

## SUPREME COURT OF INDIA

Sri Sita Ram Sugar Mills Ltd., Baitalpur, District Deoria (U. P.)

Vs.

Their Workmen

C.A.Nos.181 and 182 of 1959

(P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.)

21.03.1960

### JUDGEMENT

#### **GAJENDRAGADKAR, J.:**

1. This appeal by special leave arises out of an industrial dispute between the Appellant Sri Sitaram Sugar Mills Ltd., and its workmen, the respondents. The dispute in question was referred for adjudication to the Industrial Tribunal by the U. P. Government and it was in reference to the payment of Rs. 1,130-8-9 made by the appellant as bonus to employees engaged at the head office at Calcutta. The respondents' case was that under the U. P. Government Order which regulates the payment of bonus the said employees were not entitled to share in the bonus whereas the appellant urged that the said employees were included amongst its employees and payment of bonus to them was fully justified. The relevant year is 1953-1954. During this year the total bonus distributed by the appellant was Rs. 19,935; out of this amount the appellant paid Rs. 1130-8-9 to the employees at its head office at Calcutta, and it is in regard to this latter payment that the present dispute has arisen. A similar dispute had also been referred to the Industrial Tribunal in respect of interim bonus for the year 1954-1955; but the said dispute was amicably settled. The tribunal has upheld the plea raised by the respondents and has directed the appellant to distribute the bonus in question strictly in accordance with the terms of the Government Order excluding the employees at the head office. It is the validity of this award that is questioned before us by Mr. Veda Vyasa on behalf of the appellant.

2. It appears that in the State of U. P. the payment of bonus in sugar industry has more or less acquired the character of a regular annual payment. Orders are issued by the State Government specifying the scale according to which the sugar industry is required to pay bonus. This order is preceded by a tripartite conference at which agreed decisions are attempted to be reached. This system of awarding bonus under Government Orders was introduced in the year 1946 and has continued since then. Accordingly for the year 1953-1954 a committee was appointed by the State Government consisting of the Labour Commissioner, U. P. as Chairman and 4 members, two to represent the employers and two the workmen in the sugar industry. The said committee made its report to the Government and on the basis of that report Government passed G. O. No. 7095 (ST)/36-A-71-(ST)-54 on January 10, 1955, ordering the payment of bonus on the basis of the actual production of sugar. One of the terms of this order with which we are concerned in the present appeal was that the sugar factories in U.P. "shall pay the bonus as specified in the order to all persons employed in or under them and who were so employed in the crushing season 1953-1954". It is this clause on the construction of which the decision of the present industrial dispute depends. The tribunal has held that the 211 employees in question who are engaged at the head office at

Calcutta are not persons employed in or under the appellant; and so they were not entitled to claim any bonus under the Government Order from the appellant. Mr. Veda Vyasa contends that this finding is erroneous.

3. The construction of the clause itself presents no difficulty. What has given rise to the controversy, however, in the question as to whether the head office employees are in fact and in law employed by the appellant. In dealing with this question the tribunal had naturally to consider the evidence adduced by the parties and it is in the light of the said evidence that the tribunal has ultimately reached the conclusion that the head office staff at Calcutta are not the employees of the appellant Sri Sitaram Sugar Mills Co. Ltd. This is a question of fact and normally we would be reluctant to interfere with the finding of the tribunal on such a question of fact. The conclusion drawn by the tribunal rests on the appreciation of evidence and no question of law is involved in the process of reaching that conclusion. However, since the matter has been elaborately argued before us we propose to indicate briefly what the evidence is and what inference legitimately follows from it.

4. It is common ground that M/s. Karam Chand Thapar and Bros. Private Ltd., who were the Managing Agents of the appellant during the relevant period were during the same period Managing Agents of two other sugar mills, viz., Deoria Sugar Mills Ltd., U. P. and Mohini sugar Mills Ltd., Bihar. Besides they were the Secretaries and Treasurers of the Siwan Sugar Mills, Bihar. Mr. Verma, who is the Assistant Chief Accountant of the appellant, filed earning sheets of the establishment at the appellant's head office at Calcutta for the season 1953-1954; and he stated that the employees in question were the appellant's employees and not those of the Managing Agents. He, however, admitted that the said employees were working for the other concerns in which the Managing Agents were interested and their salaries contributed by the appellant along with the said other concerns. Mr. Thaper, Manager of the appellant, who also gave evidence referred to the several activities of the appellant and stated that the personnel whether posted at the mills or at the head office at Calcutta which is the Registered Office of the Appellant are employees of the appellant. He, however, admitted that the employees at the head office are not on the roll of the factory at Betalpur and we are concerned with the dispute raised by the workmen at Betalpur. From this evidence the tribunal has found that the employees in question worked for all the four sugar factories with which the Managing Agents of the appellant are connected and that their salaries are contributed by the said four sugar factories. It has also observed that for several years past the employees who work in the factories have been protesting, and successfully, against the payment of any share of the bonus to the employees at the head office. The Tribunal has then commented on the fact that the contract of the Managing Agency executed in favour of the Managing Agents by the appellant had not been produced; and it thought that in substance the employees were the employees of the Managing Agents at whose instance the respective concerns with which they were concerned were bearing the salary bill in regard to them. The only evidence which has been produced by the appellant is the earning sheets and that shows no more than the quota of the salaries paid by the appellant to the respective employees. If, on these facts, the tribunal came to the conclusion that the appellant had not shown that the employees in question were its employees, we do not see why we should interfere with it.

5. It would have been very easy for the appellant to produce the letters of appointment given to the employees at the head office. The appellant might also have conveniently produced the roll of the employees engaged by its Managing Agents. It is true that Mr. Vyasa contended that the onus was on the respondent to show that the share of the bonus had been wrongfully paid to the employees at the head office. In our opinion, it would be unreasonable to rely on technical or academic considerations of onus in such matters. Besides, it is obvious that the relevant facts are within the

knowledge of the appellant and cannot possibly be known to the respondents. Mr. Veda Vyasa also suggested that the respondents could have called upon by the appellant to produce the relevant documents. That again is a technical plea the importance of which cannot be exaggerated in industrial proceedings. The appellant knew that its workmen in the factories had been consistently raising an objection against the payment of any bonus to the head office staff. In such a case it was clearly the duty of the appellant to produce all the material evidence within its possession. That being so we do not think that the appellant can successfully challenge the finding of fact recorded by the tribunal that the persons in question are not employed in or under the appellant's concern

6. The tribunal has also found that the Government Order in question applied to U. P. only and so the head office staff cannot claim a share in the bonus. According to the tribunal it is only the employees of the factory who are entitled to the bonus under the agreement embodied in the Government Notification, and that again is another ground on which the head office staff must be excluded. In view of the fact that we see no reason to interfere with the first finding of the tribunal we do not propose to consider the other findings made by it. Before we part with this appeal we ought to make it clear that though the validity of the Government Order was challenged by the appellant before the tribunal, at the hearing of the appeal in this Court Mr. Veda Vyasa expressly stated that he did not want to raise that point in the present appeal.

7. The result is the appeal fails and there would be no order as to costs.

8. It is conceded that the result of this appeal would govern Civil Appeal No. 182 of 1959. Accordingly the said appeal also fails and is dismissed. No order as to costs.

Appeal dismissed.

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