Supreme Court of India
The Daily Partap vs The Regional Provident Fund ... on 29 October, 1998
Author: S.B.Majmudar
Bench: S.B.Majmudar, M.Jagannadha Rao

PETITIONER:
THE DAILY PARTAP

Vs.

RESPONDENT:
THE REGIONAL PROVIDENT FUND COMMISSIONER, PUNJAB, HARYANA, Himachal Pradesh and Union Te

DATE OF JUDGMENT: 29/10/1998

BENCH:
S.B.Majmudar, M.Jagannadha Rao

JUDGMENT:

S.B.Majmudar, J.

Both these appeals for special leave to appeal under Article 136 of the Constitution of India have brought in challenge two orders of the Division Bench of the High Court of Punjab & Haryana at Chandigarh dismissing two Letters Patent Appeals arising out of the decision of the learned Single Judge of the High Court who has considered identical questions of law. Consequently, both these appeals were heard together. Learned counsel for the respective parties were heard in support of their cases and thereafter both these appeals are being disposed of by this common judgment.

The common question which falls for consideration of this Court in these appeals is as to whether the appellants which are carrying on the business of printing and publishing newspapers in the State of Punjab at Jallandhar are liable to remit contributions under Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short the 'Act') to the authorities functioning under the Act along with the matching contributions from their respective employees, so far as the amounts paid by the appellants to their employees under identical schemes of Production Bonus are concerned. The learned Single Judge of the High Court in his impugned Judgment has taken the view that the said statutory liability is foisted on the appellants. By summarily dismissing the Letters Patent Appeals against the said decision of the learned Single Judge, the Division Bench has confirmed the said view and that is how the appellants are before us in these proceedings. A few relevant introductory facts deserve to be noted to appreciate the common grievance of the appellants.

BACKGROUND FACTS:

The appellants were carrying on the business of printing of the newspapers in the city of Jallandhar in the State of Punjab and circulating the same to their customers. They were alleged to have not remitted their contributions along with the share of their concerned employees to the extent of the amounts paid by them for the period from August, 1975 to March, 1976 by way of Production Bonus. The contention of the appellants was that as the disputed amounts were paid to the concerned employees under the relevant Production Bonus Schemes they were not liable to remit contributions for the same as per Section 6 of the Act. On the basis of the said contention, they filed writ petitions earlier against the aforesaid demand of the authorities before the High Court. In the said writ petitions filed in the year 1976, the then learned Advocate Genera for the State of Haryana appearing for the authorities, conceded before the High Court that the appellants were not required to deposit the provident fund on the Production Bonus and the appellants may deposit provident fund only on "wages" as defined in the Act from August, 1975 and with regard to the refund of the amount deposited in respect of Production Bonus, the appellants may apply to the respondent authorities, who, after giving them hearing, would decide the matter within three months. The said decision of the High Court in both these writ petitions moved by the appellants were rendered on 19th July, 1976. Thereafter the respondent authorities gave hearing to the appellants and ultimately took the view that the disputed amounts for which contributions were asked for under Section 6 of the Act from the appellants were part of the "basic Wages" and no such Production Bonus Scheme was existing in the appellants' concerns. Consequently, the claim of the appellants for non-application of Section 6 of the Act of these disputed amounts was rejected. Under these circumstances, the appellants once again carried the matters in writ petitions before the High Court. Those writ petitions were dismissed by the learned Single Judge by the impugned order which came in their turn to be confirmed by the Division Bench in the Letters Patent Appeals as noted earlier.

RIVAL CONTENTION:

Shri Ranjit Kumar, learned counsel for the appellants vehemently submitted that pursuant to the earlier order dated 19th July, 1976 of the High Court in writ petitions the only inquiry which was to be conducted by the authorities under the Act was about the appropriate amount of refund to be given to the appellants. The learned Advocate General for the State of Haryana had clearly conceded that the appellants were not required to deposit such provident fund on Production Bonus and consequently, the authorities had no jurisdiction to go behind these orders of the High Court and decide the question on merits once again and held that the appellants were liable to deposit the provident fund amount on Production Bonus paid by them to the workmen concerned. In the alternative it was contended by the learned counsel for the appellants that even assuming that the authorities could go into this question despite the order of the High Court dated 19th July, 1976, the authorities had committed a patent error of law in taking the view that the scheme in question was not a Production Bonus Scheme and that the amounts paid by the employees for extra work rendered by the workmen were covered by the definition of "basic wages" under Section 2(b) and consequently Section 6 of the Act got attracted in connection with the said disputed amounts on which the authorities were justified in seeking transmission of contribution by the appellants along with matching contribution by the workmen. In support of the said contention, learned counsel for the appellants vehemently relied upon a decision of the six member Bench of this Court in Bridge & Roof Co. (India) Ltd. vs. Union of India, (1963 (3) SCR 978) and tried to distinguish the ratio of

decision of this Court in Jay Engineering Works Ltd. & Ors. vs. The Unior of Indian & Ors. (1963 (3) SCR 995). It was contended that the scheme in question was clearly a Production Bonus Scheme. That those workmen employed by the appellants who had put in more work than beyond the norms provided for them and for which no action could have been taken by the Management if the workmen had not carried out the extra load of work, had been paid for this voluntary extra work. Such payment for extra work was directly linked up with production and was a Production Incentive Bonus squarely covered by the excepted category of the definition of "basic wages" under Section 2(b) of the Act. He also submitted that in order to become a Production Bonus Scheme it was not necessary that all the workmen were uniformly paid bonus if they worked more than what was required of them by the norms. Even if amounts of bonus varied with the quantum of extra work rendered by workmen concerned, such bonus scheme still remained a genuine incentive Production Bonus Scheme.

In reply, learned counsel for the respondent Shri Harish Chander, submitted that the Act is a beneficial piece of legislation. It is welfare measure under which workmen belonging to the lower strata of society and suffering from economic distress and penury are enabled by the legislature to contribute towards a compulsory saving scheme wherein the employer would give matching contribution and the amount credited to the workment's account maintained by the authorities under the Act would be available for them for being available to meet the needs of their families after their superannuation or even otherwise during employment. These amounts will also be available to them to draw upon by taking loans on the basis of the amounts standing to their credit, for meeting social obligations like marriage or even meeting medical expenses and other pressing economic necessities. Thus, the Act envisages a protective economic cover for the rainy day so far as these workmen are concerned. Such a welfare legislation should be construed liberally and not in a restrictive manner. In support of this contention, reliance was placed on the decisions of this Court in Regional Provident Fund Commissioner vs. S.D.College, Hoshiarpur & Ors. (1996(5) SCC 522). Reliance was also placed on the definition of the term "bonus" as found in Corpus Juris Secundum, Volume 11 at page 515. Learned counsel for the respondent further submitted that the High Court had taken the view that the Scheme pressed in service by the appellants was not a genuine Production Bonus Scheme but was merely an attempt to get out of the provisions of Section 6 of the Act so far as the disputed amounts were concerned. He also submitted that earlier orders of High Court did not deprive the authorities of statutory jurisdiction to decide the real nature of the so called Production Bonus schemes. That the concession of learned Advocate General has to be considered in its correct perspective.

In the light of the aforesaid rival contentions, the following points arise for out determination:

1. Whether in view of earlier decision of the High Court dated 19th July, 1976 based on the concession of learned Advocate General, Haryana, the authorities had jurisdiction to decide the question on merits or whether the authorities were bound to consider the only limited question of computation of appropriate refund amount to be paid to the appellants so far as the disputed amounts which were already paid under protest by the appellant authorities along with matching contributions of their employees were concerned;

2. If yes, whether the appellants were liable to remit under Section 6 of the Act contributions on the amounts paid by them to the employees concerned under the Production Bonus Scheme as promulgated by them at the relevant time; and

3. What final order?

We shall now proceed to consider these points seriatim.

Point No. 1:

As noted earlier, it is true that when the appellants in the first instance filed writ petitions in the High Court, it was contended by them that the Production Bonus amounts paid by them to their workmen were not part of the "basic Wages" as defined under Section 2(b) of the Act. It is also true that they contended before the High Court in those proceedings that under some mistake of law they had already deposited provident fund of the employees with respect to Production Bonus also. That they were entitled to appropriate refund of the said amount. It is equally true that when such a contention was raised by them, the learned Advocate General, Haryana, who appeared at that stage on behalf of the respondent authorities, conceded that the appellants were not required to deposit provident fund on the Production Bonus and they may deposit provident fund only on the "wages" as defined in the Act from August, 1975 and that for appropriate refund they may apply to the respondent who will give them hearing and decide the matter. Learned Advocate General also assured that the appellants will have to pay refund of the provident fund to the employees to the extent that such amounts were deducted from the salaries of the employees covered by the Production Bonus scheme. The said assurance of the learned Advocate General was accepted by the learned counsel for the appellants and that is how the appellants moved an application for refund before the authorities.

However, it has to be kept in view that the Advocate General's concession was on a question of law as to whether the Scheme which was put forward by the appellants as Production Bonus Scheme was covered by Section 6 read with Section 2(b) or not. Such a concession on the question of law cannot bind the authorities for all time to come but even apart from this aspect of the matter the said concession has to be considered as a whole. In the same breath while conceding that the appellants were not required to contribute on Production Bonus amounts, the learned Advocate General made it clear that they have to deposit provident fund on the "wages" as defined under the Act meaning thereby the question whether the disputed amounts for which refund was to be claimed by the appellants form the authorities fell within the definition of "wages" under the Act or not. It was a live issue which had to be decided by the authorities in proposed refund applications. Learned Advocate General had not given an absolute concession that the appellants were not liable to contribute any part of the disputed amount towards provident fund and that it never fell within the definition of the word "wages". Under these circumstances, when the applications for refund were moved by the appellants they were required to be decided on their won merits. The statement of the learned Advocate General before the High Court had no adverse effect on such a statutory jurisdiction of the authorities. The merits of refund applications had to be decided by the authorities after hearing the appellants. The entire question whether the claim for refund was justified in law or not and the

further connected question whether the amounts deposited were towards "basic wages" or otherwise were open for consideration of the authorities. It cannot be said that such an inquiry was not open to the authorities and was clearly shut out by the order of the High Court dated 19th July, 1976 recording the concession of the learned Advocate General. The first point, therefore, is answered against the appellants and in favour of the respondent authorities.

Point No. 2:

This takes us to the consideration of the merits of the controversy. In order to resolve this controversy, it is necessary to have a look at the relevant statutory scheme. It has to be kept in view that the Act in question is a beneficial social welfare legislation meant for the protection of weaker sections of society namely, workmen who had to eke out their livelihood from the meagre wages they receive after toiling hard for the same. We may usefully refer to the observations of a two Judge Bench decision of this court in Regional Provident Fund Commissioner vs. S.D. College, Hoshiarpur & Ors. (supra), wherein it has been observed in para 10 of the Report that:

> "....The Act is a beneficial welfare legislation to ensure health and other benefits to the employees. The employer under the Act is under a statutory obligation to deduct the specified percentage of the contribution from the employee's salary and matching contribution, the entire amount is required to be deposited in the fund within 15 days after the date of the collection, even month."

Section 6 of the Act which imposes this statutory obligation on the employers for remitting the requisite contributions reads as under:

> "6. Contributions and matters which may be provided for in Schemes The contribution which shall be paid by the employer to the Fund shall be [ten per cent] of the basic wages, [dearness allowance and retaining allowances (if any)], for the time being payable to each of the employees [(whether employed by him directly or by or through a contractor)] and the employee's contributions shall be equal to the contribution payable by the employer in respect of him and may, [if any employee so desires, be an amount exceeding ten per cent of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section]:
>
> [Provided that in its application to may establishment or class of establishments which the Central Govt. after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words ten percent", at both the places where they occurr, the words twelve percent" hall be substituted]:

It is not in dispute between the parties that the appellants' establishments are governed by the Act. In fact learned counsel for the appellants stated that they are remitting requisite contributions

under Section 6 so far as the amounts of "basic wages" paid by them to their employees are concerned and equally matching contributions from the employees are also deducted from their wages and remitted to the authorities under the Act. It is obvious that these contributions from part of the fund and the provident fund accounts of the workmen maintained by the authorities under the scheme are credited with these amounts from time to time. These funded amounts would be available to the workmen for the requirements as withdrawals can be made from the workers' credit balances in the fund as envisaged by the Act. However, Shri Ranjit Kumar's grievance is a limited one, namely, that the appellants are not liable to contribute with reference to the amounts which are paid to the workmen which are not "basic wages". It was submitted that under Section 6 of the Act, only three types of contributions are required to be effected by the employer along with the corresponding matching contributions by the employees as requisite percentage of the amounts; i) basic wage, ii) dearness allowance and iii) retaining allowance, if any, paid to the workmen by the employers. It was contended that undisputably the amounts in question were not paid to the workmen by way of dearness allowance and "retaining allowance" as laid down by Explanation 2 to Section 6 of the Act. It means "an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services". Therefore, according to him unless disputed amounts are part of "basic wages" they cannot be made subject matter of contributions. In order to support his aforesaid contention, learned counsel for the appellants invited our attention to the definition of "basic wages" as found in Section 2(b) of the Act. It will be necessary therefore, to have a look at the said definition. It reads as under:

> "2 Definitions -
>
> (b) "basic wages"means all emoluments which are earned by an employee while on duty or [on leave or on holidays with Wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include.
>
> (i) the cash value of any food concession:
>
> (ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any present made by the employer (Emphasis supplied) The first part of the definition clearly indicates that all emoluments which are earned by an employee while on duty in accordance with the terms of the contract of employment and which are paid or payable in cash to him would get covered by the main part of the definition. It is not in dispute between the parties that the concerned employees were paid at the relevant time additional emoluments which they had earned by their extra efforts and labor and they did so while they were on duty and such extra work which they had done was not dehors the therms of the contract of employment. The said amounts were payable in cash to the concerned employees. But the general sweep of the aforesaid definition gets curtailed in

the present case according to the learned counsel for the appellants. He placed reliance on the exception category

(ii) of the said definition, namely, that it was the amount paid by way of Production Bonus and, therefore, the said amount gets excluded from the general sweep of the definition "basic wages" as found in Section 2(b) of the Act.

Therefore, the short question is whether the disputed amounts paid to the workmen employed by the appellants during the relevant time were paid by way of Production Bonus or not. An incidental question will also arise namely, whether in any case the said amount can be said to be covered by the latter part of the exception category (ii) of the definition Section 2(b) being similar allowance payable to the employee in respect of his employment or the work done in such employment. It was submitted that in any case this allowance was paid for the extra work by way of incentive. The aforesaid contention of learned counsel for the appellants will have to be examined in the light of the Production Bonus Scheme in question which has been the sheet - anchor of the appellants' case for getting out of the sweep of Section 6 read with Section 2(b) of the Act. The said scheme which is identical in nature for both the appellants reads as under:

> "Production Bonus is paid for the following reasons:-
>
> 1. Less than the normal number of people doing the normal work of a working shift, in which case the Production Bonus is paid according to the deficiency in the numerical strength of the staff.
>
> 2. Extra output given by any workmen in any shift. Output of compositors and distributors is measured in terms of column inches of type, that of machine men in terms of the speed of the machines and of the process section in terms of plates and negatives. Allowance is made for delays caused by factors beyond the control of the workmen.
>
> Production Bonus in 1.5 times the normal daily wage. It may be reduced or increased on account of special reasons at the discretion of the management. It is variable from month to month and is apart from the basic wage of the workmen".

Now, a mere look at the aforesaid scheme, which is styled as Production Bonus Scheme, shows that so far as the first category of cases envisaged by the Scheme is concerned, it contemplates a situation where at a given point of time the required number of staff may not be available with the likelihood that the production for the day might fall and in order to ensure maintenance of the same level of production other workmen available in the given shift may by required to carry on the extra work than what is normally required to be done by them. In such cases, an extra amount is contemplated to be offered to the remaining employees who are present and who take extra load of work which otherwise would have been discharged by their absentee colleagues. The category of cases contemplated by the first part of the Scheme necessarily indicates that any extra effort undertaken by the workmen discharging extra load of work over and above the usual work expected of them

normally is to ensure maintenance of the requisite normal level of production. This situation is entirely different from the one wherein more than normally expected out-turn of work is being made available by the workmen who would get Production Bonus by way of incentive to valid total production beyond its normal level. Consequently, the first category of cases contemplated by the Scheme cannot be said to be introduction any Production Bonus scheme in the real sense of the term. It in substance is a scheme of insurance against shortfall in normal production per shift due to shortage of available staff at a given point of time. While we turn to the second category of cases, it is true that it envisages extra payment as an incentive to any workman in any shift who puts in extra output by his own effects. How the extra output for the concerned workman is to be ascertained for being eligible for the extra payment by way of an incentive is laid down by this clause. So far as compositors and distributors are concerned, their output will be measured in terms of column inches of type, and if their output goes beyond the normal output expected of them under the contract of service, then they would be eligible for getting the benefit of the Production Bonus Scheme envisaged by category 2. Similarly, for machine men to the extent speed of the machines handled by them per shift is beyond the normally expected speed of machine handled by machine men would show the eligibility of the machine men for such extra payment and so far as the workers working in the processing section are concerned their eligibility for earning extra payment would depend upon the additional work which they would be said to have put in per shift in items of the plates and negatives normally to be handled by them. It is, therefore, obvious that the extra output given by the concerned workmen in any shift will depend upon the basic norm fixed for the output which will have to be given by the concerned workmen during the shift and if it is found that any extra output is put up by them beyond the requisite norms of work-load then only the same would make them eligible to get benefit of the Production Bonus as envisaged by category

2. It becomes at once clear that before the situation envisaged by category 2 can be said to have got attracted in a given case it must be shown that the workmen concerned had put in extra work in a shift beyond what was normally required by them. Unless that basic data is available, it would be impossible to work out the extra output put up by him in a given shift on a particular day. It is easy to visualise that if the workman was paid an amount for the output given by him in a shift which is up to the norms prescribed for his output it would obviously remain in the realm or "basic wages". In order that the amount goes beyond the "basic wage" it has to be shown that the workman concerned had become eligible to get this extra amount for the work beyond the normal work which he was otherwise required to put in. There is no date available on record to show what were the norms of work prescribed for these workmen during the relevant period. It is, therefore, not possible to ascertain whether extra amounts paid to these workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen working in any given shift at the relevant time. As the appellants did not furnish such relevant data, the authorities were justified in holding that the disputed amounts cannot be said to be forming part of a genuine Production Bonus Scheme. But, even apart from that, the last part of category 2 of the Scheme makes a very interesting and curious reading. Even assuming that the workmen concerned had become eligible under the first part of category 2 of the scheme to get bonus for the extra output, the amount of Production Bonus which was to be available to such eligible workmen would be 1.5 times their normal "daily wage". It is true that it may be reduced or increased on account of special reasons but the increase or decrease for special reasons by the management would be a uniform deduction or increase in the

amount of Production Bonus available in the said category of cases. It would not depend upon individual cases of the workmen concerned to serve as a real incentive bonus. Thus the scheme of Production Bonus envisaged by category 2 of the scheme in substance has no nexus or connection with the extra production effort by the workman. In other words, by way of Production Bonus he will not get any extra amount in proportion to the extra output put up by him beyond the norms as compared to this fellow workmen. The working of category 2 of the scheme can be appreciated by taking an example. If there are five compositors working in a shift in the appellant's concern on a given day and if each of the compositors has to compose 20 sheets per shift being the normal work expected of a compositor, then if they compose only 20 sheets in a shift they cannot be said to have earned the eligibility for the Production Bonus as contemplated by category 2 of the scheme. But if out of those five compositors, two are more energetic and in a given shift on a day they compose more than 20 sheets and if one of them composes 25 sheets and another one composes 28 sheets both of of them can be said to have put in extra output beyond the normal output by five or eight sheets, as the case may be and still both of them who become eligible employees for earning Production Bonus as per category 2 of the scheme will be paid a flat rate of 1.5 times their normal daily wage. If the normal daily wage of a compositor is Rs. 50/- then both of the aforesaid compositors will get extra amount of Rs. 75/each even though both of them have put in different extra outputs. The compositor who has composed five more sheets obviously cannot be treated on par for payment of Production Bonus with the other compositor who has put in extra output of eight sheets and still both of them will be treated equally for the grant of Production Bonus and will get Rs. 75/- each whatever the extra output produced by each of them. Thus, the payment of Production Bonus as envisaged in category 2 cases under the scheme is not directly linked up with the amount of extra output furnished by the workmen. Consequently, the aforesaid scheme said to be granting Production Bonus to the employees is in substance not a scheme which is directly linked up with extra production nor it is commensurate with the extra production workman-wise or even establishment-wise. It only carves out a category of more efficient workmen or more enthusiastic workmen for being given a flat rate of extra remuneration for discharging their duties more efficiently under the contract of employment. It offers in substance an instantaneous superior daily wage scheme for more efficient workmen. Consequently the definition of the term "basic wages" as found in first part of Section 2(b) will squarely get attracted as 1.5 times of normal wages which will be given to workmen under category 2 of the scheme will be excess emoluments earned by them while on duty in accordance with the terms of the contract of employment. This amount uniformly paid to them having on direct nexus with the amount of the extra output put up by them, strictly speaking is not a Production Bonus. Thus excepted category (ii) as envisaged by definition Section 2(b) would not be available for being invoked by the appellants. We repeatedly asked learned counsel for the appellants to enlighten us as to what are the norms prescribed by the appellants for output of compositors, distributors, machine men and those working in process sections with a view to finding out as to how during the relevant period when the disputed amounts were paid to them they had over shot the norms prescribed over their daily dues. We also wanted to know whether all such workmen were to be paid proportionately for the extra output has to be worked out in terms of the column inches of types, the speed of the machine and the plates and negatives manufactured by them as laid down by category 2 of the said scheme. It is difficult to appreciate how this measure for finding out the extra output can show that the permissible & fixed norms of output for workmen were exceeded the workmen at the relevant time in a given shift on the days concerned. He also

could not effectively indicate as to how the Production Bonus at 1.5 times the normal daily wage to be given to concerned eligible workmen was directly linked up with the extent of the extra output put up by each of them individually when there is only a flat rate of 1.5 times of the normal daily wage prescribed for all of such workmen. Shri Ranjit Kumar tried to show that Production Bonus of 1.5 times of normal daily wage was only a measure or mode of calculation of permissible Production Bonus. It is difficult to appreciate this contention. On the contrary, a mere look at second part of para 2 of the scheme clearly indicates that a flat rate of Production Bonus at 1.5 times of normal daily wage will be available to all the workmen concerned if they are found to have given extra output beyond the minimum output expected of them per shift on a given day. Consequently, on the wordings of the scheme on which strong reliance was placed by learned counsel for the appellants it is impossible to hold that it was a genuine Production Bonus scheme linked with extra production given by the workmen concerned.

On the aforesaid conclusion of ours, the alternative contention of the learned counsel for the appellants to the effect that it is an incentive bonus scheme and can at least be covered by the phrase "any other similar allowance payable to the employee in respect of his employment or work" as per last part of excepted category (ii) of the definition clause 2(b) also cannot be of any avail. Reason is obvious. In order to become an incentive allowance, it has to be shown that those eligible workmen who had put in extra output as per para 2 of the scheme would be entitled by way of an incentive to do more work to get additional amount directly linked up with extra output given by them. No such linkage is found from clause 2 of the scheme as noted earlier. All those workmen who have put in extra output and who become eligible to get the benefit of clause 2 of the scheme are not to be paid Production Bonus commensurate with the extent of the output put up by them. They will all be paid equally at 1.5 times the normal daily wage. If that happens the person who puts in lesser percentage of extra output by 5% will get the same amount as his colleague who puts on 20% of the extra output. Thus, there will be no incentive for him to give such an amount of extra output above normal output so as to reach any further extra output limit as compared to his colleague who was also given extra output beyond the prescribed norms. Consequently there will be no real incentive available to the concerned eligible workman who has put in required percentage of extra output, to strive still more for reaching higher amount of extra output. He would, on the contrary, rest on his own at the stage having considered the norms even to the slightest extent. It is, therefore, not possible to agree with learned counsel for the appellants that the scheme concerned, apart from being a Production Bonus scheme, is at least an incentive bonus scheme for the concerned employees.

The nature of the bonus scheme envisaged by exception

(ii) to Section 2(b) of the Act came up for consideration of this Court in two judgments. We may usefully refer to them at this stage. A six member Constitution Bench of this Court in Bridge & Roof Co. (India)Ltd. Vs. Union of India & Ors. case (supra) had to consider as to when a scheme of Production Bonus can be said to be covered by the term "bonus" as found in the exception (ii) to Section 2(b) of the Act. Wanchoo, j., (as he then was), speaking for the six member Bench observed in this connection that "the word "bonus" was used in the definition section of the Act without any qualification and that the legislature had in mind every kind of bonus that may be payable to an employee which was prevalent in the industrial field before 1952. It is not possible to accept the

contention of the respondent that whatever is the price of labour and arises out of contract is necessarily included in the definition of "basic wages" and therefore Production Bonus which is a kind of incentive wage would also be included, in view of the exception of all kinds of bonus form the definition....." .

It may be noted that incentive Production Bonus scheme which was on the anvil of scrutiny of this court in the aforesaid decision and which was held to get excluded form the sweep of the main definition part of Section 2(b) of the Act was directly linked up with production. In fact the said scheme was linked up with the total output given by the entire body of workmen in the concerned employment. The scheme with which the court was concerned in that case envisaged Production Bonus to be given to the entire body of workmen after their total output reached 5,000 tons per year. It was a comprehensive scheme enacted for the benefit of the entire class of workmen to offer them incentive to work more and to get more. It was, therefore, held to be a genuine Production Bonus Scheme. Placing reliance on an earlier Constitution Bench decision of this court in M/s. Titaghur Paper Mills Co. Ltd. Vs. Its Workmen (1959 Supp.(2) SCR 1012), it was observed that :

> "....the payment of Production Bonus depends upon production and is in addition to wages. In effect, it is an incentive to higher production and is in the nature of an incentive wage". The straight piece produced is the simplest of incentive wage plans....."

In the light of the aforesaid observations, it was held that the scheme which fell for consideration of the Court was a scheme of Production Bonus wherein beyond a base or standard up to which basic wages or time wages have to be paid, payment were made for superior performance. This extra payment could be called an incentive wage and also Production Bonus. The aforesaid observations of the six member Bench clearly clinch the issue against the appellants. In order to become a genuine Production Bonus scheme payment to be made to meritorious workmen who put in extra output, has to have a direct nexus and linkage with the amount of extra output produced by the eligible workmen so that the scheme can work as a real incentive scheme equally to them to make extra efforts. Such a scheme may have sliding scales of bonus amount based to total extra quantity of production for which all workmen can uniformly be paid bonus on the basis of their co-operative efforts. More the extra production more the available surplus of bonus to be divided amongst all eligible workmen uniformly. Other type of incentive bonus scheme may be made available to an individual meritorious workman extra payment for extra work having direct linkage with the extra production out-turned by him. In neither case such distributable bonus can be a static figure as in the present case. On the facts of the present case, as seen earlier, unfortunately for the appellants the scheme on which they relied does not fulfil the aforesaid legal logistic for becoming a genuine Production Bonus scheme. It is not a scheme of sliding scale bonus having real nexus with the amount of extra output furnished by the concerned workmen either individually or collectively. As seen earlier, once they crossed even slightly the norm of work expected of them in a given shift, they all fall in the same category of eligible workmen entitled to get on uniform basis extra amount of 1.5 times the basic daily wage. Thus, this scheme of paying extra remuneration to more eligible and efficient workmen is a scheme of super wage fixation and is not a genuine scheme of incentive bonus which has to be earned by the workmen by showing their capabilities for earning such extra bonus

linked up with the quantity of extra production. In the same volume at page 995 it reported the case of Jay Engineering Works Ltd. & Ors. vs. Union of India & Ors. (supra), wherein also Wanchoo,J., spoke for a four member Bench. The scheme under this very Act which came for consideration in that case was a composite Production Bonus scheme. It laid down that if a workman gave outturn beyond the minimum quantity fixed for him by waly of floor quota he became entitled to additional remuneration even though that additional remuneration was for that extra out-turn of work which was below the norm of out-turn which he was enjoined under the contract of service to fulfil. The very scheme also contemplated extra amount to be paid to the workmen who exceeded the norms of output and gave extra output beyond such norms. Analysing the said scheme Wanchool j., for this court held that to the extent to which any more remuneration was paid to the workman who had given outturn more than the quantity of quota output fixed but up to limit of the normal output required of him, the extra remuneration part-took the character of extra wage and was covered by the definition of "basic wages" but to the extent to which such out-turn went beyond normal requirement of amount fixed, then to that extent extra payment for such extra output beyond the norms fixed became a Production Bonus scheme. In the case before this Court, such extra payment was on a piece rate basis. The workman concerned become entitled to be paid additional remuneration to the extent to which he produced goods beyond the norms prescribed for such work. It is easy to visualise that once a workman under any scheme of bonus is to be paid on piece rate basis for the extra output given by him beyond the norms prescribed for such work, the extra amount payable to him will have a direct linkage with the extra output furnished by him. More extra output more payment; less extra output less payment. Such a scheme would be a genuine Production Bonus scheme. The scheme in question does not fulfil the criteria laid down for a genuine production bonus scheme by either of the judgments of this Court in Bridge & Roof Co. (India) Ltd. vs. Union of India case (supra) or in Jay Engineering Works Ltd. Y Ors. vs The Union of India & Ors. case (supra).

In this connection, we may now usefully refer to the Constitution Bench judgment in M/s. Titaghur Paper Mills Co. Ltd. vs. Its Workmen case (supra), wherein an earlier Constitution Bench speaking through Wanchoo,j., had occasion to consider the legal connotation of a Production Bonus scheme as distinct from profit bonus scheme. The scheme which fell for consideration of the Constitution Bench in the said case was one floated by the company wherein up to the production 36,000 tons, there was a uniform rate of bonus payable by the company for giving appropriate remuneration to the workmen for producing that much quantity of goods but the scheme did not provide for production bonus for production above 36,000 tons, as there was on agreement between the Management and the Union in this respect. The question before the Industrial tribunal from whose decision appeal came to this court was whether the workmen were entitled to be given further benefit of production incentive scheme if by their joint efforts production of the company went beyond 36,000 tons and whether it was necessary to provide for Production Bonus beyond this limit. The tribunal, in that case while giving clearance to such a scheme, gave two reasons for increase in the rates of payment of Production Bonus (i) the intensification of the efforts of the workmen in increasing production, and (ii) the progressive going down of the labour cost of production per ton as production increased. The rates had to be increased progressively with production. Consequently, for each 460 tons increase in production the proper rates for payment of Priduction Bonus would be 1.5, 1.5, 1.75 and 2 days basic wages respectively for production between

36,000 and 42,000 tons, 42,000 and 48,000 tons, 48,000 and 54,000tons and 54,000 and 60,000tons. It is this additional Production Bonus scheme ordered by the Tribunal which was examined by this Court in the said decision. While upholding the said modification in the bonus scheme of the company, this court held that this was not a profit bonus scheme but was a genuine production incentive bonus scheme as the Production Bonus to be paid to the workmen was directly linked with the extra output furnished by them by their own efforts earn such nouns. Thus in each case payment of bonus cannot be of a fixed or proven nature having on nexus with the quantity of extra output produced by them. As in the present case the scheme relied on by the appellants does not fulfil this legal test it does not attract the exception (ii) to Section 2(b). It remains in the realm of basic extra wage. The decision rendered by learned Single Judge of the High Court as confirmed by the Division Bench decision, cannot, therefore be found fault with. The submission of learned counsel for the appellants that in the scheme in question there was no compulsion for the workman to put in extra work and the management could not compel him to do extra work not can it allege any misconduct on the part of such workman who does not want to do excess work cannot be of any avail to the learned counsel for the appellants as even if this criteria may be common to the present scheme as well as the genuine Production Bonus scheme, the further requirement of the scheme to become a genuine Production Bonus scheme, namely, that the payment by way of bonus to the concerned eligible workman should very in proportion to the extra output put up by him beyond the norm of output prescribed for him, is conspicuously absent in the present scheme, as seen earlier, and on the other hand, this requirement which is the very heart of a genuine Production Bonus scheme is missing in the present scheme and therefore, similarity on only one aspect between the genuine production incentive scheme and the present scheme, namely, that the workman could not have been compelled to carry out extra work pales into insignificance on the facts of the present case. Therefore, the second question has to be answered against the appellants and in favour of the respondent.

Point No.3 :

While granting special leave to appeal in this case, by an order dated 9th May, 1958 this court had stayed the recovery of the amounts of the Employees Provident Fund contribution for the past period, subject to furnishing a bank guarantee for payment of that sum. But no stay of recovery of future contribution was granted. As the appeals fail, the bank guarantee if furnished by the appellants, will be available for being encashed by the respondents towards the liability of the appellants for the contributions for the past period which had remained stayed by order of this court.

In the result, the appeals fail and are dismissed. Interim relief vacated. In the facts and circumstances of the case, there will be on order as to costs.