

(1962) 05 PAT CK 0003

In the Patna High Court

Case No : Misc. Judl. Case No"s. 617 and 730 to 738 of 1960

Sarat Chatterjee and Co. Private Ltd. and Others APPELLANT

Vs

Chairman, Central Government Industrial Tribunal and Others RESPONDENT

Date of Decision : 17-05-1962

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : AIR 1962 Patna 472 : (1963) 1 LLJ 76

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Lalnarayan Sinha, A.N. Chatterjee and B.N. Sen, for the Appellant;
Ranen Roy, A.K. Mitter and Tara Kumar Das, for the Respondent

Final Decision : Allowed

Judgement

Untwalia, J.—The ten petitioners in these ten applications under Article 226 of the Constitution of India carry on business as stevedores in the port of Calcutta and are members of the Master Stevedores" Association. They all have obtained rule from this Court against the respondents to show cause as to why an appropriate writ or direction be not issued against the 1st respondent restraining him from exercising any jurisdiction in regard to an alleged industrial dispute referred to him by the Central Government u/s 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947). The 1st respondent was originally described by name as G. Palit Chairman, Central Government Industrial Tribunal, Dhanbad. At the commencement of the hearing, we were informed by the petitioners that Mr. G. Palit is dead and somebody else is the Chairman of the said Industrial Tribunal. We, therefore, by cur order dated 2-5-62 directed the deletion of the name of Mr. G. Palit as it was not necessary to describe the 1st respondent by name, as a result of which the 1st-respondent now is the Chairman of the Central Government Industrial Tribunal, Dhanbad. Respondents 2 to 4 are the various registered Trade Unions of the dock workers of Calcutta Port.

2. Annexure "C" to the petition in Miscellaneous Judicial Case 617 of 1960 is a

copy of the notification dated the 10th of February, 1960, issued by the Government of India referring the alleged industrial dispute to the Industrial Tribunal, Dhanbad, for adjudication. It reads thus:

"Whereas the Central Government is of opinion that an industrial dispute exists between the employers mentioned in Schedule I hereto annexed and their workmen in respect of the matters specified in Schedule II hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby refers the-said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted u/s 7-A of the said Act.

SCHEDULE I.

1. Messrs. Balailal Mookherjee and Company, Wardley House, 25, Swallow Lane, Calcutta.
2. Messrs. Baney Madhav Mookherjee and Company, 74, Bentink Street, Calcutta.
3. Messrs. B.C. Bose and Company, 22, Strand Road, Calcutta.
4. Messrs. Darabshaw B. Cursetjee Sons, (Private) Limited, 13, Barbourne Road, Calcutta-1.
5. Messrs. H. M. Coria and Son (Private) Limited, 35, Chittranjan Avenue, Calcutta-12.
6. Messrs. P. E. Davis and Company, Mezzanine Floor, 18, Strand Road, Calcutta.
7. Messrs. Keshavlal P. Govsia, 24, Strand Road, Calcutta.
8. Messrs. A. C. Roy and Company (Private) Limited, 5, Mission Row, Calcutta.
9. Messrs. Santos Chandra Banerjee and Sons (Private) Limited, 7, Swallow Lane, Calcutta.
10. Messrs. Sarat Chatterjee and Company (Private) Limited, 3, Mangoe Lane, Calcutta.

SCHEDULE II.

1. Whether the monthly workmen employed by the employers specified in Schedule I in Calcutta Port are entitled to any bonus for the years 1957, 1958 and 1959? If so, what should be the quantum of the same?
2. Whether the monthly workmen aforesaid should have incremental scales of pay? If so, what should be the scales for different categories of such workmen?"

During the pendency of the matter before the Tribunal the petitioners took a

preliminary objection as to the validity of the reference and the jurisdiction of the Tribunal to decide the alleged dispute. Their main objection is that there cannot be any industrial dispute in respect of the two matters referred to in the order of reference (annexure "C") and the Tribunal is not competent to adjudicate upon them. This objection has been overruled by the 1st respondent by his order dated the 25th of July, 1960, a copy of which is annexure "N" to the petition in M. J. C. 617 of 1960. In the first instance, all the 10 firms named in the order of reference joined as petitioners in M. J. C. 617 of 1960. The said application was admitted and rule was issued by a Bench of this Court consisting of Misra and Dayal, JJ., on the 17th of August, 1960. Their Lordships directed that the said case would be treated as a petition on behalf of Sarat Chatterjee and Company Private Limited, petitioner No. 1, in that application, and the learned counsel for the petitioners undertook to file separate applications on behalf of the other 9 petitioners. Accordingly, M. J. C. 730 to 738 of 1960 were subsequently filed on behalf of the other petitioners and rules were issued in them also. Copies of the relevant papers have been annexed to the other nine applications also. For the sake of convenience, I shall refer to them as annexures to the main application in M. J. C. 617 of 1960.

3. In order to appreciate and decide the point involved in these cases, it is necessary to understand the nature of the business of stevedore or stevedoring firms and the scheme under which dock workers are employed by them. "Dock worker" is defined in Section 2 (b) of the Dock Workers (Regulation of Employment) Act, 1948 (Act IX of 1948), hereinafter referred to as the Act, as such:-

" "Dock worker" means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading movement or storage of cargoes, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port."

According to Section 2 (c), " employer" in relation to a dock worker means "the person by whom he is employed or to be employed as aforesaid." A "stevedore", according to the dictionary meaning of the word is a man employed in loading and unloading ship. With reference to the definitions aforesaid and the dictionary meaning of the word "stevedore", it can be said that a stevedore or a stevedoring firm is a sort of labour contractor supplying and engaging labour for the work of loading and unloading ships or other vessels and doing all other acts in connection thereto. u/s 3 of the Act, "provision may be made by a scheme for the registration of dock workers with a view to ensuring greater regularity of employment and for regulating the employment of dock workers, whether registered or not, in a port," and Sub-section (2) of Section 3 provides.

"In particular, a scheme may provide-

xxx (d) for regulating the employment of dock workers, whether registered or not, and the terms and conditions of such employment, including rates of

remuneration, hours of work and conditions as to holidays and pay in respect thereof;

XXX (i) for the manner in which, and the persons by whom, the cost of operating the scheme is to be defrayed;

(j) for constituting whether as a body corporate or otherwise the authority to be responsible for the administration of the scheme;

(k) for such incidental and supplementary matters as may be necessary or expedient for the purposes of the scheme."

Section 4 of the Act empowers the Government to make one or more schemes for port or group of ports and to add to and amend, vary or revoke any scheme made by it. The constitution of the Advisory Committee is provided for in Section 5 of the Act, according to which, the members of the Advisory Committee to advise upon such matters arising out of the administration of the Act or the scheme made thereunder are to be appointed by the Government and the Advisory Committee shall include an equal number of members representing (i) the Government, (ii) the dock workers and (iii) the employers of dock workers. Various schemes, more or less,--similar in nature--have been made for the ports of Calcutta, Bombay and Madras. In these cases, we are concerned with the Dock Workers (Regulation of Employment) Scheme, 1956, for the port of Calcutta, hereinafter referred to as the Scheme. Clause 2 of the Scheme says -

"(1) The objects of the Scheme are to ensure greater regularity of employment for dock workers and to secure that an adequate number of dock workers is available for the efficient performance of dock work.

(2) The Scheme relates to the Port of Calcutta and applies to the classes or descriptions of dock work and dock workers set out in Schedule I:

Provided that the Scheme shall not apply to any dock worker unless he is employed or registered for employment as a dock worker.

(3) The scheme shall apply to registered dock workers and registered employers."

Under Clause 4, the Central Government is empowered to constitute a Board to be called the Calcutta Dock Labour Board (hereinafter to be referred to as the Board) which shall be responsible for the administration of the Scheme. The Board shall be a body corporate and shall consist of not less than 12 members to be appointed by the Central Government and shall include an equal number of members representing (i) the Central Government, (ii) the Dock Workers and (iii) the employers of dock workers and shipping companies. An administrative body is to be appointed under Clause 5 for the purpose of carrying on day-to-day administration of the scheme. The functions of the Board are enumerated in Clause 7. It is provided in Clause 8 that-

"The Board in meeting shall be responsible for dealings with all matters of policy and in particular may-

XXX (f) determine the wages, allowances and other conditions of service and refix the guaranteed minimum wages in a month after annual review;"

Clause 15 of the Scheme makes provisions for the maintenance of register for employers and for workers. The classification of workers in registers is mentioned in Clause 16. Under the various other clauses of the Scheme, reference to some of which I would be making hereinafter, it would be noticed that there is a common pool known as reserve pool of registered dock workers who are available for work and who are not for the time being in the employment of a registered employer or a group of dock employers as monthly workers (vide Sub-clause (p) of Clause (3). "Daily worker", according to Sub-clause (f) of Clause 3, means a registered dock worker who is not a monthly worker. A "monthly worker", according to Sub-clause (k) of Clause 3, means a registered dock worker who is engaged by a registered employer or a group of such employers on monthly basis under a contract which requires for its termination at least one month's notice on either side. Clause 19 of the Scheme deals with promotion and transfer of workers.

Clause 28 dealing with the employment of workers says-

"(1) A monthly worker of a particular category attached to a registered employer or a group of employers shall be entitled to be employed for work in that category by that employer or group of employers in preference to any worker of the same category in the Reserve Pool.

(2) If the number of workers on the monthly register in a particular category is not sufficient for the work available the workers on the Reserve Pool Register in that category shall be employed.

(3) A monthly worker of one employer or a group of employers shall not be employed by another employer or group of employers except with the previous approval of the Chairman or the Deputy Chairman."

Clause 31 guarantees minimum wages in a month to a worker in the reserve pool register for at least 12 days at the wage rate inclusive of dearness allowance as prescribed by the Board appropriate to the category to which he permanently belongs, even though no work is found for him for the minimum number of twelve days in a month. Clauses 37 and 38 enumerate the obligations of registered dock workers and employers respectively. Sub-clause (2) of Clause 37 says-

"A registered dock worker in the Reserve Pool who is available for work shall be deemed to be in the employment of the Board."

Sub-clause (3) of Clause 37 prohibits a registered dock worker in the Reserve Pool who is available for work from engaging himself for employment under a registered employer unless he is allocated to that employer by the Administrative Body. Under Sub-clause (5) of Clause 38, the two obligations besides others of a registered employer are-

"(i) A registered employer shall pay to the Administrative Body in such manner and at such times as the Board may direct the levy payable under Clause 52 (1) and the gross wages due to daily workers.

(ii) A registered employer shall make payments as contributions to the Dock Worker's Welfare Fund under Clause 54."

Under Clause 39, restrictions on employment are provided for, according to which, no person other than a registered employer shall employ any worker on dock work nor shall a registered employer engage for employment or employ a worker on dock work unless that worker is a registered dock worker. I shall now quote Clause 41, which is the most important clause for the determination of the point at issue: -

"41. Wages, allowances and other conditions of service of certain classes of workers.--Unless otherwise specifically provided for in the Scheme, it shall be an implied condition of the contract between a registered dock worker (whether in the Reserve Pool or on the monthly register) not being a worker to whom the provisions of Clause 42 apply, and a registered employer that-

(a) the rates of wages, allowances and overtime, hours of work, rest intervals, holidays and pay in respect thereof and other conditions of service shall be such as may be prescribed by the Board for each category of workers from time to time, and

(b) the fixation of wage periods, time for payment of wages and deductions from wages shall be in accordance with the provisions of the payment of Wages Act, 1936."

Clause 41, is general and Clause 42 makes some provisions for the special type of workers enumerated therein. Although in these cases we are concerned with the special type of workers, but the reference to the general provision in Clause 41 will be sufficient as the provision with which we are concerned in this case is the same in Clause 42. By Sub-clause (1) of Clause 52 dealing with the cost of operating the Scheme it is provided -

"The cost of operating the Scheme shall be defrayed by payments made by registered employers to the Board. Every registered employer shall pay to the Board such amount by way of levy in respect of Reserve Pool workers together with and at the same time as the payment of gross wages due from him under Clause 38 (5) (i), as the Board may, from time to time, prescribe by a written notice to registered employers. The Board may also require any registered employer to pay such amount by way of levy in respect of monthly workers at such rate as it may determine."

Clause 54 deals with the Dock Workers Welfare Fund and it says:-

"Cost of amenities, welfare and health measures and recreation facilities for registered workers shall be met from a separate fund called Dock Workers

Welfare Fund which shall be maintained by the Board. Contributions to this Fund shall be made by all registered employers at such rate as may be determined by the Board. The Board shall frame rules for contributions to, maintenance and operation of the Fund."

4. It is thus clear that the Board is an autonomous body competent to determine and prescribe the wages, allowances and other conditions of service of the dock workers. It can deal with almost all matters of importance connected with the employment and service of the dock workers. The Scheme is a self-contained one. The whole purport of the Scheme seems to be that the entire body of dock workers should be under the control and supervision of the Board. The various registered employers are allocated monthly workers by the Administrative Body, and they are subject to transfer from one stevedoring firm to another. A large number of daily workers are engaged by the stevedoring firms and under Clause 38 (5) (i) of the Scheme the gross wages due to daily workers are to be paid by the registered employer to the Administrative Body. The workers in the reserve pool are considered to be the employees of the Board. They are guaranteed minimum wages. In respect of such workers, under Clause 53, the Board is to frame and operate rules provided for contributory Provident Fund and the registered employers are to do the same in respect of their monthly workers. The cost of operating the Scheme is to be met and contributions to the Workers Welfare Fund are to be made by the registered employers. In this background, there does not seem to be any scope to think that the monthly dock workers employed by the petitioners are entitled to any bonus or to have incremental scales of pay. Even if they are, the question has to be raised before, and decided by, the Board itself. In my opinion, there is no scope for taking the view that the two matters referred to above can be the matters of industrial dispute in respect of which reference can be made to and adjudication can be made by the Industrial Tribunal.

5. It is manifest that incremental scales of pay are included in the terms of wages, allowances and other conditions of service within the meaning of Clauses 8 (f) and 41 of the Scheme. This was not disputed on behalf of respondents 2 to 4 on whose behalf arguments were advanced before us; nobody appeared on behalf of respondent No. 1. Under Clause 41, it is mandatory that the rates of wages, allowances, etc., and other conditions of service shall be such as may be prescribed by the Board for each category of workers from time to time, and it shall be an implied condition of contract between registered dock workers and registered employers that they shall be such as may be prescribed by the Board. It is not subject to variation by an express contract to the contrary between the parties, be it for the benefit or to the detriment of the workers. This being the position, it is clear that there can be no industrial dispute between the registered dock employers and their registered monthly workmen as to whether the latter are entitled to have incremental scale of wages. Such claim, if possible under the Scheme, has got to be looked into and determined by the Board itself and the Industrial Tribunal on a reference by the Government is not competent and has

no jurisdiction to adjudicate upon the alleged industrial dispute.

I would now like to consider the effect of the provision of Sub-clause (o) of Clause 8 of the Scheme which runs thus -

"The Board may

XXX (o) endeavour to settle disputes about which a request for adjudication has been made to the Central Government by the parties concerned and report to the Government the results of such endeavours".

and the argument advanced on behalf of the answering respondents with reference to the provisions of the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946). Sub-clause (o) of Clause 8 postulates that in spite of the Scheme there can be disputes for which a request for adjudication can be made to the Central Government by the parties concerned and the Government in its turn will have to refer the industrial dispute for adjudication by an appropriate tribunal. This position was conceded to by the learned Government Advocate who appeared for the petitioners. He submitted that the Act and the Scheme are not exhaustive enough to cover all kinds of industrial disputes and their settlement and adjudication by the statutory board or other bodies constituted thereunder. There may be certain types of industrial disputes in respect of which a responsibility has been cast on the Board to endeavour to settle them and report to the Government the results of such endeavours. On the failure of the board to bring about a settlement, steps can be taken by the Government for determination and adjudication of those disputes under the Industrial Disputes Act, 1947. By way of illustration, he pointed out a dispute between the employers and employees. But he contended that there can be no industrial dispute in regard to a matter which is within the exclusive jurisdiction of the Board to decide and determine, and in respect of which it is not open to the parties concerned to settle it by mutual agreement in contravention of the decision of the Board. In my opinion, the argument put forward on behalf of the petitioners is well founded and has got to be accepted. The provisions of Clause 8 (o) of the Scheme, therefore, cannot be called in aid of the answering respondents to enable me to hold that the disputes in question are industrial disputes which can be validly adjudicated upon by respondent No. 1.

6. Reliance was placed by Mr. Ranen Roy, learned advocate for respondent No. 3, whose argument was adopted by the learned Advocates for respondents 2 and 4, on the case of Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others, . In that case, the Standing Order in question in regard to retirement of the employees of the appellant company provided-

"Workmen shall retire from the service of the company on reaching the age of 55 years but the company may at its sole discretion offer an extension of service beyond this age to anybody".

A dispute was raised about the compulsory retirement of the workmen concerned

and, in fact, they had challenged the validity of the Standing Order itself. The learned Attorney-General put forward an argument on "behalf of the employer before the Supreme Court that the reference of the said dispute was bad in view of the provisions of Section 7 of Act XX of 1946 which made the Standing Orders binding on the employers and the employees.

This argument was repelled by Gajendragadkar, J., with reference to the provisions of the said Act, as they stood before the amending Act 36 of 1956, thus-

"The position then is that though the relevant Standing Order about the age of superannuation came into operation u/s 7 and was binding thereafter upon the employer and all his employees the right of the respondent to challenge the validity or propriety of the standing order and to claim a suitable modification in it cannot be disputed. The standing orders certified under the Act no doubt become part of the terms of employment by operation of Section 7; but if an industrial dispute arises in respect of such orders and it is referred to the tribunal by the appropriate government, the tribunal has jurisdiction to deal with it on the merits."

In this connection, I may refer to the provisions of Section 4 of the said Act, as it stood before the amendment of 1956. It provided-

"Standing orders shall be certifiable under this Act if-

(a) provision is made therein, for every matter set out in the schedule which is applicable to the industrial establishment, and

(b) the standing orders are otherwise in conformity with the provisions of this Act; and it shall not be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders."

A vital change was brought about by the amending Act of 1956 in the last part of the section and it was provided-

"..... it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders".

Referring to this change in law, it was observed by his Lordship in the case of Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others, :

"There can be no doubt that before the amendment of 1956 if the employees wanted to challenge the reasonableness or fairness of any of the standing orders the only course open to them was to raise an industrial dispute in that matter. This position has been substantially altered by the two amendments to which we have just referred; but we are concerned in the present appeal with the state of the law as it prevailed prior to the said amendment and so it cannot be denied that the employees had a right to claim a modification of the standing orders on

the ground that they were unreasonable or unfair by raising an industrial dispute in that behalf. Subsequent to the amendment of the Act the employees can raise the same dispute before the certifying officer or before the appellate tribunal and may in a proper case apply for its modification u/s 10(2) of the Act."

In my opinion, this decision of the Supreme Court, instead of helping the respondents, helps the petitioners. I have said above, the matter concerning the conditions of service, wages or remuneration can be raised on behalf of the dock workers before the Board and it is competent to decide it. If that be so, the industrial tribunal will not be competent to force on the employer or the workmen its decision against that of the Board or in modification of it.

7. The question of bonus has presented some difficulty in this case, as it was argued by Mr. Ranen Roy that neither Clause 8 (f) nor Clause 41 covers the claim of bonus made on behalf of the workers. In *Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur*, it has been held that the term "bonus" is applied to a cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attendance and efficiency being attained. Bonus is not a deferred wage. Bonus, therefore, strictly speaking, is not wage. But I shall presently show that it is neither a gratuitous reward nor an ex gratia payment depending upon the sweet will of the employer. It is a special type of payment which under certain conditions can be claimed, as a matter of right, by the workmen and yet it is not wage. I am, however, of the opinion that considering the scheme of the Act and the Scheme as a whole either the dock workers are not entitled to any bonus or, if entitled, the Act and the Scheme are such as to include the claim of bonus also within the provisions of Section 3(2)(d) of the Act and Clauses 8 (f) and 41 of the scheme.

8. In the *Muir Mills*" case, of the Supreme Court (*Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur*, , just referred to, it has been observed by Bhagwati, J. at page 996 (of SCR) : (at p. 172 of AIR) :"

"The word "bonus" has however acquired a secondary meaning in the sphere of industrial relations. It is classified amongst the methods of wage payment. It has been used specially in the United States of America to designate an award in addition to the contractual wage. It is usually intended as a stimulus to extra effort but sometimes represents the desire of the employer to share with his workers the fruits of their common enterprise.

XXX This imports the conception that even though the payment be not strictly due to the recipient nor legally enforceable by him, a claim to the same may be laid by the employee under certain conditions and if such claim is entertained either by an agreement with the employer or by adjudication before a properly constituted Tribunal as on an industrial dispute arising, the same would ripen into a legally enforceable claim".

I would like to re-quote the quotation in the decision of the Supreme Court from the case of *National Association of Local Government Officers v. Bolton*

Corporation (1943) AC 166 at p. 187:

"This payment, if made, cannot properly in my opinion be regarded as a mere gratuity. Though there is an element of bounty in it the bounty, if granted, is given for good reasons of national policy..... I do not see why this does not fall within the definition of trade dispute just as much as a dispute as to the rate of wages or salary."

If that be so, it is obvious that the dispute as to bonus is "just as much as a dispute as to the rate of wages or salary". I find no sufficient reason to take the view that under the Scheme the Board is not competent to consider and decide the dispute as to bonus when it is competent to decide as to rate of wages, remuneration and conditions of service. In the case of Lipton Limited and Another Vs. Their Employees, , S.K. Das, J. has pointed out at page 686 the distinction between bonus and wages in these terms :

"Bonus comes out of profits and can claim no priority over dividend or other prior charges; bonus is paid if after meeting prior charges, there is an available surplus. Wages stand on a somewhat different footing; wages primarily rest on contract and are determined on a long term basis and are not necessarily dependent on profits made in a particular year".

In The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka Vs. Its Workmen and Another, Gajendragadkar J. has said at page 985 :

"We have already noticed that the formula for awarding bonus to workmen is based on two considerations; first that labour is entitled to claim a share in the trading profits of the industry because it has partially contributed to the same; and second that labour is entitled to claim that the gap between its actual wage and the living wage should within reasonable limits be filled up. The concept of labour's contribution to the profits of the industry has reference to the contribution made by the employer and the workmen taken together as a class; and so it would not be relevant to inquire which section of labour has contributed to what share of profits. The broad idea underlying this concept is that the capital invested by the employer and labour contributed by workmen jointly produce the profits of an industry. This does not necessarily mean that, in the industry in question, labour must actually manufacture or produce goods, though, in the case of manufacture and production of goods contribution of labour is patent and obvious. In the Burma-Shell Oil Storage and Distributing Co. of India Ltd. v. Their Workmen 1953 2 L LJ 246 (LATI-Bom), the Labour Appellate Tribunal rejected the employer's claim that, since workmen employed by them did not manufacture or produce any goods but merely assisted them in the distribution of oil, they were not entitled to claim any bonus under the formula. "It is wrong to say", observed the Labour Appellate Tribunal, "that because the employees of these oil companies merely market the oil they have not earned the right to any bonus". It was also pointed out that the workmen had to perform duties of various intensity for marketing an article of public utility, and in

that sense they contribute to production according to the concept of economists".

9. In the background of the pronouncements of the Supreme Court as to what really is the nature of the claim of bonus, it is first to be noticed that the dock workers in the reserve pool who under the scheme are deemed to be under the employment of the Board cannot possibly claim any bonus as the Board is not meant to earn any profit by their employment; its function is to guarantee their employment, pay them minimum wages, look after their welfare and deal with their provident fund and gratuity. A large number of daily workers, who are employed by the registered employers and paid through the Board, cannot have any claim to bonus. The question has arisen with reference to the monthly workers of the petitioners. The nature of the work of stevedores, as I have said above, is more or less akin to that of labour contractors. They take work from their monthly workers, pay their wages as fixed by the Board and receive payments on a contracted and consolidated basis from the shipping companies for doing their work of loading or unloading. It is no doubt true that in the said operation the registered employers may make extra profits and it can be said on behalf of the workers that they have also contributed in the earning of that extra profit. Nonetheless, the case of stevedores is different from that of the *Burma Shell Oil Storage and Distributing Co. of India Ltd.* 1953 2 L LJ 246 (LATI-Bom) referred to in the passage quoted above from the judgment of Gajendragadkar J. in the case reported in *The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka Vs. Its Workmen and Another*, .

The only difference between a "daily worker" and a "monthly worker" within the meaning of Sub-clauses (f) and (k) of Clause 3 of the Scheme seems to be that the latter is engaged by a registered employer on a monthly basis under a contract which requires for its termination at least one month's notice on either side. On termination of his service by a particular registered employer, the registered worker does not cease to be a registered worker. He goes in the reserve pool and becomes an employee of the Board which has got to find out employment for him and to pay him the minimum wages for at least 12 days in a month. Such variations of service and transfers are often possible in the case of dock workers. In such a situation, it seems to me that the Act and the Scheme do not contemplate payment of any bonus to the monthly worker of a particular registered employer. If that were not so, by a specific provision in the Act or the Scheme the Board must have been empowered to deal with and determine the question of bonus also. Even assuming that such a claim can be made on behalf of the workers, there is no doubt in my mind that the Board is the competent authority to deal with such a claim under its power under Clauses 8 (f) and 41 of the Scheme. Even if the said provisions of the Scheme are not wide enough to cover the question of bonus and if the Government be of the view that such a claim can and should be entertained on behalf of the dock workers, it is competent enough u/s 4 of the Act to amend or vary the scheme and make provision for it. But, in the present set of things as provided for in the scheme, I am of the view that there cannot be any industrial dispute in regard to the claim

of bonus made on behalf of the monthly dock workers and hence the Tribunal is not competent to decide the said question referred to it for its adjudication.

10. In the result, I hold that the order of the Chairman of the Industrial Tribunal, Dhanbad (respondent No. 1) dated the 25th July, 1960, taking a view contrary to the one expressed by me above is bad and erroneous in law. I allow all these applications and direct that a writ in the nature of prohibition be issued restraining respondent No. 1 from proceeding with the reference in question. In the circumstances of the case, I would make no order as to cost.

Ramaswami, C. J.

11. I agree.