THE MANAGEMENT OF MARINA HOTEL

v.

THE WORKMEN

1961

August 4.

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

Industrial Dispute—Bonus—Hotel workmen getting service charges and tips—If disentitled to get bonus—Casual-cum-sickness leave—Amount of leave—Delhi Shops and Establishments Act, 1954 (Delhi 7 of 1954), s. 22.

The award made by the Industrial Tribunal, to which the dispute between the appellant, a hotel in new Delhi, and its workmen was referred, was challenged by the appellant on the grounds *inter alia* (1) that the workmen got a share in the service charges and also some amount by way of tips from the customers and so no bonus could be awarded to them, and (2) that the Tribunal was not justified in awarding 15 days casual-cum-sickness leave in view of the fact that s. 22 of the Delhi Shops and Establishments Act, 1954, provided only for a maximum of 12 days for such leave. It was not disputed that the workmen in the present case had contributed to the earning of profits for the years in question, that on a consideration of the wages paid to the workmen by the appellant there was a wide gap between their existing wages and the living wages, and that the amounts received through the distribution of service charges and tips were quite inadequate to bring the wages to the level of a living wage.

Held, that it is well-settled that bonus is paid to workmen out of the available surplus of profits in order to fill in the gap between the existing wage and the living wage, provided that the workmen have contributed to the earning of profits, and that, in the present case, if there was an available surplus of profits in accordance with the Full Bench formula, the workmen would be entitled to bonus.

Voltas Limited v. *Its Workmen*, (1961) 3 S. C. R. 167, distinguished.

Held, further, that the Tribunal was in error in awarding 15 days' casual-cum-sickness leave contrary to the provisions of s. 22 of the Delhi Shops and Establishments Act, 1954, and that the amount of leave must be reduced to 12 days as provided in the Act.

1961

The Management of Marina Hotel v. The Workmen

Messrs Dalmia Cement (Bharat) Limited, New Delhi v. *Their Workmen*, A. I. R. 1960 S. C. 413, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 393 of 1960.

Appeal by special leave from the Award dated July 1, 1958, of the Industrial Tribunal, Delhi, in I.D. No. 99 of 1958.

S. P. Varma, for the appellant.
Janardan Sharma, for the respondent.

1961. August 4. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—This is an appeal by special leave in an industrial matter. There was a dispute between the appellant, namely, the Marina Hotel, New Delhi, and its workmen, which was referred for adjudication to the Industrial Tribunal, Delhi. The matters in dispute comprised a number of items ; but in the present appeal we are concerned only with the following :—

1. Bonus for the years 1953-54 and 1954-55.
2. Leave.
3. Provident Fund.
4. Scales of Pay.
5. Dearness Allowance.

We shall deal with these points one by one.

Bonus.

The first contention of the appellant in this regard is that as the workmen get a share in the service-charges and also some amount by way of tips from the customers, no bonus can be awarded to them. Reliance in this connection is placed on the observations of this Court in *Voltas Limited* v. *Its Workmen* (1), where in dealing with salesmen it

(1) [1961] 3 S. C. R. 167.

was said that salesmen being paid commission on sales had already taken a share in the profits of the appellant on a fair basis and therefore there was no justification for granting them further bonus out of the available surplus of profits. The contention is that the workmen of the appellant also get a share in the profits on the distribution of service charges among them and therefore they are not entitled to any further bonus. Now it is well-settled that bonus is paid to workmen out of the available surplus of profits in order to fill in the gap between the existing wage and the living wage provided the workmen have contributed to the earning of profits. It is not disputed that the workmen in the present case have contributed to the earning of the profits ; nor can it be disputed on a consideration of the wages paid to the workmen by the appellant that there is a wide gap between their existing wage and the living wage. In the circumstances, if there is an available surplus of profits in accordance with the Full Bench formula, the workmen would be normally entitled to bonus.

The appellant, as we have already mentioned, relies on the observations of this Court in the case of *Voltas Limited* (1). However, we are of opinion that those observations cannot help the appellant. It cannot be disputed that even taking into account the amount received by the workmen through distribution of service charges and tips, there is still a gap between their existing income and the living wage. The observations on which reliance is being placed on behalf of the appellant were made in a different context altogether. When dealing with salesmen of *Voltas Limited* (1) this Court pointed out that the commission of salesmen on an average worked out to about Rs. 1,000 per month and therefore their total emoluments were quite adequate. It was in that context that the observa-

(1) [1961] 3 S. C. R. 167.

1961

The Management of Marina Hotel
v.
The Workmen

Wanchoo J.

tions in question on which reliance has been placed were made. Besides, salesmen in that case were a small part of the total number of workmen of Voltas Limited and that was the reason why this Court observed that as the salesmen had already taken a share in the profits of the appellant on a fair basis as contrasted with the majority of the other workmen there was no justification for granting them further bonus out of the available surplus. The observations therefore on which reliance has been placed were conditioned by two circumstances, namely, (i) that salesmen in that case were getting adequate wages after taking into account the commission received by them, and (ii) that salesmen were only a small part of the workmen in that case and as they had already partaken of a share in the profits they were not entitled to any further share from the available surplus to the detriment of the other workmen who formed the large majority. Neither of these two conditions apply in the present case. The evidence shows that the amounts received through the distribution of service charges and tips are quite inadequate to bring the wages to the level of a living wage. Besides, all the workmen of the appellant share in the distribution of service charges and thus stand on the same footing so far as the distribution of bonus from the available surplus, if any, is concerned. The appellant cannot therefore take advantage of the observations made in the case of *Voltas Limited* (1) torn out of their context.

Coming now to the available surplus for the year 1953-54, the Tribunal found that the net profits were Rs. 98,343 and was of opinion that taking into account the prior charges three months' bonus would be justified as the monthly wage-bill was about Rs. 5,500 per month. The Tribunal, however, did not make a chart in accordance with the Full Bench formula to work out the available surplus. It said that even making allowance for

the prior charges there was a substantial surplus to allow payment of three months' bonus. The main attack of the appellant is directed to this infirmity in the Tribunal's judgment. It appears, however, that the appellant also did not submit a chart showing the available surplus, according to its calculations as is usually done in all such cases by an employer. The reason for this apparently was that the balance-sheet and the profit and loss account of the appellant are maintained in a rather peculiar way from which it was not easy to work out the figures according to the Full Bench formula. There is no doubt, however, that the net profits were above Rs. 98,000 in 1953-54. Depreciation was already provided for in the profit and loss account and as the Tribunal had taken into account net profits it was not necessary to allow any further depreciation, for the net profits had been arrived at after charging depreciation. As for rehabilitation it seems to us that there is hardly any scope for rehabilitation in the present case, for we find from the profit and loss account that repairs and replacements which would include what is understood as rehabilitation are charged as expenses. As for income-tax, it appears that the rate was 45 *per centum* in the relevant year. The income-tax would thus work out to about Rs. 44,000 leaving a balance of about Rs. 54,000. Then comes 6 *per centum* return on paid-up capital. The balance-sheet shows Rs. 6,000 as paid-up capital on which the appellant would be entitled to Rs. 360. But, it has been urged before us that the business was purchased for Rs. 60,000 and that should also be treated as capital. It is enough to say that even if this is a fact there was no evidence of it before the Tribunal and the balance-sheet did not show this figure as capital. In the circumstances the appellant cannot in the absence of proof claim that the capital on which 6 *per centum* interest should be allowed is Rs. 60,000. It will,

1961

The Management of Marina Hotel v. The Workmen

Wanchoo J.

however, be open to the appellant to prove this in subsequent years if it can. The last of the prior charges is return on working capital. On that also there was no evidence worth the name as to what amount was used as working capital. In the circumstances the award of three months' bonus cannot possibly be challenged before us.

We asked the appellant to furnish a chart before us showing what was the surplus according to the appellant's case. That chart has been furnished and shows an available surplus of Rs. 28,550. The respondents dispute a number of items in that chart—and perhaps rightly. But even if we were to accept the figure of available surplus for this year at Rs. 28,550 the award of three months' bonus which would come to Rs. 16,500 would not be unjustified, particularly as Rs. 8,100 would come back to the appellant out of that as rebate on income-tax. In the circumstances we are of opinion that the order of the Tribunal in respect of bonus for the year 1953-54 is correct.

Then we come to the year 1954-55. For that year the appellant did not even produce the balance-sheet and the profit and loss account. It was, however, conceded before the Tribunal that there were profits in 1954-55. The Tribunal therefore held that there was enough profit to warrant the payment of three months' wages as bonus. This view of the Tribunal is being attacked and it is urged that in the absence of figures it was not correct for the Tribunal to award any bonus for this year. We consider that the figures are not available because of the fault of the appellant. We find that the balance-sheet and the profit and loss account for the year 1956-57 were produced in another connection. It is obvious that the accounts for the year 1954-55 were available. The fault for their non-production obviously therefore lies on the appellant. We find, however, from an affidavit filed on behalf of the respondents in

this court in connection with the stay application that the profits for the year 1954-55 were over Rs. 85,000. We asked the appellant to produce the accounts for the year 1954-55 and the original accounts were brought and shown to us. These accounts confirm the figure of profit mentioned in the affidavit filed on behalf of the respondents. We further find that in the profit and loss account for the year 1953-54, there is an item of over Rs. 13,000 for refund of water charges which has been claimed as extraneous income unrelated to the efforts of labour. If this amount is deducted from the profit of 1953-54 the profit in that year would also come to Rs. 85,000 or so. Thus the profits in the year 1954-55 appear to be more or less the same as in the year 1953-54. In the circumstances there is no reason to interfere with the award of three months' wages as bonus for the year 1954-55.

Leave.

The contention of the appellant in this connection is that the Tribunal was not justified in awarding 15 days' casual-cum-sickness leave in view of the provisions of s.22 of the Delhi Shops and Establishments Act, (No. VII of 1954), as that provides for a maximum of 12 days for sickness-cum-casual leave. This matter was considered by this Court in *Messrs Dalmia Cement (Bharat) Limited New Delhi* v. *Their Workmen and another* (1) and it was pointed out that the position with regard to sickness-cum-casual leave was that s.22 fixed a maximum of 12 days total leave for sickness or casual leave with full wages, and it was not open to the Tribunal to disregard this peremptory direction of the Legislature. In this case the Tribunal was aware of the provisions of s. 22 of the Delhi Shops and Establishments Act; but in spite of that it decided to grant 15 days' sickness-cum-casual leave instead of 12 days, which was the maximum

(1) A.I.R. [1960] S.C. 413.

1961

The Management of Marina Hotel v. The Workmen

Wanchoo J.

provided under the Act. This in our opinion was illegal and the amount of casual-cum-sickness leave must be reduced to 12 days as provided in the Act.

It was urged on behalf of the respondents that the kitchen of the hotel would be a factory and the Delhi Shops and Establishments Act would not apply to the kitchen staff at any rate. This point however was not raised in the written-statement where the respondents' case was that the Act did not debar the workmen from demanding more leave than what was provided therein. It is not in dispute that the Delhi Shops and Establishments Act applies to this hotel. Whether the kitchen of the hotel would be a factory and thus the staff working in the kitchen would be exempt from the operation of the Delhi Shops and Establishments Act is a question which cannot be decided in the present appeal in the absence of facts. In the circumstances the order of the Tribunal with respect to casual-cum-sickness leave is modified as indicated above.

Provident Fund.

Learned counsel for the appellant has stated that the Employees' Provident Funds Act (No.XIX of 1952) has been extended to the hotel industry and in the circumstances he is not pressing the appeal so far as it relates to provident fund, as the provisions in the award relating to provident fund are in accordance with the provisions of the Employees' Provident Funds Act.

Scales of Pay.

The workmen had demanded certain scales of pay; but the Tribunal has fixed scales which are somewhat lower than those demanded by the workmen. The Tribunal was of opinion that the scales fixed by it were in accordance with the scales prevailing in some hotels in the Delhi area; in particular it referred to the scales in the Cecil and Grand Hotels, which are more or less similar. The

appellant, however, relies on the statement of Lakshmi Chand Narula, Hony. Secretary of the Delhi Caterers' Association, who stated that the Marina Hotel was in B category. Our attention was also drawn to the statement of D. D. Singh, Secretary, Hotel Workers' Union on behalf of the respondents who stated that the workers placed the Marina Hotel in category A, which included almost all the hotels in New Delhi and Civil Lines Delhi. The Grand and Cecil Hotels are in Civil Lines Delhi and Singh's contention was that they were comparable, though he did not say so in so many words. The appellant contends that as the Marina Hotel is in B category, according to Narula, it cannot be compared with the Grand and Cecil Hotels. The evidence of Shri Narula, however, does not show in which category the Cecil and Grand Hotels are. But on the whole Singh's evidence shows that the Marina Hotel is in the same category as the Cecil and Grand Hotels. In any case in this state of the evidence, we see no reason to disregard the view of the Tribunal that the Marina Hotel was not inferior to the Cecil and Grand Hotels in any way. If that is so, scales of pay fixed by the Tribunal which are more or less similar to the scales in the Cecil and Grand Hotels cannot be objected to; nor are the scales intrinsically so high as to call for reduction. We also see no reason to disregard the view of the Tribunal that the appellant has the capacity to pay the scales of pay fixed by it. It is true that profits have gone down since 1954-55. Even so there is no reason to hold that the Tribunal was wrong in the view that the hotel would be able to bear the increase in the wage-bill due to the introduction of these scales of pay. We therefore see no reason to interfere with the scales fixed by the Tribunal.

Dearness Allowance.

The dearness allowance fixed by the Tribunal

1961

The Management of Marina Hotel
v.
The Workmen

Wanchoo J.

is in accordance with the present scale. The workmen were demanding Rs. 35, but the Tribunal has fixed Rs. 20 per month and has provided that where a workman takes his meals at the hotel the amount will be reduced by Rs. 15; but where he lives in accommodation provided by the hotel but does not take his meals there the amount will be reduced by Rs. 5; further where he both lives and takes his meals in the hotel there will be no dearness allowance paid to him. We see no reason to disagree with the view taken by the Tribunal in this behalf, particularly when it is in accordance with what was prevalent in the hotel from before according to the award of Shri Dulat of May 17, 1950.

The appeal therefore fails except in the matter of the modification in the casual-cum-sickness leave as indicated above and it is hereby dismissed with costs.

Appeal dismissed except for slight modification.

1961

August 4.

THE STATE OF BOMBAY

v.

KATHI KALU OGHAD AND OTHERS

(B. P. SINHA, C. J., S. J. IMAM, S. K. DAS, P. B. GAJENDRAGADKAR, A. K. SARKAR, K. SUBBA RAO, K. N. WANCHOO, K. C. DAS GUPTA, RAGHUBAR DAYAL, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Testimonial Compulsion—Obtaining specimen writing and thumb impression from accused—Statement of accused in Police custody used in evidence—If contravene constitutional guarantee—Constitution of India, Art. 20(3).

Section 73 of the Indian Evidence Act empowers the court to obtain specimen writing or signature and finger impressions of an accused person for purposes of comparison.