
(1961) 07 KL CK 0019
In the High Court Of Kerala

Travancore Coir Factory Staff Association	APPELLANT
Vs	
Aspinwall and Co. (Travancore), Ltd.	RESPONDENT

Date of Decision : 05-07-1961

Acts Referred:

Citation : (1961) 5 KLJ 1116 : (1962) 1 LLJ 488

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Judgement

C.A. Vaidialingam, J.—In both these writ petitions the award of the industrial tribunal, Alleppey, in Industrial Dispute No. 22 of 1958 is attacked by the respective petitioners. The dispute relates to the payment of bonus for the years 1956 and 1957. It is seen that the management and employees appear to have entered into a settlement whereby, both parties agreed to refer the issue as to whether Aspinwall & Co. (Travancore), Ltd., Alleppey, was obliged to pay the same rate of bonus to the staff as was paid to the staff in Aspinwall & Co., Ltd., Cochin. This dispute, by agreement of parties, was accordingly referred to the industrial tribunal for adjudication and it is in consequence of the reference so made that the present award, that is under attack, has been passed by the tribunal.

2. The only basis, so far as I could see for the claim made by the petitioners for payment of bonus for the years 1956 and 1957 appears to be that there is a custom and practice for the management to pay the bonus and that they have been doing so for several years previously.

3. I am emphasizing this aspect of the matter, because during the course of arguments Sri Velayudhan Nair, learned Counsel appearing for the petitioner in Original Petition No. 858 of 1959, attempted to convince me that the claim of the parties for bonus must be considered to be on the ground that there is an implied term of contract between the parties and therefore the tribunal has erred in not advertng to this aspect or giving an adjudication in favour of the petitioner on this basis. No doubt, this contention was also supported by Sri Viswanatha

Menon, learned Counsel appearing in the connected writ petition.

4. So far as I could see, the broad heads under which the claim for bonus has been recognized and as stated in the decision of the Supreme Court in 1961--1 L.L.J. 521 at p. 526 appear to be:

So far as we can see, there are four types of bonus which have been evolved under the industrial law as laid down by this Court. Firstly, there is what is called a production bonus or incentive wage see *Titaghur Paper Mills v. Their workmen* 1959--2 L.L.J. 9; the second is bonus as an implied term of contract between the parties see *Ispahani, Ltd. v. Ispahani Employees Union* 1959--2 L.L.J. 4 ; the third is customary bonus in connexion with some festival see *Oraham Trading Co. v. Their workmen* 1959--2 L.L.J. 393 and the fourth is profit bonus which was evolved by the Labour Appellate Tribunal in *Mill-owners Association, Bombay v. Rashtriya Mill Mazdoor Sangh, Bombay* 1950--1 L.L.J. 1247, and which has been considered by this Court fully in two cases.

5. Whether a claim for bonus can be sustained only under one or other of these four categories or even otherwise does not arise before me for consideration in this case, because, as I mentioned earlier, the basis of the claim for bonus in this case was custom and practice.

6. Therefore the only question that arose before the tribunal was as to whether the employees have been able to establish the case set up by them. No doubt, there were many other minor contentions that were raised both by the management and by the employees. I do not think it necessary to deal with those contentions or the finding's recorded by the tribunal on those points.

7. On the main question, namely, the claim made on the basis of custom and practice, no doubt, petitioners appear to have let in evidence to show that the employees of *Aspinwall & Co. (Travancore), Ltd., Alleppey*, were being paid every year more or less at the same rate the bonus that was being paid by *Aspinwall and Co., Ltd., Cochin*, to their employees. The management also appears to have let in evidence to show that there was no uniform payment such as contended by the employees.

8. On a consideration of the entire materials placed before the tribunal, the latter has come to the conclusion that the case of custom or precedent in the matter of payment of bonus in the two companies set up by the two petitioners has not been established and it has also observed that the contentions of the employees in that behalf has to be rejected.

9. Ultimately the tribunal goes into the question as to whether during the years in question the management has really made a profit. Here again after going through the profit and loss statements, which were filed by the management and which I find were not disputed by the union, the tribunal is of the view that in both these years the company has sustained a loss. On this reasoning, the tribunal upholding the conditions of the management, has ultimately held that

the employees are not entitled to bonus for the year.

10. The main contention urged before me by Sri Velayudhan Nair, learned Counsel for the writ petitioner in Original Petition No. 858 of 1959 is that the tribunal has ignored very many vital admissions that have been made by the management itself regarding the payment of bonus for a long number of years and which payment more or less approximate or is equal to the payment made by the Aspinwall sad Co., Ltd., Cochin.

11. That is, in short, Sri Velayudhan Nair's contention was that the tribunal has ignored valuable items of evidence that were before it and if that evidence has been considered by the tribunal, the finding now arrived at cannot be sustained.

12. As Sri Velayudhan Nair rather strenuously attacked the finding of the tribunal on this aspect, I allowed the learned Counsel to take me through the material evidence, which according to him, has been omitted to be taken into consideration by the tribunal in arriving at this conclusion.

13. On an entire consideration of the materials and the evidence placed before me by Sri Velayudhan Nair, I am not satisfied that the criticism levelled against the findings arrived at by the tribunal in this case is justified.

14. No doubt, if some of the answers given by the manager are taken, apart from the context in which they have been given, they may prima facie appear to support the contention of Sri Velayudhan Nair. But if the entire evidence of that witness is taken together, in my view, the finding of the tribunal regarding the failure of the petitioners to establish their case on either custom or practice in the matter of payment of bonus to employees in question has been properly arrived at by the tribunal and the finding arrived at also cannot be stated to be not supported by the material evidence on record.

15. Probably faced with this difficulty, Sri Velayudhan Nair was forced to fall back upon the claim for bonus being paid as an implied term of contract between the parties. No doubt, such a claim has been recognized by the Supreme Court in the decision reported in 1959--2 L.L.J. 4. But the question is whether the contention now Bought to be raised by Sri Velayudhan Nair was really the subject-matter of consideration before the tribunal, that 1B, whether such a case has been set up by the employees in this case. On a perusal of the statements filed by the petitioners, I am not satisfied that such a contention was ever raised. If such a contention has been raised, the approach to a decision of that question should have been entirely different from the one that has been adopted by the tribunal and in my view quite rightly because of the sole basis of the claim being rested on custom and practice. Therefore the tribunal was quite justified in confining its attention only to this aspect of the matter, viz., whether the petitioners have established the case of payment of bonus by custom and precedent. In fact the tribunal has also adverted to the question as to whether an employee may be entitled to claim bonus on the basis of it being an implied term of the contract of employment or service. It is adverted to by the tribunal in connexion with the

question under what circumstances a labourer is entitled to claim bonus. But after advertng to this aspect, the tribunal considers the specific case set up by the parties, namely of a custom and practice. It is on that question that the tribunal has ultimately focussed its attention and recorded a finding as against the petitioners in these proceedings. On an entire consideration of the materials that were available before the tribunal and also taking Into account the various reasons given by the tribunal for coming to a conclusion, I am not satisfied that the findings recorded by the tribunal suffers from any infirmities, nor is it liable to be quashed as contended by the learned Counsel in this writ petition. Therefore the question as to whether the petitioners are entitled to claim bonus on the basis of custom and practice, was essentially a question of fact which had to be decided on the available evidence placed before it by the management and the employees. On that question, on a consideration of the evidence adduced, the tribunal has recorded findings as against the employees and the finding so recorded la a pure question of fact. When it cannot be stated that there is no evidence to support that finding, in my view, there is absolutely no scope for interfering with the finding so recorded. The result is that both these writ petitions fail and the parties will bear their costs in these proceedings.