A WORKMEN OF KETTLEWELL BULLEN AND COMPANY LTD.

v.

KETTLEWELL BULLEN AND COMPANY LTD.

JANUARY 6, 1994

B [KULDIP SINGH AND S.C. AGRAWAL, JJ.]

Labour Law : Industrial Disputes Act, 1947 : S.10—Customary Bonus—Industrial dispute regarding Bonus paid to workmen under settlements before Puja festival irrespective of earning/profits from 1959 throughout and from C *1965 to 1973 at a uniform rate of 10.5% of annual salary/wages—Claim for customary bonus for the period 1974 to 1977—Held, Bonus paid to workmen had ripened into customary bonus and they were entitled to it at the rate of 10.5% of annual salary/wages.*

The Payment of Bonus Act, 1965 : ss.17, 34(3)—Bonus not linked with D *earning/profits Payment of to workmen under settlements at a uniform rate of 10.5% of annual salary/wages from 1965 to 1973—Held, bonus had ripened into customary bonus—Reference to s.34(3) in settlements would not alter nature of payment so as to convert it into a bonus paid under the Act.*

E **The respondent-company paid bonus to its workmen for the years 1959-1963 at the rate of three-and-a-quarter months' basic pay, for the year 1964 at the rate of 4 per cent in accordance with the payment of bonus ordinance 1965, and for the years 1965 to 1973 at a uniform rate of 10.50 per cent of the salary or wages. The said bonus was generally paid before the commencement of Puja Festival and irrespective of earning or profits.** F **In the year 1979 the Government referred to the Tribunal the dispute whether the workmen were entitled to customary bonus for the accounting years 1974 to 1977.**

The Tribunal held that the bonus which was being paid by the mamagement had ripened into a customary bonus due to long usage and G **for the years 1974 to 1977 the workmen were entitled to fixed customary bonus at the rate of 10.5 percent of their annual salary or wages. The respondent-company challenged the award by filing a writ petition before the High Court. The Single Judge set aside the award holding that the workmen had failed to establish that they were entitled to payment of** H **customary bonus. In appeal, the Division Bench of the High Court, con-**

firming the judgment of the Single Judge, held that the payment made by the management could not be regarded as customary bonus because it was not being paid at a uniform rate throughout; the settlements of 1966, 1977 and 1973 were stated to have been entered into under s.34(3) of the Payment of Bonus Act, 1965 and the bonus paid thereunder was bonus contemplated under the Act. Hence the appeal by the workmen. A B

Allowing the appeal, this Court

HELD : 1.1. Having regard to the facts and circumstances of the case the tribunal was justified in drawing an inference that the bonus that was being paid by the respondent-company to the appellants was customary or traditional bonus on the occasion of Puja festival payable at the rate of 10.5 per cent of the salary or wages. The tribunal rightly held that for the years 1974 to 1977 the appellants were entitled to payment of customary bonus at the rate of 10.5 per cent of the annual salary or wages earned by each workman concerned in each such years. The High Court was in error in holding otherwise and setting aside the award. [32-H; 33-A-C] C D

1.2. The High Court was not right in holding that the bonus was not being paid at a uniform rate throughout. The payment had been made by the company by way of bonus over an unbroken series of years and the said payment did not depend upon the earning and profits. Though during the years 1959 to 1963 it was paid at the rate of three and a quarter months' basic pay and in the year 1964 it was paid at the rate of 4 per cent, but in subsequent years from 1965 to 1973 it was paid at a uniform rate of 10.50 per cent of the salary or wages. The payment made during the years 1959 to 1964 could be ignored and on the basis of the payment made during the years 1965 to 1973 at the uniform rate of 10.50 per cent of the salary or wages it could be said that payment was made at a uniform rate for an unbroken period of 9 years from 1965 to 1973, which was a sufficiently long period. [33-A-D] E F

1.3. The payments made under the settlements had no link with the profit. In the circumstances, reference to s. 34(3) of the Payment of Bonus Act, 1965 in the settlements must be regarded as having been made by way of abundant caution to exclude the liability of the appellant for bonus under the Act but that would not alter the nature of the payment *so as to* convert it into a bonus paid under the Act. [34-H; 35-A] G H

A *M/s. Tulsidas Khimji* v. *Their Workmen,* **[1963] 1 S.C.R. 675;** *Vegetable Products Ltd.* v. *Their Workmen,* **A.I.R. (1965) S.C. 1499 and** *Mumbai Kamgar Sabha, Bombay* v. *M/s. Abdulbhai Faizullabhai & Ors.,* **[1976] 3 S.C.R. 591, relied on.**

Upendra Chandra Chakraborty and Anr. v. *United Bank of India,* B **[1985] 3 S.C.R. 1057, held inapplicable.**

2.1. Customary bonus differs from the bonus (as normally understood) based on the general principle that labour and capital should share the surplus porfits available after meeting prior charges. Customary C **bonus is also different from bonus claimed as an implied term of the contract of employment.**

2.2. The Bonus Act is confined, in its application, to profit bonus, and other kinds of bonus recognised in industrial law are not covered by the provisions of the Act.

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M/s. Ispahani Ltd. Calcutta v. *Ispahani Employees' Union,* **[1960] 1 S.C.R. 24;** *The Graham Trading Co. (India) Ltd.* v. *Its Workmen,* **[1960] 1 S.C.R. 107 and** *Hukum Chand Jute Mills Ltd.* v. *Second Industrial Tribunal, West Bengal & Ors.,* **[1979] 3 S.C.R. 644, referred to.**

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5224 of 1990.

From the Judgement and Order dated 17.11.1986 of Calcutta High Court in Appeal No. 103 of 1983.

F Tapas Ray, H.K. Puri, Sharad Puri and Jamshed Bey for the Appellants.

G.B. Pai and Suman Khaitan for the Respondent.

G The Judgment of the Court was delivered by

S. C. AGRAWAL, J. 1. This appeal by the workmen of Kettewell Bullen & Company Ltd. (hereinafter referred to as 'the workmen') involves the question whether the workmen are entitled to Customary bonus at the rate of 10.5 per cent of the total annual salary or wages in respect of the H years 1974 to 1977.

2. By order dated September 11, 1979 the Government of West Bengal referred to the Eighth Industrial Tribunal (hereinafter referred to as 'the tribunal') the following dispute for adjudication under Section 10 of the Industrial Disputes Act, 1947 :

> "Whether the workmen are entitled to customary bonus for the accounting years 1974, 1975, 1976 and 1977? If so, at what rate?"

Before the tribunal it was submitted by the workmen that the bonus was being paid to them since the year 1959 and that for the years 1959 to 1963 bonus was paid at the rate of three and a quarter months' basic wages and for the years 1965 to 1973 it was paid at the rate of 10.5 per cent of the total annual salary or wages and that in the year 1964, it was paid at the rate of 4 per cent on the basis of Payment of Bonus Ordinance, 1965. The management disputed the said claim of the workmen and asserted that the workmen were not entitled to claim Customary Bonus and that they were only entitled to Statutory Bonus at the rate of 4% payable under the Payment of Bonus Act, 1965 (hereinafter referred to as the 'Bonus Act'). The tribunal by its award dated April 16, 1982 found that the bonus was paid by the management for a long period from 1959 onwards not on the basis of the profit calculation and usually in the month of Sepember before Puja festival and that from 1965 to 1973 it was being paid at the uniform rate of 10.5 per cent, and, therefore, the bonus which was being paid by the management had ripened into a Customay Bonus due to a long usage. The tribunal held that the workmen were entitled to fixed Customay Bonus at the rate of 10.5 per cent of the annual salary or wages earned by each concerned workmen for the years 1974 to 1977. The said Award was challenged by the management before the Calcutta High Court in a writ petition filed under Article 226 of the Constitution. The said writ petition was allowed by a learned single judge of the said High Court by judgment dated September 21, 1982 whereby the learned single Judge set aside the award made by the tribunal on the view that the workmen had failed to establish that they were entitled to payment of Customary Bonus. The said decision of the learned single Judge was confirmed, in appeal, by a Division Bench of the High Court by judgment dated November 17, 1986. The present appeal is directed against the said judgment of the Division Bench of the High Court.

A 3. Since the appeal relates to demand for customary bonus, it is necessary to mention that customary bonus differs from the bonus (as normally understood) based on the general principle that labour and capital should share the surpulus profits available after meeting prior charges. Customary bonus has also to be distinguished from bonus claimed as an implied term of the contract of employment. The circumstances in which an implied agreement may be inferred have been laid down in *M/s Ispahani Ltd. Calcutta* v. *Ispahani Employees' Union,* [1960] 1 S.C.R. 24, 28.

4. In *The Graham Trading Co. (India) Ltd.* v. *Its Workmen,* [1960] 1 S.C.R. 107, bonus sought as a matter of tradition or custom, has been distinguished from bonus payable as an implied term of employment and it has been laid down that for determining whether the bonus is payable by way of custom or tradition the following matters be taken into consideration :

> "(i) whether the payment has been over an unbroken series of years; (ii) whether it has been for a sufficiently long period, though the length of the period might depend on the circumstances of each case: even so the period may normally have to be longer to justify an inference of traditional and customary puja bonus than may be the case with puja bonus based on an implied term of employment; (iii) the circumstance that the payment depended upon the earning of profits would have to be excluded and therefore it must be shown that payment was made in years of loss. In dealing with the question of custom, the fact that the payment was called *ex gratia* by the employer when it was made, would, however, make no difference in this regard because the proof of custom depends upon the effect of the relevant factors enumerated by us; and it would not be materially affected by unilaterial declarations of one party when the said declarations are inconsistent with the course of conduct adopted by it; and (iv) the payment must have been at a uniform rate throughout to justify an inference that the payment at such and such rate had become customary and traditional in the particular concern". (pp.111, 112)

5. In *M/s Tulsidas Khimji* v. *Their Workmen,* [1963] 1 S.C.R. 675, Sinha, C.J., speaking for the majority, has held that the four 'so-called conditions' laid down in the *Graham Trading Company* case (supra) are not really in the nature of conditions precedent but are circumstances which have been taken into account in this Court in that case for coming to a conclusion as to whether or not the claim to customary or traditional bonus had been made out and that the observations in the *Graham Trading Company* "must be understood as based on consideration of substance and not of form". It was further observed :

> "What is more important to negative a plea for customary bonus would be proof that it was made *ex gratia,* and accepted as such, or that it was unconnected with any such occasion like a festival....." (p.688)

6. In that case the appellant firm had an unbroken record of profits year after year. The Court upheld the finding of the Industrial Tribunal that the traditional or customary bonus had been established notwithstanding that it had not been shown, as it could not have been shown, that it was paid in a year of loss.

7. In *Vegetable Products Ltd.* v. *Their Workmen,* A.I.R. 1965 S.C. 1499, the observations in the *Graham Trading Company* case (supra) have been thus explained :

> "The third circumstance lays down that it has to be proved that the payment has been made even in years of loss. This only means that where there have been years of loss, payment should have been made in those years also. But it does not mean that where there has been no year of loss at all and the concern has been fortunate enough always to earn profit, there can be no customary or traditional bonus connected with a festival like Puja, even though payment at a uniform rate has been made for a larger number of years. This circumstance should, therefore, be read only thus: in case there have been years of loss, it must be proved that payment has been made in those years also. The fourth circumstance mentioned above is to the effect that payment should have been made at a uniform rate throughout. That, however, does not mean that

A uniformity should be established from the beginning to the end. Take a case where for the first few years payment at a certain rate was made. But later on, for a much larger number of years payment at a somewhat different but uniform rate has been made. In those circumstances, the tribunal may well come to the conclusion that the payment B was at a uniform rate ignoring the first years". (p.1501)

In *Mumbai Kamgar Sabha, Bombay* v. *M/s Abdulbhai Faziullabhai & Ors.*, [1976] 3 S.C.R. 591, this Court has dealt with the contention that custom based bonus must be linked with some festival or other. Negativing the said C contention it has been observed :

"Surely, communal festivals are occasions of rejoicing and spending and emloyers make bonus payments to employees to help them meet the extra expenses their families have to incur. Ours is a festival-ridden society with D many religions contributing to their plurality. That is why our primitive practice of linking payment of bonus with some distinctive festival has sprouted. As we progress on the secular road, may be the Republic Day or the Independence Day or the Founder's Day may well become the E occasion for customary bonus. The crucial question is not whether there is a festival which buckles the bonus and the custom. What is legally telling is whether by an unbroken flow of annual payments a custom or usage had flowered, so that a right to bonus based thereon can be predicted. The custom itself precipitates from and is F proved by the periodic payments induced by the sentiment of the pleasing occasion, creating a mutual consciousness, after a ripening passage of time, of an obligation to pay and a legitimate expectation to receive". (pp.600, 601)

G 8. Having set out the principles governing payment of customary bonus, we may now come to the facts of the present case.

9. With regard to payment of bonus for the year 1959 a dispute was raised by the workmen and the same was discussed in joint conference of the representatives of the workmen as well as the management before the H Conciliation Officer and a settlement was reached on July 25, 1962 whereby

the parties mutually agreed to settle not only the bonus issue for 1959 but also to enter into an agreement of bonus for all the years upto and including 1966. The relevant terms of the said settlement are as under :

> "(a) All workmen of Messrs Kettlewell Bullen & Co. working at 21, Strand Road, Calcutta-1, will be paid three and a 'quarter months' Basic Salary as Bonus for each of the years 1962 to 1965 (both inclusive). The calculation of Bonus will be as under :
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> $$\text{Total Basic Salary receiver} = \frac{\text{during the year} \times 3.1/4}{12}$$
>
> (b) The above quantum of Bonus will be paid irrespective of working results of the Company during the years 1962 to 1966 (both inclusive) which will, however, not be treated as a condition of service for further years.
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> The Union also agrees not to make any demands for any additional Bonus of any kind during these years as stated hereinabove.
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> (c) Regarding the quantum of Bonus for the years 1959, 1960 and 1961, it is also agreed that all the Workmen of Kettlewell Bullen & Co. Ltd., working at 21, Strand Road, Calcutta-1, will receive the said quantum of Bonus on the same conditions as specified in clauses (a) and (b) above of this agreement.
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> (d) The quantum of Bonus agreed upon for the years 1959 to 1961 (both inclusive) will be paid in two equal instalments, one in the month of September, 1962 and another in the month of April, 1963.
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> (e) Bonus in respect of each of the years 1962 to 1966 (both inclusive) will be paid in each of the succeeding years before the pujas".

10. While the said settlement was in operation, the Payment of Bonus Ordinance, 1965 was promulgated on May 29, 1965. Relying upon the provisions contained in the said Ordinance, the management refused to

honour the settlement and for the year 1964 bonus was paid at the rate of 4%.

11. On October 15, 1966 the parties the workmen and the management - entered into another Settlement covering the period of five accounting years, i.e., 1965 to 1969 (both inclusive), whereby it was agreed as under:

> "(a) All the clerical and subordinate staff of the Company working at 21, Strand Road, Calcutta-1, will be paid bonus in respect of each of the accounting years 1965 to 1969 (both inclusive) at the rate of 10.1/2 per cent (ten and half percentum) of the total salary and wages (salary and dearness allowance only and excluding attendance bonus, overtime, or any other allowance or payment) earned by them during each of the relevant accounting years ending 1965 to 1969 (both inclusive).
>
> (b) Bonus as aforesaid for each of the accounting years mentioned in clause (a) above will be paid in the next succeeding year approximately two week before the pujas".

In the said Settlement, it was stated that it had been arrived at in terms of Section 34(3) of the Payment of Bonus Act, 1965.

12. The said settlement was followed by Memorandum of Settlement dated September 20, 1971 covering the accounting years ending 31st December, 1970, 31st December, 1971 and 31st December, 1972. Under the said Settlement it was agreed as under :

> "(a) All the clerical and subordinate staff of the Company working at 21, Strand Road, Calcutta-1, will be paid Bonus in respect of each of the accounting years ending 31st December, 1970, 31st December, 1971 and 31st December, 1972 (all inclusive) at the rate of 10.1/2% (ten and a half percentum) of the total salary and wages (basic and dearness allowance only and excluding attendance bonus, overtime or any other allowance or payment) earned by them during the said accounting year.

(b) Bonus as aforesaid or each of the accounting years mentioned in clause (a) above will be paid to the employees in the next succeeding year approximately four weeks before the Pujas."

In the said Settlement also it was stated that it was arrived at under Section 34(3) of the Payment of Bonus Act, 1965

13. On September 26, 1974 the parties entered into another settlement in respect of the accounting year ended 31st December, 1973 and agreed as under :

"(a) All the clerical and subordinate staff of the Company working at 21, Strand Road, Calcutta-1, will be paid Bonus in respect of the accounting year ended 31st December, 1973 at the rate of 10.50% (ten and a half percentum) of the total salary and wages basic and dearness allowance only and excluding attendance bonus, overtime, or any other allowance or payment earned by them during the said accounting year."

14. In that Settlement also it was provided that it was arrived at under Section 34(3) of the Payment of Bonus Act, 1965.

15. Before the tribunal Shri Kasi Nath Banerjee, General Secretary of the Employees' Union, had appearned as a witness and has stated that the bonus was being paid since 1959 before the commencement of Puja.

16. From the settlements referred above and the evidence that was produced before tribunal it appears that (i) bonus was being paid by the appellant ever since the year 1959, (ii) for the years 1959 to 1963 bonus was paid at the rate of 3.1/4 months' basic pay, (iii) for the year 1964, bonus was paid at the rate of 4 per cent in accordance with the Payment of Bonus Ordinance, 1965, (iv) for the years 1965 to 1973, bonus was paid at the rate of 10.50 per cent of the salary or wages, and (v) the said bonus was generally paid before the commencement of Puja festival.

17. The tribunal has found that :

"Bonus was paid by the management for a long period from 1959 onwards not on the basis of profit calculation

A and usually in the month of September before the Puja Festival and the facts and circumstances prove that there was continuous payment of bonus since 1959 at a relevant time without calculation of profits according to the salary and wages since 1959 and the payments were made from 1965 to 1973 at the rate of 10.5% under Section 34(3) of the Payment of Wages Act at a uniform rate and that too before the Puja Festival and not being based on any calculation of the profit and loss of the company. The only possible inference in such circumstances is that the management paid bonus which has ripened into a customary bonus due to long usage from 1959 onwards covering a period of 15 years."

18. The learned Judges on Division Bench of the High Court have also observed :

D "However, we may point out that we are of the opinion that from the various agreements it was clear that provisions for payment were being made irrespective of the quantum of profit and loss."

E 19. It can, therefore, be said that the payment had been made by the management of the respondent by way of bonus over an unbroken series of years and the said payment did not depend upon the earning and profits.

20. The learned Judges on the Division Bench have held that the said payment could not be regarded customary bonus for the following reasons:

F (i) it was not being paid at a uniform rate throughout, and

(ii) the settlements that were entered into on October 15, 1966, September 20, 1971 and September 20, 1973 stated that the said settlements were entered into under Section G 34(3) of the Payment of Bonus Act, 1965 and that the bonus paid under the said settlements was bonus contemplated under the Payment of Bonus Act.

21. As regards the first reason given by the High Court that the bonus was not being paid at a uniform rate throughout, it may be stated that H though during the years 1959 to 1963 it was paid at the rate of three and

a quarter months' basic pay (which amount, as pointed out by the learned Judges of the High Court, varied between 10.81 per cent to 12.95 per cent of total salary or wages) and in the year 1964 it was paid at the rate of 4 per cent but in subsequent years from 1965 to 1973 it was paid at a uniform rate of 10.50 per cent of the salary or wages. As noticed earlier, in *Vegetable Products Ltd.* (supra), it has been held it is not necessary that the uniformity in the rate should be established from the beginning to the end and in a case where for the first few years payment at a certain rate was made but later on for a much larger number of years payment at a somewhat different rate had been made, the tribunal could well come to the conclusion that the payment was at a uniform rate ignoring the first few years. Having regard to the said decision, the payment made during the years 1959 to 1964 could be ignored and, on the basis of the payment made during the years 1965 to 1973 at the uniform rate of 10.50 per cent of the salary or wages it could be said that the payment was made at a uniform rate during the period 1965 to 1973.

22. The question is whether the said period was sufficiently long to draw an inference about the payment being customary in nature. In the *Graham Trading Company* (supra) the payment had been made continously from 1940 to 1952 at the rate of one month's wages and this Court upheld the claim of the workmen for bonus as a customary and traditonal payment. In *Vegetable Products Ltd.* (supra) bonus was paid from 1954 to 1961 and the said payment was at a uniform rate (30 days' wages) from 1956 to 1961. In view of the said payment at a uniform rate from 1956 to 1961 the Industrial Tribunal had held that there was a custom of payment at the rate of 30 days' wages as bonus before Puja in the said concern. This Court, however, found that payment was made without dispute and without condition from 1956 to 1958 and that in 1959 the payment was made *ex-gratia* and accepted as such and that in 1960 and 1961 the payment was made on condition that it would be adjusted towards for profit bonus of the previous year and was accepted as such. The Court, therefore, set aside the conclusion of the Tribunal that payment of customary or traditional bonus was established. In the instant case there was payment of a uniform rate of 10.5% of salary or wages for an unbroken period of nine years, from 1965 to 1973, which was a sufficiently long period, and the tribunal could have reasonably drawn an inference that the said payment was customary or traditional bonus on the occasion of Puja festival.

23. With regard to the other reason given by the High Court, namely,

A reference to section 34(3) of the Bonus Act in the various settlements, it may be stated that the Bonus Act is confined, in its application, to profit bonus, and other kinds of bonus recognised in industrial law are not covered by the provisions of the Act. In *Mumbai Kamgar Sabha, Bombay* (supra) it has been held :

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> "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." (p.608)

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24. The same view was reiterated in *Hukum Chand Jute Mills Ltd.* v. *Second Industrial Tribunal, West Bengal & Ors.,* [1979] 3 S.C.R. 644, wherein it was held that the customary or contractual bonus were excluded from the provisions of the Act and it was laid down :

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> "The Bonus Act (1965) was a complete code but was confined to profit-oriented bonus only. Other kinds of bonus have flourished in Indian Industrial law and have been left uncovered by the Bonus Act. The legislative universe spanned by the said statute cannot therefore affect the rights and obligations belonging to a different world or claims and conditions." (p 647)

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25. In *Hukam Chand Jute Mills Ltd.* case (supra) while referring to Section 17 of the Bonus Act, this Court has observed :

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> "Section 17 in express terms refers to puja bonus and other customary bonus as available for deduction from the bonus payable under the Act, thus making a clear distinction between the bonus payable under the Act and 'puja' bonus or other customary bonus. So long as this Section remains without amendment the inference is clear that the categories covered by the Act, as amended, did not deal with customary bonus." (p.649)

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26. As indicated earlier the High Court has found that payments made under the settlements had no link with the profit. In the circumstances the reference to Section 34(3) of the Bonus Act in the Settlements

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would not alter the nature of the payment so as to convert it into a bonus paid under the said Act. The reference to Section 34(3) of the Bonus Act must be regarded as having been made by way of abundant caution to exclude the liability of the appellant for bonus under the Act, but that would not alter the nature of the payment. Moreover, Section 17 of the Bonus Act provides as under :–

> "Section 17. Adjustment of customary or interim bonus against bonus payable under the Act. Where in any accounting year—
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> (a) an employer has paid any Puja bonus or other customary bonus to an employee; or
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> (b) an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable,
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> then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance."

27. In *Mumbai Kamgar Sabha* (supra) this Court has observed :

> "For this reason it is provided in Section 17 that where an employer has paid any puja bonus or other customary bonus, he will be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him under the Act. Of course, if the customary bonus is thus recognised statutorily and, if in any instance it happens to be much higher than the bonus payable under the Act, there is no provision totally cutting off the customary bonus. The provision for deduction in s. 17, on the other hand, indicates the independent existence of customary bonus although, to some extents, its quantum is adjustable towards statutory bonus." (p.607)

This can only mean that if the bonus that was being paid by the respondent is found to be customary bonus then the respondent would be entitled to

A deduct the amount so paid from the amount of bonus payable to the employee by way of bonus under the Act in respect of that accounting year.

28. Shri G.B. Pai, learned senior counsel appearing for the respondent, placed reliance on the decision of this Court in *Upendra Chandra Chakraborty and Anr.* v. *United Bank of India,* [1985] 3 S.C.R. 1057. In that B case, it was held that the bonus received by the workmen did not have the characteristic of customary bonus as known to law. It was found that no bonus was paid for the years 1950 to 1958 and from 1959 onwards the rate had not been uniform and there was no evidence to show that the payment was unrelated to the profits and it was nobody's case that the bonus was C not paid in any year of loss and it was also observed that the concept of any customary bonus was unknown to nationalised banks and that in all the natonalised banks which are wholly owned undertakings of the Government of India, the employees must be dealt with on a common denominator in the matter of bonus. Having regard to the aforesaid circumstances, it was held that although the payment was made in the month of September D but that payment was not customary bonus. In our opinion, the said decision has no application to the facts of the present case.

29. Having considered the award made by the tribunal as well as the judgments of the learned single Judge and the Division Bench of the High Court, we are of the view that in drawing an inference that the bonus that E was being paid by the respondent company to the appellants was customary bonus payable at the rate of 10.5 per cent of the salary or wages could be justifiably drawn by the tribunal having regard to the facts and circumstances of the case, and the High Court was in error in setting aside the award and holding that the bonus that was paid was not in the nature of customary F bonus.

30. The appeal is, therefore, allowed. The judgment and order of the Division Bench of the High Court dated November 17, 1986 in Appeal No. 103 of 1983 as well as that of learned single Judge dated September 21, 1982 in Matter No. 754 of 1982 are set aside and the award dated April G 16, 1982 made by the Eighth Industrial Tribunal holding that for the years 1974 to 1977 the appellants were entitled to payment of customary bonus at the rate of 10.5 per cent of the annual salary or wages earned by each concerned workmen in each such years is restored. The parties are left to bear their own costs.

R.P. Appeal allowed.