

PETITIONER:
MANAGING DIRECTOR, CHALTHAN VIBHAG SAHAKARIKHAND UDYOG, CHAL

Vs.

RESPONDENT:
GOVERNMENT LABOUR OFFICER & ORS.

DATE OF JUDGMENT 04/02/1981

BENCH:
SEN, A.P. (J)
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SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1981 AIR 905 1981 SCR (2) 738
1981 SCC (2) 147 1981 SCALE (1) 234

ACT:

Payment of Bonus Act, 1965-Section 2(21)-Whether the expression 'salary or wage' in s.2(21) of the Act covers retaining allowance during the off season granted to the workmen in the seasonal establishment of the sugar factory of the Udyog.

HEADNOTE:

The appellant which runs a sugar factory, treated the retaining allowance paid to the workmen during the off-season as part of their wages for the purpose of the Employees' Provident Fund Act, 1972, but not for the purpose of the Payment of Bonus Act, 1965. On a reference of an industrial dispute, the Industrial Court, Gujarat made an award holding that the allowance cannot be included in wages or remuneration for the purpose of calculation of bonus. The Gujarat High Court set aside the award in writ petition and held that the allowance fell within the definition of the expression 'salary or wage' in s. 2(21) of the Act. The appellant sought special leave to appeal under Art. 136 of the Constitution.

Dismissing the special leave petition, the Court.

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HELD : The retaining allowance paid to the employees during the off-season in the sugar industry partakes the nature of deferred wages on a lower scale and falls within the definition of the expression 'salary or wage' within the meaning of s.2(21) of the Payment of Bonus Act, 1965 and, therefore, must be taken into account for the purpose of calculation of bonus payable under s.10 of the Act. The definition of the expression 'salary or wage' as given in s.2(21) of the Act is wide enough to cover the retaining allowance granted to the workmen during the off-season. The retaining allowance is nothing but remuneration correlated to service and it would be a misnomer to call it an allowance. It does not fall within the purview of clause (i) of the exclusionary clause of s.2(21) but comes within the substantive part of the definition of 'salary or wage' in s. 2(21) of the Act. [741A-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 1122 of 1981.

From the Judgment and Order dated 28-11-1980 of the Gujarat High Court in Special Application No. 2003/80.

F. S. Nariman, H. K. Puri and Arun B. Desai for the Petitioner.

Charanlal Sahu for Respondent No. 3.

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The Order of the Court was delivered by

SEN, J.-The controversy in this case is whether for the purpose of bonus to the workmen employed in the Chalthan Vibhag Sahakari Khand Udyog, Chalthan, which is a seasonal establishment, retaining allowance paid to such workmen should be regarded as remuneration or wages under the Payment of Bonus Act, 1965. The question arises under the following circumstances :

The Industrial Court, Gujarat, by its Award dated July 11, 1980 held that the retaining allowance paid to the workmen could not be included for the purpose of calculation of bonus and, therefore the demand of the workmen was not justified. Thereupon, the workmen challenged the Award by a Writ Petition in the Gujarat High Court. The High Court by its judgment dated December 15, 1980 set aside the Award of the Industrial Court and held that the retaining allowance falls within the definition of the expression 'salary or wage' given in s. 2(21) of the Payment of Bonus Act, 1965 so as to attract the payment of bonus in the context thereof under s. 10 of the Act.

For a proper understanding of the question involved, it is necessary to state a few facts. Chalthan Vibhag Sahakari Khand Udyog runs a seasonal factory which crushes sugarcane and produces sugar. It does not work for all the 12 months in year. There is an off-season during the year during which the factory remains closed. For this off-season during which the workmen suffer forced idleness, full wages are not paid. There are several categories of workmen employed by the management. There are unskilled workmen who are paid 10% of the basic wages and dearness allowance as retaining allowance during the off-season. There are also semi-skilled workmen who get 25% of the basic wages and dearness allowance as retaining allowance. The rest, i.e., skilled 'C' to supervisory class of workmen, are paid at the rate of 50% of basic wages and dearness allowance as retaining allowance during the off-season. The retaining allowance is paid to these workmen after 40 days of work in the next crushing season. Workmen in sugar factories in the State of Gujarat usually come from the State of Uttar Pradesh. During the off-season, they engage themselves in different occupation. Retaining allowance is a sort of incentive which is offered to the workmen to attract them to return to the factory after the expiry of the off-season.

The retaining allowance is paid in pursuance of the Report of the Second Central Industrial Wage Board on the Sugar Industry and subsequently in implementation of the Award of the Industrial Court, Gujarat, based on the adoption of the U.P. Pattern Scales of Wages and Dearness Allowance for workmen employed in all sugar factories

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working by vacuum Pan Manufacturing Process. In the Management of Shri Chalthan Vibhag Khand Udyog Sahakari Mandali Ltd. etc. v. B. S. Barot and Anr. etc. the Management challenged the Award on other grounds but did not question its liability to pay retaining allowance to the seasonal workmen. The payment of the retaining allowance by

the Management to the workmen during the off-season is obligatory. The Management treated the retaining allowance to be part of wages for purposes of the Employees' Provident Funds Act, 1952 but not for purposes of the Payment of Bonus Act, 1965.

The obligation to pay bonus to the workmen is created by s. 10 of the Act. Under s. 8 thereof, every employee is eligible for payment of bonus. The question is whether retaining allowance should be regarded as remuneration or wages for purposes of computation of bonus. The decision whether the retaining allowance forms part of 'salary or wage' must turn on the construction of the definition of that expression contained in s. 2(21) of the Act which, in so far as it is relevant, reads :

2(1). "salary or wage" means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money which would, if the terms of employment, express or implied, were fulfilled, be payable to any employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include-

- (i) any other allowance which the employee is for the time being entitled to;

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There can be no doubt that the retaining allowance paid to the workmen during the off-season falls within the substantive part of the definition of the expression 'salary or wage'. It undoubtedly is remuneration which would, if the terms of employment, express or implied, were fulfilled, be payable to any employee in respect of his employment. The retaining allowance is a remuneration on a lower scale which is paid to the workmen by the management during the off-season for their forced idleness. The payment of such allowance by the management to its workmen during the off-season when there is no work and when the factory is not working, is indicative of the fact that it wants to retain their services for the next crushing season. The very fact that retaining allowance is paid to the workmen clearly

741 shows that their services are retained and, therefore, the jural relationship of employer and the employee continues. It is true that a workman may not return to work and may take up some other job or employment. In that event, he forfeits the right of payment of the retaining allowance. But when the workmen returns to work when the next crushing season starts, the payment of retaining allowance during the off-season, partakes the nature of basic wage on a diminished scale. The definition of the expression 'salary or wage' given in s. 2(21) of the Act is wide enough to cover the payment of retaining allowance to the workmen. It is nothing but remuneration correlated to service and it would be a misnomer to call it an allowance. The retaining allowance does not fall within the purview of clause (i) of the exclusionary clause of s. 2(21), but comes within the substantive part of the definition of 'salary or wage' in s. 2(21) of the Act. The retaining allowance cannot be construed to be any other allowance which the employee is, for the time being, entitled. The High Court was, therefore, justified in holding that the retaining allowance paid to the seasonal employees was a part of their 'salary or wage' within the meaning of s. 2(21) of the Act and, therefore, must be taken into account for the purpose of calculation of

bonus payable under the Payment of Bonus Act, 1965.

For these reasons, the judgment of the High Court is upheld.

S.R.

Petition dismissed.

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JUDIS