

appropriate Government as meaning, in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government, the Central Government. The question which arises is: has the textile industry been specified as controlled industry in this behalf by the Central Government? It is true that the textile industry is controlled by the provisions of Act 65 of 1951 and in that sense it is controlled industry; but that would not be enough to attract the application of s. 2(a)(i) of the Act. What this latter provision requires is that the Central Government must specify "in this behalf" that the industry in question is a controlled industry; in other words the specification must be made by the Central Government by reference to, and for the purpose of, the provisions of the Act in order that the Central Government may itself become the appropriate Government *qua* such industry under s. 2(a)(i) of the Act. It is conceded by Mr. Sastri that no such specification has been made by the Central Government. Indeed, we ought to add in fairness to Mr. Sastri that he did not very seriously press this point.

The result is the appeal fails and is dismissed with costs.

Appeal dismissed.

M/S. ROHTAS SUGAR LTD., & OTHERS

v.

THEIR WORKMEN

(P. B. GAJENDRAGADKAR, K. SUBBA RAO AND
K. C. DAS GUPTA, JJ.)

Seasonal Industries—Unskilled workmen—Retaining allowance for off season—If wage structure to be raised in lieu of retaining allowances.

The unskilled seasonal workmen of the Bihar Sugar Industry, bulk of whom belonged to the landless labourer class, who ceased to have any contractual relation with the employers once the

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season was over and on the commencement of the next season might or might not rejoin their employment, raised disputes over the question whether retaining allowances should be paid to them during the off season.

The Labour Appellate Tribunal inter alia awarded a retaining allowance to unskilled workmen, at a rate of 5% of the basic wage for the period of the off season to be paid every year at the beginning of the season, when they reported for duty.

The main contentions on behalf of the employer were that agriculture was the primary occupation of these persons and the employment in the Sugar Factory was merely a subsidiary occupation, that claim for retaining allowance was really in the nature of unemployment relief which it was the duty of the State and not the industry to give, that the relationship of employer and employee did not exist in the off season and so no payment of anything in the character of wages could possibly be claimed by the labour.

Held, that the relief of unemployment by arranging suitable alternative employment or an alleviation of the distress of employment insurance benefits or by other modes though is primarily the function of the Government of the country, yet the industry where these workmen are seasonally employed cannot look unconcerned and play no part in alleviating the distress of the people who have contributed to the prosperity of the industry by their labour though only for a part of the year.

In deciding whether the principle of social justice which it is the aim of industrial adjudication to apply to justify the payment of retaining allowance to unskilled workmen in these sugar industries it is necessary to take into account.

(a) opportunities of alternative employment in the off season that will be available to such workmen ;

(b) the degree in which such workmen can be said to have become attached to the particular factory where they work ;

(c) the likely benefit to the industry if such workmen are induced to return to the factory by the incentive of retaining allowance to be paid when the season commences ;

(d) the capacity of the industry to bear the burden of retaining allowance.

Held, further, that for alleviating the distress of unskilled workmen in these Sugar Factories, a much better course will be to raise the wage structure with an eye to this fact that for a part of the off season at least when they remain unemployed than to pay retaining allowance for the entire off season.

In the instant case the interests of both the employers and labour will be best served if the question of raising their wages in view of the seasonal nature of their employment be raised before the wage board which has been entrusted with the task of fixing the wages of the workmen concerned in the present dispute, which will be considered sympathetically, specially as the employers have recognised the reasonableness of the claim.

CIVIL APPELLATE JURISDICTION: Civil Appeals
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Appeals by special leave from the decision dated August 31, 1956, of the Labour Appellate Tribunal of India, Calcutta in Appeals Nos. (Cal.) 45 to 52, 59, 61-63, 65-78 and 98 of 1955.

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A. B. N. Sinha and *B. P. Maheshwari*, for the appellants (in all the appeals).

L. K. Jha and *D. P. Singh*, for respondents Nos. 1, 4, 5, 7, 8, 10, 14, 15, 21, 24, 26 to 30, 36, 37 and 39.

P.K. Chatterjee, for respondents Nos. 6, 9, 12, 17, 20, 22, 23, 25, 31 and 32.

L. K. Jha and *R. C. Prasad*, for the Intervener.

1960, February, 12. The Judgment of the Court was delivered by

Das Gupta J.

* DAS GUPTA, J.—These appeals are against the order of the Labour Appellate Tribunal of India at Dhanbad by which the Labour Appellate Tribunal confirmed the order of the Industrial Tribunal awarding a retaining allowance to unskilled workmen at a rate of 5% of the basic wages for the period of the off season of numerous sugar industries in Bihar. The appellants-companies, the employers, in these sugar industries also challenge the correctness of the order made by the Industrial Tribunal and confirmed by the Labour Appellate Tribunal awarding the workmen attending the proceedings before the Industrial Tribunal, wages, travelling allowance and halting allowance and further directing that the workmen attending these proceedings would be treated on special leave with pay for the period of such attendance.

As regards these orders the appellants contend that they run counter to the pronouncements of this Court in *Punjab National Bank Ltd. v. Sri Ram Kanwar, Industrial Tribunal, Delhi* (1). This contention, we are bound to say, is correct. Whatever might have been said in support of the view taken by the Tribunals in ordering payment of these allowances and of granting special leave to workmen attending proceedings of necessity, if the question was *res integra* we are bound by the authority of *Punjab National Bank's Case* (1) to

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hold that no such allowances are payable and no such order granting leave may be made. The order of the Tribunals below allowing travelling allowance and halting allowance and special leave to workmen attending proceedings of necessity, must therefore be set aside. Mr. Sinha, learned counsel for the appellants, however, has undertaken on their behalf that no restitution will be claimed of allowances which have already been paid.

This brings us to the main question in controversy in these appeals. That question is whether retaining allowance should be paid to unskilled workers in these industries during the off season. Disputes over this question have been going on for many years and committee after committee has wrestled with the problem for arriving at a formula acceptable to both employers and labourers but in vain. In 1950 a reference was ultimately made to Mr. Justice B. P. Sinha (as he then was) as regards these disputes about retaining allowance. The award made by him provided for retaining allowance to skilled and semi-skilled workmen but none to unskilled workmen. Before the Appellate Tribunal who heard the appeal against that award the labourers and employers came to an agreement that no retaining allowance would be payable to the unskilled workmen. This award was in operation for a period of two years but was thereafter determined by notice given by workmen followed up by similar notice by employers. The reference out of which the present appeals arise included several other matters besides retaining allowance to seasonal employees, but with those we are no longer concerned in these appeals. Nor are we concerned with the question of retaining allowance to skilled and semi-skilled workmen as that part of the award was not disputed by the present appellants.

On the question of retaining allowance the main contentions on behalf of the employers were that agriculture was the primary occupation of these persons and the employment in the sugar factory was merely a subsidiary occupation, that the claim for retaining allowance was really in the nature of unemployment relief which it was the duty of the State and not the

industry to give, that the relationship between the employers and these employees does not exist in the off season and so no payment of anything in the character of wages could possibly be claimed by the labour. The Tribunal overruled all these objections. It was of opinion that the working season in the factory completely covers the paddy harvesting season in North Bihar, where most of the factories are situated so that the workmen the bulk of whom belong to the landless labourers' class in the rural areas do not obtain employment in the off season. It also pointed out that the seasonal employees are entitled to provident fund, gratuity and also bonus and that their connection with the employers is not broken during the off season. Accordingly it awarded retaining allowance of 5% to all unskilled employees—to be paid every year at the beginning of the season when they report themselves to duty.

In agreeing with the Tribunal's conclusion the Appellate Tribunal pointed out further that the grant of seasonal allowance to unskilled labour in the industry would promote stability, good relations and efficiency.

The question whether the retaining allowance should be paid to seasonal workers during the off season is one of great complexity. A measure of the complexity is provided by the conflict in the view expressed by many committees who examined the matter. While it will serve no useful purpose to set out these different views and the reasons given in support thereof, it is proper to mention that with the exception of the Labour Enquiry Committee no committee ever recommended payment of retaining allowance to unskilled workmen, though several of these recommended payment of such allowance to skilled and semi-skilled workmen. When the matter comes before the Tribunals for adjudication they have to decide the matter on the materials before them and it is not possible to derive much assistance from these reports of the committees. The real difficulty in coming to a conclusion lies in the fact that while there is no doubt on the one hand of the plight of the seasonal workmen during the off season, if they during such period remain

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practically unemployed, there is some force also in the argument that it is neither just nor fair to treat these unfortunate people as the special responsibility of the particular industry or the factory where they are seasonally employed. It is difficult not to agree with the opinion that the relief of unemployment by arranging suitable alternative employment or an alleviation of the distress of such seasonally unemployed persons by providing unemployment insurance benefits or by other modes is primarily the function of the government of the country. To say that, is, however, not to say that the industry where they are seasonally employed should look on unconcerned and play no part in alleviating the distress of the people who have contributed to the prosperity of the industry by their labour, even though for only a part of the year. While these considerations on either side are common to claims for retaining allowance for all seasonal workmen in all industries, the special facts and circumstances of the categories of workmen and different local circumstances in different industries play an important part in deciding the question. Thus skilled and semi-skilled workers have often been able to put forward a strong case by pointing out that the specialized skill acquired by them makes it difficult for them to obtain suitable alternative employment in the off season. Employers also often find it to their own interest to pay such categories of workmen, some retaining allowance as an inducement to them to return to their factories when the season commences. In the present appeals we are concerned with the case of unskilled workmen only. It is obvious as has been noticed by both the Tribunals below, that the employers feel that there is such a glut in the supply of unskilled labour in Bihar that retaining allowance or no retaining allowance a sufficient supply will be available for the industries. That is why the employers contend that they ought not to be asked in an industrial adjudication to pay retaining allowance to unskilled labour. We do not think it will be fair to say that merely because the employers have agreed to pay retaining allowance to skilled labour their opposition to such payment of

some such allowance to unskilled labour is unjustified. In deciding whether the principles of social justice which it is the aim of industrial adjudication to apply justify the payment of retaining allowance to unskilled workmen in these sugar industries, it is necessary to take into account (a) the opportunities of alternative employment in the off season that will be available to such workmen; (b) the degree in which such workmen can be said to have become attached to the particular factory where they work; (c) the likely benefit to the industry if such workmen are induced to return to the factory by the incentive of retaining allowance to be paid when the season commences; (d) the capacity of the industry to bear the burden of retaining allowance. The capacity of the appellant-employers to bear the additional burden resultant from the 5% retaining allowance ordered by the Tribunals below has not been disputed before us. The position is however far from clear as regards the existence of alternative opportunities available to unskilled labour in the off season. It was found, and we must proceed on the basis, rightly found, that the working season of the sugar industry in North Bihar, where most of the factories concerned in the present appeals are situated, completely covers the paddy harvesting season. That however is slender material for any conclusion as regards the existence of opportunities of alternative employment for these unskilled workmen.

The appellate Tribunal has said that the grant of seasonal allowance to unskilled labour in the industry will promote stability, good relations and efficiency. Except in so far as this conclusion is based on the general probability that newly recruited labour at the commencement of the season is likely to be less efficient and less disciplined than men who have worked in previous seasons, this does not appear to have been based on any concrete evidence on the point.

Nor is it clear from the materials on the record that unskilled workmen employed in a particular factory consider themselves attached to that factory. It appears to be clear that once the season is over the unskilled workmen cease to have any contractual relations with the employers and may rejoin on the com-

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mencement of the season or may not rejoin at their sweet will. As regards the observations of the Tribunal that "seasonal employees are entitled to the benefit of provident fund, gratuity and also bonus which shows that in fact their connection with the employers is not broken" the materials on the record are too scanty for arriving at any definite conclusion.

In consideration of the nature and extent of the materials on the record we are of opinion that for alleviating the distress of unskilled workmen in these sugar factories, with whom we are concerned in the present appeals a much better course will be to raise the wage structure with an eye to this fact that for a part of the off season at least when they remain unemployed than to pay a retaining allowance for the entire off season.

The appellant's counsel readily agrees that the fact that these unskilled workmen find employment in the sugar factories only for a few months and are in comparative difficulty in the matter of finding employment during the remaining months, should be taken into consideration in fixing their wages. We are informed that a Wage Board entrusted with the task of fixing the wages of the workmen concerned in these disputes is sitting at the present time. The interests of both the employers and labour will, we think, be best served if instead of confirming the order made by the Appellate Tribunal as regards the retaining allowance the workmen will raise this question of raising their wages in view of the seasonal nature of their employment before this Wage Board. We have no doubt that such a claim will be sympathetically considered by the Wage Board, especially as the employers have through their counsel, recognized before us the reasonableness of their claim. The appellants have through their counsel also undertaken that they will not claim restitution of the amounts already paid as retaining allowance and further that they will continue to pay the retaining allowance for the next season—half at the commencement of the season and the other half mid-way during the season—till the wages have been fixed by the Wage Board. Accordingly we allow the appeals and set aside the order passed by the Labour

Appellate Tribunal of India, Dhanbad, as regards retaining allowance to unskilled workmen and also its order as regards payment of halting allowance and travelling allowance and wages to workmen attending proceedings of necessity of the Industrial Tribunal. But as has been mentioned earlier the appellants have undertaken not to seek restitution as regards the halting or retaining allowance already paid and further that they will continue to pay retaining allowance for the next season—half at the commencement of the season and the other half mid-way during the season—till the wages are fixed by the Wage Board.

There will be no order as to costs.

Appeal allowed.

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