1964

March 25

MANAGEMENT OF BOMBAY CO. LTD.

v.

WORKMEN

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO AND K. C. DAS GUPTA, JJ.]

Industrial Dispute — Christmas bonus — Implied agreement—Test.

An industrial dispute arose between the appellant and its workmen as to payment of bonus for the years 1957-58 and 1958-59. The dispute was referred for adjudication to the tribunal. The respondents claimed bonus on the basis that payment of some bonus at Christmas had become an implied condition of service between the appellant and its workmen. The workmen claimed 1½ months' wages for each year on the basis of an implied term of service. On these facts the tribunal held on the basis of the decision of this Court in *M/s. Ispahani Ltd.* v. *Ispahani Employees Union* that payment of bouns at the rate of 1½ months' salary as an implied condition of service had been established. It is this award of the tribunal which has been challenged before this Court.

Held: (i) Where the payment of bonus is connected with a festival it is possible to infer that there is an implied condition to pay something at the time of the festival, even though the payment has not been made at a uniform rate in previous years. In the present case, the payment has not been uniform over the years and before an implied term of service to pay bonus can be inferred it must be shown that the payment was connected with some festival. Therefore the tribunal was not right in holding that there could be an implied condition of service as to payment of bonus unconnected with any festival.

In the present case, though the amount paid in December was originally called an advance, at least one month's salary out of the so-called advance always remained with the workmen and was treated as bonus connected with Christmas festival. On the facts of this case it was held that there was an implied condition of service between the appellant and its workmen that something would be paid every year about Christmas time as festival bonus.

M/s. Ispahani Ltd. v. *Ispahani Employees' Union,* [1960] 1 S.C.R. 24, relied on.

(ii) In a case of payment which is made at different term and is not at a uniform rate the duty of the court is to connect the payment with a festival (in this case Christmas). On the evidence in this case it is clear that the minimum is only one month's salary payable about Christmas time and this was actually paid in 1951-52 and 1953-54. Therefore the payment of one month's salary as Christmas bonus is proved as an implied condition of service between the appellant and its workmen on the admitted facts of this case.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 583 of 1963. Appeal by special leave from the Award dated June 18, 1962 of the Industrial Tribunal, Ernakulam, in Industrial Dispute No. 38 of 1960.

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G. B. Pai, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain,* for the appellant.

Janardan Sharma, for the respondents.

March 25, 1964. The judgment of the Court was delivered by

Wanchoo, J.

WANCHOO, J.—This is an appeal by special leave from the award of the Industrial Tribunal, Ernakulam. A dispute arose between the appellant and its workmen as to payment of bonus for the years 1957-58 and 1958-59, and was referred for adjudication to the tribunal. The respondents claimed bonus on two grounds: (i) on the basis of profits earned by the appellant, and (ii) on the basis that payment of some bonus at Christmas had become an implied condition of service between the appellant and its workmen. It may be mentioned that the claim was for four months' wages for each year on the basis of profit bonus. The alternative claim was for 1½ months' wages for each year on the basis of an implied term of service. We may also mention that the appellant had paid two months' basic salary as bonus for the year 1957-58, and one month's basic pay as bonus for the year 1958-59. The appellant contended that there was no surplus available on the basis of the Full Bench formula applied in such cases and therefore no profit bonus could be paid. It also contended that no bonus was payable as an implied term of service.

The tribunal found on an application of the Full Bench formula that there was no available surplus in either of the two years and therefore no bonus was payable as profit bonus. It then went into the question whether any bonus was payable as an implied condition of service and relying on the decision of this Court in *Messrs. Ispahani Ltd.* v. *Ispahani Employees' Union*(1) held that payment of bonus at the rate of 1½ months' salary as an implied condition of service had been established. It therefore ordered the appellant to pay that amount after taking into account one month's salary already paid by it. It is this award of the tribunal which has been brought before us by special leave.

The main contention on behalf of the appellant are two-fold:

(1) It is urged that the tribunal erred in holding that payment of bonus as an implied condition of service need not be attached to any festival;

(2) On the undisputed facts of this case, the tribunal was not right in holding that a case had been made out for

(1) [1960] 1 S.C.R. 24.

payment of some bonus as an implied condition of service, and in any case, even if a case had been made out for payment of some bonus, it could not be at the rate of 1½ months' salary.

Turning to the first contention raised on behalf of the appellant, we are of opinion that the tribunal was not right in holding that there could be an implied condition of service as to payment of bonus unconnected with any festival. In *Ispahani's case*(1) the question raised was whether there was an implied condition of service for payment of some bonus at the time of puja festival in Bengal. In that connection this Court laid down the tests for holding when it could be said that there was an implied condition of service for payment of some bonus in connection with some festival. This Court also pointed out that it was not necessary in order to establish an implied condition of service as to payment of some bonus at the time of a festival like puja in Bengal that the amount paid in connection with the festival should be uniform, and that in the absence of a uniform rate an implied agreement to pay something could be inferred. Now where the payment is connected with a festival it is possible to infer that there is an implied condition to pay something at the time of the festival, even though the evidence discloses that in previous years payment has not been made at a uniform rate. But it is difficult to see how the principle which applies to a case of payment at the time of a festival can be extended to infer an implied term of payment where the payment has been made entirely unconnected with any festival and at rates which have varied from year to year. We are therefore of opinion that when this Court laid down that there was an implied condition of service to pay something about the time of puja festival in *Ispahani's case*(1), it was clear that such implied condition of service could be inferred where the rate of payment was not uniform only when such payment was obviously connected with some festival. In the present case also, the payment has not been uniform over the years and therefore before an implied term of service to pay bonus can be inferred it must be shown that the payment was connected with some festival. It would in our opinion be impossible to infer an implied condition of service where payment has not been uniform in the past, unless such payment can be connected with some festival. We are therefore of opinion that the tribunal was wrong in holding that an inference could be drawn for payment of bonus as an implied condition of service in the circumstances of the present case when the payment was not uniform in the past even though it was not connected with any festival.

(1) [1960] 1 S.C.R. 24.

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But that in our opinion does not dispose of the matter. The evidence shows that payment of some bonus began to be made from the year 1945-46 in which year bonus varying from one month to 3½ months' salary was paid in this branch. It may be added that the appellant has a number of other branches in other parts of the country. What we are saying in this case is only concerned with the Cochin branch and may not necessarily be applicable to other branches of the appellant, the facts of which are not before us. From 1946-47 to 1949-50, it appears that some lumpsum was paid, though the amount is not exactly known. It is also not clear whether during the years 1945-46 to 1949-50 payment was made about Christmas time, as there is no evidence either way. In 1950-51 it appears that 1½ months' salary was paid as bonus. No payment appears to have been made in that year about Christmas time, though it is said that 1½ months' salary was paid as bonus sometime afterwards. From 1951-52 right upto 1958-59, payment was made at the rate of one month's salary to two months' salary about Christmas time. It is clear therefore that at any rate since 1951-52 payment is connected with Christmas festival, though there is no clear evidence as to the earlier payments being connected with Christmas. At the same time there is no clear evidence that those payments were not connected with Christmas even though payment for the year 1950-51 might have been made sometime after Christmas. On the whole therefore it seems to us that it is possible to infer that the payments which began from 1945-46 and have been made throughout upto 1958-59 were in all probability connected with Christmas festival. This inference in our opinion is strengthened by the fact that from 1951-52 undoubtedly payments were connected with Christmas and were always made about Christmas time, even though there was adjustment on some occasions later on by payment of more amount or by reduction of the amount already paid by deducting some part of it from later salary. We are therefore of opinion that we can infer from the evidence on the record that the payment in the present case is connected with Christmas festival. Therefore even though the tribunal was wrong in holding that the payment need not be connected with any festival in a case like the present where the rate has not been uniform, the respondents have made out a case of payment of some bonus as an implied condition of service connected with a festival subject to what we say on the second contention raised on behalf of the appellant.

The appellant however contends that it has not been proved that the payment of bonus was in connection with the Christmas festival on the undisputed evidence in this

case. Now the evidence is that something used to be invariably paid at least from 1951-52 about Christmas time. Later on something more was paid in some years. In one year nothing more was paid and in three years the appellant took back part of the payment which had been made. The appellant's contention is that the payment before Christmas which has been established in this case was only an advance in connection with the festival which was later adjustable from the salary of the workmen. It is true that when the payment was made it was designated as an advance. For example, when payment was made in December 1953, it was designated as an advance and it was stated in the notice that it would be treated as advance against any bonus and in the event of no bonus as advance against salary. Even so, the evidence shows that the so-called advance was never recovered in full. Sometimes more was paid in addition to what had been paid in December. Once nothing more was paid but the amount already paid in December was not recovered. Three times something was recovered from what was paid in December; even so a minimum of one month's salary out of the so-called advance in December was always left with the workmen. So though the amount paid in December was originally called an advance, at least one month's salary out of the so-called advance always remained with the workmen and was treated as bonus connected with Christmas festival. The fact that the payment was originally called advance would not detract from the conclusion that some amount was really paid as bonus in connection with Christmas festival.

There is no evidence to show that this amount was paid *ex-gratia*. In this connection our attention is drawn to what happened in April 1954. Then a notice was given about payment of additional bonus which was called *ex-gratia*. The evidence however shows that in 1953-54 one month's salary was paid in December and in addition half a month's salary was paid later on and it was this additional half month's salary which was designated as *ex-gratia payment*. There is nothing to show that the payment made in December was ever designated as *ex-gratia* payment. It could hardly be so designated for it was usually called an advance which was claimed as recoverable though the whole of it was never recovered. In spite of the payment made in December being called an advance, we are of opinion that on the evidence in this case it is clear that part of the advance was made as a bonus in connection with Christmas festival. It is therefore established on the evidence that there was an implied condition of service between the appellant and its workmen that something would be paid every year about Christmas time as festival bonus.

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The next question to which we turn is the minimum amount which has to be paid as an implied condition of service. Here again the evidence shows that the minimum that has been paid, at any rate since 1951-52, is one month's salary. Sometimes more has been paid, but one month's salary seems to have been paid in connection with Christmas for an unbroken period of time, which is long enough to permit an inference that there is an implied condition of service for payment of one month's salary as festival bonus connected with Christmas in this branch of the appellant. We cannot agree with the tribunal that the evidence shows a minimum payment of 1½ months' salary at the time of Christmas. It is true that if we take into account what was paid later also over the entire period from 1950-51, the minimum is 1½ months' salary; but in a case of payment which is not at a uniform rate we have to connect the payment with a festival (in this case Christmas). We can therefore only look at the payment made in December to decide what is the minimum which may be treated as a condition of service. Once it is proved that there was an implied condition of service, some amount has to be paid under the said implied term; what the minimum would be in that behalf must be decided as a question of fact. On the evidence in this case it is clear that the minimum is only one month's salary payable about Christmas time and this was actually paid in 1951-52 and 1953-54, though in other years more was paid which was later liable to adjustment. We therefore hold that there is an implied condition of service between the appellant and its workmen that one month's salary as the minimum would be paid as Christmas bonus to the workmen about Christmas time. The decision of the tribunal therefore allowing 1½ months' salary as the minimum must be modified and we hold that payment of one month's salary as Christmas bonus is proved as an implied condition of service between the appellant and its workmen on the admitted facts of the case. The minimum of one month's basic salary has to be paid even if there is loss in any given year. We may add that though this is the minimum, it would be open to the appellant to pay more if its profit position justifies the payment of more. But we cannot agree with the tribunal that in the year 1958-59, the profit position of the appellant justifies payment of more than the minimum. It has been found that in that year there was actually a small loss of Rs. 8,000/- suffered by the appellant. Therefore even though the tribunal may be justified in awarding a reasonable amount as festival bonus once it is proved that something has to be paid as an implied condition of service towards such bonus, it cannot be said in this case that the tribunal was justified in giving anything beyond the minimum for

this was a year of loss. We are therefore of opinion that the amount awarded as festival bonus for the year 1958-59 should be reduced to one month's salary and order accordingly.

Before we part with this appeal we should like to add that there was no stay order by this Court in this case. The extra amount of 15 days' salary awarded by the tribunal has already been paid to the workmen. Mr. Pai has assured us that he would advise his client that the additional amount so paid may not be recovered back in the circumstances. We therefore partly allow the appeal in the manner indicated above. In the circumstances we pass no order as to costs.

Appeal partly allowed.