Jay Engineering Works Ltd. and Others

Vs

The Union of India and Others

Petition No. 64 of 1962.

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

12.12.1962

JUDGMENT

WANCHOO, J. -

This writ petition was heard along with writ petition No. 62 of 1962 (Bridge and Roof Company (India), Limited v. Union of India), as the short question in both of them was whether production bonus was excluded from the term "basic wages" as defined in s. 2(b) of the Employees Provident Funds Act, No. 19 of 1952, (hereinafter referred to as the Act). A further question also arose in this writ petition as to the nature of the production bonus scheme in force in the petitioner-company, and the parties were given time to file additional affidavits in that connection. The main point raised in the two writ petitions was decided in Bridge and Roof Company (India) Limited v. Union of India ([1963] 3 S.C.R. 978.). The only question that now remains is whether the production bonus scheme in force in the petitioner-company is of the same type as in Bridge & Roof Company ([1963] 3 S.C.R. 978.). If it is of the same nature the present petition would be governed by that decision and production bonus would be excluded from the term "basic wages" as defined in the Act. The parties have filed additional affidavits and it now remains to determine the nature of production bonus in force in the petitioner-company and to decide whether the decision in the Bridge and Roof Company ([1963] 3 S.C.R. 978.) would apply in the present case, and if so, to what extent.

It appears that some kind of production bonus scheme was started in the petitioner-company in 1947 and that scheme is said to have been more or less on a straight piece-rate system. Then came the major engineering awards in the years 1948, 1950 and 1958 fixing basic minimum wages and dearness allowance. This was followed by an agreement between the petitioner-company and its workmen in August 1958, in which the present scheme in force was established even though some kind of production bonus on a more or less straight piece-rate system was in force from as far back as 1947. The scheme which was established by the agreement of 1958 was this. A certain proportion of the production was taken to correspond to the minimum basic wages and dearness allowance fixed by the awards, and this was termed as "quota". The production above the quota was paid for at piece-rates. But there was a "norm" also fixed which was much higher than the "quota" and every workman was normally expected to produce the "norm" as the minimum production. If the workman did not produce the "norm", he would be guilty of misconduct and would be liable to dismissal, as the agreement provided that any deliberate deviation from production norms would amount to go-slow tactics. The standing orders of course provide that go-slow tactics would amount to mis-conduct and may lead to dismissal of the workman concerned.

It will be seen therefore that the peculiar feature of the production bonus scheme in force in the petitioner-company is that it has got two bases namely, (i) the quota, and (ii) the norm, the quota being much lower than the norm. In view of the agreement between the parties and the precise definition of "go-slow" contained in that agreement, it is clear that workmen are expected to give the "norm" as the minimum production and if there is any deliberate deviation therefrom they are liable to be charged with misconduct in the shape of go-slow and may be dismissed for such misconduct. The minimum wages and the dearness allowance fixed by the major engineering awards are payable for production upto the quota and thereafter extra payments are made on piece-rate basis upto the norm, and even beyond it where the workmen produce beyond the norm. The question that falls for consideration is whether such a system is a typical production bonus system described in the case of Bridge and Roof Company ([1963] 3 S.C.R. 978.).

The main dispute centres around production between the quota and the norm. The petitioner's case is that the entire payment for production above the quota is payment of production bonus and therefore cannot be taken into account for the purpose of provident fund, in view of the decision in Bridge and Roof Company ([1963] 3 S.C.R. 978.). The workmen however, contend that the scheme in force in the petitioner-company is a peculiar one which does not correspond to any standard scheme of production bonus as known in standard books on such schemes. It is contended that no scheme dealing with production bonus or incentive wage has two bases of the kind in force in the petitioner-company. The workmen, therefore, contend that in a scheme of the kind prevalent in the petitioner-company, production bonus as well understood in industry only starts after the norm and that payment for production between the quota and the norm is nothing more than basic wage as defined in the Act and that the exception of bonus from basic wage will only apply to that part of the payment which is made for production above the norm. The workmen further point out that the straight piece-rate system was in force in the petitioner-company before the major engineering awards fixing minimum basic wages and dearness allowance. When such minimum basic wages and dearness allowance were fixed by the awards they became applicable to the petitioner-company also. It was then that the system was evolved of having a quota which would represent production for the minimum basic wages and dearness allowance and the rest of the production was to be paid on a piece-rate basis. The change that resulted was that instead of a straight piece-rate system, the petitioner-company introduced the piece-rate system along with a guaranteed time wage. The workmen contend that the quota which was to represent payment for production upto the basic wages and dearness allowance was fixed arbitrarily and had no relation to the productive capacity of the workmen, which is the basis for fixing the base or standard in a typical scheme of production bonus. Therefore, what happened was that the petitioner-company though it fixed the quota, expected much higher production even before the agreement of 1958 for a fair day's work and used to pay extra for this production. This matter was finally stabilised by the agreement of 1958 by which norms were fixed and the workmen were expected to give production upto the norms as a rule and any deliberate deviation from such production amounted to go-slow tactics, resulting in misconduct, which might lead to the dismissal of the workman. The union therefore contends that the real base or standard of a typical production bonus scheme in the case of the petitioner-company is not the quota but the norm, and the payment between the quota and the norm can only be basic wages within the meaning of the Act and it is only payment above the "norm" which would be production bonus as understood in industry. It was conceded on behalf of the workmen in arguments that any payment for production above the "norm" would be payment of production bonus and would be covered by the judgment of this Court in Bridge and Roof Co. ([1963] 3 S.C.R. 978.)

What is a typical production bonus scheme was considered by this Court in M/s. Titaghur Paper Mills Co. Ltd. v. Its Workmen ([1959] Supp. 2 S.C.R. 1012.), and that has been confirmed in Bridge

and Roof Company ([1963] 3 S.C.R. 978.). It was pointed out that the straight piece-rate plan was the simplest of the incentive wage plans. In such a case all payments would be basic wage was as defined in s. 2(b) of the Act, even though the worker is working under an incentive wage plan. But the difficulty arises where the straight piece-rate system cannot work. In such cases the system of production bonus by tonnage or by any other standard is introduced. The core of such a plan is that there is a base or a standard above which extra payment is earned for extra production in addition to the basic wages which is the payment for work upto the base or standard. Such a plan typically guarantees time wage up to the time represented by standard performance and gives workers a share in the savings represented by superior performance. The typical scheme thus has only one base or standard and time wages are guaranteed upto that base or standard and any production above that base or standard is production bonus. But it is clear that in such a scheme of production bonus the workers are not bound to produce beyond the base or standard and no disciplinary action can be taken against them for not producing above the base or standard. Learned counsel for the petitioner has been unable to point out any scheme of production bonus which has two bases or standards as is the case in the petitioner-company in the shape of a quota and a norm, the quota being much lower than the norm. What we have to decide is whether in the case of the peculiar system which is in force in the petitioner-company, production bonus, as generally understood, can be said to start immediately after the first base (namely, the quota) or it can only start after the second base (namely, the norm). It was urged on behalf of the petitioner that production bonus schemes have safeguards for both the employer and the employee, and that production upto the norm in addition to the quota in the scheme in force in the petitioner-company is a mere safeguard. Reliance in this connection was placed on a passage in the book "Payment by Results" issued by International Labour Office, Geneva at p. 164, which is as follows :

> "No employee will be compelled to produce more than union has stated was fair, but continued failure of an employee to co-operate in establishing a fair standard or to meet the agreed rate of production of an established standard or the rate of production as stated by the union as fair, without a reason mutually satisfactory to both union and company will result in dismissal or, if the circumstances warrant unusual treatment, transfer to another department."

That passage appears under the heading "Management Safeguards", and apparently is concerned primarily with time studies for the purposes of setting up production standards. Therefore that passage cannot be taken as an indication that a typical production bonus scheme can fix two bases or standards, at the best the passage only indicates that disciplinary action may be taken in certain cases where the established standard is not reached by a workman without a reason mutually satisfactory to both union and company. We may add that learned counsel relied on this book which deals with a large number of various types of incentive wages plans or production bonus plans; but he was unable to draw our attention to any plan in this book which fixes two bases or standards. It is true that when fixing a base or standard the employers sometimes fix a standard which is below the normal production worked out on the basis of time studies. Not infrequently such base is fixed at 80 per centum of the normal production found on time studies and in some cases it has been known to go as low as 67 per centum. That is however a matter of agreement between the employer and the employee and depends upon various factors. But the reason behind fixing the base or standard somewhat below the normal which might have been found by time studies is to make an allowance for workers who may be little slower than the average and also to allow for some incentive even before the normal is reached so that there may be an effort on the part of the workman to produce not merely the normal but something more than normal. This is helped by fixing the base or standard somewhat below the normal production as found by time studies and gives the workmen a

greater incentive to produce without fail not only upto the normal but also beyond the normal. The fact however that the standard or the base may be fixed somewhat below the normal production found by time studies is of no help to the petitioner, for the scheme in the present case is not a typical production bonus scheme, if the quota is taken to be the base. As we have already indicated, in a typical production bonus scheme the worker is not bound to produce more than the base or standard, though he may do so in order that his earnings may go up. In the scheme in force in the petitioner-company however the worker cannot stop at the quota; he must produce up to the norm on pain of being charged with misconduct in the shape of go-slow and being liable to be dismissed. It seems to us therefore that the real base or standard which is the core of a typical production bonus scheme is, in the case of the petitioner-company, the norm. Any payment for production above the norm would be real production bonus under the scheme in force in the petitioner-company. The production upto the norm is the standard which is expected of a workman in the company and payment into that production must be basic wages as defined in the Act. It is true that this payment is split up into two parts. The first part consists of basic wages and dearness allowance fixed in the awards for production up to the quota and the latter part is payment at piece-rate for production upto the norm; but the two together in our opinion represent the base or standard of a typical production bonus scheme and so only payment above the norm in the case of the petitioner-company can be properly called production bonus. The mere fact that part of the basic wage as defined in the Act is paid in one form as a time wage and part in another form as a piece-rate wage would make no difference to the whole being basic wage within the meaning of the Act. The real base of production bonus scheme in force in the petitioner-company is the norm and not the quota and therefore payment upto the norm whether made in one form or the other, is basic wage for the purpose of the Act.

It is however urged on behalf of the petitioner that it is open to the employer to punish a workman for go-slow, even where wages are paid on a piece-rate basis and in this connection reliance was placed on Mr. Ziakh v. Firestone Tyre and Rubber Co. Limited ((1954) 1 L.L.J. 281.), where it was held that there could be go-slow even where wages are being paid on piece-rate basis. Assuming that to be so, we are of opinion that that does not affect the validity of the conclusions as to base or standard in the present scheme at which we have arrived. It may be possible to punish for go-slow even where wages are paid on a piece-rate system because the employee deliberately does not produce what he had been normally producing. But in the present case, the position has been crystallised by the agreement and what is go-slow has been precisely defined; usually it is rather a difficult matter for the employer to prove a case of go-slow, more particularly when the piece-rate system of payment is in vogue. Under the agreement however any deliberate deviation from production norms immediately becomes go-slow and the workman is liable to disciplinary action which may even result in dismissal. In these circumstances when go-slow is precisely defined it is obvious that of two bases to be found in the scheme in the petitioner-company it is the norm which is the real base to be found in all typical production bonus schemes and that it is only when payment is made for production above the "norm" that it can be said that the workman is earning production bonus as generally understood in industry. It would in our opinion be utterly wrong and unrealistic in the present case to call payment for production between the quota and norm as production bonus when the employee is bound to produce up to norm practically on pain of dismissal.

It was further urged that norms have been fixed for a small proportion of workmen employed in the petitioner-company and therefore all payments above the quota which is apparently fixed for all workmen should be treated as production bonus in the case of workmen other than this small proportion. This in our opinion is a disingenuous argument and the union's reply show that though norms have been fixed by agreement only with respect to a small proportion of workmen in actual

practice there are norms for all workmen governed by the scheme, these norms being based on normal performance before the agreement of 1958. It is not disputed that these actual norms are much higher than the quota.

Finally, it was urged that even if the payment for production between the quota and the norm is not production bonus which can be taken out of definition of basic wages in the Act, it should be treated as payment in the nature of "other similar allowance" appearing in s. 2(b)(ii). We are of opinion that this payment for work done between the quota and the norm cannot be treated as any "other similar allowance". The allowances mentioned in the relevant clause are dearness allowance, house-rent allowance, overtime allowance, bonus, and commission. Any "other similar allowance", must be of the same kind. The payment in this case for production between the quota and the norm has nothing of the nature of an allowance, it is a straight payment for the daily work and must be included in the words defining basic wage i.e., "all emoluments which are earned by an employee while on duty or on leave with wages in accordance with terms of the contract of employment".

In the view we have taken of the scheme in this case, the petition succeeds partly. We direct that the petition of the payment which is made by the petitioner for production above the "norm" would be production bonus and would be covered by the judgment of this Court in Bridge and Roof Company, but that portion of the payment which is made by petitioner for production up to the quota as well as production between the "quota" and the "norm" is basic wage within the meaning of that term in the Act. The petition is therefore partially allowed as indicated above. In the circumstances we pass no order as to costs.

Petition, allowed in part.

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