

Baidyanath Ayurveda Bhawan Mazdoor Union, Patna

Vs

Management of Shri Baidyanath Ayurveda Bhawan Pvt. Ltd. and Others

Civil Appeal No. 1851 of 1974

(D. A. Desai, Ranganath Misra, R. B. Mirsa JJ)

24.11.1983

JUDGMENT

RANGANATH MISRA J. -

1. 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.
2. 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 bounds?" 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 v. Secretary, Madras Chillies, Grains Kiranan Merchants Workers Union* ((1969) 1 SCR 366 : AIR 1969 SC 530 : (1969) 35 FJR 162 : (1969) 1 LLJ 719 : 1969 Lab IC 854) 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.
3. In *Ghewar Chand case* ((1969) 1 SCR 366 : AIR 1969 SC 530 : (1969) 35 FJR 162 : (1969) 1 LLJ 719 : 1969 Lab IC 854) 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 Faizullahbai* ((1976) 3 SCR 591 : (1976) 3 SCC 832 : 1976 SCC (L&S) 517 : 1976 Lab IC 1012 : (1976) 49 FJR 15), this Court considered the question directly. The latter case also referred to *Ghewar Chand case* ((1969) 1 SCR 366 : AIR 1969 SC 530 : (1969) 35 FJR 162 : (1969) 1 LLJ 719 : 1969 Lab IC 854) and ultimately held : [SCC p. 848, para 35]

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 not 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 case ((1969) 1 SCR 366 : AIR 1969 SC 530 : (1969) 35 FJR 162 : (1969) 1 LLJ 719 : 1969 Lab IC 854), Krishna Iyer, J. in this latter case indicated : [SCC p. 849 para 38]

....., 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 ((1969) 1 SCR 366 : AIR 1969 SC 530 : (1969) 35 FJR 162 : (1969) 1 LLJ 719 : 1969 Lab IC 854) 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 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. The ruling undoubtedly lays down the law thus :

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, 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 corresponding law.

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 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

4. Upon a further analysis of Ghewar Chand case ((1969) 1 SCR 366 : AIR 1969 SC 530 : (1969) 35 FJR 162 : (1969) 1 LLJ 719 : 1969 Lab IC 854), Krishna Iyer, J. concluded by saying : [SCC p. 850 para 39]

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.

5. We concur with this conclusion.

6. 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 cent per annum from the due date till disbursement. Hearing fee is assessed at Rs. 2000.

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