Hamdard Dawakhana Wakf

v.

Its Workmen and Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE P.B. GAJENDRAGADKAR HON'BLE MR. JUSTICE A.K. SARKAR HON'BLE MR. JUSTICE K.N. WANCHOO

Civil Appeal No. 199 Of 1962 | 15-10-1962

Gajendragadkar, J.

1. This appeal by special leave arises out of an industrial dispute between the appellant Hamdard Dawakhana Wakf and the respondents, its workmen. On 20 April 1961 the Chief Commissioner, Delhi, referred two items of dispute between the parties to the adjudication of the industrial tribunal at New Delhi. These items were in regard to the claim for additional bonus made by the respondents for the year 1959 and in regard to the grievance made by them in respect of the dismissal of Shamsul Zaman. The tribunal has ordered that the appellant should pay to each and every workman of the Hamdard Dawakhana who worked in the calendar year 1959 additional bonus equivalent to the one-third of his earnings by way of basic wages for the said year. It has also held that the order of dismissal passed against Shamsul Zaman was unjustified and so, it has directed the appellant to reinstate him in service without break in the continuity of his service. Back-wages during the period of his dismissal have, however, not been allowed to the workman. In the present appeal, the appellant challenges the correctness and propriety of both the directions given by the award.

2. Hamdard Dawakhana, the appellant, was originally established in a modest way in 1906 by Hakim Hafiz Abdul Majid. It was then manufacturing and selling indigenous simple and compound medicines. On the death of Hakim Hafiz Abdul Majid, his heirs conducted the said business till 1948. On or about 28 August, 1948, the said heirs and successors settled the said business with all its assets, goodwill, etc., including the trade marks, on an irrevocable wakf with the object that the income from the said trust should be utilized for the advancement, reform and development of the indegenous system of medicine

and for affording medical, education and social relief to deserving people in the country.Under the terms of the wakf, the business is to be managed by at least one and no more than two mutawallis. Provision is made for the remuneration of the said mutawallis. The said remuneration is in addition to the "khandani" income. These mutawallis have to be appointed from the heirs and successors of the settlers. The net profits of the appellant are determined under Cl. 33 of the wakfnama; the terms and conditions of the wakf require that the appellant should set apart one-eighth of the net profits towards the reserve fund; one-fourth of the balance is to be spent for the personal and family benefit of the settlers - it is called khandani income; the balance of three-fourths is to be spent on objects of charity and general and public utility as well as for the individual and collective needs of the community and the country.

3. It appears that in or about 1958, the appellant framed a scheme for the payment of bonus to its employees, and in accordance with the said scheme, about Rs. 70, 000 have been paid by the appellant to the respondents for the relevant year. The respondents, however, urged that the appellant was an industry within the meaning of the Industrial Disputes Act and that under the Full Bench formula they were entitled to much larger amount of bonus for the relevant year. That is how the dispute about the bonus arose between the parties.

4. In deciding this dispute, the tribunal has applied the Full Bench formula, has made deductions in respect of four prior charges and has held that the available surplus for the relevant year is Rs. 5, 12, 600. Out of this available surplus, it has ordered that a lakh of rupees should be paid by the appellant to the respondents by way of additional bonus. In other wards, the tribunal thought that the total amount of bonus to which the respondents were entitled was Rs. 1, 70, 000.On behalf of the appellant, the learned Solicitor-General contended that the tribunal was in error in awarding to the appellant by way of prior charge Rs. 68, 000 only under the heading "Income-tax" for the relevant year. He contends that the amount of Rs. 68, 000 thus allowed is in respect of the income of the appellant which is actually taxable; a part of the income is not taxable because it has been dedicated to charity, and so, it is urged that in the notional working of the formula, the appellant is entitled to claim by way of Income-tax an amount which would normally have been taxable in respect of the whole of the taxable profits earned by the appellant. The fact that a part of the profits would not be taxed is irrelevant for the purpose of the formula. This point was, however, not raised before the tribunal and we do not think it would be right to allow this

point to be raised for the first time in appeal; as the tribunal has pointed out, the amount of Rs. 68, 000 has been allowed by it because that is the amount which the appellant claimed in that behalf before the tribunal. The statement filed by the appellant shows that this was the amount to which the appellant made a claim by way of Income-tax. The learned Solicitor-General has invited our attention to the fact that in the petition for special leave it has been urged under Para. 11 that the tribunal did not consider the position with regard to the tax on the quami income and that a sum of Rs. 5, 20, 000 should have been allowed under that item as a prior charge. No doubt, it was sought to be suggested that this point had been argued before the tribunal and had not been considered by it. We do not think that this suggestion is well-founded. The award of the tribunal clearly shows that in respect of the amount of Income-tax claimable by the appellant, there was no dispute between the parties; the appellant claimed a specific amount of Rs. 68, 000 and the respondents agreed to it. That is why the tribunal has allowed the said item without discussing any other aspect of the matter. Therefore, we do not think the appellant can in fairness be allowed to take this new point which was not agitated before the tribunal, so far as bonus for 1959 is concerned.The next contention is in respect of the notional normal depreciation. The tribunal has allowed under the item of depreciation an amount of Rs. 1, 06, 785, whereas the notional normal depreciation under the Incometax Act would be Rs. 2, 22, 867. The tribunal thought that since the former amount had been shown by the appellant in its profit and loss account, it should not be permitted to claim any higher amount by way of depreciation. It has also observed that there was no satisfactory proof of the fact that the amount of notional normal depreciation would be of the order of Rs. 2, 22, 867. In our opinion, both the reasons given by the tribunal are not well-founded. It is well settled that in making the calculations under the Full Bench formula, what industrial adjudication has to take into account is the notional normal depreciation and not the actual depreciation. In the profit and loss account, it is the actual depreciation that would be shown and not the notional normal depreciation and so, the fact that the former depreciation has been shown in the profit and loss account cannot be held to be a factor against the appellant. In regard to the finding of the tribunal that there was no satisfactory proof about this notional depreciation, it appears that the tribunal's attention was not drawn to the evidence on this point. Rashid Ahmad who is the accountant of the appellant produced Exs. M. 10 to M. 14, Exhibit M. 12 deals with the figures of depreciation. Rashid Ahmad stated that he had got the said exhibits prepared on the basis of the accounts and he added that the depreciation had been calculated according to the Incometax Act. This statement has not been challenged in cross-examination. Therefore, it is not right to say that the calculation about

depreciation had not be proved satisfactorily. The witness who prepared those calculations had sworn to their correctness and his statement in that behalf has not been subjected to cross-examination. Therefore, we are satisfied that the tribunal was in error in not allowing the appellant the amount of Rs. 2, 22, 698 by way of notional normal depreciation. That being so, the available surplus which has been found by the tribunal to be Rs. 5, 12, 698 is reduced to Rs. 3, 96, 616. Roughly, the available surplus can be taken to be Rs. 4 lakhs.That raises the question as to the division of this surplus between the appellant and the respondents. The award of the tribunal shows that it gave the respondents about one-third of the available surplus as determined by it. The learned Solicitor-General contends that in deciding the question of distribution of the available surplus, we should bear in mind the fact that a voluntary gratuity scheme which is discretionary with the appellant has been introduced by the appellant and he suggests that the fact that the quami income is required to be utilized for charitable purposes may also be borne in mind. Having regard to all the circumstances, we think that it is not necessary to disturb the proportion adopted by the tribunal in dividing the available surplus between the appellant and the respondents. We would accordingly direct that in addition to about Rs. 70, 000 which has been paid by the appellant to the respondents by way of bonus for the relevant year, it should make a further payment of Rs. 63, 000 in that behalf. There has been some dispute before us as to the total amount of the wage bill of the respondents. We would, therefore, avoid making any reference to the number of months in directing the payment of bonus. The only direction we would, therefore, give is that the respondents should obtain from the appellant by way of additional bonus Rs. 63, 000 for the year 1959.

5. That takes us to the question about the dismissal of Shamsul Zaman. The position with regard to this dispute is that a quarrel took place between Shamsul Zaman and Mohammad Mian on 3 June, 1960, during duty hours. This quarrel disturbed the working of the establishment and was clearly against the rules of discipline laid down for the workmen in the establishment. After this quarrel took place, a chargesheet was served on Shamsul Zaman and after obtaining his explanation an enquiry was held. In this enquiry, evidence was led and the offending workman was given an opportunity to cross-examine the said evidence. After the enquiry was over, the enquiry officer made his report. He held that the incident which took place on 3 June, 1960 was not a one-sided affair and that both the parties were to blame. He, therefore, recommended that the increment of both the parties should be stopped, as specified in the report. No doubt, he notice that the record of Mohammad Mian was clean, whereas that

of Shamsul Zaman was far from clean. Even so, he was disposed to take the view that dismissal would be too severe a punishment in the case. After this report was submitted to the management, the manager examined the evidence and came to the conclusion that Shamsul Zaman should be dismissed. The manager accepted the recommendation of the enquiry officer in respect of Mohammad Mian and directed that his increment should be stopped for six months and that he should be warned that if such an incident took place in future, he would be discharged from the appellant's service. The tribunal has taken the view that the order thus passed by the manager terminating the services of Shamsul Zaman was not justified and so, it has directed the reinstatement of Shamsul Zaman. The Solicitor-General contends that in passing this order, the tribunal has acted beyond its jurisdiction.In reaching its conclusion that the order of dismissal was unjustified, the tribunal has been influenced by the fact that Shamsul Zaman was an active worker in the Hamdard Dawakhana Employees' Union and that the appellant did not approve of the activities of this union. There is another union to which some of the appellant's employees belong and that is the Union Mulazaman Hamdard Dawakhana. It appears that according to the respondents, this latter union is favoured by the appellant. The tribunal took the view that the dismissal in the present case amounted to victimization and it has also held that the finding of the manager is perverse. If the finding of the tribunal that the conclusion of the manager is perverse can be sustained, then, of course, there would be no difficulty in upholding the order of reinstatement passed by it. But we find it difficult to affirm the view taken by the tribunal that the impugned finding of the manager is perverse. As we have pointed out on several occasions in dealing with industrial disputes of this kind, an industrial tribunal would be justified in characterizing the finding recorded in the domestic enquiry as perverse only if it is shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of the evidence adduced before it. In the present case, such a conclusion is obviously impossible. Evidence has been led on both the sides and the decision of the question as to whether Mohammad Mian was also to blame or Shamsul Zaman alone was to blame, would depend on the view that the officer concerned may take about the character of the said evidence. Shamsul Zaman's case was that on the day in question when he went to his seat, he found that Mohammad Mian was sitting with the salary register and was looking into it. He then asked Mohammad Mian to leave his seat, but Mohammad Mian did to like it. Then he told Mohammed Mian that he would complain about this conduct to the superior officer. Thereafter he sat down in his chair but Mohammad Mian put his hand on his collar and appeared determined to pick a quarrel. He, however, controlled his anger and

expostulated with him. Thus, the version of Shamsul Zaman was that Mohammad Mian was to blame. On the other hand, Mohammad Mian's side gave a contrary version. Mohammad Mian being dumb and deaf, other employees gave evidence on his behalf. Mohmood Ali Khan also gave evidence which seemed to show that both parties were partly to blame. In such a case, if the manager took the view that Shamsul Zaman was that aggressive party and Mohammad Mian who is dumb and deaf was the victim, it is difficult hold that such a conclusion is preserves. There is evidence on which this conclusion could be based. In deciding the question as to whether a particular conclusion of facts is perverse or not, industrial tribunal is not justified in weighing the evidence for itself and determining the question of the perversity of the manager's view in the light of its own finding on the question of fact. What the tribunal has done in the present case is to reach its won conclusion on the merits of the case in the first instance and then address itself to the question as to whether the contrary view taken by the manager is perverse or not. It has thought that since the manager's conclusion is contrary to the view which it itself is inclined to take, the said conclusion must be said to be perverse. In our opinion, this approach is entirely misconceived and unsound. Therefore, we must hold that the the tribunal was in error in taking the view that the manager's conclusion was perverse.In this connexion, it is relevant to remember that the manager has referred to the previous conduct of Shamsul Zaman. On several occasions in the past, he had been warned; once in a case of theft, his increment was stopped and he was transferred to another section; then he was suspended for four days for quarreling; the manager had also written to his father complaining against his son's conduct and he had also been warned on 3 June, 1959, that if his activities, continued in the manner adopted by his, the appellant would not be able to keep him in service. It is in the light of these blemishes in his past record that the manager ultimately decided to dismiss him. It has been urged before us by Mr. Kishore that the service record of Shamsul Zaman has not been produced before the tribunal. We do not see how that makes any difference. All that the appellant was expected to do in the present proceedings was to prove that a proper enquiry had been held before Shamsul Zaman was dismissed and that has been done by leading oral evidence and producing documentary evidence in respect of the enquiry. It has not been suggested when the oral evidence was led on behalf of the appellant that the reference to the blemished past record of Shamsul Zaman was untrue and that he had, in fact, not been warned or punished in the past. Therefore, it was not necessary for the appellant to produce the service book of Shamsul Zaman.

6. It is then argued by Mr. Kishore that Shamsul Zaman was not given an opportunity to meet the manager though he had requested for such an opportunity. We do not think that the requirements of natural justice made it necessary for the appellant to give Shamsul Zaman an opportunity to meet the manager. What is necessary in such cases is that a fair enquiry should be held, and such an enquiry has been held even according to the findings of the tribunal. That being so, after the report was submitted by the enquiry officer to the manager, the manager was not bound to hear Shamsul Zaman again. Besides, in point of fact, the manager did see Shamsul Zaman and did hear what he had to say. This has been mention by the manager in his own order. Mr. Kishore, however, contends that the manager admitted in his evidence that he did not give a hearing to Shamsul Zaman at any time before he passed the order of dismissal. This statement, in the context, means that he did not give a regular hearing to Shamsul Zaman; what he did was merely to see him and listen to what he had to say. We do not think that the statement on which Mr. Kishore relies can help to establish that manager's order is inaccurate when it says that the manager gave Shamsul Zaman and opportunity to meet him as desired by him. In the light of these facts, we do not see how it should be possible to hold that the dismissal of Shamsul Zaman is an act of victimization. Even if the appellant may be favouring the rival union, the fact that Shamsul Zaman was an active worker in the union of whose activities the appellant the appellant does not approve, does not by itself show that the dismissal of Shamsul Zaman is an act of victimization. Once it is held that Shamsul Zaman was guilty of misconduct and it is found that the said conclusion is not perverse, the dismissal of the offending workman must be upheld even though the said workman may be an active worker in the union not liked by the appellant. We are making these observations on the assumption that the appellant disapproves of one union and favours the other.The result is, the appeal is partly allowed. The award as to bonus is modified as indicated in the judgment and the order of reinstatement of Shamsul Zaman passed by the tribunal is set aside. There would be no order as to costs.