
(1968) 07 KL CK 0043
In the High Court Of Kerala

Malabar Tile Works

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 08-07-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1970) 1 LLJ 79

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Judgement

V. Balakrishna Eradi, J.—This writ petition has been preferred by the management of the Malabar Tile Works, Feroke, seeking to quash the award of the industrial tribunal, Calicut, dated 28 December 1955, evidenced by Ex. P. 7 whereby the tribunal has directed the management to pay bonus to the workers concerned in the reference at the rate of 25 per cent of the total earnings on the ground that they are entitled to payment of bonus at the same rate as had been allowed by the management to the members of their clerical staff.

2. The claim put forward by the petitioners before the tribunal who are daily-rated workers of the concern was that the bonus already paid to them by the management at 26 per cent of their basic wages for the year 1958 was inadequate, inasmuch as the "profits of the company for that year Justified payment of bonus at 37 1/2 per cent and that, in any event, they had been discriminated against inasmuch as the company had paid for the identical period bonus to the clerical staff at the rate of 25 per cent of their total emoluments. The contention advanced by the management was that for the year in question there was no available Surplus after making provision for the prior charges mentioned in the Full Bench formula and that what had been paid by them to the workmen was really in the nature of a mere bounty. It was, therefore, urged that in the absence of a legal liability to pay any sum as bonus the claim put forward by the workmen to compel the management to disburse bonus at any particular rate for the year 1958 was manifestly untenable and should be rejected.

Alternatively the management also sought to Justify the differential rates adopted at between the clerical staff and the daily-rated workers on the ground that the conditions of service of the two categories were substantially different and that therefore the adoption of different rates in respect of the two classes of employees was fully justified.

3. The tribunal, after noticing the contentions put forward by the management, took the view that it was unnecessary for it to go into the question as to the existence of available surplus because, according to it, even if no surplus was available, it was not open to the management to make any payment of bonus to the two classes of employees at different rates and that on such discriminatory treatment being made out there was jurisdiction for the tribunal to direct the management to do away with such discrimination by compelling them to pay to the daily-rated workmen bonus at the same rates as had been paid to the clerical staff. On the question as to whether the discrimination was justified on the ground that the conditions of service of the clerical staff were less favourable than those applicable to the daily-rated workers, the tribunal held that the management had not substantiated the case put forward by them. After discussing the evidence adduced by the management on this point, the tribunal has recorded the conclusion that there were no Justifying circumstances warranting differential rates of bonus being adopted as between the two classes of employees. In the result, the tribunal passed the impugned award directing the management to pay bonus to the petitioning workers at the rate of 25 per cent of their total earnings for the year in question.

4. The main contention urged before me by the learned Counsel for the petitioner is that the tribunal has committed a manifest error of law in thinking that it was open to it to pass an award compelling the payment of bonus by the management without investigating into and recording any finding on the vital question as to the existence of available surplus in the year in respect of which the claim for bonus was made. The petitioner's counsel contends that in the absence of any allegation, much less proof, of any unfair labour practice or of victimization, there is nothing preventing an employer from choosing according to his own discretion the manner in which he would distribute any bounty that he may decide gratuitously to give to the employees and that it is not open to the tribunal merely on account of any differentiation in the distribution of such bounty to compel the employer to treat all the workmen alike in regard to each matter.

5. It is now Well-established that there are only four types of bonus which have been recognized in the industrial law as enforceable through the industrial courts. They are:

- (1) production bonus or incentive wages;
- (2) bonus as an implied term of the contract between the parties ;
- (3) customary bonus in connexion with some festival; and

(4) profit bonus.

There is no case before me that the claim by the workmen in the instant case was for anything other than profit bonus. A reference to the statement filed by the workmen before the tribunal shows this beyond doubt. The very foundation of the claim advanced by them is that the company had made huge profits during the year in Question and that on the basis of such profits bonus at the rate of 37 1/2 per cent was payable to them.

6. In order that a claim for "profit bonus" should be available to the workman for any year it is absolutely necessary that they should establish the existence of an available surplus in that year for distribution as bonus. This position is placed beyond doubt by the following observation of the Supreme Court in *The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and Others Vs. The Textile Labour Association, Ahmedabad*, at 547:

... It would thus be clear that the essential concept of profit bonus is that there should be an available surplus determined according to the principles laid down in the cases mentioned above for distribution. If there is no such available surplus for distribution, there can be no case for payment of profit bonus....

In the above ruling their lordships have also reaffirmed their approval of the Full Banch formula wherein the five prior charges for which provision has to be made by way of deduction from the gross profits for arriving at the available surplus have been catalogued, viz.,

- (1) depreciation,
- (2) taxes,
- (3) return on paid up capital,
- (4) return on working capital, and
- (5) rehabilitation.

It is only if a surplus is left after deducting these items of prior charges from the gross profits made during the year that a claim for profit bonus enforceable through industrial courts can really arise. Although a contention was put forward before the Supreme Court in the aforesaid case that in addition to the four types of bonus mentioned above there is yet a fifth type of bonus, viz., the goodwill bonus, their lordships turned it down and hold that a goodwill bonus is inherently and essentially dependent on the goodwill of the employer being in the nature of a bounty and cannot therefore be compelled to be paid through the process of industrial adjudication. The following observation at p. 630 may be usefully extracted:

It was, however, urged on behalf of the respondent that there is a fifth kind of bonus, namely, goodwill bonus, and that the agreement when it provides for a minimum bonus irrespective of availability of profits provides for such bonus in

the interest of industrial peace. It is enough to say that so far as what is called good will bonus is concerned, it presupposes that it is given by the employer out of his own free will without any compulsion by an industrial court. As its very name implies, it is a bonus which is given by the employer out of his free consent in order that there may be goodwill between him and his workmen; but there can be no question of imposing a goodwill bonus by industrial courts, as imposition of such a bonus is a contradiction of its very concept, We have already referred to four kinds of bonus which prevail in the Industrial law in India and which can in certain circumstances be imposed by industrial tribunals; but there can be no question of the imposition of the so-called goodwill bonus, for that bonus depends upon the goodwill of the parties and on their free consent. In the absence of such free consent, there can be no question of any goodwill bonus.

It is, therefore, clear that under no circumstances can the industrial court compel the employer to disburse goodwill bonus.

7. The only ground mentioned by the tribunal for directing the management in this case to pay bonus to the workmen at the rate of 25 per cent of their total earnings is that the management had chosen to pay bonus at the said rate to the members of their clerical staff. The tribunal has relied on a decision of the Supreme Court in *Burmah-Shell Refineries, Ltd. v. their workmen* 1951 I L.L.J. 644 as warranting a direction being issued to the management in the instant case to do away with such discrimination even in respect of payment of goodwill bonus. In the case before the Supreme Court 1661 I L.L.J. 644 (vide supra) there was no dispute whatever as to the existence of available surplus and the only question that came up for consideration was whether in distributing such available surplus as profit bonus it was open to the management to discriminate as between the different types of employees. It was in this context that their lordships held that in the absence of some overriding consideration it would not be fair to make a distinction in the rate of bonus between different classes of workman. Tills decision is therefore no authority in support of the view taken by the tribunal that even in the absence of any available surplus the management can be compelled by an order of the tribunal to disburse bonus to the workmen merely on the ground that in making certain payments which can be characterized only as goodwill bonus differential rates had been applied as between the different classes of workman.

8. As already noticed, the observations of the Supreme Court in *The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and Others Vs. The Textile Labour Association, Ahmedabad*, make It abundantly clear that only the four types of bonus enumerated therein are recognizes in the industrial law in this country as enforceable through industrial courts. Hence in the present case it is only if the workmen make out a valid claim for the payment of profit bonus by proving the existence of available surplus for the year in question that the tribunal will have jurisdiction to direct the management to pay any Bach bonus to them. Unfortunately, however, that vital question as to the existence or

otherwise of available surplus has not been gone into by the tribunal on account of its erroneous view that it was unnecessary to be considered. Unless the tribunal comes to a definite finding that there was available surplus made by the company during the year 1958 for distribution as bonus no further question would arise as to the exact rate at which the workmen are liable to be paid. The mere circumstance that the management chose to make some payments to its workers despite the absence of an available surplus, will not attract any legal liability on them to pay bonus for that year.

9. The award passed by the tribunal cannot therefore stand and is set aside. The matter is remitted back to the tribunal and the tribunal is directed to go into the question as to whether or not there was available surplus during the year 1958 and pass fresh orders on the reference in accordance with law and in the light of the observations contained in this judgment. I make it clear that I am not disposed to interfere with the finding of the tribunal rejecting the management's contention that in case available surplus did exist there were circumstances justifying differential treatment as between the two classes of workmen. This being a pure question of fact, the conclusion arrived at by the tribunal in regard to it is not liable to be interfered with by this Court under Articles 226 and 227 of the Constitution.

10. The original petition is allowed as above. There will be no order as to costs.