SUPREME COURT OF INDIA

Management of Madura Mills Co., Ltd.

Vs.

Workmen

C.A.No.404 of 1959

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

23.11.1960

JUDGEMENT

GAJENDRAGADKAR, J.:

1. The industrial dispute between the management of Madura Mills (hereafter called the appellant) and its workmen (hereafter called the respondents) which has given rise to the present appeal was in relation to the claim for bonus made by the respondents against the appellant for the year 1957. This dispute was referred for adjudication to the Industrial Tribunal, Madras. It appears that before the Tribunal the appellant pleaded that for the relevant year no available surplus would remain in its hands from which any bonus could be paid to the respondents. Even so, in order to preserve industrial peace and goodwill, the appellant offered to pay one month's basic wage by way of bonus for the relevant year. Since this offer was not acceptable to the respondents, the dispute proceeded to a trial, and the Industrial Tribunal applying the formula came to the conclusion that for the relevant year there was a substantial available surplus. According to the calculations made by the Tribunal under the Full Bench formula the available surplus was Rs. 38,17,974/-. Having reached the conclusion that the appellant was in possession of this available surplus the Tribunal has passed an award directing the appellant to pay to the respondents by way of bonus two months' basic wages and other allowances excluding dearness allowance. It appears that pending the proceedings before the Tribunal an interim order had been passed by it directing the appellant to pay Rs. 12/- per employee by way of interim bonus for the relevant year. When the interim order was passed, the Tribunal intended to adjust the said payment towards the final award that it would pass. However, it appears that, on making calculations, the Tribunal came to the conclusion that having regard to the extent of the available surplus, the employees were entitled to get a little more than two months' basic wages and other allowances, and so it directed that the twelve rupees already paid by the appellant to the respondents under the interim award need not be adjusted; in other words, as a result of the final award, the bonus which the appellant is required to pay to the respondents was two months' basic wages and other allowances excluding dearness allowance in addition to Rs. 12/- which it had already paid. It is this award which is challenged before us by the learned Attorney-General on behalf of the appellant in the present appeal by special leave.

2. The learned Attorney-General contends that in working out the formula the Tribunal has not followed the principles laid down by this Court in recent decisions dealing with the question of bonus. He contends that in determining the extent of the prior charges awardable to the appellant, the Tribunal has committed an obvious error in regard to the prior charges of income-tax and rehabilitation; and according to him if these errors are corrected it would be found that there is no

available surplus for the relevant year and so no bonus can be awarded.

3. We will deal first with the question of income-tax. The Tribunal has taken the view that in determining the extent of income-tax allowable to the employer by way of a prior charge, what should be considered is the income-tax as arrived at the worksheet or the income-tax to which the company would actually be assessed. It appears that on an earlier occasion this Tribunal had considered this matter at length and had come to the conclusion that income-tax should be determined in that way. It was urged before the Tribunal by the appellant that the decisions of this Court were inconsistent with the view that it was inclined to adopt. However, it interpreted the said decisions as being consistent with its own view and so it adhered to its earlier decision. The appellant's argument is that for the purpose of determining the amount which must be allowed to the employer by way of income-tax the Tribunal was in error in taking into account the income-tax to which the appellant would be actually assessed. This argument is obviously well-founded. The question about the working of the Full Bench formula has been elaborately considered by this Court in the case of the Associated Cement Co., Ltd. v. Its Workmen, 1959 SCR 925 (AIR 1959 SC 967). In that case it has been held that in making the calculation of income-tax it would not be reasonable to allow the employer to claim under the item of income-tax an additional amount in respect of the two further depreciations which are expressly authorised under S. 10(2) of the Income-tax Act. Therefore, the two concessions thus given by the Income-tax Act should be taken into account in determining the amount of income-tax under the formula; but it has been emphasised that the calculation as to income-tax has to be notional on the basis of the profits determined according to the formula. In fact, in all the decisions in which the Full Bench formula has been worked out, it does not appear to have been ever suggested or held that in determining the amount of income-tax, which must be allowed to the employer as a prior charge, what the industrial court has to consider is not the notional amount determined as laid down by the Full Bench formula, but the actual amount to which the employer may be assessed for the relevant year. This question was raised before this court in another form by the employer in the case of Bharat Barrel and Drum Manufacturing Co., (Private) Ltd. v. Govind Gopal, AIR 1960 SC 873. The employer there claimed an allowance for income-tax of an amount which had actually been taxed as this amount happened to be larger than what it would have been if it were determined notionally under the formula. This plea was rejected by this Court and it was observed that the Industrial Tribunal is not concerned with what the Income-tax Act authorities assess as actual income-tax in a particular year; it is concerned with working out the formula in accordance with its notional calculations. Therefore, we have no doubt that the Tribunal was clearly in error in ignoring the notional aspect of income-tax while working out the formula and in allowing to the appellant by way of income-tax only the amount to which it was actually assessed. This position has fairly not been disputed by Mr. Sharma who appears for the respondents. As we have just indicated, the decisions on the point are all one way, and it is surprising that the Tribunal should have adhered to its earlier view even though its attention was drawn to the decisions of this Court which have taken a contrary view. We ought to add that we have found it very difficult to appreciate what the Tribunal meant when it observed in a vague and general manner that its view was not inconsistent with the decisions of this Court. It has no doubt referred to two decisions in that behalf but they do not at all justify its conclusion.

4. It appears from the statement supplied to us at the hearing of this appeal that the total amount of income-tax for which allowance has been made by the Tribunal is Rs. 26,18,731/-. If the said amount is properly determined, as it should have been, it would be Rs. 46,88,255/-, and then the available surplus would be reduced from Rs. 38,17,974/- to Rs. 17,47,000/- and odd, and that obviously is a substantial deduction.

5. The other point which the learned. Attorney-General wanted to raise before us was that the Tribunal was in error in distributing the total rehabilitation requirement of the appellant over 25 years instead of 15 years; and if this argument is right it may lead to a further reduction in the available surplus. However, we do not propose to deal with this point, because, as we have already indicated, the appellant had fairly offered to pay one month's basic wage to the respondents by way of bonus for the relevant year, and we propose in substance to give effect to this offer. The learned Attorney-General has agreed to our adopting such a course in the present appeal. That is why we direct that the appellant should pay substantially the same amount as was included in its offer made before the Tribunal. We have said "substantially the same amount" because we do not propose to be mathematically accurate in that behalf in view of certain facts which have occurred during the pendency of this dispute before the Tribunal and this court. As we have already stated, under the interim award the appellant has paid to each of its employees Rs. 12/- by way of interim bonus. We are told by both the learned counsel that thereafter Rs. 20/- per employee have been further paid by the appellant towards the said bonus. In other words, Rs. 32/- have been already received by each one of the respondents. We think the ends of justice would be met in this case if we were to direct that the appellant should pay Rs. 4/- more to each one of the respondents in full satisfaction of its liability to pay bonus to them for the year in dispute. This would work roughly at Rs. 8,50,000/-. The procedure we have adopted in dealing with the claim in the present appeal is intended to do substantial justice between the parties. That is why we have not heard the appellant on the merits of its contention regarding rehabilitation and other grounds.

6. In the result, the award under appeal is set aside and an order is passed in its place that the appellant should pay each one of the respondents Rs. 4/- in addition to Rs. 32/- which it has already paid them. There will be no order as to costs.

Appeal allowed.

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