1960

March 24.

BHARAT BARREL AND DRUM MFG. CO. PRIVATE LTD.

v.

GOVIND GOPAL WAGHMARE AND ANOTHER

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Industrial Dispute—Full Bench formula—Income-tax payable—Test.

The workmen of the appellant company claimed four months, wages including dearness allowance as bonus for the year 1952, and retrospective operation of the increased wage scale to be fixed by the Industrial Tribunal from March 1, 1952. The appellant agreed to the increased wage scale suggested by the Tribunal but wanted that it should be linked to some guaranteed production, and opposed its operation retrospectively on the ground that there had been eliberate slowing down of production by the workmen in the previous years. The Tribunal found that there was some justification in the appellant's contention that there was considerable go-slow which had affected production and ordered that retrospective effect should be given to its order relating to increase in wages which was passed on May 13, 1957, from June 1, 1956, and not March 1, 1952, as claimed by the workmen. The increased wages were not linked to any guaranteed production but it was made clear that the workers would give certain reasonable production to which the workmen agreed. The Tribunal granted five months' basic wages by way of bonus on the basis of the Full Bench formula which is generally applied to these matters. On appeal by the Appellant-company by special leave :

Held, that there was no reason for interference with the order of the Tribunal fixing the date as June 1, 1956, from which the increased wages should come into force and that the Tribunal had jurisdiction to award five months' basic wages by way of bonus.

For the purpose of the Full Bench formula, the income-tax payable has to be deducted on the figures worked out according to the formula and it is immaterial what the actual income-tax paid is—whether more or less.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 93 of 1959.

Appeal by special leave from the Award dated May 13, 1957, of the Industrial Tribunal, Bombay, in Reference (I.T.) No. 166 of 1955.

R. J. Kolah, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the appellants.

K. R. Chaudhury and *Janardan Sharma*, for the respondents Nos. 1 and 2.

1960. March 24. The Judgment of the Court was delivered by

WANCHOO, J.—This appeal by special leave raises two questions, namely, (i) bonus for the year 1952 and (ii) retrospective operation of the order of the Industrial Tribunal relating to increase in wages. The appellant is a company manufacturing barrels and drums at Bombay. There was a dispute between the appellant and its workmen about a number of matters, which was referred to the tribunal by the Government of Bombay on November 17, 1955. In respect of the two matters which are now raised in appeal the workmen claimed (i) four months' wages including dearness allowance as bonus for the year 1952 and (ii) retrospective operation of the wage-scale to be fixed by the tribunal from March 1, 1952.

So far as the increase in wages is concerned, the appellant agreed to the scale suggested by the tribunal but it opposed the grant of the increased scale retrospectively and also wanted that the increased wages should be linked to some guaranteed production. The reason for this was that the appellant felt that there had been deliberate slowing down of production by the workmen in the previous years. The tribunal was of opinion that there was some justification in the appellant's contention that there had been considerable go-slow which had affected production. Taking that into account it ordered that retrospective effect should be given to its order which was passed on May 13, 1957 from June 1, 1956. As to the linking of the increased wages to a certain guaranteed production it found it difficult to lay down any norm itself; but it made it clear that the increase in wages was made by it on the basis that the workers would give a certain reasonable production and noted that the workers were agreeable to do that. It, however, recommended that immediately after the award had been given, an expert should be appointed by agreement, if possible, to go into this question. It also said that in case it was not possible to appoint an expert by agreement it would be open to the appellant to appoint one.

1960

Bharat Barrel & Drum Mfg. Co. (P) Ltd.
v.
Govind Gopal Waghmare

Wanchoo J.

The appellant's contention before us is that the tribunal having found some justification in its contention that there had been considerable go-slow should not have given retrospective effect at all to the order relating to the increase in wages. This matter has been considered fully by the tribunal and it came to the conclusion that increase in wages should be granted from June 1, 1956. This could hardly be called retrospective considering that the reference was made in November 1955; in any case the tribunal rejected the claim of the workmen for retrospective operation for the period of over four years from March 1952 to May 1956 and a good deal of go-slow was practised during this period. In the circumstances we see no reason for interference with the order of the tribunal fixing the date as June 1, 1956, from which the increased wages should come into force.

This brings us to the next question relating to bonus. The tribunal has awarded five months' basic wages by way of bonus. The first contention in this connection is that the workmen had only claimed four months' basic wages and the tribunal could not have awarded anything more than what the workmen claimed. This in our opinion is incorrect. The workmen had claimed four months' wages including dearness allowance as bonus. Five months' basic wages which the tribunal has allowed are admittedly less than the claim put forward (namely, four months' wages including dearness allowance). In the circumstances the tribunal certainly had jurisdiction to award what it has awarded to the workmen.

The next question is whether the tribunal was justified in awarding as much as five months' basic wages on the basis of the Full Bench formula, which is generally applied to these matters. The gross profit found by the tribunal is not challenged, namely, Rs. 5·05 lacs. The tribunal has then allowed Rs. 1·36 lacs as depreciation, leaving a balance of Rs. 3·69 lacs. Deducting income-tax from this at seven annas in a rupee (i.e., Rs. 1·61 lacs), we are left with a balance of Rs. 2·08 lacs. Six per cent. per annum interest on the paid-up capital along with four per cent. interest on the working capital comes to Rs. 16,000, leaving an available

surplus of Rs. 1·92 lacs. Out of this, the tribunal has allowed five months' basic wages as bonus which according to its calculations comes to Rs. 91,000, leaving Rs. 1·01 lacs. There will be a rebate of Rs. 40,000 on this sum, leaving a total of Rs. 1·41 lacs with the appellant. On these figures, the bonus awarded by the tribunal cannot be interfered with.

The appellant, however, draws our attention to two circumstances in this connection. In the first place it urges that the tribunal has not taken into account anything for rehabilitation. But it may be mentioned that the appellant had proved no rehabilitation amount as such. What it had done was to appropriate Rs. 3·16 lacs towards depreciation, which of course was not the proper amount of notional normal depreciation, which is allowable under the formula. Our attention is drawn, however, to the figures filed by the workmen in Ex. U-4 in which Rs. 40,000 has been allowed towards rehabilitation. Even accepting this concession by the workmen and deducting it from the figures given by us above, the appellant would still be left with Rs. 1·01 lacs after paying five months' basic wages as bonus. There is thus no reason to interfere with the award of bonus on this ground.

Lastly it is urged that according to the income-tax assessment which was actually made in this case sometime after the order of the tribunal, the appellant has been assessed to income-tax amounting to Rs. 2·35 lacs. The appellant claims that it should be allowed this entire amount and not the notional figure calculated by us, namely, Rs. 1·61 lacs as income-tax. We are of opinion that for the purpose of the Full Bench formula, the income-tax payable has to be deducted on the figures worked out according to the formula and it is immaterial what the actual income-tax paid is—whether more or less. In this particular case, the income-tax appears to be more because certain items which were challenged by the workmen but were allowed as proper expense by the tribunal have apparently not been allowed as proper expense by the income-tax department. The industrial tribunal, however, is not concerned directly with what the income

1960

Bharat Barrel & Drum Mfg. Co. (P) Ltd. v. *Govind Gopal Waghmare*

Wanchoo J.

tax authorities assess as actual income-tax in a particular year; it is concerned with working out the Full Bench formula in accordance with its notional calculations and this is what has been done in this case. There is no ground therefore for interference with the award of bonus for this reason either.

We therefore dismiss the appeal, but in the circumstances pass no order as to costs.

Appeal dismissed.

B. N. ELIAS AND CO., LTD., EMPLOYEES' UNION AND OTHERS

v.

B. N. ELIAS & CO., LTD., AND OTHERS.

1960

March 24.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Industrial Dispute—Bonus—Implied term of agreement or condition of service—Ex gratia payments—Customary bonus—Puja bonus.

Since 1942 the respondents had been making *ex gratia* payments to their employees (appellants) in addition to wages and salaries, but these were not regular and in 1956, no *ex gratia* payments were made at all. The appellants claimed that their right to be paid bonus had become an implied term of agreement or a condition of service and, at any rate, it should be paid as customary bonus, and relied on the case of *The Graham Trading Co. (India) Ltd.* v. *Its Workmen*, [1960] 1 S.C.R. 107. The evidence showed that though the payments were made from 1942 to 1952 it was made clear every time that the payments were made as *ex gratia*:

Held, (1) Where payments are made to workers *ex gratia* and are accepted as such, it is not possible to imply a term of service on the basis of an implied agreement to pay bonus.

(2) that there cannot be a customary payment of bonus between employer and employee 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.

The Graham Trading Co. (India) Ltd. v. *Its Workmen*, [1960] 1 S.C.R. 107, explained.

(3) that for the year 1956 one month's basic wage should be paid as Puja bonus to the subordinate staff as it has become customary and traditional in the respondents' concerns.