WORKMEN OF M/S BATA SHOE CO., (P) LTD.

v.

M/S BATA SHOE CO. (P) LTD.

May 1, 1972

[C. A. VAIDIALINGAM AND I. D. DUA, JJ.]

Payment of Bonus Act 1965—*Payment of profit bonus—Workers having agreed in writing to accept bonus in terms of the agreements—Whether under, s.* 32(*vii*)(*a*) *such agreements bar further bonus.*

A dispute arose between the respondent company and the appellants workmen as regards payment of profit bonus under the Payment of Bonus Act 1965. The company, and the appellants, represented by its Union had been entering into various agreements from time to time, the last being the agreement on August 30, 1962 (Ex. A-5). As per Ex. A-5, the respondent paid bonus for the year 1964 at the rates mentioned therein. The appellants demanded that they should be paid the profit bonus as per the Act in addition to what has been paid under the agreement. Ex. A-5 . The Company pleaded s. 32(vii)(a) of the Bonus Act as a bar to further bonus. On a reference to the Industrial Tribunal, it was held that in view of the general bonus paid under agreement Ex. A-5, it was an annual bonus, though paid quarterly, and it was linked with production or productivity and that it was paid in lieu of bonus based on profits. Therefore, the workmen are not entitled to claim bonus for the year 1964 under the Act. On appeal to this Court, it was contended that payments under the agreement, Ex. A-5, was made quarterly and they do not have the character of an annual bonus. There is no material or record to show that the company paid the amount in lieu of bonus based on profits. The amount paid under the agreement was only an *ex-gratia* payment and not a profit bonus under the Act.

The respondent, however, contended that in order to decide the character of the general bonus paid under the agreement of 1962, previous agreement must be referred to, which would clearly show that what was being paid by the company was production bonus or as an incentive wage and not an *ex-gratia* payment.

Dismissing the appeal,

HELD : The general bonus paid under Art. VI or the agreement dated August 30, 1962, Ex. A-5, was a payment of annual bonus based on profits. Although Article VI of Ex. A-5 does not throw much light as to the nature and character of the general bonus payable under it, a reference back to previous settlements and discussions between the parties will show that the pattern of bonus paid to the workers were sometimes called production bonus, later on called *ex-gratia* payment. but from 1951 called as general bonus, which was paid quarterly, at the request of the workers, at a particular percentage based on salary excluding dearness allowance, Having this background in mind, it is clear that what was being paid under Art. VI of Ex. A-5 was a payment linked with production or productivity. The principal emphasis was that the amount, was being paid as an incentive to production and therefore, it was paid as production bonus as a wage incentive. Further, it was an annual bonus paid from year to year not only during the period of agreement but also for the succeeding year till the required notice was given under the agreement. Even then, the agreement was to continue to have

force notwithstanding the notice till a fresh agreement entered into. Therefore, it is clear that the payment of general bonus paid quarterly was "annual bonus" as contemplated by s. 32(vii)(a) of the Act. [464 A—465 G]

Smith v. *Smith*, (1923) P.D. 191, and *Moss' Empires Ltd.* v. *Inland Revenue Commissioners*, [1937] 3 All E.R. 381 followed.

Under the circumstances workers could claim not any additional bonus under the Act for the period for which the agreement was in operation and s. 32(vii)(a) of the Act was a bar to their claim. [465 C]

M/s Titaghur Paper Mills Co. Its Workmen, [1959] Supp. 2, S.C.R. 1012; *The New Manek Chowk Spinning and Weaving Co. Ltd. Ahmedabad and others* v. *The Textile Labour Association, Ahmedabad*, [1961] 3 S.C.R. 1 and *Sanghi Jeevaraj Chewar Chand and others* v. *Secretary, Madras Chillies, Grains Kirana Merchants Workers' Union and another*, [1969] 1 S.C.R. 366, referred to.

CIVIL APPELLATE JURISDICTION : C.A. No.1040 of 1968.

Appeal by special leave from the Award dated September 16, 1967 of the Third Industrial Tribunal, West Bengal in Case No. VIII-235/66.

Debabrata Mookherjee, Janardan Sharma and *Anil Das Chowdhury*, for the appellants.

C. K. Daphtary and *M. C. Bhandare, B. P. Maheshwari* and *Leila Sheth*, for the respondent.

The Judgment of the Court was delivered by

Vaidialingam J. In this appeal, by special leave, the short question that arises for consideration is whether the appellants are precluded by s. 32(vii)(a) of the Payment of Bonus Act, 1965 (hereinafter to be referred as the Act) from claiming bonus under the Act in view of the agreement Ex. A5 dated August 30, 1962.

The respondent Company is a fairly prosperous concern and one of the biggest of its kind in Asia. It has factories at Batanagar in West Bengal, Faridabad in the present Haryana State, Digha and Mokamehghat in Bihar and Administrative Offices in Calcutta. It has Central Repair shops in Calcutta and other places and a Purchasing Depot in Kerala. It has about 900 shops for retail sale scattered throughout the country besides the wholesale agents. Its branches have a wide market both in this country as well as abroad. It employs a very large number of workmen in its factory, Administrative Office and Central Repair Shops. The Company and the appellants, represented by its Unions have been entering into various agreements from time to time, the last of which was on August 30, 1962, Ex. A.5. As per Ex. A.5 the respondent paid bonus for the year 1964 at the rates mentioned therein. The appellants demanded that they should be paid the profit bonus as per the Act in addition to what has been paid as

per Ex. A.5 The Company declined to accede to the demand of the workmen on the ground that the general bonus paid under Ex. A.5 was an amount paid as production bonus or incentive wages. The Company also pleaded s. 32(vii)(a) as a bar to the workmen making a claim for payment of bonus under the Act. During the conciliation proceedings the Union and the Company agreed to have the dispute referred for adjudication to the Industrial Tribunal. Accordingly, the State Government on June 25, 1966, referred to the Third Industrial Tribunal, West Bengal, for adjudication the following dispute :

> "Whether the employees of the Company represented by Bata Mazdoor Union are entitled to Bonus for the year, 1964 under the Payment of Bonus Act, 1965 in addition to the Bonus paid to them and whether in view of the Agreement dated the 30th August, 1962, between the Union and the Company for payment of Bonus, the Payment of Bonus Act, 1965 is applicable to such employees."

Before the Tribunal the appellants' plea was that the amount paid under the agreement Ex. A. 5 is an *ad hoc* or an *ex-gratia* payment made out of charity and as a supplement to the wages and that it was not a bonus linked with production or productivity. It was not an annual payment, nor was it paid in lieu of bonus based on profits. The workmen accepted the position that the general bonus paid under the agreement was neither customary nor a profit bonus; nor a bonus as an implied term of contract. On all these grounds the workmen pleaded that s. 32(vii)(a) is no bar to their claim for bonus under the Act.

The Company on the other hand, after a reference to the various prior agreements, under which the amounts have been paid as bonus, though under different names, pleaded that the general bonus paid under the agreement Ex. A5 was an amount paid as production bonus or incentive wages. The Company placed considerable reliance on the minutes of the discussions that took place between the Union and the Company whenever demands were raised and the agreements arrived at between the parties, which were later on incorporated as formal settlements from time to time. These proceedings were relied on by the Company for the purpose of showing that the demands for payment of bonus were as production bonus and that what was ultimately paid under the various agreements including the one in question, namely, Ex. A.5 were all understood by all parties as production bonus or incentive wages. As the necessary conditions required under s. 32(vii)(a) were present in this case, according to the Company, the claim for profit bonus under the Act is not sustainable.

A The Industrial Tribunal, after a fairly elaborate consideration of the various agreements as well the record of the proceedings leading upto those agreements and the other materials on record has held in its award that the general bonus that was being paid by the Company including the payment of bonus under the agreement Ex. A.5 was not a profit sharing bonus. The Tribunal has B found that the general bonus paid under the agreement of 1962 was an annual bonus linked with production or productivity and that it was paid in lieu of bonus based on profits. The mere circumstance that the payment of bonus was made quarterly, according to the Tribunal, does not take it away from the nature of an annual payment. The Tribunal ultimately held that in view of the C agreement Ex. A.5 the workmen are not entitled to claim bonus for the year 1964 under the Act.

On behalf of the appellants Mr. D. Mookerjee, learned counsel, very strenuously criticised the reference made by the Tribunal to the previous agreements for interpreting the nature of the payment under Ex. A.5. It was contended that the Tribunal having D held that the agreement of 1962 was a self-contained agreement, committed a very serious error in law in interpreting the term "General Bonus" occurring in the said agreement by reference to the previous agreements. According to Mr. Mookerjee, the Tribunal should have considered the nature of the payment by a reference only to the provisions contained in the agreement of 1962. E Read in that manner, it was pointed out, the inevitable conclusion should be that the general bonus paid under the agreement of 1962 was not an annual bonus, nor was it linked with production or productivity and it has not been paid in lieu of bonus based on profits. The general bonus paid does not satisfy the test of production bonus as laid down by this Court. The payments admittedly being made quarterly do not have the character of an annual bonus. F There is no material on record to show that the Company paid the amount under the agreement in lieu of bonus based on profits. The contention taken before the Tribunal by the workmen that the amount paid under the agreement was only an *ex-gratia* payment to supplement the wage bill of the workmen without any relation to production or productivity was also pressed before us by the G counsel.

On the other hand, Mr. C. K. Daphtary, learned counsel for the respondent Company, pointed out that in order to appreciate and decide about the character of the general bonus paid under the agreement of 1962, it was not only necessary but also obligatory on the part of the Tribunal to refer to the previous agreements. H The counsel pointed out that the various demands made from time to time by the workmen as well as the minutes of the discussion that took place between the parties which ultimately resulted in

the various agreements extending over a fairly long period, will clearly show that what was being paid by the Company was production bonus or as an incentive wage. As the same payment was being continued under the agreement of 1962, the Tribunal was justified in holding that the general bonus that was being paid by the Company over a long number of years was by way of production bonus or as an incentive wage. Mr. Daphtary also referred us to the various provisions contained in the several agreements regarding the duration of the agreements and also to their having binding effect till they were terminated by notice given in accordance with the terms of the agreement. All this, according to the counsel, will clearly show that the intention of the parties was that the agreements under which the payments were made were to be throughout the year and also to be continued from year to year. The material on record, according to the counsel, will also show that the payments were made quarterly at the express desire and request of the workmen, but as the payments extended throughout the year and will also continue year to year, they are in the nature of annual payment of bonus.

Before we consider the various contentions of the learned counsel on both sides, it is desirable to refer to the material provisions of the Act. All parties are agreed that the additional claim for bonus for the year 1964 was under the provisions of the Act. Section 2(21) defines the expression "Salary or wage". This definition among other things includes dearness allowance also. Section 8 lays down the conditions for eligibility for bonus. Sections 10 and 11 deal with the payment of minimum and maximum bonus respectively in the circumstances mentioned therein. Section 17 enables an employer to adjust the amount paid as pooja or customary bonus or interim bonus against the final bonus payable under the Act. Section 32 deals with various classes of employees to whom the Act does not apply. The relevant provision with which were are concerned is section 32 (vii) which is as follows :

"Section 32. Nothing in this Act shall apply to :

(vii) employees—

(a) who have entered before the 29th May, 1965 into any agreement or settlement with their employers for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits; or

(b) who have entered or may enter after that date into any agreement or settlement with their employers for payment of such annual bonus in lieu of the bonus payable under this Act,

A for the period for which such agreement or settlement is in operation;"

We are particularly concerned with sub-clause (a) of cl. (vii) as the appellants claim is resisted on the basis of the agreement dated August 30, 1962. In order to attract s. 32(vii)(a) the B Company will have to establish :

(1) That there has been an agreement or settlement entered into between the workmen and the Company before May 29, 1965;

(2) The said agreement or settlement was one for payment of annual bonus;

C

(3) The said payment of bonus was linked with production or productivity; and

(4) The said payment was in lieu of bonus based on profits.

D In this case there is no controversy that there has been an agreement Ex. A.5 entered into between the parties on August 30, 1962, which is anterior to May 29, 1965. There is also no controversy that the amount paid under this agreement is characterised as general bonus. The question then arises whether the said payment as general bonus was an annual bonus linked with production or producivity and paid in lieu of bonus based on profits.

E The nature of production bonus has been discussed by this Court in *M/s Titaghur Paper Mills Co. Ltd. v. Its Workmen*(1). It has been stated that payment of production bonus is by way of an incentive to higher production and is in the nature of an incentive wage. The extra payment depends not on extra profits but on production. From this decision it is clear that the principal F element in the payment of extra amount is to provide an incentive to production.

In *The New Maneck Chowk Spinning and Weaving Co. Ltd. Ahmedabad and others* v. *The Textile Labour Association, Ahmedabad*(2), it has been stated that there are four types of bonus G which have been evolved under the Industrial Law as laid down by this Court, namely, (1) Production bonus or Incentive wage, (2) Bonus as an implied term of contract between the parties, (3) Customary bonus in connection with some festival, and (4) Profit Bonus which was evolved by the Labour Appellate Tribunal and approved by this Court. Under the Act there is no controversy, what is payable is the profit bonus. In the case before us, H from the Award it is seen that the Union conceded that the amount paid as general bonus under the agreement was neither customary;

(1) [1959] Supp. 2 S.C.R. 1012. (2) [1961] 3 S.C.R. 1.

nor profit bonus; nor bonus as an implied term of contract. In the nature of things the Union has not raised the plea that the amount paid under the agreement is a profit bonus. Equally, the Company could not also take up such a plea as their attempt was to show that it is a payment as production bonus or incentive wages.

In *Sanghi Jeevaraj Ghewar Chand and others* v. *Secretary, Madras Chillies, Grains Kirana Merchants Workers' Union and another*(1), it has been held that where the bar of s. 32(vii)(a) of the Act operates, the employees in such cases so long as the agreement or settlement is in operation cannot claim bonus on the basis of Full Bench Formula or under the Act.

Therefore, it becomes essential to find out the nature of the payment made under Ex. A.5. That is an agreement entered into between the appellant and the respondent Company on August 30, 1962. The purpose of the agreement is stated to be to promote and improve industrial and economic relationship between the Company and its workmen and to establish and maintain satisfactory working conditions. In Article IV, among various other matters, the Union has acknowledged that it is the exclusive right and function of the Company to maintain among other matters the efficiency. In Article V dealing with lock out and strikes, the Company, on the one hand, has agreed not to declare any lock out so long as the workmen do not commit any breach of the agreement. The Union, on the other hand, has also agreed while retaining its right to go on strike, not to permit its members individually or collectively to curtail or restrict production and certain other matters. Article VI dealing with general bonus is as follows :

"Article VI—General Bonus :

> The Company declares and makes a payment of General Bonus one month after the end of each quarter at the rate of 20% of the total salary and/or wages paid to each workman and employee during the quarter immediately preceding (such salary or wages are exclusive of Dearness Allowance or any other special allowances or rewards granted to him during such period). Such Bonus will be payable to those who have completed six months approved service ending on the last day of the quarter; and to those who have completed less than six months approved service on the last day of the quarter, the Bonus will be payable at the rate of 10% of their total salary or wages as aforesaid. The Bonus will be available only to those who are in the employ of the

(1) [1969] 1 S.C.R. 366.

A Company on the last date of the quarter and who have given regular and approved service during the quarter to which the payment of Bonus is available."

Under Article VIII it is provided that the agreement is to be in force until December 31, 1965 and that it shall continue from B year to year thereafter unless either party gives notice in writing of its intention to enter into negotiations for the purpose of amending the agreement. The said Article further provides for the period of notice as well as the starting of negotiations and the agreement continuing to be in froce till a new settlement or agreement is arrived at.

C A mere reading of Article VI relating to general bonus will not by itself throw much light on the character of such payment. But, it is clear that the payment is to be made at the end of each quarter at the percentage mentioned therein of the total salary or wages which does not include Dearness Allowance. The said Article also provides for the period of service necessary for qualifying to get the higher or lower percentage of bonus as the case may D be. The emphasis is also laid on the workmen giving regular and approved service during the quarter to which the payment of bonus is available.

Normally, it is the agreement Ex. A.5, which has to be looked into for the purpose of ascertaining the rights and liabilities of the E employer and employees. That is, the agreement will have to be looked into for the purpose of ascertaining the nature and character of the general bonus payable under Art. VI, provided that clause gives a full and clear indication regarding the character of such payment. But, a mere reading of Article VI does not give any indication regarding the character of such payment. The F other clauses in the agreement also do not throw much light on this aspect. But it is not as if that agreement Ex. A.5 has been entered into between the parties for the first time. The expression "General Bonus" occurs, as we will show presently, in certain previous agreements. Under those circumstances, in our opinion, in order to properly appreciate the character and nature of the payment that was being made originally and that was continued under G Article VI of the agreement of 1962, it is not only relevant but also necessary to consider the various settlements and agreements that took place between the parties on prior occasions.

We are not inclined to agree with the contention of Mr. Mookerjee that the Tribunal has committed a very serious error in H law when it tried to interpret the nature of the payment under Ex. A.5 by reference to the previous settlements and discussions that took place between the parties. The Tribunal was perfectly justified in considering those agreements as they, in our opinion,

give a complete and clear picture of the nature of the claims made by the Union, the stand taken by the Company and the nature of the agreement ultimately arrived at between the parties regarding the payment of the amount in question.

Hence we will also refer to the prior agreements as well as the events leading upto those agreements. The earliest agreement is Ex. A. dated May 16, 1946. Under Article V the Company agreed to pay Victory bonus of six weeks pay, for the employees mentioned therein. Under Article VI, the Company agreed to pay bonus on production or special bonus equivalent to 10% of pay. It is significant to note that the payment under Art. VI of this agreement is characterised as a production or special bonus at a fixed percentage on the pay of the employees.

On March 6, 1947, the Union addressed a letter Ex. B to the Company requiring "Production Bonus" to be increased in the manner stated therein. In fact the Union wanted an increased percentage depending upon the salary drawn by the employees. It is to be noted that the Union also understood the payment made under Ex. A. as a production bonus; and under Ex. B it is the production bonus that they wanted to be increased. In view of this demand, there were discussions between the parties and ultimately they entered into an agreement Ex. C on July 12, 1947. This agreement states that 10% production bonus given under Ex. A is not to be increased. But an extra amount of 5% or 2% was given as an Attendance Bonus.

On November 22, 1948, there was another agreement Ex. A.1 entered into between the parties. Article VI related to *ex-gratia* payment of bonus, which is as follows :

'Article VI—*Ex-Gratia Payment of bonus*

> The Company declares and makes an *ex-gratia* payment of Bonus one month after the end of each quarter at the rate of 10 per cent of the total salary and/or wages paid to each employee during the quarter immediately preceding (such salary or wages are exclusive of dearness allowance or any other special allowances or attendance bonus or rewards granted to him during the said period); such bonus will be payable only to those employees who have completed six months' approved service ending on the last day of the quarter; and to those employees who have completed less than six months' approved service on the last day of the quarter the *ex-gratia* Bonus will be payable at the rate of 5% of their total salary or wages as aforesaid. The *ex-gratia Bonus* will be available only to those employees who are in the employ of the Company on the date fixed for payment

A and who have given regular and approved service during the quarter to which the *ex-gratia* payment of Bonus is available.'

It will be noted that while in the agreements Exs.A and C, what was characterised as production bonus, has been changed in Ex. A. 1 as *ex-gratia* payment of bonus. Article VIII provided for the B agreement being in force till December 31, 1950 and to continue year to year unless either party gives notice in writing of its intention to enter into negotiations for the purpose of amending the agreement.

On May 15, 1951, the Union made a representation for modi- C fying the agreement Ex. A.1. In respect of this demand on October 3, 1951, agreed minutes of discussion and agreement between the parties were recorded in Ex. D.

From Ex. D it is seen that the Union had accepted the position that the approximate living wage has been attained in this Company and therefore, the bonus has to be paid as an incentive to D greater efficiency in production as well as towards labour's contribution to the prosperity of the Company. In view of this, the Union represented that the bonus that is being paid should not be regarded as *ex-gratia* payment. Hence the Company was requested to delete the expression *"ex-gratia"* and to substitute the word "general". The Union further suggested that as the payment of E bonus on the basis of earned salary is a sufficient incentive for attendance, the attendance bonus, which was being paid, should be discontinued and that a general bonus is to be paid at a flat rate of 15% every quarter to all the employees. This representation was accepted by the Company and Ex. D. shows that it was agreed between the parties that the attendance bonus was to be discontinued and that the term *"ex-gratia"* was to be substituted by the F word "general". It was also agreed that the rate should be increased to 15% and 7½% respectively. The suggestion of the Union for payment of the amount every quarter was also agreed to by the parties. It was also agreed that the arrangements entered into between the parties are to continue till December 31, 1953.

G From Ex. D. it is clear that the Union itself has required the payment of bonus to be made "as an incentive to greater efficiency in production" and the workmen wanted the expression *"ex-gratia"* to be substituted by the word "general". The Union accepted that approximate living wage is being earned by the employees of this Company. Further, the Union wanted the amount to be paid at a flat fixed rate every quarter. It is also to be noted from Ex. D H that the changes agreed to between the parties were to take effect from the first quarter of 1952. On the basis of the arrangement recorded in Ex. D, the parties entered into a formal agreement Ex. A.2 on November 22, 1951. This is called Collective Agree-

ment as finally amended by the settlement of October 3, 1951, evidenced by Ex. D. Article I dealing with the purpose of the agreement states that it was with a view to promote and improve industrial and economic relationship between the Company and its employees and to establish and maintain satisfactory working conditions. Article VI dealing with the general bonus is as follows :

"Article VI—General Bonus :

The Company declares and makes a payment of General Bonus one month after the end of each quarter at the rate of 15 per cent of the total salary and/or wages paid to each employee during the quarter immediately preceding (such salary or wages are exclusive of Dearness Allowance or any other special allowance or rewards granted to him during such period); such bonus will be payable only to those employees who have completed six months' approved service ending on the last day of the quarter; and to those employees who have completed less than six months' approved service on the last day of the quarter the Bonus will be payable at the rate of 7½% of their total salary or wages as aforesaid. The Bonus will be available only to those employees who are in the employ of the Company on the last date of the quarter and who have given regular and approved service during the quarter to which the payment of Bonus is available."

It will be noted that this article is in substitution of the original Article VI in the 1948 agreement Ex. A.1. What was characterised as *ex-gratia* payment of bonus in Ex. A.1 was designated as general bonus in Ex. A.2. It must be noted that it was for the first time that the expression "general bonus" has found a place in the agreement between the parties. This change was effected due to the representation made by the Union and accepted by both the parties as recorded in the minutes Ex.D. The rate has been increased to 15% and 7½% respectively depending upon the service of the employee. This rate is on the basic wages; and dearness allowance has been excluded for purposes of calculation. Attendance bonus was abolished and the rate in Article VI shows that it has combined the old production bonus as well as the attendance bonus. The payment is also to be made every quarter as required by the Union. Article VIII provided that the agreement shall be in force upto December 31, 1953 and was to continue from year to year thereafter unless either party gives notice in writing of its intention to enter into negotiations for the purpose of amending the agreement.

A On December 28, 1953 the Union made a representation for effecting certain modification in the agreement Ex. A.2. This was followed by the proposals contained in Ex. B.3 on March 11, 1954. Paragraph 3 of Ex. B.3 relates to bonus. After referring to the existing payment of general bonus at the rate mentioned in Ex. A.2, the Union made a request to the Company to revise the B rate of bonus by including dearness allowance also in the wages or salaries for purposes of calculation of bonus, the reason being "the necessity of giving incentive to the employees and the rate at which bonus is paid to employees of many other comparable concerns." There was also a demand for pooja or festival bonus. Ultimately, the demand with regard to bonus was that: (a) the C general bonus paid quarterly at the end of each quarter of the year should be increased to 20% and 10% depending upon the length of service of the employee and the payment at the said percentage should be on a calculation of both the basic wages and dearness allowance paid to an employee during the quarter; and (2) the workmen should be paid pooja bonus equal to three months' wages including dearness allowance besides the general bonus.

D

There was a supplementary claim made on behalf of the Union on March 15, 1954 under Ex. B.4, that the payment to be made under Ex. B.3, should have retrospective effect from January 1, 1954. Three points emerge from this demand of the Union: (1) Increase in the rate of general bonus and percentage to be worked E out on wages including dearness allowance; (2) A claim for payment of pooja or festival bonus; and (3) The payments of both (1) and (2) to take effect from January 1, 1954. But the significant point to be noted is that in Ex. B. 3 the reason given by the Union itself for claiming general bonus at an increased rate and for working out the percentage of wages including dearness allo- F wance was "the necessity for giving incentive to the employees...." These demands of the Union were discussed and agreed minutes of discussion and agreement were recorded in Ex. D.1 dated February 18, 1955. It is seen that there were as many as 45 meetings between the representatives of the Union and the Company beginning from April 9, 1954. Ex. D.1 shows that the demands in letters dated December 28, 1953, March 11, 1954 and G March 15, 1954 were discussed thread bare between the parties. The minutes show that the Company was not willing to accede in full to the increased rates claimed by the Union regarding general bonus; nor was it inclined to take into account dearness allowance for the purpose of calculation of bonus. But the Company was prepared to show some consideration by merging a part of the H dearness allowance in the basic wages as that will result in a slightly higher amount being received as general bonus by the workmen. The claim for pooja or festival bonus was not accepted by the Company. Both parties ultimately agreed that the gene-

ral bonus will be paid at 17½% instead of the original 15% as per Ex. A.2. The minutes further show that all demands made by the Union have been fully settled by increasing the percentage of general bonus. The tentative agreement recorded in Ex. D.1 was the subject of a collective agreement between the parties under Ex. A.3 dated February 18, 1955. Article VI deals with general bonus. Except for the difference in the rate of 17½% and 8.75% on the basic wages excluding dearness allowance, the provision regarding payment of general bonus under this Article was similar to those contained in Article VI of Ex. A.2 of 1951.

Article VIII provided that the agreement is to be in force till December 31, 1957 and that it was to continue from year to year thereafter unless either party has given notice in the manner provided therein.

On December 24, 1957 the Union sent a letter Ex. B.5 to the Company requiring the general bonus to be paid at 50% and 25% respectively in place of the present rate of 17½% and 8.75%. The demand was also to calculate this rate on salaries including the dearness allowance. A further request was made that half of the bonus as per the demand be paid "in four quarters in a year as at present and the remaining half at the time of pooja every year". This again led to the parties discussing the demands and the minutes of discussion and conclusions arrived at by the parties by agreement are recorded in Ex. D.2 dated October 6, 1958. The minutes disclose that the demands of the Union were carefully considered by the Company. The Chairman of the Company drew the attention of the Union to the agreed minutes of settlement Ex. D and pointed out "that bonus was being paid as an incentive to greater efficiency in production....." and suggested that "bonus payment be linked with the generally accepted formula and be no longer paid on percentage basis. But the Union did not accept the suggestion of the Chairman and stated that "as a matter of security they would like the continuation of the same to be paid on a fixed percentage basis." After further discussion, the Chairman agreed to a token increase in the rate of bonus. It was agreed between both the parties that the payment of general bonus will be increased from 17½% to 18½% on the wages excluding dearness allowance. The conclusions so arrived at were incorporated in the agreement Ex. A.4 on October 6, 1948. This again is styled as a collective agreement. Article VI relating to general bonus is substantially the same as Art. VI in Ex. A.5 excepting that the rate was 18½% and 9.25% depending upon the service of the workman. The percentage was to be calculated only on the total salary excluding dearness allowance and the general bonus was to be paid at the end of every quarter. Article VIII provides that the claim was to be in force till December 31,

A 1965 and that it was to continue from year to year unless a notice was given by either party in the manner provided therein.

This takes us to the agreement under consideration Ex. A.5 dated August 30, 1962. This is the seventh agreement in the series. We have in the earlier part of the judgment referred to Articles VI and VIII. Article VI deals with general bonus and B it was to be paid at 20% and 10% respectively on the basic wages excluding dearness allowance. It was to be paid at the end of each quarter. It will be seen that the rates are slightly higher than those provided in the previous agreement Ex. A.4 of 1958.

We have very exhaustively dealt with the various demands made by the workmen, the minutes recording the discussion that C took place between the parties regarding the demands, the conclusions arrived at therein as well as the final agreements entered into on different dates between the parties, as they furnish the background, so to say, for the agreement under consideration Ex. A.5. It will be seen that originally in 1946 the payment was made as production or special bonus. Specific demand was made D by the Union on March 6, 1947 to increase "production bonus". The Company did not agree to this request. On the other hand, Ex. C., the agreement, clearly shows that there would be no increase in production bonus. But an additional amount was given as attendance bonus. In 1948 what was originally characterised as production bonus was termed "*ex-gratia*" payment of E bonus. The Union specifically desired in 1951 to substitute "*ex-gratia* bonus" by "general bonus" and to abolish attendance bonus. The demand also was for general bonus to be paid at a flat rate every quarter. For the first time the expression "general bonus" occurs in the demand made by the Union on May 15, 1951 and in the agreed minutes of October 3, 1951. The same was incorporated in the final agreement of November 22, 1951. The Union F made a demand on March 11, 1954 for increase in the rate of general bonus so as to provide an incentive to the employees. This was accepted and embodied finally in the agreement dated February 18, 1955. In Ex. B.5, the Union made a specific demand for further increase of the rate of general bonus and wanted half the amount to be paid quarterly as at present and the balance at G the time of pooja. Though, the minutes of the discussion in respect of this demand shows that the Chairman of the Company wanted to alter what was given as incentive to greater efficiency in production to one on profit basis, the Union preferred the payment to be continued as was being done on a fixed percentage basis. The pattern of bonus paid sometimes called production bonus, later on called *ex-gratia* payment, but from 1951 called as general H bonus, was being paid quarterly at a particular percentage based on the salary excluding dearness allowance. Having this background in mind, it is clear that what was being paid under Art. VI

of Ex. A.5 was a payment linked with production or productivity. The principal emphasis is that the amount is being paid as an incentive to production and therefore it is paid as production bonus or as a wage incentive. That it is an incentive payment in order to secure greater efficiency in production is clear from Exs. D, B.3, and D.2. We have already referred to the contents of these exhibits in great detail. Even the workmen in Ex. B.3 required the rate of general bonus to be increased in view of the necessity of giving incentive to the employees. But a more important point emerges from the minutes of discussion recorded on October 6, 1958 in Ex. D.2. The Chairman of the Company emphasised that what was being paid as general bonus was as an incentive to greater efficiency in production. The Chairman specifically wanted this method of payment to be changed and suggested that the bonus payment be linked with the generally accepted formula, namely, of profit bonus and that the payment on a fixed percentage be abolished. But this suggestion to alter the nature of the payment from a fixed percentage as a production bonus for providing an incentive to greater efficiency in production was not accepted by the Union, which wanted the fixed percentage basis to be continued. That is, the Union was not prepared to receive bonus on the basis of profits, but wanted to continue the existing arrangement of payment at a fixed percentage as an incentive to efficiency in production. That is, the Union wanted the character of the payment as production bonus being continued. Therefore, these circumstances clearly lead to the conclusion that the payment that was being made and continued in the agreement Ex. A.5 was payment of bonus linked with production or productivity. It is also clear that the said payment was made in lieu of bonus based on profits because the Union itself did not agree to the suggestion of the Chairman as contained in Ex. D.2 to alter the character of payment to one of profit sharing bonus. Therefore, this also shows that the payment under Ex. A.5 was in lieu of bonus based on profits. The expressions used in s. 32(vii)(a) are "linked with production or productivity" and that test is satisfied in respect of the payment made under Ex. A.5. It is not the case of the Union that the character of payment which was designated as an incentive to greater efficiency in production even as early as 1951 (vide Ex. D) has been altered either in the subsequent agreements or in the agreement Ex. A.5. If so, it follows that the payment of general bonus in Ex. A.5 retains the same character as a payment by way of an incentive to greater efficiency in production.

As the minutes of the discussion that took place between the parties have been recorded then and there, they are items of evidence which are more valuable and useful than the oral evidence adduced by the parties. For instance, P.W. 1, Secretary of the Union, has deposed that the payment in Ex. A.5 is not linked with

A production. On the other hand, the Labour Officer of the Company, as D.W. 1 has stated that the said payment is linked with production. This type of evidence does not lead us any where. That is why, we have placed more emphasis and reliance on the documentary evidence adduced by the parties, more especially when there is no controversy that the record of the meetings do
B not represent the actual facts.

Then the question is whether the bonus paid is an annual bonus, which is another requirement of s. 32(vii)(a) of the Act. That bonus has been paid at the end of every quarter at any rate from 1948, is clear from the various settlements and agreements,
C referred to earlier. That the Union itself required that bonus should be continued to be paid quarterly, is clear from the letters written by the Union, particularly Ex. B.5 dated December 24, 1957. We have already referred to the various agreements which no doubt prescribe the normal duration of the period of the agreement, which extends to over a year. There is also a further pro-
D vision to the effect that even after the date of expiry mentioned therein, the agreement will continue to be in force till a notice is given in the manner provided for in the agreement. Therefore, it will be seen that it is not as if that bonus is paid for one quarter and does not enure for a succeeding quarter. On the other hand, the amounts payable are not restricted to one particular quarter and the intention is made clear in the agreement that it has to
E operate throughout the year and also continue from year to year. It is not possible to accept the contention of Mr. Mookerjee that it is only when a payment is made at the end of the year, it can be considered to be an annual bonus. The essential test to be satisfied is that the payment should enure throughout the year and it should also be continued from year to year. As observed by
F Lord Maugham in *Moss' Empires, Ltd.* v. *Inland Revenue Commissioners*(1) the expression "annual" must be taken to have the quality of being recurrent or being capable of recurrence. Adopting this test, the payments in the case before us were to continue the whole of the year and also were to be paid from year to year not only during the period of agreement but also for the succeed-
G ing year till the required notice was given under the agreement. Even then there is a provision in the agreement to the effect that the agreement will continue to have force notwithstanding the notice till a fresh agreement or settlement is entered into. Therefore it is clear that the payment of general bonus is "annual bonus" as contemplated by s. 32(vii)(a) of the Act. The Court of Appeal in *Smith* v. *Smith*(2) had to consider whether a payment
H to be made weekly during the life time of a person was an "annual payment". It was held as follows :

(1) [1937] 3 All. E.R. 381. (2) [1923] Probate Division 191.

"It is no doubt payable weekly, but that fact does not prevent it from being an annual payment if the weekly payments may extend beyond a year." A

The position, as pointed out by us earlier, in the case before us, is also the same.

It follows from the discussion above that the general bonus paid under Article VI of the agreement dated August 30, 1962, Ex. A.5 is a payment of annual bonus linked with production or productivity in lieu of bonus based on profits. It further follows that as the agreement has been entered into before May 29, 1965, the employees cannot claim any additional bonus under the Act for the period for which the agreement is in operation. It is the case of all parties that the agreement Ex. A.5 at the relevant time was in operation. If so, it follows that the view of the Tribunal that s. 32(vii)(a) of the Act is a bar to claim any additional bonus under the Act is correct. B C

In the result, the award of the Industrial Tribunal is confirmed and this appeal dismissed. There will be no order as to costs. D

S.C. *Appeal dismissed*