

(1959) 07 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 826 of 1957

Workers of Srirama Sugars and Industries Ltd., Bobbili	APPELLANT
Vs	
Industrial Tribunal Andhra Pradesh and Another	RESPONDENT

Date of Decision : 09-07-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1960 AP 485 : (1959) 2 LLJ 704

Hon'ble Judges : Mohd. Ahmed Ansari, J

Bench : Single Bench

Advocate : Y. Sivarama Sastry, for the Appellant; O.A.N. Reddy, for 3rd Govt. Pleader and A. Kuppuswamy, for the Respondent

Final Decision : Allowed

Judgement

Mohd. Ahmed Ansari, J.—The petitioners are the Sri Rama Sugar Mill Labour Union, and seek Certiorari to vacate the award by the Industrial Tribunal, which was published in the State Gazette of 25-4-1957. Six questions had been referred to the aforesaid Tribunal by the Industrial Dispute No. 24 of 1956: but only the following three had been answered:

1. Payment of bonus for the years 1951-52 and 1952-53;
2. Payment of Dearness Allowance, and
3. Leave facilities.

So far as the first question was concerned the Tribunal has held that from the scrutiny of the balance sheets and the evidence of the accounts, there was no balance for the payment of bonus for the two years referred to in the question. The claim for the dearness allowance has also been found not justified, partly because cost of living index was similar to that when the earlier award between the parties to the dispute was given, so that what was then fixed did not require any increase, and partly because of section of the employees has given up its

claim to the increase.

The answer to the question concerning the leave facilities is that the claim of ten days privilege, 10 days sick and 10 days casual leaves for workers employed after 1949 cannot be granted because after the amendment to the Factory Act they were getting their statutory leaves under the amended Section 79 of the Act. All the aforesaid conclusions have been challenged before me and so far as the argument concerning the answer to the first question is concerned, it requires adequate consideration.

2. The Counsel for the parties agree that the claim to bonus depends on two conditions. The first is that the wages in the particular industry are short of what can be properly described as living, wages, and the Other is that the industry is shown to have made profits. Again there is no difficulty as to how this surplus is to be ascertained; for there are two recent pronouncements by the Supreme Court covering the question. In *The Sree Meenakshi Mills, Ltd. Vs. Their Workmen*, it has been held that the principles on which the distributable surplus has to be ascertained are, to provide from the gross profits for depreciation, for rehabilitation, for return at 6 per cent on the paid-up capital, for return on the working capital at a lesser but reasonable rate, and for an estimated amount in respect of the payment of Income Tax.

In the same case it has been also held that in determining what should be allowed on account of depreciation the Tribunal is not required to adopt the basis followed under the Income Tax Act. The same principle was reiterated in *The State of Mysore Vs. The Workers of Gold Mines*, in which Gajendragadkar, J. while enumerating the several heads of deductions from the gross profit in order to find out the surplus, has laid how the amount required for rehabilitation is to be determined. In this connection he observes at page 933 as follows:

"For the purpose of sustaining the claim for rehabilitation there must be evidence to show the age of the machinery, the period during which it requires the replacement, the cost of replacement, the amount standing in the depreciations and reserve fund and to what extent the funds at the disposal of the company would meet the cost of replacement. In *Trichinopoly Mills, Ltd. Ramjeenagar v. National Cotton Mills Workers' Union*, Ram-jeenagar 1953 AC 672 the appellate tribunal has observed that for determining the total amount required for rehabilitation it is the original cost that has to be multiplied by an appropriate multiple, for instance 2.7, for the purpose of ascertaining the replacement value of the machinery, buildings and plant. From the amount thus obtained 5 per cent, of the original value is to be deducted as breakdown value.

The balance is treated as sufficient to complete replacement of machinery and buildings. Then the amounts in hand under the head of depreciation, general reserve and rehabilitation have to be totalled and this total has to be deducted from the aforesaid balance which is required to complete replacement of machinery and buildings. It is the balance thus drawn that has to be spread over

a number of years, as for instance 15, for the purpose of rehabilitation; in other words, the balance has to be divided by 15 and the amount thus determined has to be treated as prior charge under the heading of rehabilitation for the relevant year Thus the appellant's claim for rehabilitation would have to be tried by the tribunal in the light of these decisions." The Counsel for the writ petitioner has argued that the Tribunal while correctly enumerating the several heads of deductions in order to ascertain the surplus has not appreciated the principles, on which deduction for depreciation and reserves for rehabilitation are to be determined. I think there is force in this argument; for there is nothing in the award to show on what principle the deductions on account of depreciation have been allowed.

Nor is there anything in the award to indicate how the reserves for rehabilitation have been determined. The only oral evidence on record about the deductions in order to ascertain the surplus is the deposition of M. W. 1 and the accountant deposes to have allowed for depreciation according to the Income Tax. Obviously the Tribunal in accepting such depreciation as having been correctly made has committed error of law and that would justify interference; for it is apparent on the face of the record.

The answer to the question is further vitiated by the Tribunal's not ascertaining whether the reserves for rehabilitation, if any, have been arrived at on correct principle. Indeed the witness for the employers claims reimbursement on account of depreciation, but is not clear about how much of it is on account of rehabilitation. This is not keeping in view the principle enunciated by the Supreme Court in *The State of Mysore Vs. The Workers of Gold Mines*, .

3. The Counsel for the respondent has, however, argued that these are not errors apparent on the face of the record and do not furnish grounds for interference under Article 226. It is clear that the Tribunal, though it has enumerated the several heads, had not fully appreciated the principles on which the allowances for depreciation and rehabilitation are allowed, and because of the error the conclusions on no surplus being available had become vitiated. This in my opinion constitutes error apparent on the face of the record of this case and therefore grounds have been made out for interfering so far as the answer to the first question is concerned.

4. As regards the answer to the second question it was argued that the reasons for disallowing the claim to dearness allowance is bad because no concern can get rid of the obligations of paying fair wages on the ground of inadequate finances. The main reason on which the Tribunal has not allowed the dearness allowance is that the cost for living on which the earlier award had fixed the dearness allowance has not been shown to have arisen, so that what was fair then still continues to be so. This is a question of fact, which I cannot vary in exercise of powers under Article 226.

5. The answer to the third question also must stand. The Workers' case as

explained by their Counsel is that there should not be two sets of leave, one for workers employed before 1949 and another for those engaged afterwards. But then the statute preserves leave secured to worker under agreements which are prior to the amendment of the section. The difference therefore arises because the statutory provisions cannot be adjusted by any tribunal. It follows that the award on this question must stand.

6. Though the award is one it contains several heads of disputes and the claim to bonus is separate from those of dearness allowance and for equal leave. It is also clear that whereas the part of the award concerning the bonus is vitiated by legal error concerning how the two deductions should be made for ascertaining the surplus, that cannot be said of the other answers. I therefore hold that the whole award should not be vacated by Certiorari and only that part of it should be set aside which deals with the first question. Accordingly that part of the award alone is set aside and the Tribunal is to determine afresh after giving both the parties opportunity to adduce proper evidence if they so desire. The writ petition is allowed, but having regard to the partial success of the parties they should bear their costs.