WORKMEN OF ASSAM CO.

v.

ASSAM CO. LTD.

1958

March 31.

(BHAGWATI, J. L. KAPUR and A. K. SARKAR JJ.)

Industrial Dispute—Bonus—Formula applicable to tea industry —Deductions allowable for return on capital and on reserves—"Unit Scheme" of payment of bonus, if suitable.

The appellants claimed bonus for the years 1950, 1951 and 1952 at the rate of six months' wages per year. The Industrial Tribunal to which the dispute was referred allowed, in calculating the surplus available for payment of bonus, *inter alia* return on paid up capital and on the reserves at 7% and 5% respectively and accepted the "unit scheme" of payment of bonus which the company had been following since 1926. Under this scheme units were credited to each workman taking into consideration the importance of the job he held, the wages he got and the number of years he had been employed in that particular job, and each workman was paid bonus in proportion to the units to his credit. On appeal the Labour Appellate Tribunal modified the award and raised the return on the reserves from 5% to 6%.

Held, that the formula laid down in *Sree Meenakshi Mills* v. *Their workmen*, ([1958] S.C.R. 878 at 884) for ascertaining the surplus on the basis of which bonus becomes determinable and distributable could be applied to the tea industry with suitable adjustments.

The allowing of 7% return on capital as against 6% held allowable under that formula was justified by the additional risk factors in the tea industry. The allowing of 5% return on reserves by the Industrial Tribunal as against 4% allowed by the formula was not unreasonable, it being sufficient to safeguard the interests of the company. But the increasing of this to 6% by the Appellate Tribunal was insupportable in the absence of any claim in the respondent's written statement for rehabilitation or of any figures for determining this amount.

The "unit scheme" was suitable for the payment of bonus and would result not only in the fair distribution of bonus but would also lead to improvement in the quality and quantity of work.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 34 of 1957.

Appeal from the judgment and order dated August 31, 1955, of the Labour Appellate Tribunal of India, Calcutta in Appeal Nos. Cal-187 & Cal-188 of 1954, arising out of the Award dated May 15, 1954, of the

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Industrial Tribunal, Assam in Reference No. 20 of 1953 published in the Assam Gazette dated June 16, 1954.

C. B. Aggarwala and *K. P. Gupta*, for the appellants.

P. K. Goswami, *S. N. Mukherjee* and *B. N. Ghosh*, for the respondent.

1958. March 31. The Judgment of the Court was delivered by

Kapur J.

KAPUR J.—In this appeal brought by special leave against the order of the Labour Appellate Tribunal, Calcutta dated August 31, 1955, the controversy between the parties is confined to the question of bonus. The appellants are the workmen including members of the Indian staff and artisans employed by the respondent, the Assam Co. Ltd., a company incorporated in the United Kingdom and engaged in tea industry in the State of Assam. The appellants claimed bonus for the years 1950, 1951 and 1952 at the rate of 6 months' wages per year. The respondent offered to the Indian staff excluding the artisans Rs. 51,061 as bonus for 1950, Rs. 48,140 for 1951 and Rs. 15,493 for 1952 which works out at 2·3% of the net profit for the year 1950, 3·1% for the year 1951 and 3·9% for the year 1952. This dispute was referred to the Industrial Tribunal by a notification of the Assam Government dated August 27, 1953.

The Industrial Tribunal allowed depreciation as given in the company's balance sheets for the three years and allowed as return on the paid up capital and on the reserve 7% and 5% respectively and held the artisans also to be entitled to bonus. For the purpose of mode of payment the Industrial Tribunal accepted the "unit scheme" under which the company had been paying bonus since the year 1926. It was of the opinion that the scheme was fair and rational and gave incentive to industrial efficiency and to production.

Both the appellants and the respondent appealed against this order, the former as to the correctness of

the accounts, the amount of the return on capital and reserves and the " unit scheme " and again claimed six months' wages per year as bonus. The latter appealed against the percentages allowed on the capital and the reserves and claimed 10% and 8% respectively as a fair return. It objected to the inclusion of the artisans amongst the workmen eligible for bonus and also to the application of what is known as the Bombay formula to Tea industry.

The Labour Appellate Tribunal varied the Tribunal's award and allowed depreciation at the rate allowable under the Indian Income Tax Act, confirmed 7% on the paid up capital but raised the return on the reserves from 5% to 6% in order to meet the claim of the company for rehabilitation which though not claimed before the Industrial Tribunal, was put forward before it as a basis for increase in return on reserves. In this Court the appellants again repeated their objection to the amount of depreciation, the return on capital and on reserves and to the " unit scheme " but were prepared to confine their claim to two months' wages as bonus. Counsel for the respondent objected to the applicability of the formula to an industry like the tea industry, his contention being that circumstances and considerations applicable to the textile industry cannot apply to Tea industry which, being connected with agriculture, is affected by various factors which must be taken into consideration in the matter of depreciation, return on capital and return on reserves.

The principles on which the ascertainment of the surplus on the basis of which bonus becomes determinable and distributable have been laid down by this Court in *Sree Meenakshi Mills* v. *Their Workmen* (1). The formula there laid down is:

" Distributable surplus has to be ascertained after providing from the gross profits for (1) depreciation, (2) rehabilitation, (3) return at 6 per cent. on the paid up capital (4) return on the working capital at a lesser but reasonable rate, and (5) for an estimated amount in respect of the payment of income-tax."

(1) [1958] S.C.R. 878.

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Under this formula the depreciation allowable in cases arising under the Industrial Disputes Act is the normal depreciation including shift depreciation. We did not understand counsel for the respondent to contend that there was anything in the formula which was wrong in principle but that it had to be adjusted to suit the circumstances of the Tea industry. No circumstances, were however, given by him which would make it unfair to apply the formula nor were any figures or particulars furnished for varying it in regard to depreciation.

The Industrial Tribunal allowed 7% return on capital as against 6% held allowable under the formula. Its reasons for this increase were :

"That the tea industry here may have often to face various adverse circumstances—more adverse than those that may come upon other industries and may have more risks than other industries. It may however be noted that the company in the instant case—is more than a Century old one fairing well all through and has thus been so far a prosperous one and on a sound footing and as such it is expected to have built up a substantial reserve."

The Labour Appellate Tribunal maintained this higher rate of return on capital on the ground "of its being exposed to greater risks than any other industry ..... namely weather, pests in the plants and gradual deterioration of the soil over which no man has any control". These additional risk factors are no doubt present in an industry connected with agriculture like the tea industry and in our opinion they justify the giving of a higher rate of return on capital.

Instead of 4% allowed by the formula the industrial Tribunal fixed the return on reserves at 5% on the ground of its "being sufficient to guard the interests of the company" but the Labour Appellate Tribunal increased it to 6% to meet replacements and rehabilitation charges since the "usual method of calculating these charges is not possible in the present case" and "we are to see that the industry does not suffer for want of replacement and rehabilitation funds and must

provide such funds in some other way, namely, by allowing a return on the working capital at higher rates". In the absence of any claim in the respondent's Written Statement for rehabilitation or any figures for determining this amount, this extra one per cent. is insupportable. It is not a case where a claim could not be made or figures could not have been given at the proper stage. The additional one per cent. cannot therefore be allowed. In our opinion the reasons given by the Industrial Tribunal sufficiently support the giving of 5% on the reserves as being fair considering the risks of the tea industry which is exposed to various adverse circumstances and elements. The Industrial Tribunal has not acted unreasonably nor in disregard of any accepted principles in calculating the return on reserves at 5% and we see no cogent reason for varying this rate.

The respondent has, since 1926, been paying bonus to its employees according to a scheme called the "unit scheme" which according to the Industrial Tribunal has the merit of being more rational and gives incentive to industrious habits and efficiency leading to more production. The Labour Appellate Tribunal did not go into the merits of the scheme but ordered payment according to it. Under this scheme units are credited to each workman, taking into consideration the importance of the job he holds, the wages he gets and the number of years he has been employed in that particular job. The value of units so awarded thus vary commensurate with considerations of efficiency and experience. The establishment is divided into twelve categories and the medical staff into three each based on the relative importance of the nature of work done by a workman. Thus in the descending order of their importance the jobs are classified as: 1. Head Mohori; 2. Head Clerk; 3. Divisional Mohori; 4. Land Mohori; Hazaria Mohori; 5. Kamjari Mohori; 6. Godown Mohori; 7. 2nd Tea House Mohori; 2nd Kerani; 2nd Hazaria Mohori; 8. 2nd Godown Mohori; 9. Gunti Mohori; 10. 3rd Tea House Mohori; 11. Mondal; 12. Apprentices.

Units would thus be awarded to workmen in the

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particular category they are in and the more qualified the worker the better his work and the higher his wage, the higher the number of units he would be entitled to. The amount available for distribution as bonus is divided by the aggregate number of units of all the workmen participating in the scheme and each worker would be entitled to a multiple of the amount payable on one unit and the units to his credit. It appears to us that the estimate of the Industrial Tribunal as to the suitability of the scheme was fully justified and payment of bonus in accordance with this scheme will not only result in fair distribution of bonus but would also lead to improvement in the quality and quantity of work. This scheme is not to be confused with production bonus though it has the merit of combining the fair distribution of the surplus available and the maintenance of efficiency in the establishment.

Taking the figures on the basis of the award made by the Industrial Tribunal we find that Rs. 7,64,608 would be the surplus for the year 1950, Rs. 77,823 for 1951 and a deficit of Rs. 10 lacs for the year 1952. The total sum available for three years will be nil. On the basis of the claim which counsel for the appellant has made before us, i. e., two months' wages, we find that the amount of bonus required for the members of the staff for the year 1950 will be one sixth of Rs. 4,63,095 and for the year 1951, one sixth of Rs. 4,83,893 and for 1952 one sixth of Rs. 5,31,202 which works out to Rs. 77,182 for 1950, Rs. 80,647 for 1951 and Rs. 88,533 for 1952. The amounts required for the artisans further increase these figures. No doubt on the calculations which have now been made the appellant may justify the claim of two months' bonus for the year 1950 but the same cannot be said in regard to the claim for the years 1951 and 1952 because of the available surplus which is only Rs. 77,823 for 1951 and there is a deficit of about 10 lacs of rupees for the year 1952. Taking all these figures into consideration, we are of the opinion that the amounts awarded by the Industrial Tribunal are fair and proper. As the Labour Appellate Tribunal

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allowed depreciation and rehabilitation on an erroneous basis, we would set aside the order of the Labour Appellate Tribunal and would restore that of the Industrial Tribunal with this modification that the Respondent shall make available the additional amount required for payment of the proportional bonus to the artisans.

The appeal is, therefore, allowed to this extent, the order of the Labour Appellate Tribunal set aside and the award of the Industrial Tribunal restored with this modification that the respondent shall also provide an additional amount for these three years for payment to the artisans of proportionate bonus on the basis of the "Unit System". As neither of the parties have succeeded in their main contentions, the fair order in regard to costs should be that the parties do bear their respective costs throughout.

KANHAIYALAL

v.

Dr. D. R. BANAJI AND OTHERS

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March 31.

(B. P. SINHA, JAFER IMAM and SUBBA RAO JJ.)

Revenue Sale—Property in possession of Receiver appointed by Court—Absence of leave of Court for sale—Notice to Receiver not given—Whether sale illegal—Whether suit to set aside sale by civil court barred—Berar Land Revenue Code, 1928, ss. 155, 156, 157, 192.

The appellant was the auction-purchaser of the property at a revenue sale held under the provisions of the Berar Land Revenue Code, 1928, for recovery of land revenue due. The property at the time of the attachment and sale was in the possession of a Receiver appointed under Or. 40, R. 1 of the Code of Civil Procedure by the Bombay High Court. Notice to the Receiver, however, was not given of the attachment and sale of the property, nor was any leave of the Court taken for the sale. In a suit instituted by the Receiver for a declaration that the sale was a nullity or, at any rate, was illegal and liable to be set aside, the auction-purchaser contended that the sale without notice to