CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

THE WORKMEN OF HARYANA ROADWAYS,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 1437 of 1968

September 24, 1969.

Payment of Bonus Act (XXI of 1965)—Sections 2(4), 4, 5, 6(c) *and* 7—*Allocable surplus of Haryana Roadways for* ex-gratia *payment to its workers—Determination of—Roadways not paying Income-tax and Road tax—Such taxes—Whether to be excluded from its gross profits.*

Held, that the manner of computing gross profits is mentioned in section 4 of the Payment of Bonus Act, according to which the gross profits derived by an employer from an establishment other than a banking company are to be calculated in the manner specified in the Second Schedule. The available surplus has to be computed in accordance with section 5 of the Act by deducting the various sums referred to in section 6 from the gross profits of the employer. Section 6 of the Act details the sums deductible from gross profits as prior charges. Under clause (c) of this section any direct tax, which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year, is liable to be deducted from the gross profits subject to the provisions of section 7. Section 7 of the Act gives the manner of calculating the direct tax payable by the employer for the purposes of clause (c) of section 6 and provides that it is so to be calculated at the rates applicable to the income of the employer for that year. Since the Haryana Roadways is not liable to pay any income-tax, it cannot be calculated at any rate whatsoever and hence income-tax cannot be deducted for computing gross profits of the Roadways. (Para 6)

Held, that the road tax is liable to be deducted out of the profits of the Haryana Roadways in order to determine the allocable surplus for the purposes of determining the *ex gratia* payment due to its workmen. It is true that the Haryana Roadways does not pay this tax for the reason that it is a Government undertaking, but the fact remains that the use of the roads is made by its vehicles for which it is entitled to compensation. The State Government, which is the owner of the Haryana Roadways, contributes to the carrying on the business of transport by providing and maintaining roads in good repair by spending money thereon. It is, thereof, entitled to deduct out of its gross profits the estimated amount representing the wear and tear which the roads suffer by the use of its vehicles. The road tax forms part of the revenues of the Haryana State and this amount is determined for each vehicle. The amount may not be liable to be deducted as a direct tax but is certainly liable to be deducted as an expenditure suffered by the owner of the Haryana Roadways on account of the use of the roads by its vehicles. (Para 7)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari *or any other appropriate writ order or direction be issued quashing the award dated 25th January, 1968, and respondents be directed to allow bonus to the petitioners in accordance with the provision of Payment of Bonus Act.*

R. K. GARG, R. S. BINDRA, J. C. VERMA, AND MRS. B. S. BINDRA, ADVOCATES, for the petitioner.

D. S. TEWATIA, ADVOCATE-GENERAL (HARYANA), WITH MR. JASWANT JAIN, ADVOCATE, for the respondents.

JUDGMENT

TULI, J.—This writ petition has been filed by the workmen of Haryana Roadways through their union, Haryana Roadways Workers Union, against the State of Haryana (respondent 1), Industrial Tribunal, Haryana (respondent 2) and the Provincial Transport Controller, Haryana (respondent 3). The union of the workmen is a registered one which has also been recognised by the Haryana State Government. The union gave two notices to the Transport Controller, Haryana, in which several demands were made. The disputes between the parties mentioned in the said notices were settled by two different agreements which were executed on June 8, 1967 and October 26, 1967. Clause 4 of the agreement dated June 8, 1967 reads as under:—

> "That all the employees will be entitled to receive annual *ex-gratia* payment in accordance with the principles and provisions of Payment of Bonus Act, 1965 beginning from the accounting year 1966-67 (ending 31st March, 1967). The payment of minimum of 4 per cent shall be made before 30th June, 1967 and the balance, if due, shall be paid as early as possible immediately after the audit."

Clause 13 of the agreement dated October 26, 1967 reads as under:—

> "It is agreed that the department will submit a copy of the profit and loss accounts for the year 1966-67 on the basis of the Payment of Bonus Act, 1965 with calculations about their admissibility of *ex gratia* to the Union by the 15th November, 1967 and payment due, if any, will be made by the 26th November, 1967. The headquarters clerical staff of the commercial wing will also be entitled to the *ex gratia* payment for the year 1966-67 and onwards, with the sanction of Government."

(2) After the close of the accounting year 1966-67 a balance sheet of the undertaking of the Haryana Roadways was prepared, on the basis of which the Transport Department prepared a chart of allocable surplus for finding out what, if any, was the exact amount which was payable to the workmen in pursuance of clause 4 of the agreement dated June 8, 1967. According to this chart there was no allocable surplus and no amount was payable to the workmen by way of *ex gratia* payment as was provided in clause 4 of that agreement. The workmen, on the other hand, claimed that the management was not entitled to make any deductions out of the gross profits on account of the income-tax and the road tax and that the amounts of depreciation reserve fund, motor transport reserve fund and interest payable on capital were to be added back in accordance with section 4 of the Payment of Bonus Act. The management also was of the opinion that accounting year 1966-67 of the Haryana Roadways was from November 1, 1966 to March 31, 1967 whereas the workmen alleged that the year commenced from April 1, 1966 and ended with March 31, 1967. The dispute thus arose between the parties with regard to the interpretation of clause 4 of the agreement dated June 8, 1967 and clause 13 of the agreement dated October 26, 1967 for the determination of the allocable surplus as well as the period which formed the accounting year 1966-67. The Governor of Haryana, by Notification No. ID/I/10/62-165 dated January 1, 1966, referred the said dispute for adjudication to the Industrial Tribunal, Haryana, under section 36-A of the Industrial Disputes Act, 1947.

(3) The workmen filed the statement of their claims to which the management filed a written statement. The parties agreed not to lead any evidence before the Tribunal and confined the controversy mainly to two main points, that is, whether the management was entitled to deduct the sum of Rs. 11,57,424.00 on account of income-tax and Rs. 5,37,073.00 on account of road tax out of the gross profits in order to determine the allocable surplus and what was the period covered by the expression "the year 1966-67" in clause 13 of the agreement dated October 26, 1967. The learned Tribunal came to the conclusion that the management was entitled to the deduction of the said amounts out of the gross profits in order to determine the allocable surplus and on that basis there was no allocable surplus and nothing was due to the workmen. The Tribunal was also of the opinion that the words "the year 1966-67" in clause 13 of the agreement dated October 26, 1967, meant the period from November 1, 1966 to March 31, 1967 and not from April 1, 1966 to March 31, 1967. The award of the Industrial Tribunal is dated January 20, 1968

and was published in the Haryana Government Gazette (Extraordinary), dated February 6, 1968. Feeling aggrieved from the award, the workmen of the Haryana Roadways filed the present writ petition in this Court on April 24, 1968, which was admitted the following day.

(4) The written statement to the writ petition has been filed by Shri Shiv Kumar, Deputy Transport Controller, Haryana, to which the petitioners have filed a replication.

(5) The learned counsel for the parties have confined their arguments before me to the points decided by the learned Industrial Tribunal so that if my decision on those points goes counter to the award of the Industrial Tribunal, the matter shall have to go back to him for redecision.

(6) The first point canvassed before me by the parties is whether the management is entitled to deduct the sum of Rs. 11,57,424.00 on account of income-tax. It is admitted by the respondents that Haryana Roadways is not liable to pay any income-tax but it is submitted that the *ex-gratia* payment agreed to be paid to the workmen under the two agreements referred to above has to be determined in accordance with the principles and provisions of the payment of Bonus Act, 1965 and, therefore, Haryana Roadways is to be equated to a company carrying on the business of transport and is entitled to deduct the income-tax which would have been payable by a company if it has not been a Government undertaking. I find myself unable to agree to this submission of the respondents. The manner of computing gross profits is mentioned in section 4 of the Payment of Bonus Act (hereinafter called the Act), according to which the gross profits derived by an employer from an establishment other than a banking company are to be calculated in the manner specified in the Second Schedule. The available surplus has to be computed in accordance with section 5 of the Act by deducting the various sums referred to in section 6 from the gross profits of the employer. Section 6 of the Act details the sums deductible from gross profits as prior charges. Under clause (c) of this section any direct tax, which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year, is liable to be deducted from the gross profits subject to the provisions of section 7. Section 7 of the Act gives the manner of calculating the direct tax payable by the employer for the purposes of clause (c) of section 6 and provides that it is to be calculated at the rates applicable to the income of the employer for that year. Since the Haryana Roadways

is not liable to pay any income tax, it cannot be calculated at any rate whatsoever. It is a misnomer to equate the Haryana Roadways with a company carrying on such business. The company is liable to pay the income tax and the rate at which it is to be paid is also specified in the Finance Act every year. No part of the income tax paid by a company comes back to it in the form of income. The income tax paid by a company, therefore, completely goes out of the funds of the company. If the income tax is not liable to be paid nothing goes out of the funds of the company and the entire amount remains in its hands. If the Haryana Roadways was liable to pay inome tax, it would have parted with Rs. 11,57,424.00 according to its calculation and out of this amount it might have got back from the Central Government only about Rs. 20,000.00 according to the formula under which the income tax collected by the Centre is distributed amongst the various States. That formula is stated to be that 75 per cent of the income tax is distributed amongst the State, 90 per cent of which is distributed on the basis of population and 10 per cent on the basis of the contribution by the State. The income tax constitutes the revenue of the Central Government and not of the State Government and for this reason it cannot be said that the Haryana State Government is losing any revenue by not paying the income tax. Instead of about Rs. 20,000.00 it has retained Rs. 11,57,424.00 in its hands. The gain is far greater than the loss of any indirect revenue which it would have received out of the income tax if it was payable by it and had been actually paid. The fact remains that no amount is paid to the Central Government by way of income tax and the entire profits are retained by the Haryana Roadways which go to augment its revenues. I am, therefore, of the opinion that the Haryana Roadways an undertaking of the State Government, cannot be equated with a private transport company and is not entitled to the deduction of national income tax determined according to the rates mentioned in the Finance Act applicable to companies. The allocable surplus has to be determined without the deduction of the income tax.

(7) The next point relates to the deduction on account of road tax. There is no precedent on the point but having given my careful thought to this matter, I have come to the conclusion that the road tax is liable to be deducted out of the profits of the Haryana Roadways in order to determine the allocable surplus for the purposes of determining the *ex-gratia* payment due to its workmen. The roads are owned by the State Government and it is a well-known fact that they suffer wear and tear as a result of the use by the vehicles. The State Government has to spend money on constructing the roads

and maintaining them in good repair. For that purpose the State levies a tax on all the vehicles using the roads. The tax payable is in accordance with the carrying capacity of the vehicle and its nature. The heavy vehicles pay more road tax than the light vehicles. The road tax, that is charged, can be taken as a reasonable measure, for the wear and tear that the roads suffer as a consequence of the use of the vehicle which pays that tax. It is true that the Haryana Roadways does not pay this tax for the reason that it is a Government undertaking, but the fact remains that the use of the roads is made by its vehicles for which it is entitled to compensation. The State Government, which is the owner of the Haryana Roadways, contributes to the carrying on of the business of transport by providing and maintaining roads in good repair by spending money thereon. It is, therefore, entitled to deduct out of its gross profits the estimated amount representing the wear and tear which the roads suffer by the use of its vehicles. The road tax forms part of the revenues of the Haryana State and this amount is determined for each vehicle. The amount may not be liable to be deducted as a direct tax but is certainly liable to be deducted as an expenditure suffered by the owner of the Haryana Roadways on account of the use of the roads by its vehicles. This expenditure is at par with the other expenditure on the repairs of the vehicles and maintenance of the bus stands and sheds etc. and is solely contributed by the State. It has been argued that the road tax is a tax and not a fee and goes to the Consolidated Fund of the State and since no road tax is paid by the Haryana Roadways, nothing is contributed by it to the Consolidated Fund whereas the amount spent on the provision and maintenance of the roads comes out of the Consolidated Fund. It is further submitted that the road tax is not used entirely on the maintenance of the roads but for other purposes as well. There is no dispute with regard to these points but the fact remains that all the profits earned by the Haryana Roadways go to the Consolidated Fund of the State and the State gains thereby. These profits become available to the State like its general revenues for being spent on any purpose of the State. It is open to the State to require the Haryana Roadways to pay the road tax just like the State pays court-fee like other litigants, although the amount paid by way of court-fee goes to its revenues, and in that case the road tax paid will be deductable under clause (c) of section 6 of the Act. The State has not thought it fit to follow that course as it will pay with one hand and receive with the other, which will be a useless formality. In contrast to the income tax, the amount realised by the levy of road tax forms part of the revenues of the State and whatever amount is spent on the roads goes out of its revenues including the profits earned by the

Haryana Roadways. It is for this reason that I have held above that the amount equivalent to road tax is deductible as an expenditure incurred by the State for providing and maintaining the roads for its vehicles which is solely contributed by it and the workmen are not entitled to the benefit thereof without contributing their share to it. For these reasons, I am of the opinion that the road tax should be deducted from the amount of gross profits for the determination of the allocable surplus.

(8) The last point argued before me is regarding the meaning of "the year 1966-67" mentioned in clause 13 of the agreement, dated October 26, 1967. I am in agreement with the view expressed by the learned Industrial Tribunal that this expression meant the period from November 1, 1966 to March 31, 1967 and not the period from April 1, 1966 to March 31, 1967. The reason is that "Haryana Roadways" came into existence on November 1, 1966. Prior thereto, the Government undertaking was known as "Punjab Roadways" which ran throughout the length and breadth of the erstwhile State of Punjab. The assets and liabilities of that State including the Punjab Roadways were to be shared by the successor States in accordance with the provisions made in part VI of the Punjab Reorganisation Act, 31 of 1966. The partition of the assets and liabilities of Punjab Roadways amongst the successor States is not on the basis of the income or the profits of the various units of that undertaking but on wholly different basis and for this reason I am of the opinion that it could never have been the intention of the Haryana Roadways, when entering into the said agreements, to determine the allocable surplus on the basis of the year from April 1, 1966 to March 31, 1967. The reasonable interpretation is that "the year 1966-67" meant that period during which Haryana Roadways was in existence in that year, that is, from November 1, 1966 to March 31, 1967.

(9) Since I have held that the amount of income tax cannot be deducted out of the gross profits for determining the allocable surplus but the road tax can be, the matter will have to be redecided by the learned Industrial Tribunal. I may point out here that in annexure 'R-2' to the return, the amount of income tax is shown as Rs. 11,57,424.00 whereas in the Statement filed before the Industrial Tribunal by the Joint Provincial Transport Controller and dated January 16, 1968, this amount was shown as Rs. 12,13,316.00. This is, however, immaterial as no amount on account of income tax is to be deducted. Since the parties did not argue about the other items to be added back in view of the decision of the Tribunal in respect of the income tax and road tax, it will be open to the parties now to

urge those points before the Industrial Tribunal in order to enable him to arrive at a correct determination of the allocable surplus to be shared by the workmen in terms of clause 13 of the agreement dated October 26, 1967. It is, however, made clear that the road tax will be deducted out of the gross profits and "the year 1966-67" will be taken as the period from November 1, 1966 to March 31, 1967.

(10) For the reasons given above, this writ petition is accepted to the extent indicated above and the award of the Industrial Tribunal dated January 20, 1968 and published in the Haryana Government Gazette (Extraordinary), dated February 6, 1968, is hereby quashed. The case is remanded to the learned Industrial Tribunal to decide it afresh in the light of the observations made above. Since the points were not free from difficulty, I leave the parties to bear their own costs.

N. K. S.

APPELLATE CIVIL

Before H. R. Sodhi, J.

BUDHAN,—*Appellant.*

versus

MAM RAJ,—*Respondent.*

First Appeal From Order No. 62 (M) of 1968

September 25, 1969.

Hindu Marriage Act (XXV of 1955)—Sections 5, 9, 10 and 13—Petition for restitution of conjugal rights—Invalidity or voidability of marriage on ground of age—Whether can be pleaded in defence.

Held, that a marriage may not be valid if not performed between parties who have not attained the requisite age as prescribed by section 5 of Hindu Marriage Act, 1955, but the invalidity or voidability of the marriage cannot be pleaded in defence in answer to a petition for restitution of conjugal rights under section 9 of the Act. Section 9 provides for relief by way of restitution of conjugal rights and sub-section (2) thereof lays down that nothing shall be pleaded in answer to a petition for restitution of conjugal rights which shall not be ground for judicial separation or for nullity of marriage or for divorce. The fact that a marriage has been solemnised in violation of the conditions laid down under section 5 of the Act regarding the age of the parties has not been made a ground either for judicial separation or for divorce under sections 10 and 13 of the Act. It is also not a