Messrs. Shalimar Works Limited.

Vs

Their Workmen

Civil Appeals Nos. 317 & 318 of 1950

(B. P. Sinha, P. B. Gajendragadkar, K. N. Wanchoo JJ)

08.05.1959

JUDGMENT

WANCHOO J. –

These are two appeals by special leave against the same decision of the Labour Appellate Tribunal of India in a dispute between Messrs. Shalimar Works Ltd., Howrah (hereinafter called the company) and its workmen represented by two unions (hereinafter called the workmen). Appeal No. 317 is by the company while appeal No. 318 is by the workmen. We shall dispose them of by one judgment.

There was a dispute between the company and its workmen on a number of matters and it was referred to the Sixth Industrial Tribunal for adjudication by the Government of West Bengal. Only two matters now survive out of the many referred to the Tribunal, namely, (1) profit sharing bonus and (2) reinstatement of 250 old workmen.

We shall first deal with the question of profit sharing bonus. It appears that the company had a profit sharing bonus scheme in force on the following lines. It provided that after making certain deductions, if the remaining profit was between Rs. 1,50,000 and Rs. 1,99,999, the workmen would be entitled to quarter of a month's average basic pay as bonus. When the remaining profit was between Rs. 2.00 lakhs and Rs. 2,49,999, the bonus went up to half of a months average basic pay. When the remaining profit was between Rs. 2,50,000 and Rs. 2,99,999, the bonus was to be three quarters of a month's average basic pay and when the remaining profit was Rs. 3 lacs or more the bonus was to equal one month's basic pay. No bonus was to be paid if the profit was less than Rs. 1,50,000. There were provisions that the full bonus would be paid to a workmen who had attended 275 days in a year (inclusive of holidays and leave with pay) while those with less attendance were to be paid proportionately with the condition that if the attendance of any workman was less than 100 days he would be entitled to no bonus. The workmen wanted this scheme to be revised and the main revision they desired was that the bonus should begin with a profit of Rs. 25,000 after the usual deductions when it would be one week's wages and should go on increasing till it came to three months' wages for profit above Rs. 1 lakh and upto Rs. 3 lakhs; thereafter it should increase further at the rate of 21 days' wages for each lakh over 3 lakhs. This was opposed by the company, though the company agreed to a change in the quantum of bonus when profit after deductions was Rs. 3 lakhs or above. In the scheme in force, the bonus was equal to one month's basic pay when the profit was Rs. 3 lakhs or above, with no further increase whatsoever be the profits. The company agreed to revise this term and suggested that when profit was -

(i) between Rs. 3 lakhs to Rs. 4 lakhs, bonus should be four weeks' wages;

(ii) above Rs. 4 lakhs upto Rs. 5 lakhs, bonus should be five weeks' wages.

(iii) above Rs. 5 lakhs, it should be six weeks' wages

The Industrial Tribunal did not accept fully the contentions of either party in this connection, though it varied the scheme in force in certain particulars. After the variation the scheme was as below :-

For remaining profit after the usual deductions -

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(i) from Rs. 80,000 to bonus at the rate of one Rs. 1,99,999, week's average basic pay;

(ii) from Rs. 2.00 lakhs to bonus at the rate of half Rs. 2,49,999, of a month's average basic pay;

(iii) from Rs. 2.50 lakhs to bonus at the of three quarters Rs. 2,99,999, of a month's average basic pay;

(iv) from Rs. 3.00 lakhs to bonus at the rate of four weeks' Rs. 4.00 lakhs, average basic pay;

(v) from above bonus at the rate of six Rs. 4.00 lakhs up weeks' average basic to Rs. 5.00 lakhs pay; and

(vi) from above bonus at the rate of two Rs. 5.00 lakhs, months' average basic pay.

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The Industrial Tribunal also accepted 275 days' attendance for earning full bonus and proportionate bonus when the attendance fell below 275 days and the minimum of 100 days' attendance for earning any bonus at all. It also held that bonus for the years 1951 and 1952 should be paid at the existing rates while revised rates should be applied from the year 1953 onwards.

Both parties appealed to the Labour Appellate Tribunal against this revision. The company contended that no greater revision than what it had agreed to should have been ordered. In the workmen's appeal it was contended that the scheme put forward on their behalf should have been accepted. They further contended that the condition of minimum attendance for 100 days should not have been laid down and that the bonus for the years 1951 and 1952 should have been awarded at the revised rates.

The Appellate Tribunal saw no reason to interfere with the award of the Industrial Tribunal in this respect and dismissed the appeals with one modification, namely, it added that if in any year it was found that the bonus worked out according to the award of the Industrial Tribunal was less than profit bonus, calculated according to the Full Bench formula evolved in the Mill-Owners' Association, Bombay v. The Rashtriya Mill Mazdoor Sangh, Bombay [1950 L.L.J. 1247], the workmen would be entitled to bonus under the formula; otherwise they would get bonus under the scheme as modified by the Industrial Tribunal.

In the appeals before us, the company has attacked the revision ordered by the Industrial Tribunal, which was upheld by the Appellate Tribunal, as also the condition added by the latter; while the workmen have attacked the scale fixed by the Industrial Tribunal as also the order of payment of

bonus for the years 1951 and 1952, according to the scheme in force before the revision by the Industrial Tribunal, and the conditions as to attendance. Learned counsel for the parties, however, agreed before us that the revision made by the Industrial Tribunal was acceptable to both the parties and that the condition laid down by the Appellate Tribunal that where the bonus according to the scheme is less than the bonus worked out according to the Full Bench formula that formula should be applied, should be deleted. In view of this agreed statement, we delete the condition laid down by the Appellate Tribunal and order that bonus should be paid in accordance with the scheme as revised by the Industrial Tribunal. Learned counsel for the workmen, however, urged that the condition as to minimum attendance of 100 days for entitlement to any bonus at all and of minimum attendance of 275 days for entitlement to full bonus was arbitrary and should be set aside. This condition has been accepted by both the Tribunals and appears reasonable and we see no reason to interfere. It was further contended that bonus for the years 1951 and 1952 should have been ordered to be paid according to the revised scheme. This contention was also negatived by the two Tribunals and we see no reason to differ from them. The two appeals therefore with respect to bonus are dismissed subject to the modification given above.

We now come to the question relating to the term in the reference as to the reinstatement of 250 old workmen. It is necessary to state certain facts in this connection. It appears that a Major Engineering Tribunal was set up by the Government of West Bengal in October 1947 to decide disputes between major engineering firms and their workmen. The company as well as the workmen were parties to the disputes which was pending before that tribunal. The issues before the tribunal were of a very comprehensive nature and included all kinds of disputes that could arise between employers and employees. While that adjudication was pending the workmen suddenly pressed certain demands upon the company for immediate solution without awaiting the award of the tribunal, even though the demands so put forward were under adjudication. The company naturally refused to meet the demands when they were under investigation by the tribunal. Consequently, the workmen who had come to work on March 23, 1948, started a sit-down strike after they had entered the company's premises. This strike continued from March 23 to 27, and it was on March 27 that the workmen were ejected from the premises by the police according to the case of the company or were induced to leave the premises by the police according to the case of the workmen. Anyhow, after the workmen left the premises on 27th, the company gave notice on that day that the Works would be closed indefinitely. Another notice was given by the company on April 6, 1948, in which it was notified that all those who had resorted to illegal strike from March 23, 1948, would be deemed to have been discharged from that date. Thereafter no work was done till May 15, 1948. On that date the company gave a notice that if sufficient suitable men applied for employment on or before May 19, the works would be opened on a limited scale from May 20. It seems, however, that nothing came out of this notice. Eventually on July 5, the company gave another notice to the effect that the works would reopen on July 6, 1948, and all old employees could apply, and it re-engaged their past services would be counted and their conditions of service would be as awarded by the Major Engineering Tribunal, which, it seems, had given its award in the meantime. It was also said in the notice that upto July 21, the company would only consider engagement of former employees and no fresh labour would be recruited till that date. Thereafter the majority of the old workmen applied for being retaken in service and everyone who applied upto July 21 was re-engaged. Thereafter the company refused to re-engage the old employees, a few of whom are said to have applied in November and December, 1948, August, 1951, February, 1952 and January, 1953.

It appears that in November, 1949, the Assistant Labour Commissioner was moved by one of the trade unions about non-employment of 249 workmen. He wrote to the company in that connection and it replied that the workmen had been discharged for having taken part in an illegal strike and it

could not see its way to re-employ them. For a long time nothing seems to have happened thereafter till we come to October 7, 1952, when the first reference was made with respect to the reinstatement of 250 old workmen. The original reference was to the tribunal consisting of Shri S. K. Niyogi. That gentleman went on retirement before he could dispose of the reference and consequently another reference was made on November 18, 1953, to the present tribunal consisting of Shri M. L. Chakraborty. No list of 250 workmen was sent to the Tribunal about whom it was to consider the question of reinstatement. No list of these workmen was filed even before the Industrial Tribunal during the adjudication proceedings. It was only after the arguments on behalf of the company were over on December 14, 1953, that a list of names was filed before the Industrial Tribunal. This list consisted of 220 persons only though the reference was with respect to 250. As has been pointed out by the Appellate Tribunal, it was a carelessly prepared list in which some names were repeated. Against some serial numbers there were neither names nor ticket numbers. It spite of this, the Industrial Tribunal ordered reinstatement without specifying who were to be reinstated; it really did not know who were the persons to be reinstated. What it did was to order the company in order that identity of the workmen to be reinstated might be established to give a general notice on its notice-board notifying the strikers to come and joint their duties on a fixed date and to reinstate whichever striker applied within the time allowed.

This award of the Industrial Tribunal has been rightly criticised by the Appellate Tribunal, which has characterized this reinstatement as "vague and highly objectionable". The Appellate Tribunal was of the view that "no award could be so loosely or vaguely made". If further went on to consider whether identity could in any manner be fixed. In this connection it relied on the remarks made by company (which had, however, objected to the production of the list at that late stage) on this list under orders of the Industrial Tribunal. From these remarks the Appellate Tribunal came to the conclusion that the identity of 115 workmen had been established. It found that 100 out of them had withdrawn their provident found. It, therefore, held that so far as these 100 were concerned, they accepted the order of discharge because of the withdrawal of the provident fund and no further relief could be granted to them. As for the remaining fifteen workmen, it pointed out that they had not withdrawn their provident fund. It, therefore, ordered these fifteen workmen to be reinstated. Finally, it ordered that no compensation could be allowed to the workmen for the period between their discharge and their reinstatement because of the delay on their part in asking for redress. The reason which impelled the Appellate Tribunal to order reinstatement was that the notice of discharge dated April 6, 1948, was not served on the workmen individually and though the notice of July 5, 1948, inviting the former workmen to come and join the company was given wide publicity, it was also not served on the workmen, individually. According to the Appellate Tribunal, "the net result was that there was defective communication of notice of discharge to the workmen and the notice offering reinstatement was not also sufficiently published to enable it to hold that the defect was cured". As to the sit-down strike itself, both the Tribunals were of the view that the strike was the result of pre-concerted action and there was no justification for it when the matter was pending before a tribunal for adjudication. The plea of the workmen that the strike resulted spontaneously because of the insult offered by the manager to a deputation of the workmen on March 23 was disbelieved by both the Tribunals.

The main contention on behalf of the company in this connection is that when both the Tribunals had found the sit-down strike unjustified, they should have held that the company was entitled to discharge the workmen, in the particular circumstances of this case. It is also urged that the discharge took place in April, 1948 and the company reopened in July, 1948; the reference of the matter more than four years after without the list of the workmen said to have been discharged, was not proper. On the other hand it has been urged on behalf of the workmen that as a dispute was

pending between the company and its workmen, the company could not discharge the workmen without obtaining permission of the tribunal under s. 33 of the Industrial Disputes Act, and inasmuch as the notice of discharge of April 6, 1948, was given without obtaining the sanction of the tribunal before whom the dispute was then pending, it was breach of s. 33 and therefore the order of discharge being in breach of law the workmen were entitled to reinstatement.

There is no doubt that strictly speaking the order of the company discharging its workmen on April 6, 1948, when a dispute was admittedly pending was breach of s. 33; (see Punjab National Bank Ltd. v. Employees of the Bank, [[1953] S.C.R. 680]). The remedy for such a breach is provided in s. 33-A and it can be availed of by an individual workmen. If therefore it was felt by the workmen who were discharge on April 6, 1948, that there was breach of s. 33 by the company, they should have applied individually or collectively to the tribunal under s. 33-A. None of them did this. It is true that some kind of letter was written to the Assistant Labour Commissioner in November, 1949, but that was also very late and nothing seems to have happened thereafter for almost another three years, till the first reference was made October 7, 1952. It is true that there is no limitation prescribed for reference of disputes to an industrial tribunal; even so it is only reasonable that disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale, as in this case. The industry has to carry on and if for any reason there has been a wholesale discharge of workmen and closure of the industry followed by its reopening and fresh recruitment of labour, it is necessary that a dispute regarding reinstatement of a large number of workmen should be referred for adjudication within a reasonable time. We are of opinion that in this particular case the dispute was not referred for adjudication within a reasonable time as it was sent to the Industrial Tribunal more than four years after even re-employment of most of the old workmen. We have also pointed out that it was open to the workmen themselves even individually to apply under s. 33-A in this case; but neither that was done by the workmen nor was the matter referred for adjudication within a reasonable time. In these circumstances, we are of opinion that the tribunal would be justified in refusing the relief of reinstatement to avoid dislocation of the industry and that is the correct order to made. In addition, the reference in this case was vague inasmuch as the names of 250 workmen to be reinstated were not sent to the Industrial Tribunal and no list of these men was given to it till practically after the whole proceeding was over. Even the list then supplied was so bad that the Industrial Tribunal did not think it worthwhile to act upon it, and directed the company to give a notice to the strikers to ask for re-employment within a certain time. This the company had already done on July 5, 1948. That notice had gained considerable publicity, for the majority of the workmen did appear thereafter for re-employment by July 21. In the circumstances there was no reason for ordering reinstatement of any one on such a vague reference after such an unreasonable length of time. The defect in the order of discharge of April 6, due to permission not having been obtained under s. 33 can in the circumstances of this case be ignored on the ground that the workmen who did not re-join in July 1948, were not interested in reinstatement : firstly, on account of the circumstances in which that order came to be made after an illegal and unjustified sit-down strike, secondly, because the workmen in their turn did not avail themselves of the remedy under s. 33-A which was open to them, and thirdly, because the reference was made after an unreasonable length of time and in a vague manner. We are therefore of opinion that the Appellate Tribunal should not have ordered the reinstatement of even the fifteen workmen in the circumstances as their case was exactly the same as the case of the hundred workmen, except in the matter of the withdrawal of the provident fund.

After the application for special leave was allowed this Court made an order on September 26, 1955, that seven day's wages every month should be paid by the company to the fifteen workmen

who had been ordered to be reinstated. Learned counsel for the company informs us that of these fifteen, only seven have been turning up to receive this payment while eight men never turned up. This shows that these eight are not interest in the reinstatement. Of the remaining seven, two, according to the learned counsel for the company, have obtained other jobs while one is said to be a member of Parliament. The company was prepared to reinstate, out of human considerations, the other four, though, it contends that legally - and rightly so - it is not bound to reinstate any one of these fifteen workmen. These four workmen whom the company is prepared to take back are Nitai Manji, Satya Charan Das, Mustafa Khan and Akil-ud-Din. The appeal of the company must therefore be allowed with respect to the remaining eleven workmen who have been ordered to be reinstated by the Appellate Tribunal. The order of the Appellate Tribunal will stand with respect to the four workmen named above in view of the company's willingness to take them back. The appeal of the workmen on the question of reinstatement fails and is hereby dismissed. We may, however, make it clear that payment made pursuant to the order of this Court will not in any even be refundable or adjustable towards the future wages of those workmen who will be reinstated by the company.

Both the company and the workmen have raised other points in their respective grounds of appeal; but as they have not been pressed before us we need not say anything with respect to them. In these circumstances we are of opinion that both the parties will bear their own costs of this Court.

Appeal No. 317 allowed.

Appeal No. 318 dismissed.

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