(1959) 05 CAL CK 0020

Calcutta High Court

Case No: None

Continental Commercial Co. (Private) LTD.		APPELLANT
	Vs	
Third Industrial Tribunal and Others		RESPONDENT

Date of Decision: May 21, 1959

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: 63 CWN 705

Hon'ble Judges: P.B. Mukharji, J

Bench: Single Bench

Advocate: Phanindra Kumar Sanyal, for the Appellant;N.C. Chakravarty and Sushil Kumar Banerjee for Opposite Parties 1 to 3 and Arun Kumar Dutta and Binoy Kumar Sarkar for Opposite Parties, 4 and 5, for the Respondent

Judgement

P.B. Mukharji, J.

This is an application by the Continental Commercial Co. (Private) Ltd. under Article226 of the Constitution for a writ of certiorari to quash the award of the Third Industrial Tribunal awarding bonus for the year 1954-1955 and holding that the discharge of the workman Provat Kumar Banerji was without justification and permitting him compensation. The petitioner has challenged the award on both these issues, namely, (1) Bonus and (2) discharge and compensation.

2. On the second issue about the discharge of Banerji and compensation awarded to him, I am of opinion that the question is entirely one of fact and the decision of the Tribunal ought not to be and cannot be interfered with by a constitutional writ in the facts and circumstances of this case. The Tribunal has found as a fact that Sri Banerji was a workman and was not properly and lawfully discharged.

3. Arguments really have been marshalled on the point of bonus. The problem arises in a very acute form on the facts of this case. The issue before the Tribunal was:

Bonus for the year 1954-1955 payable in 1956.

4. The finding of the Tribunal is that there was no available surplus in the year 1954-1955 out of which bonus could be paid. In fact, the Tribunal finds that there was no available surplus but a deficit in that particular year. The allowable charges and deductions were duly made by the Tribunal. The Tribunal also comes to the finding: "If, however, there will he no available surplus profit for the year in question, no bonus can be allowed." Having come to that conclusion, the Tribunal, however, holds and finds that the workmen are entitled to get bonus of one month''s wages in 1956 as a term of employment. On behalf of the petitioner, Mr. Sanyal, contends that this conclusion cannot be sustained in law. It is contended that once it is found that there is no available surplus out of which the bonus can be given, no bonus could thereafter have been allowed. He relies on the decision of the Supreme Court in Muir Mills Ltd. v. Suti Mazdoor Union, (1) (1955) S.C.A. 321 and two other decisions of the Supreme Court on the same point.

5. On behalf of the workers, Mr. Dutt contends and the Tribunal also finds that this conclusion to grant one month''s wages as bonus in 1956 as a term of employment is supported by an agreement between the parties dated July 14, 1949, signed by the Company, the workers and the Conciliation Officer. By clause 3 of the terms of settlement, it was provided as follows:

The Company will at the first instance pay an annual bonus equivalent to one month''s salary but it will be left to their discretion to pay more if possible.

6. It is therefore, contended on the basis of this agreement that the Company agreed to pay one month''s salary as bonus every year whether there was profit or not.

7. The proper determination of this question depends on the correct inter-pretation of the meaning of the word, "bonus" in clause 3 of this agreement.

8. The Tribunal seems to have approached this question by assuming that this was a condition of service without expressly slating the reasons about the meaning of the word, "bonus" in this clause of the agreement It discusses questions of comparable profits from 1949 to 1953-1954 and finds that profits of 1954-1955 could be compared to profits of previous years when bonus was paid on the basis of one month''s salary. The Tribunal, however, failed to decide the question whether the particular agreement meant payment of bonus even where there was no profit in the sense of no available surplus. On the other hand, the Tribunal did come to a definite finding that no bonus could be paid if there was no available surplus and the further finding that in the year in question, namely, 1954-1955, there was only

deficit and no available surplus.

9. Apparently, the dispute as to the meaning and interpretation of this clause in the agreement arose from its very inception. The agreement was filed on the 19th July, 1949. Within a month thereafter, on the 9th August 1949, the Labour Commissioner writes to the Managing Director of the petitioner saying:

the question of bonus will always depend upon profit and it is not our intention that according to the terms of settlement you will have to pay bonus even if the Company incurs loss or does not earn comparable profit.

10. This communication of the Labour Commissioner was a piece of evidence before the Tribunal. The Tribunal notices the fact that: "during conciliation proceedings, the Company also declined to pay bonus either out of profit or one month''s wages as condition of service." The Tribunal, therefore, knew that the Company was disputing this agreement to be interpreted as payment of bonus irrespective of profit as a condition of service.

11. Attempt has been made by Mr. Dutt, appearing on behalf of the workers, to argue that the Supreme Court decision relating bonus to profits and available surplus in the Muir Mills case, does not apply to a case where the bonus is a condition of service. This argument may be sound but here it begs the question. It has first to be found in this case, on a proper interpretation, whether, in fact, or in law, bonus was a condition of service or was intended to relate to profits. What was the agreement between the parties, that is the enquiry. That depends on a proper interpretation of the clause in the contract using the word "bonus" and the surrounding circumstances, the contemporaneous events and the disputes as contained in the Labour Commissioner''s communication and such other facts from which the parties'' intentions could be gathered. Mr. Dutt has relied on the unreported Supreme Court decision in (2) the Graham Trading Co. (India) Ltd. v. Its Workmen, decided on May 7, 1959. That case cannot be of much assistance to the respondent workmen on the ground that it dealt with a case of Pujah bonus and discussed the question of customary and traditional bonus In case of customary and traditional bonus, the question of profit may not arise. It will depend on the contents and terms of that custom or of that tradition on which such types of bonus rest. In every case, it is a question of fact. I have discussed the various aspects of bonus in my decision in Civil Revision Case 2691 of 1956, (3) M. Tilak & Co. v. 3rd Industrial Tribunal. (Since reported in M. Tilak and Co. Vs. Third Industrial Tribunal and Others, .)

12. Reliance also was placed on behalf of the workmen on the Labour Appellate Tribunal''s decision in Messrs. India Industrial Works Ltd: v. Engineering Mazdoor Sabha, Howrah, (4) reported in 1955 L.A.C. 408 at page 413, where the Labour Appellate Tribunal makes an annotation on the Supreme Court decision of the Muir Mills case (1) saying that the principles laid down in those cases applied only to the

case of profit sharing bonus and did not apply to the cases of customary or contractual bonus which did not depend on the surplus and the profits made by the Company but it also says at that page:

In case of customary or contractual bonus, the liability depends exclusively on the express or the implied contract and its terms are governed by the custom or the contract under which a claim thereto arises.

13. I approve this last observation of the Labour Appellate Tribunal. The question, therefore, depends on the express or implied terms of this particular contract in this case. Ordinarily, the expression, "bonus", without anything more to justify that it is customary or traditional or Pujah or festivity bonus or that it is the very term of the contract of employment, would imply the notion of surplus and available profits. With nothing more, I would therefore, read the word, "bonus", in its ordinary connotation, as explained in the Supreme Court decision in the (1) Muir Mills case. If it was intended that the workers should get an additional one months wages as extra wages during the year of twelve months, then it could have been expressed as wages but the moment the word, "bonus" is used, it connotes and signifies a certain concept which has been so clearly analysed by the Supreme Court in the (1) Muir Mills case and in the subsequent cases. It will be wrong in any event to treat bonus as deferred wages. The settled judicial opinion is that it is not deferred wages.

14. Before I conclude, I need only say that the Tribunal''s discussion of comparable profit appears to me irrelevant if it was satisfied that it was a condition of employment or a term of employment. The fact that payments have been made in the past few years even when profits were not as high, does not show that in those past years when bonus was paid, it was paid even without available surplus. The Tribunal does not say that in those past years there was no available surplus.

15. For these reasons, I must quash and set aside the Tribunal''s decision on Issue No. 1 relating to bonus and make the Rule of Certiorari absolute only to that extent. This, however, will not prevent the workers in a proper reference of the dispute to agitate the question of bonus on any other ground in future. There will be no order as to costs.