Jardine Henderson Ltd

Vs

The Workmen and Another

Civil Appeal No. 359 of 1961

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo JJ)

05.03.1962

JUDGMENT

WANCHOO, J. -

This appeal by special leave arises out of a question of bonus referred by the Government of West Bengal to the Third Industrial Tribunal. The appellant is a company carrying on business in Calcutta and the dispute relates to the closing bonus for the year 1958. It appears that the appellant had been paying a bonus which was called closing bonus to its workmen at the rate of one month's pay from 1948 to 1957. In 1958, however, as the profits of the appellant fell considerably, the quantum of closing bonus was reduced to half a month's pay. In consequence a dispute was raised by the respondents workmen represented by two unions and their claim was that they should have been paid one month's bonus as usual. Consequently reference was made to the tribunal and the question for decision was whether the management was justified in reducing the quantum of the closing bonus to half a month's pay in 1958.

The case of the workmen was that the appellant had been paying two kinds of bonuses to its workmen each year, namely, (i) Puja bonus which was paid usually before the Puja festival, and (ii) closing bonus which was paid after the close of the financial year ending on March 31st each year. The workmen claimed that the closing bonus had been paid at a uniform rate from 1948 to 1957 and this payment had therefore become an implied condition of service between the workmen and the appellant; in the alternative the claim was that the payment had acquired the character of the customary bonus and was not dependent upon profits earned by the appellant.

On the other hand the contention of the appellant was that the payment of closing bonus at a uniform rate of one month's pay for ten years previous to 1958 had not in fact turned the payment into an implied condition of service as this bonus was of the nature of profit bonus and its payment depended upon the profits made by the appellant. It was urged further that the very fact that this bonus was paid after the accounts for the year were made up and the profit ascertained showed that it was a bonus depending upon profits; the circumstance that it was paid at a uniform rate for sometime was only fortuitous, particularly as the appellant had increased the Puja bonus as its profits increased in order to help the workmen at festival time. As to the alternative case of customary bonus, the appellant contended that this bonus had no connection with any festival and was paid after the state of profits earned by the appellant was known and therefore could not be demanded as a customary bonus. Finally, appellant pleaded that if closing bonus was treated as profit bonus there was no available surplus to justify the grant of any further amount as bonus besides half a month's pay which the appellant had already given to the workmen.

The tribunal came to the conclusion that it had not been proved that the payment of closing bonus had become an implied condition of service and in that connection relied on the decision of this Court in Messrs. Ispahani Limited Calcutta v. Ispahani Employees' Union ((1960) 1 S.C.R. 24.). Further, it held that the bonus could not be held to be a customary bonus as there was nothing to show that it had been paid even in a year of loss. It therefore negative the case of the workmen that closing bonus of one month's pay was payable every year after the accounts were closed either as an implied condition of service or as a customary bonus. The tribunal then went into the question whether any further amount besides half a month's pay which had already been paid by the appellant as bonus could be awarded as profit bonus on the basis of the Full-Bench formula approved by this Court in the Associated Cement Companies Limited v. Its Workmen ((1959) S.C.R. 925.). It held that there sufficient available surplus to warrant payment of one month's pay as profit bonus and therefore ordered that half a month's basic salary be further paid as profit bonus to the workmen for the year in dispute. It is this decision of the tribunal which has been assailed before us by the appellant.

So far as profit bonus is concerned, the main contention on behalf of the appellant is that the tribunal went wrong in allowing 2 1/2 per centum interest on paid-up capital and that it should have allowed, 6 per centum interest, which is the usual amount allowed under the Full-Bench formula. The reason why the tribunal allowed 2 1/2 per centum interest was that the appellant had paid divided at 2 1/2 per centum in that year as its profits had show a considerable fall. We are of opinion that the tribunal was wrong in allowing only 2 1/2 per centum interest on paid-up capital on the ground that the actual dividend declared by the appellant was only 2 1/2 per centum for that year. The return on paid-up capital provided in the Full-Bench formula is not linked with actual dividends that might be declared by a company. Many a time companies declare dividends higher than six per centum. But under the formula they are usually allowed six per centum interest on paid-up capital irrespective of the dividends declared. It is only where a company can make out an exceptional case for allowing more than six per centum interest on paid-up capital that the tribunal can award more. Similarly it is only when an exceptional case is made out for allowing less than six per centum interest that the tribunal would be justified in allowing less. We are of opinion that the fact that a company declares dividend at more or less than six per centum is no reason for changing the rate of interest allowed under the Full-Bench formula on paid-up capital. In the present case no reason has been shown besides the fact that the dividend declared was less than six per centum to reduce the usual rate of interest from six per centum to 2 1/2 per centum. We are therefore of opinion that the tribunal should have allowed six per centum interest on paid-up capital in this case and that would increase the amount due under this head from Rs. 5 lacs to Rs. 12 lacs. It is not disputed by learned counsel for the respondents that if six per centum interest is allowed on paid-up capital in this case as is usually one there will be no justification for allowing more as profit bonus than what the appellant has already given. In the result the tribunal's award of half a month's further wages as bonus on the ground that there is available surplus to justify it must be set aside.

Learned counsel for the respondents however submitted that even though no further bonus could be allowed on the basis of the Full-Bench formula, the workmen were entitled to one month's pay as closing bonus either as an implied condition of service or as a customary bonus. So far as customary bonus is concerned it is enough to say that customary bonus of the nature dealt with in Graham Trading Co. Ltd. v. Its Workmen ((1960) 1 S.C.R. 107.) is always connected with some festival. In the present case it is not in dispute that the closing bonus is not connected with any festival and therefore cannot be treated as customary bonus of the kind dealt with in Graham's case. This was pointed out by this Court in B.N. Elias & Co. Ltd., Employees' Union v. B.N. Elias & Co. Limited ((1960) 3 S.C.R. 382.), where it was observed that it was different to introduce the payment of

customary bonus between employer and employees where terms of service are governed by contract, express or implied, except where the bonus may be connected with a festival, whether puja in Bengal or some other equally important festival in any other part of the country. Therefore as closing bonus is admittedly not connected with any festival it cannot be allowed as a customary bonus of the type considered in Graham's case ((1960) 1 S.C.R. 107.).

The Turning now to the question whether payment of one months pay as closing bonus has become an implied condition of service, the first point to be noticed is that closing bonus was always paid after the trading results of the year were known. Under these circumstances it would not be improper to infer that closing bonus was dependent upon profits made by the appellant, for it was paid only after profits for the previous year had been ascertained. In the present case during the whole of the period from 1948 to 1957 when the closing bonus was paid there was no loss incurred by the appellant. As was pointed out in Ispahani's case the fact that bonus was paid during a year of loss also would be an important circumstance in coming to the conclusion that payment was a matter of obligation based on an implied agreement. In the present case that important circumstance is absent. The absence of this circumstance along with the fact that the bonus was paid only after the trading results of the year were known and therefore in all probability depended upon the profits would show that it could not be a matter of obligation based upon implied agreement.

Besides it appears that this company formerly belonged to another owner and merged with the appellant in 1946. When the former company was the owner it does not appear that it paid any closing bonus as such from 1940 to 1945. Even after the appellant took over no payment was made in 1946 and 1947. It was only from 1948 after the trading results for the year ending on March 31, 1948 were known that one month's basic wages began to be paid as closing bonus in addition to Puja bonus which was originally paid at the rate of one month's basic wages but which was gradually increased to two months' basic wages from 1955. For the year in dispute the appellant has paid two month's puja bonus; but it reduced the closing bonus from one month to half a month's basic wages because of the fall in profits which fell from Rs. 27 lacs in 1957 to a little over Rs. 15 lacs in 1958. It is clear therefore that the closing bonus had not been paid from the beginning when the appellant took over the business of the previous company, though it was paid at a uniform rate from 1948 to 1957. It may be mentioned that in 1959 when profits went up again the appellant has paid one month's pay as closing bonus. Taking therefore all the circumstances into account it appears that closing bonus has been paid on the basic of the trading results of the previous year and depended upon the profits earned in the previous year. In the circumstances it cannot be held that the one month's pay as closing bonus is payable as an implied condition of service irrespective of the profit made by the appellant. It seems to have been of the nature of profit bonus, even though it may have been paid at a uniform rate for ten years.

We therefore allow the appeal, set aside the order of the tribunal and reject the claim of the workmen for any closing bonus over and above that paid by the appellant for the year 1958. In the circumstances we order the parties to bear their own costs.

Appeal allowed.

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