

were all decisions of the same Court, and arose in different circumstances. In two of them, the question was wide enough to take in a line of reasoning not adopted by the Tribunal, and in the third, the question was widened by deleting a reference to a section, when another section was also material. They were not cases where the issues of law as decided by the Tribunal and the High Court were entirely different, which is the case here. The Punjab High Court has taken a contrary view in *Mash Trading Co. v. Commissioner of Income-tax* (1).

For the reasons given above, we are of opinion that the High Court exceeded its jurisdiction in going outside the point of law decided by the Tribunal and deciding a different point of law. The order of the High Court will, therefore, be set aside, and the case will be remitted to the High Court to decide the question framed by the Tribunal. In view of the fact that both the assessee and the Commissioner pointed out the anomaly to the High Court and the question was reframed in spite of this, the costs of this appeal shall be costs in the reference to be heard by the High Court, and will abide the result.

Appeal allowed.

Case remitted.

M/S. BURN & CO. LTD. & OTHERS

v.

THEIR EMPLOYEES.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and
K. C. DAS GUPTA, JJ.)

Industrial Dispute—Incentive bonus—Scheme—Exclusion of clerical and subordinate staff—Propriety—Power of Industrial Tribunal.

There can be no doubt from the point of view of Economics that the clerical and subordinate staff of an industry like its manual workers contribute to its production and there can, therefore, be no reason for excluding them wholly from the benefits of a scheme of incentive bonus. The fact that the clerical staff are paid dearness allowance at a higher scale can be no reason for their exclusion.

(1) [1956] 30 I.T.R. 388.

1960

—
Kusumben.
D. Mahadevia
v.
Commissioner of
Income-tax,
Bombay

—
Hidayatullah J.

1960

—
March 30.

1960
 ———
Burn & Co. Ltd.
 v.
Their Employees

Where, as in the instant case, the company had already introduced a scheme of incentive bonus for the majority of its workmen, there could be no reason why the Industrial Tribunal should not be able to extend that scheme to the clerical and subordinate staff.

M/s. Titaghur Paper Mills Co. Ltd. v. Their Workmen, [1959] Supp. 2 S.C.R. 1012, considered.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 195 and 196 of 1959.

Appeals by special leave from the Award dated April 15, 1957, of the Third Industrial Tribunal, West Bengal, in Case No. VIII-7 of 1956.

B. Sen, P. K. Chakravarty and B. N. Ghosh, for the appellants (in C. A. No. 195 of 59) and respondents (in C. A. No. 196 of 59).

N. C. Chatterjee, D. L. Sen Gupta and B. P. Maheshwari, for the respondents (in C. A. No. 195 of 59) and appellants (in C. A. No. 196 of 59).

1960. March 30. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—These are two appeals by special leave against the same award of the Third Industrial Tribunal, West Bengal and shall be disposed of by this judgment. Appeal No. 195 is by Messrs. Burn and Co. Limited (hereinafter called the company) and Appeal No. 196 is by the workmen of Messrs. Burn and Co. Limited (hereinafter called the workmen). There were disputes between the company and the workmen on various matters, which were referred to the tribunal for adjudication. Of these disputes, only two now survive in the two appeals. The company's appeal is with respect to that part of the award which deals with incentive bonus to the clerical and subordinate staff while the workmen's appeal is with respect to that part of the award which deals with the cash benefit of Annas eight per head per working day for the period the canteen was not in operation.

We shall first take up the company's appeal. The company has introduced incentive bonus for manual workers including Sarkars and Checkers but there is no provision for incentive bonus to the clerical and subordinate staff. The workmen therefore claimed that these two categories should also be given incentive bonus like the manual workers and pointed out

that in other concerns this was done. The company resisted the claim on two grounds: (i) that the clerical staff got what is known as the Bengal Chamber of Commerce dearness allowance, which is higher than the dearness allowance paid to the manual workers and (ii) that the clerical staff and the subordinate staff do not actually produce anything and if they are given incentive bonus it will mean that they would be paid on the production of others, namely, the manual workers.

The tribunal was of the view that the fact that the clerks got the Bengal Chamber of Commerce dearness allowance was no reason for their total exclusion from the benefit of the incentive bonus scheme. It also pointed out that the subordinate staff did not get the Bengal Chamber of Commerce dearness allowance and there was no difference between their dearness allowance and the dearness allowance of the manual workers. Further the tribunal was conscious of the fact that the clerical staff and the subordinate staff do not directly produce goods but that in its opinion was no justification for their total exclusion, particularly when other comparable concerns like the Indian Iron and Steel Co. Ltd. at Burnpur, Bridge and Roof Co. (India) Limited, Howrah, and Tatas were paying incentive bonus to the clerical and subordinate staff also. It therefore ordered that the company should extend the scheme of incentive bonus to the clerical and subordinate staff also and lay down the rates and conditions for the same.

The main contention of the company before us is that as the clerical staff and the subordinate staff have no part in actual production they should not be given any incentive bonus, particularly as their work does not increase at all because of the increased production. It is, however, difficult to accept that there will be no increase in the work of the clerical staff in particular and also of the subordinate staff because of higher production, though it may be accepted that the increase may not be in proportion to the increase of production. It is also true that the clerical staff and the subordinate staff do not directly produce goods like manual workers and that may be a reason

1960
—
Burn & Co. Ltd.
v.
Their Employees
—
Wanchoo J.

1960
—
Burn & Co. Ltd.
v.
Their Employees
—
Wanchoo J.

for treating them somewhat differently in the matter of incentive bonus and that is what the tribunal seems to have done, for it has directed the company to extend the scheme of incentive bonus to the clerical and subordinate staff and to lay down the rates and conditions of the same and has not said that exactly the same rates and conditions should apply to the clerical and subordinate staff as apply to the manual workers. But there can be no doubt that economically speaking the clerical staff and the subordinate staff also take part in the production and there is no reason therefore for excluding them altogether from the scheme of incentive bonus. Besides, as the tribunal has pointed out, in other comparable concerns incentive bonus is being paid to the clerical and subordinate staff. The fact that dearness allowance was paid to the clerical staff at a higher scale is also, in our opinion, no reason for depriving them altogether of the benefits of the incentive bonus scheme.

It is also urged on behalf of the company that the introduction of incentive bonus is a management function and the tribunal should not impose it on the management and reference in this connection has been made to *Messrs. Titaghur Paper Mills Co. Ltd. v. Their Workmen* ⁽¹⁾. In the present case, however, the incentive bonus scheme has already been introduced by the company for the major part of its workmen and all that is now asked for is that the benefit of the scheme should be extended to the remainder of the workmen. This prayer is, in our opinion, very different from asking a tribunal to impose an incentive bonus scheme for the first time in a concern. We can see no reason why where an incentive bonus is in force in a concern for the majority of its workmen, the tribunal should not be able to extend the same to the remainder of the workmen.

We therefore see no reason to interfere with the order of the tribunal in this behalf.

Turning now to the appeal of the workmen with respect to eight annas tiffin allowance during the period the canteen was not working, it is enough to say that this matter was examined at length by the

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

tribunal. It has dealt with the history relating to this tiffin allowance and exhaustively considered all the points raised on behalf of the workmen. Nothing has been brought to our notice which would induce us to interfere with the considered order of the tribunal in this behalf. All the points that Sri Chatterjee has raised on behalf of the workmen have been dealt with by the tribunal and the conclusion it has reached is that having regard to the circumstances, the workmen were not eligible to the tiffin allowance of annas eight per head per working day. All that we need say is that the correspondence between the workmen and the company shows that though the workmen were keen on the provision of a canteen before the tiffin allowance was granted by the award dated July 24, 1953, their keenness disappeared after the award. The company seems to have taken steps even before the award to start a canteen and pursued the matter vigorously after the award; but the workmen started objecting to the arrangements made and some of the objections were fantastic. It seems that having been given the tiffin allowance they preferred to have it rather than go to the canteen. In the circumstances we are of opinion that the conclusion of the tribunal is correct and there is no reason for interference.

The appeals are hereby dismissed, but in the circumstances we pass no order as to costs.

Appeals dismissed.

1960
 ———
 Burn & Co. Ltd.
 v.
 Their Employees
 ———
 Wanchoo J.

THE STATE OF UTTAR PRADESH

v.

KHUSHI RAM

(JAFER IMAM and A. K. SARKAR, JJ.)

Criminal Trial—Magistrate empowered to impose sentence provided—Commitment under impression of not being so empowered—Trial by Court of Session on such commitment—Validity—Prevention of Food Adulteration Act, 1954 (37 of 1954), ss. 7, 16 and 21.—Code of Criminal Procedure, 1898 (V of 1898), ss. 32, 207 and 347.

The respondent was prosecuted for offences under s. 7 of the Prevention of Food Adulteration Act, 1954. The Magistrate found the offences proved and he further found that the respondent had

1960
 ———
 April 1.