

BAIDYANATH AYURVEDA BHAWAN
MAZDOOR UNION, PATNA

v.

MANAGEMENT OF SHRI BAIDYANATH
AYURVEDA BHAWAN PVT. LTD. & ORS.

November 24, 1983

[D.A. DESAI, R.B. MISRA, AND RANGANATH MISRA, JJ.]

Payment of Bonus Act 1965

Act whether exhaustive on the law relating to bonus—'Attendance bonus' being paid prior to Act—Employees whether entitled to 'attendance bonus' over and above profit bonus payable under the Act.

The workmen working in the establishment of the first respondent were being paid 'attendance bonus'. The question whether the workmen were entitled to payment of bonus under the Payment of Bonus Act, 1965, over and above the 'attendance bonus' was referred to adjudication under Section 10 of the Industrial Disputes Act 1947. The Tribunal held in favour of the workmen. Before the High Court the employer contended that when bonus was being paid under the Act the workmen were not entitled to separate 'attendance bonus'. The High Court, relying on the decision of this Court in *Sanghi Jeevaraj Ghewar Chand & Ors. v. Secretary, Madras Chillies, Grains Kirana Merchants Workers Union & Anr.* (1969) 1 S.C.R. 366 held that the workmen were not entitled to payment of 'attendance bonus'.

Allowing the appeal,

HELD: 1. Both the Tribunal and the High Court concurrently held that the workmen in the establishment had been receiving 'attendance bonus' from before. 'Attendance bonus' being outside the purview of the Bonus Act, the High Court was not right in vacating the award of the Tribunal.

[928 E-F, 931 A]

2. In *Ghewar Chand's* case on which the High Court relied, the question was not whether after the Bonus Act came into force, the other types of bonus hitherto paid caused to be payable. This question was directly considered in *Mumbai Kamgar Sabha, Bombay v M/s Abdulbhai Faizullahbhai & Ors.* (1976) 3 SCR 591 and held that the Act leaves untouched customary bonus.

[929 A-B, 930 H]

3. In the instant case, if the employer had not challenged the award, the workmen would have had the benefit of the bonus more than a decade back. That justifies the awarding of interest at 9% per annum. [931 B-C]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1851 of 1974.

Appeal by special Leave from the Judgment and Order dated the 24th October, 1973 of the Patna High Court in C.W.J.C. No. 613 of 1970.

B *R.K. Garg* and *V.J. Francis* for the Appellant.

L.C. Goyal for the Respondents.

The Judgment of the Court was delivered by

C RANGANATH MISRA, J. This appeal by special leave is directed against the decision of the Patna High Court quashing an award of the Industrial Tribunal of Bihar in exercise of jurisdiction under Article 227 of the Constitution and the workmen's union has carried the appeal.

D Two disputes were referred to adjudication under section 10 of the Industrial Disputes Act but the appeal is confined to only one, viz., "whether the workmen are entitled to payment of bonus for the year 1966-67 under the Payment of Bonus Act over and above the 'attendance bonus' which is being paid in this establishment? If so, what should be the quantum of bonus?" The Tribunal found that the workmen were entitled to attendance bonus over and above the bonus payable under the Payment of Bonus Act, 1965 ('Act for short), and specified the amount as required under the reference. The employer challenged the Award before the High Court and contended that no separate attendance bonus was payable when bonus was being paid under the Act. A Division Bench of the High Court came to hold, concurring with the Tribunal, that the workmen in the establishment had been receiving attendance bonus from before and proceeded to examine whether such attendance bonus was included in the bonus payable to the workmen under the Act or could be claimed over and above the statutory bonus. Relying on the observations of this Court in *Sanghi Jeevaraj Ghewar Chand & Ors. v. Secretary, Madras Chillies, Grains Kirana Merchants Worker's Union & Anr.*⁽¹⁾, the Court came to the conclusion that the workmen were not entitled to payment of attendance bonus for the year 1966-67 and accordingly vacated the Award.

H
 (1) (1969) 1 S.C.R. 366.

In *Ghewar Chand's* case (supra) as rightly observed by the High Court the question for consideration was not whether after the Act came into force and statutory bonus became payable, other types of bonus hitherto paid ceased to be payable. On the other hand, in a later case *Mumbai Kamgar Sabha, Bombay v. M/s. Abdulbhai Faizullabhai & Ors.*⁽¹⁾, this Court considered the question directly. The later case also referred to *Ghewar Chand's* case and ultimately held :

"It is clear further from the long title of the Bonus Act of 1965 that it seeks to provide for bonus to persons employed 'in certain establishments'—not in all establishments. Moreover, customary bonus does not require calculation of profits, available surplus, because it is a payment founded on long usage and justified often by spending on festivals and the Act gives no guidance to fix the quantum of festival bonus; nor does it expressly wish such a usage. The conclusion seems to be fairly clear, unless we strain judicial sympathy contrarywise, that the Bonus Act dealt with only profit bonus and matters connected therewith and did not govern customary, traditional or contractual bonus."

Referring to *Ghewar Chand's* case, Krishna Iyer, J. in this latter case indicated :

"...so viewed, we are able to discern no impediment in reading *Ghewar Chand* as confined to profit-bonus, leaving room for non-statutory play of customary bonus. The case dealt with a bonus claim by two sets of workmen, based on profit of the business but the workmen fell outside the ambit of the legislation by express exclusion or exemption. Nothing relating to any other type of bonus arose and cannot be impliedly held to have been decided. The governing principle we have to appreciate as a key to the understanding of *Ghewar Chand* is that it relates to a case of profit bonus urged under the Industrial Disputes Act by two sets of workmen, employed by establishments which are either excluded or exempted from the Bonus Act. The major

(1) [1976] 3 S.C.R. 591.

A inarticulate premise of the statute is that it deals with—
and only with—profit-based bonus as has been explained
at some length earlier. There is no categorical provision
in the Bonus Act nullifying all other kinds of bonus, nor
does such a conclusion arise by necessary implication,
B The ruling undoubtedly lays down the law thus :

C 'Considering the history of the legislation, the
background and the circumstances in which the Act
was enacted, the object of the Act and its scheme,
D it is not possible to accept the construction suggested
on behalf of the respondents that the Act is not an
exhaustive Act dealing comprehensively with the
subject-matter of bonus in all its aspects or that
Parliament still left it open to those to whom the
Act does not apply by reason of its provisions either
as to exclusion or exemption to raise a dispute with
regard to bonus through industrial adjudication
under the Industrial Disputes Act or other corres-
ponding law'.

E But this statement, contextually construed, means
that profit-bonus not founded on the provisions of the
Bonus Act and by resort to an adventure 'in industrial
dispute under the Industrial Disputes Act is no longer
permissible. When Parliament has expressly excluded or
exempted certain categories from the Bonus Act, they
F are bowled out so far as profit-based bonus is concerned.
You cannot resurrect profit-bonus by a backdoor method,
viz., resort to the machinery of the Industrial Disputes
Act."

G Upon a further analysis of *Ghewar Chand's* case. Iyer, J.
concluded by saying :

H "A discerning and concrete analysis of the scheme of
the Act and the reasoning of the Court leaves us in no
doubt that it leaves untouched customary bonus."

We concur with this conclusion.

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On the finding by the Tribunal as also the High Court that attendance bonus was being paid from before and it being outside the purview of the Act, the High Court was not right in vacating the Award. The appeal must succeed and the award on this score has to be restored. If the employer had not challenged the Award, the workmen would have had the benefit of the bonus more than a decade back. That justifies awarding of interest. While allowing the appeal of the workmen with costs, we direct that the amount found by the Tribunal for being given as attendance bonus shall carry interest at the rate of 9% per annum from the due date till disbursement. Hearing fee is assessed at Rs. 2,000.

N.V.K.

Appeal allowed.