

PETITIONER:
THE BURMAH-SHELL REFINERIES LIMITED

Vs.

RESPONDENT:
THEIR WORKMEN.

DATE OF JUDGMENT:
01/02/1961

BENCH:
GUPTA, K.C. DAS
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GUPTA, K.C. DAS
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.

CITATION:
1961 AIR 917 1961 SCR (3) 669

ACT:
Industrial Dispute--Payment of bonus to clerical staff--Practice Prevailing in oil companies--If must be Paid lower rate than labour staff.

HEADNOTE:
Payment of bonus being based on the contribution of workmen to the profits of the company, that contribution, it is well settled, has to be taken into consideration as a whole and it is not relevant to enquire which class or section of the workmen contributed how much to the profits.
Burn and Co., Calcutta v. Their Employees [1956] S.C.R. 781 and Baroda Borough Municipality v. Its Workmen [1957] S.C.R. 33, referred to.
Looked at from that stand-point, it is not fair, in the absence of any overriding consideration, to make a distinction as to the rate of bonus payable to different classes of workmen such as clerks and operatives, for it is ordinarily impossible to say which class contributed more to the prosperity of the industry than another.
Nor can it be laid down as an inflexible rule that the clerical and the labour staff must always be paid at the same rate. The Industrial Tribunals must have wide discretion in the matter, which this Court would be reluctant to interfere with unless arbitrarily exercised.
Consequently, where the Industrial Tribunal, on a full consideration of the difference in the wage scales of labour and the clerical staff, came to the conclusion that it would be improper to award lower rate of bonus to the clerical staff who belonged to the middle class and suffered more than the labour staff from the rise of price, and there was nothing to show that this was not so, the decision of the Tribunal was reasonable and must be upheld.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 250/1959.
Appeal by special leave from the award dated May 18, 1958, of the Industrial Tribunal, Bombay, in Reference (I. T.) No. 106 of 1955.

M. C. Setalvad, Attorney-General for India, S. D. Vimadalal and I. N. Shroff, for the appellants.

Janardan Sharma, for respondent No. 1.

1961. February 1. The Judgment of the Court was delivered by

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DAS GUPTA, J.-This appeal by special leave arises out of an industrial dispute between the appellant company, and their clerical staff on the question of bonus for the year 1956. The demand of the workmen, was for bonus equivalent to 8 months' total earnings of the year. The company resisted this demand mainly on the ground that there was in existence an agreement between the company and its labour employees-whereby bonus for the year 1956 had been settled at 4-1/2 months' basic wages, that the general practice in awards in the matter of bonus had in the past been to award or grant lesser amounts to clerical employees than to labour, and that in any case, to grant the same rate of bonus to clerical employees and labour employees would be "to encourage or to invite strife and discontent." The Tribunal held that such an agreement as regards bonus for 1956 had been voluntarily entered into on behalf of the workers and was beneficial to them; and was of opinion that the bonus to the clerical staff ought to be on the same scale. On the one hand, it rejected the clerical staff's claim for bonus at a higher rate than what the workmen were entitled to, as this "would lead to industrial discontent and strife", and on the other held that there was no reason to grant the clerical staff bonus at a lower rate. Accordingly it awarded bonus at the rate of 9/24ths of the basic wages, to the clerical staff, for the year ending December 31, 1956.

Two contentions were raised in appeal. The first is that the Tribunal erred in awarding bonus without having recorded a conclusion as regards the existence and extent of the gap between the actual wages received by these workmen and the living wage. The second contention urged on behalf of the appellant is that the Tribunal erred in granting to the clerical staff bonus at the same rate as was payable to the labour staff, on the basis of the agreement, and should have granted bonus to the clerical staff, at a lower rate.

The appellant cannot however be allowed to urge the first contention in this appeal because such a contention does not appear to have been seriously

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raised before the Tribunal. It is true that in the first part of the written statement filed before the Tribunal on behalf of the company a statement was made that "the company, craves leave to refer to and rely on, as if incorporated herein, its written statement filed before this Hon'ble Tribunal in Ref. (I.T.) 279 of 1957, and repeats and adopts all the submissions and averments made therein" and that in the written statement filed therein a question that in view of the high wage, % paid by the company no gap existed between the actual wage and the living wage, was taken. Not only was no independent statement made in the separate written statement which was filed in the present reference, i.e., Ref No. (I.T.) 106 of 1958 on this question but we find no reference at all in the award made by the Tribunal which heard both the references together to any contention of this nature. No ground that the Tribunal had granted bonus without coming to a conclusion as regards the existence and extent of a gap between the actual wage received by the workmen and the living wage was taken in the petition for special leave to appeal. Even in the statement of case filed on behalf of the appellant no such question

had been raised. It is not therefore open to the appellant to urge such a contention now.

In support of the other contention that the Tribunal was in error in granting to the clerical staff bonus at the same rate as was payable to the labour staff, on the basis of the agreement, and that bonus should have been granted to the clerical staff at a lower rate, it is urged that for many years now, the practice in the petroleum industry has been to make a distinction between the clerical employees and the operatives, giving a lower rate of bonus to the former, than what is given to the latter. It is unnecessary in the present case, to consider, whether, if the premise that there had for many years been such a practice of paying a lesser rate of bonus to clerical staff than to the labour staff, that itself would preclude industrial adjudicators from awarding bonus to both classes of employees at the same rate. For, we find that the above premise has not been established, while it is true that in some

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years, either by award of Industrial Tribunal or by agreement, clerical staff of petroleum concerns has got bonus at a lower rate, than the labour employees, it is equally true that in some years at least, clerical staff and operatives have been given bonus at the same rate. Thus for the year 1951, we find that in disputes between the three oil companies-The Burmah Shell, the Caltex and the Standard Vacuum, and their employees in their Calcutta office the Labour Appellate Tribunal discussed the matter in *Burmah-Shell Oil Co. Ltd. v. Their Workmen* (1) thus :-

" In the matter for payment of bonus for 1950, both the clerical staff and the working people got bonus at the rate of 3 months' wages, though there was an observation that the working class were on calculation entitled to 4 months. The effect-, was, however, that both the groups got bonus at the rate of 3 months' basic wages. During the pendency of the Tribunal proceedings, all the companies made agreements with the Union of the workers that bonus would be granted on the basis of 3-1/2 months' wages for the year 1951. We feel that there; would be a serious repercussion if we allow to the clerical staff anything in excess of that amount. On the other hand, as the effect of the previous decision had been that both groups got equally, paying to the clerks less than that what has been paid to the working class would give rise to a real discontent.

" We find also that when the same question, viz., whether the same rate of bonus should be paid to clerical staff and operatives, was raised before the Industrial Tribunal, *Ernakulam*, in a dispute between the *Burmah-Shell Co. v. Their Workmen* (2), learned counsel on behalf of the company conceded that he would not press the point for making a distinction in the matter of payment of bonus. We find therefore that there is no basis for the assumption' that 'the uniform or nearly uniform practice in the oil companies has been to pay bonus at a lesser rate to clerical staff than to operatives. There is no substance. therefore in the argument that the award of bonus at

(1) (1955) L.A.C. 787, 794.

(2) (1959) (1) L.L.J. 198,

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9/24ths of basic wages, to the clerical staff, is likely to

cause discontent among the labour staff, which has entered into an agreement to receive bonus at the same rate.

The second argument is that as the pay scale of the clerical staff is higher than what the labour staff receive as wages, the gap between the living wage and wage actually received, is less for the clerical staff, and so, it would be wrong to pay bonus, which is primarily intended to bridge this gap, at the same rate to these two classes of workmen. This argument overlooks the important principle that the payment of bonus is based on the fact of contribution by labour to the profits of the industry, and that it has been held more than once by the court that the contribution to be taken into consideration is the contribution made by the workmen taken together as a class, and that it would not be relevant to enquire which section of the workmen has contributed to what share of profits. It was observed by this Court in *Burn & Co., Calcutta v. Their Employees* (1), in setting aside an award of the Appellate Tribunal of an additional one month's basic wages:-

" The entire profits of the company are the result of the labour of all the workmen and employees in all its units. To grant a bonus to a section of them on the basis of the total profits of the company will give them a share in profits to which they have not contributed..... If the order of the Appellate Tribunal is to be given effect to, some of the employees of the company would get a bonus while, others not and as observed in *Karam Chand Thaper & Bros.' Workmen v. The Company* (1953 L.A.C. 152), that must lead to disaffection among the workers, and to further industrial disputes. "

A similar view was expressed by this Court in *Baroda Borough Municipality v. Its Workmen* (2).

It is true that in the cases mentioned above, the Court was considering the question whether one class of employees could be granted bonus, while another class was being granted none at all; and was not

(1) [1956] S.C.R. 781. 795.

(2) [1957] S.C.R. 33.

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considering the question of propriety of different rates of bonus being paid to different classes. But the basis of the decision that all the workmen, taken as a whole contribute to the profits, is relevant also for the consideration of the question whether different rates of bonus between two different classes of workmen are fair; and it is necessary to remember that it is ordinarily not possible to say that one class or workmen, say clerks, contribute more to the prosperity of the industry than another class like operatives. In the absence of some overriding consideration it would not be fair to make a distinction in the rate of bonus between different classes of workmen.

We do not wish however to lay down an inflexible rule that clerical staff and labour staff must always be paid the same rate of bonus. It may happen in a particular industry that wages of labour staff are extremely low, while the pay scale of the clerical staff is many times higher. If a Tribunal in a case like this, being of opinion, that payment of bonus at the same rate will not be fair, and may cause discontent amongst the workers awards bonus at a lower rate to the clerical staff, than to the labour staff, there would be no reason for disturbing the award. The industrial tribunals must have very wide discretion in deciding matters like

this; and it is not for this Court to interfere with their exercise of discretion, unless it is plainly arbitrary.

In the present case, the Tribunal fully conscious of the difference in the wage scales of labour and clerical staff has pointed out that the clerical staff came from the middle class whose standard of living is higher, and has stated that this class has suffered perhaps more than the operative class from rise in prices, and has in consideration of these factors, concluded that it would be appropriate not to award a lower rate of bonus to them. Nothing has been shown to us to justify any doubt about the correctness of the premises mentioned by the learned Tribunal; and the conclusion seems eminently reasonable.

It was urged by the learned Attorney-General who appeared on behalf of the appellant company that

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even though it be true that the standard of living of the middle class from which the clerical staff comes is higher than that of the operatives the difference between the higher average wage received by the clerical staff and that received by the operatives is much more than the difference in monetary terms between the living wage of the clerical staff and that of the operatives. From the statements furnished before us it was attempted to be shown that the starting rate of remuneration of the middle grade for operatives together with what is received in shapes other than the wages was on January 1, 1958, Rs. 188-94 while similar receipts by the middle grade for clerks is Rs. 404.45, that is, the starting remuneration of clerks taking the middle grade as the type is 113.91% more than the starting remuneration for middle grade for labour. As against this it is suggested, the living wage for clerical staff should be taken only 80% more than that for the operatives. We may assume without further investigation the correctness of the statement as regards the comparative remuneration received by middle grade of operatives and middle grade of clerical staff as submitted on behalf of the company. We find no basis however for the assumption that the living wage of clerical staff is only 80% more than that of operatives. It is true that in connection with the determination of wages a formula which appears to have been initiated first by Mr. Justice Rajadhyaksha when he was enquiring into the cost of living of the non-gazetted employees in the Post and Telegraph Department of multiplying the figures reached on the basis of the requirements of the lower class employees by 180% has often been accepted by the industrial tribunals. Assuming however without deciding that this coefficient of 180 % may be properly adopted for arriving at the fair wage requirements of clerical staff from the fair wage requirements of operatives it does not by any means follow that the same coefficient can be usefully applied in calculating the living wage of the clerical staff from the living wage of the operatives. As has been clearly pointed out by this Court in a recent

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judgment in C. A. No. 416 of 1958 (Standard Vacuum Refining Co., Ltd. versus Its Workmen) the components of a living wage are largely different from those of a fair wage. The difference in the living wage standards of the class to which operatives generally belong and the class to which the clerical staff belongs may produce much greater differences in the money value in the components of the requirement of living wage as between the two classes than the difference in the money value of the components of fair wage of the two

classes.

There is no justification therefore for thinking that the living wage of the clerical staff is only 80% more than the living wage of the operatives and so ..no conclusion that the gap between the living wage and the actual wage is less in the case of clerks than in the case of operatives can be drawn from a consideration of the comparative wage,% received by them.

We find nothing that would justify us in interfering with the conclusion of the Tribunal that the clerical staff should be awarded bonus at the same rate, as the operatives. The appeal is accordingly dismissed with costs.

Appeal dismissed.