**Production Bonus is not 'basic wage'—Employees' Provident Fund Act, 1952—Bridge and Roof Company *v.* Union of India.**

Recently, the Supreme Court in *Bridge & Roof Co.* v. *Union of India*,[1] has held that the production bonus is not a part of 'basic wage' for the purposes of contribution to the statutory fund under the Employees' Provident Fund Act, 1952.

The appellant company had a production bonus scheme in force which provided for payment of production bonus over and above the wages fixed by the major engineering award of 1958. Production bonus was to be paid at certain rates specified in the scheme when the output reached 5,000 tons per year and no production bonus was paid when the output was less than 5,000 tons per year.[2]

Section 6 of the Employees' Provident Fund Act provides for contribution by the employer and the employee to the provident fund and this contribution is 6¼% of the *basic wages*, *dearness allowance* and *retaining allowance* (if any).[3] On the assumption that production bonus is not a part of 'basic wage', the Company neither contributed its share, nor deducted from the employees their share of contribution, of provident fund on "production bonus".

The term 'basic wages' has been defined as under: s. 2(b)—'basic wages' means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of contract of employment and which are paid or payable in cash to him, *but does not include*—

(i) the cash value of any food concession;

(ii) any dearness allowance, house-rent allowance, over-time allowance, *bonus*, commission or any other similar allowance payable to the employee in respect of his employment or work done, in such employment;

(iii) any presents made by the employer.

The Central Government in exercise of its power to remove difficulties and doubts under Section 19A of the Act, decided that 'production bonus' was a part of 'basic wages' under s. 2(b) of the

1. 1962-II-L.L.J. 490 (S.C.)

2. According to a revised scheme, production bonus began when the output of the quarter reached 1,300 tons and there was no bonus if the output was below 1,300 tons. But this is not relevent for the decision of the case.

3. Section 6 of the Employees' Provident Funds Act, 1952, reads:

"(i) The contribution which shall be paid by the employer to the fund shall be six and a quarter per cent. of the basic wages (dearness allowance and retaining allowance (if any) ) for the time being payable to each of the employees, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him . . . ."

Act, and that it should be taken into account in calculating the contribution of 6¼% under section 6 of the Act. The Government also directed the company to recover the provident fund contribution on 'production bonus' from the employees and to deposit along with its share of contribution on the same in the statutory fund.

The company challenged this decision and direction of the Central Government. The main contention of the company was that 'bonus' without any qualification had been exempted from the term 'basic wages' in the definition in s. 2(b) of the Act. Hence, the term 'bonus' should be interpreted to include all kinds of bonuses, *i.e.*, profit bonus, production bonus, attendance bonus, and festival bonus, for the purposes of this section. Secondly, the Central Government exceeded its jurisdiction in directing that 'production bonus' should be included in 'basic wage' for the purposes of contribution under s. 6, when the legislature has excluded 'bonus' without any qualification from the term 'basic wages' as defined in s. 2(b) of the Act. It was also argued that in 1952 when the Act was passed, the legislature was aware of the various kinds of bonuses which were being paid in various concerns in India, so it must be presumed that the legislature did not qualify the term 'bonus' intentionally to give it a broader connotation.

The respondents, Union of India and the Trade Union, contended that wages are the price for labour and arise out of contract and *whatever is the price* of labour and arises out of contract was intended to be included in the definition of 'basic wages' in s. 2(b) of the Act. Secondly, it was argued that the term 'bonus' as used in cl. (ii) of the exceptions to s. 2(b) referred only to 'profit bonus' as it was well established before the enactment that the use of word 'bonus' without any qualification referred to 'profit bonus' only.

The court rejected the reasoning of the Government and rightly upheld the contention of the company. The court held:

> "It would not be improper to infer that when the word 'bonus' was used without any qualification in the clause, the legislature had in mind every kind of bonus that may be payable to an employee."

The court also reasoned that the bonuses other than profit bonus were in force and well known before the Act came to be passed in 1952.[4] The legislature, therefore, "could not have been unaware

4. The court observed at p. 495: "For example, the Coal Mines Provident Fund and Bonus Scheme Act, No. 46 of 1948, provided for payment of bonus depending on attendance of employees during any period. Besides the attendance bonus, four other

that these different kind of bonuses were being paid by different concerns in different industries when it passed the Act in 1952."

The Court rejected the contention of the Government that whatever was price for labour and arose out of contract was included in the definition of 'basic wages' and therefore production bonus which was a kind of incentive wage would be included in 'basic wage'. The court pointed out that the payment of production bonus depended upon production and was in *addition* to wages. When, however, the worker produced beyond the base or standard, what they earned was not 'basic wage'. This extra payment may be called 'incentive wage' and is also called production bonus.

The case is a reminder to the executive that the court will not allow the executive to interpret a statute according to its own notions by reading some thing in it which is not there at all, even though section 19-A(v) of the Employees' Provident Funds Act provided: "If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to, 'whether the total quantum of benefits to which an employee is entitled has been reduced by the employer, the Central Government may, by order, make such provision or give such direction, *not inconsistent with the provision of this Act*, as appear to it to be necessary or expedient for the removal of the doubts or difficulty". The power to the Government in the instant case had been given only to 'remove the doubts or difficulty', but not to substitute its own wisdom for that of the legislature.

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kinds of bonus had been evolved under industrial law even before 1952 and were in force in various concerns and in various industries. There was first production bonus, which was in force in some concerns long before 1952. [See *Titaghur Paper Mills Co.* v. *Its Workmen*, 1959 Suppl. (2) S. C. R. 1012]. Then there was festival or puja bonus which was in force as an implied term of employment long before 1952 [*Isphani Ltd.* v. *Isphani Employee's Union*, (1960) (1) S. C. R. 24]. Then there was customary bonus in connection with some festival. [See *The Graham Trading Co.* v. *Its Workmen*, [1960] (1) S. C R. 107] And lastly, there was profit bonus the principle underlying which and the determination of whose quantum were evolved by the Labour Appellate Tribunal in the *Mill Owners' Association* v. *The Rashtriya Mill Mazdoor Sangh*, [1950 LL. J. 1247]."

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