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In our opinion, therefore, the Labour Appellate Tribunal was not in error in dismissing the appeal by the Company and by the auction-purchaser, as incompetent. It follows, therefore, that we are not concerned with the merits of the appeal. In view of the fact that we have not expressed any opinion on the merits of the controversy raised in the abortive appeal, this dismissal shall be without prejudice to the appellants' rights, if any. The appeal is, accordingly, dismissed, but the parties here are directed to bear their own costs, in view of the fact that we have not gone into the merits of the controversy.

Appeal dismissed.

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May 6.

MESSRS. ISPAHANI LTD. CALCUTTA
v.
ISPAHANI EMPLOYEES' UNION

(B. P. SINHA, P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Puja Bonus—Implied agreement—Test—Benefits arising out of service with employer's predecessors—Workmen if entitled to.

The workmen were originally employed by M/s. M.M. Ispahani Ltd., which shortly before the partition of India transferred its registered office from Calcutta to Chittagong. The appellant company was incorporated on September 15, 1947 and took over the good-will and trading rights of M/s. M. M. Ispahani Ltd. and also purchased its stock-in-trade, properties and assets. Most of the shares of the appellant were held by M/s. M. M. Ispahani Ltd. and the business of the appellant was of the same nature carried on in the same premises with the same workmen on the same remuneration. On the transfer of M/s. M. M. Ispahani Ltd. to Chittagong the question arose of retrenching those workmen who were not willing to go to Chittagong and when the appellant company came into existence it agreed to employ those workmen. The workmen apparently agreed to the termination of their services with M/s. M. M. Ispahani Ltd., and after receiving their provident funds and arrears of salaries they were appointed by the appellant. M/s. M. M. Ispahani Ltd. used to pay puja bonus to the workmen at the rate of one month's wages and the appellant also paid the same from 1948 up to 1952, even in the years in which the appellant suffered losses. As the appellant did not pay puja bonus for 1953, a dispute arose and was referred for

adjudication. The workmen also claimed benefits from the appellant for the period of service rendered by them under M/s. M. M. Ispahani Ltd.

Held, that the workmen were entitled to the puja bonus equal to one month's wages as it was an implied term of the employment of the workmen. Puja was a special festival in Bengal and it had become usual with many firms there to give bonus before Puja to their workmen. A claim for puja bonus was based either on implied agreement or on customary payment. An implied agreement could be inferred if the following circumstances were established:—

(i) that the payment was unbroken;

(ii) that the payment had been made for a sufficiently long period; and

(iii) that it was not paid out of bounty.

The payment need not necessarily be at a uniform rate throughout, and it was for the Tribunal to decide the quantum in a particular year taking into account the various payments made in previous years.

In the present case the payment was unbroken and was not made out of bounty as it was made even in years of loss. The sufficiency of the length of the period depended on the circumstances of each case and in the present case the appellant had paid the bonus since its birth.

Mahalaxmi Cotton Mills Ltd., Calcutta v. *Mahalaxmi Cotton Mills Workers' Union,* 1953 L.A.C. 370 approved.

Held further, that the workmen were not entitled to any benefits arising out of their employment with M/s. M. M. Ispahani Ltd. The workmen had agreed to the termination of their service with that company, and there was no express or implied undertaking given by the appellant regarding continuity of service when employing the workmen.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 473 & 474 of 1957.

Appeals by special leave from the judgment and order dated the 27th July 1955 of the Labour Appellate Tribunal of India at Calcutta in Appeal No. Cal. 257 of 1954.

M. C. Setalvad, Attorney-General for India (*M/s. J. B. Dadachanji, S. N. Andley* and *Rameshwar Nath, Advocate of M/s. Rajinder Narain & Co.,* with him) for the appellants.

S. K. Mukherjee and *P. K. Ghosh* for the respondents.

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Wanchoo J.

1959. May 6. The Judgment of the Court was delivered by.

WANCHOO J.—These are two connected appeals by special leave against the decision of the Labour Appellate Tribunal in an industrial matter. Appeal No. 473 is by Messrs. Ispahani Ltd. (hereinafter called the company) and appeal No. 474 is by the employees of the company represented by Ispahani Employees' Union (hereinafter called the workmen). They will be disposed of by one judgment.

There was a dispute between the company and its workmen on a number of matters, which was referred by the Government of West Bengal to the adjudication of the Second Industrial Tribunal, by an order of December 17, 1953. There were a number of matters which had to be adjudicated upon; but of these only two now survive, namely—

(1) whether the workmen are entitled to puja bonus for 1953, and

(2) whether the workmen are entitled to receive from the company any benefits for the period of service rendered by them under Messrs. M. M. Ispahani Ltd.

A few facts may be set out here to give the background of this dispute. Originally, there was another company called Messrs. M. M. Ispahani Ltd. which was carrying on business in Calcutta since December 1934 before the partition of India. Shortly before the partition took place, Messrs. M. M. Ispahani Ltd. transferred their registered head office from Calcutta to Chittagong, now in Pakistan. That company thus became a Pakistani company after August 1947. It, however, continued to own properties in India and carried on some business in Calcutta on a small scale. The company was incorporated on September 15, 1947 and took over the good-will and trading rights of Messrs. M. M. Ispahani Ltd. and also purchased the stock-in-trade, properties and assets of that company. Most of the shares of the company were, however, held by Messrs. M. M. Ispahani Ltd. and the business of the company was of the same nature and was carried on in the same premises with the same telegraphic address

and with the same workmen on the same remuneration. Further, the company continued to pay puja bonus at the rate of one month's wages from 1948 up to 1952. As no bonus was paid in 1953, a dispute arose between the company and the workmen, which was referred for adjudication along with other matters.

The Industrial Tribunal held that it had not been established that puja bonus had been paid at the uniform rate of one month's wages for a sufficiently long time and for unbroken period, and therefore rejected the claim for puja bouns for 1953. On the other question relating to whether the workmen were entitled to receive from the company any benefits for the period of service rendered by them under Messrs. M. M. Ispahani Ltd., it held that the workmen were entitled to take into account the service rendered by them under Messrs. M. M. Ispahani Ltd. in the matter of benefits due under the law during their service under the company.

This award led to two appeals, one by the company on the question of benefits arising from the service rendered under Messrs. M. M. Ispahani Ltd., and the other by the workmen with respect to puja bonus for the year 1953. The Labour Appellate Tribunal allowed both the appeals. It held on the question of bonus that it had been proved that puja bonus had become a term of employment and the workmen were therefore entitled to bonus at the rate of one month's wages for the year 1953. As to the benefits arising out of the service rendered by the workmen under Messrs. M. M. Ispahani Ltd., it held that there was termination of employment of the workmen when Messrs. M. M. Ispahani migrated to Pakistan and the employment of the workmen by the company was fresh employment and they therefore were not entitled to any benefits arising out of their employment under Messrs. M. M. Ispahani Ltd. Both the company and workmen applied for special leave to appeal to this Court against the decision of the Appellate Tribunal insofar as it was against them. The applications were granted; and that is how the matter has come up before us.

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We shall first take up the appeal of the company relating to puja bonus for the year 1953. Two points have been urged in this behalf, namely—

(1) the Appellate Tribunal had no jurisdiction to interfere with the finding of the Industrial Tribunal as it was a finding of fact; and

(2) even if the Appellate Tribunal had jurisdiction, its decision is incorrect in law.

Puja is a special festival in Bengal and it has become usual with many firms there to give bonus before puja to their workmen. This matter came up before the Appellate Tribunal in *Mahalaxmi Cotton Mills Ltd., Calcutta* v. *Mahalaxmi Cotton Mills Workers' Union.*(1) In that case puja bonus was claimed as a matter of right payable by the employer at a special season of the year, namely, at the time of the annual Durga Puja. This right was not based on the general principle that labour and capital should share the surplus profits available after meeting prior charges. It was held in that case that this right rested on an agreement between the employer and the employees, and that the agreement might be either express or implied. Where the agreement was not express, circumstances might lead the tribunal to an inference of implied agreement. The following circumstances were laid down in that case as material for inferring an implied agreement:—

(1) The payment must be unbroken:

(2) It must be for a sufficiently long period; and

(3) The circumstances in which payment was made should be such as to exclude that it was paid out of bounty.

The Appellate Tribunal further pointed out that it was not possible to lay down in terms what should be the length of period to justify the inference of implied agreement and that that would depend upon the circumstances of each case. It also pointed out that the fact of payment in a year of loss would be an important factor in excluding the hypothesis that the payment was out of bounty and in coming to the conclusion that it was as a matter of obligation based

(1) 1952 L. A. C. 370.

on implied agreement. As to the quantum of bonus it was laid down that even if payment was not at a uniform rate throughout the period, the implied agreement to pay something could be inferred and it would be for the tribunal to decide what was the reasonable amount to be paid as puja bonus. The tests laid down in that case have since been followed in a number of cases by the Industrial Tribunals and the Labour Appellate Tribunal. We do not think it necessary to refer to all those cases. It may now be taken as well settled that puja bonus in Bengal stands on a different footing from the profit bonus based on the Full Bench formula evolved in *The Millowners' Association, Bombay* v. *The Rashtriya Mill Mazdoor Sangh, Bombay* (1). The claim for puja bonus in Bengal is based on either of two grounds. It may either be a matter of implied agreement between employers and employees creating a term of employment for payment of puja bonus, or (secondly) even though no implied agreement can be inferred it may be payable as a customary bonus. In the present case we are concerned with the first category, (namely, that based on an implied agreement creating a term of employment between the employer and the employees), and so we shall confine ourselves to that category. It was this kind of bonus which was considered by the Appellate Tribunal in *Mahalaxmi Cotton Mills case* (2). We are of opinion that the tests laid down in that case for inferring that there was an implied agreement for grant of such a bonus are correct and it is necessary that they should all be satisfied before bonus of this type can be granted.

This brings us to the two questions raised on behalf of the company, as set out above. The first question, (namely, that the Appellate Tribunal had no jurisdiction to interfere with the finding of the Industrial Tribunal that begin a question of fact) can be easily disposed of. We are of opinion that the decision whether there is an implied term of employment is a mixed question of fact and law and not a pure question of fact. This is similar to the decision, for example, on a question whether a custom has been

(1) 1950 L.L.J. 1247 (2) 1952 L.A.C. 370

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established or whether adverse possession has been proved, or whether a Hindu family has ceased to be joint as a matter of law accepting the facts proved. The Appellate Tribunal will therefore have jurisdiction to consider whether on the facts proved before the Industrial Tribunal an inference in law can be drawn that an implied term of employment for grant of puja bonus has been established. The Appellate Tribunal therefore had jurisdiction to consider this matter.

The next question is whether in law the decision of the Appellate Tribunal drawing the inference of an implied term of employment in this case is correct. The undisputed facts here are these: The workmen when they were in the employ of Messrs. M.M. Ispahani Ltd. always used to get puja bonus at the rate of one month's wages. This was asserted by the workmen in their written statement and the company did not deny it in its reply. All that it said was that the practice or custom prevalent at the time of Messrs. M.M. Ispahani Ltd. and the payment of bonus by that company were immaterial and did not bind the company. This averment impliedly admitted that Messrs. M. M. Ispahani Ltd. used to pay puja bonus as alleged by the respondents. The company practically took over the business from Messrs. M.M. Ispahani Ltd. and it was found that it had been paying bonus ever since it came into existence from 1948 right up to 1952 without any break at the rate of one month's wages and that this bonus was paid even in the years in which the company suffered loss. In the circumstances, it was established in this case that (1) the payment was unbroken and (2) it was not paid out of bounty due to profits having arisen, for it was paid in some years of loss also. The only other question that remains is whether it had been paid for a sufficiently long period in order to justify the inference that it was an implied term of employment. The length of the period depends on the circumstances of each case and what may be a short period not justifying an inference of an implied term of employment in one case may be long enough in another. In the present case, since the appellant has paid the bonus

continuously since its birth, we agree with the Appellate Tribunal that the circumstances justify the inference of an implied term of employment for payment of puja bonus at the rate of one month's wages every year. The appeal of the company must therefore fail.

Turning now to the appeal of the workmen on the question of benefits, we are of opinion that the decision of the Appellate Tribunal on this question also is correct. It is true that the company practically took over the business of Messrs. M. M. Ispahani Ltd. But, as pointed out by the Appellate Tribunal, when Messrs. M. M. Ispahani Ltd. transferred their head-office from Calcutta to Chittagong, the question arose of retrenching those employees who were not willing to go to Chittagong in view of the expected partition of India. In these circumstances, the company, when it came into existence in September 1947, agreed to employ those employees of Messrs. M. M. Ispahani Ltd., whose services were likely to be terminated. These employees apparently agreed to the termination of their services with Messrs. M. M. Ispahani Ltd., and therefore obtained settlement of their claims for provident fund, and also received all arrears of salary from them. They were thereafter appointed, after withdrawal of their provident fund, by the company. There was no express or implied undertaking given by the company regarding continuity of service and the employees joined the provident fund of the company afresh. In the circumstances the decision of the Appellate Tribunal on this question is correct, and the appeal of the workmen must also fail.

We therefore dismiss both the appeals and in consequence order the parties to bear their own costs of this Court.

Appeals dismissed.