to acquire a wider meaning and means knitwear. "Topas" and mufflers are knitted garments and, as such, would fall in the category of hosiery goods. Reference in that decision has been made to the earlier unreported decision of that Court in *Ram Lal and Brothers v. Commissioner of Sales Tax, U. P.* in which it has been held that "hosiery" means an underwear or underclothing, i.e., articles which are used next to the skin. The Allahabad High Court in that decision has also referred to the decision of the Rajasthen High Court in *Jaipur Hosiery Mills v. State of Rajasthan*, (1967) 19 Sales Tax Cases 416. The Rajasthen High Court has in that decision held that "hosiery" means machine-knitted garments.

17. We are, therefore, not impressed by thearguments which Mr. Vakil has raised before us. We are of the opinion that "Banians" and "Jangias" which are "articles of hosiery" are statutorily exempted from payment of excise duty under Item 22D and, therefore, do not attract any provisions of the Central Excises and Salt Act, 1944, and we declare accordingly.

18. In some of these petitions, applications for amendment have been made. The principal contention which the petitioners seek to raise by the proposed amendments relates to violation of Article 14 of the Constitution. In light of the view which we have expressed, it is not necessary to grant the proposed amendments.

19. In the result, all the petitions succeed. It is declared in each of the cases that "articles of hosiery" in or in relation to the manufacture of which any process is ordinarily carried on "with the aid of power" are exempted from the provisions of the Central Excises and Salt Act, 1944. It is not in dispute before us that all the petitioners have been manufacturing "Jangias" and "Banians" "with the aid of power." There fore, the impugned notices are quashed. Rule is made absolute in each case with casts. In light of the reasons which we have stated, all applications for amendment are rejected.

Petitions allowed.

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SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice S. H. Sheth and
the Hon'ble Mr. Justice G. T. Nanavati.

F.M. KOLIA v. MEMBER, INDUSTRIAL TRIBUNAL,
AHMEDABAD & ANR.*

Payment of Bonus Act (XXI of 1965) - Sec. 2(21) - Meaning of the phrase 'Salary or Wage' - Retaining allowance paid to seasonal worker during off-season - Such allowance is pay within the meaning of definition.

Retention allowance is a remuneration on a lower scale which is paid to workmen by his employer during the off-season. It is not an incentive to attract the workmen to return to work when the next crushing season starts. A workman may not return to work and may take up some other job or employment. The payment of retention allowance to its workmen during the off-season when there is no work .

*Decided on 28-11-1900. Spl. C.A.No. 2003 of 1980 under Art. 226 of the Constitution praying to quash and set aside the award of the Industrial Court etc. etc

and when the factory is not working clearly shows that it is the employer who is eager to retain their services for the next crushing season rahter then the workmen being eager to return to work. Secondly, bearing in mind the basic proposition that the company retains the services of its workmen during the period of forced idleness in order that they may be available when the next crushing season starts, it must be concluded that relationship of employer and employee subsists between the company and its workmen during the off season. (Para 7)

Retention allowance is the "basic wage" on a diminished scale which the employer pays to his workmen during the off-season. It is not an allowance because it is not paid in addition to basic salary or wage. Therefore, it cannot be anything else but remuneration on a diminished scale. Merely because it is called an allowance, it does not attain the character of an allowance in the sense that it is a payment made in addition to basic wages. (Para 9)

Therefore, retention allowance is one of the express terms of employment between the compiny and its workmen and is, therefore, payable. It is payable, not for the "work done in such employment" but it is payable to a workman "in respect of his employment." The definition of Salary or 'age given in sec. 2(21) of the Payment of Bonus Act, is wide enough to cover payment which is made during an off-season for retaining the services of a workman. Therefore, all ingredients of sec. 2(21) are satisfied in so far as the retention allownace is concerned. (Para 10)

The Management of Shri Chalthen Vibhag Khand Udyog Sahakari Mandli Ltd. v. G. S. Barot & Anr.[1]. referred to.

Amba Prasad v. Jaswant Sagar Mills Ltd.[2], dissented from.

T. C. Ponnuswamy v. Labour Court, Coimbatore[3], referred to.

F. M. Kolia, Petitioner in person.

K. S. Nanavaty, for Respondent No, 2.

Respondent No. 1 served.

S. H. SHETH, J. This petition is directed against the award made by the Industrial Court, Gujarat, in Reference No. (1C) 69 of 1980 under sec. 73A of the Bombay Industrial Relations Act, 1945, The facts of the case, briefly stated, are as under:

2. The Chalthen Kamdar Mandal, the petitioner, served upon the company, respondent No. 2, a notice of change in which they demanded that for the purpose of payment of bonus to the workmen employed by respondent No. 2 company, rentention allowance should be regarded as remuneration or wages. There were conciliation proceedings between the parties which failed. Therefore, reference of the dispute was made to the Industrial Court under sec. 73A of the Bombay Industrial Relations Act, 1946. The Indstrial Court by its award dated 11th July 1980 held that retention allowance was not a remuneration and that, therefore, it could not be included in the wages for the purpose of payment of bonus under the Payment of Bonus Act, 1965. It is that award which is challenged in this petition by the workmen's Union.

3. The nature of retention allowancs is as follows. Respondent No. 2 runs a seasonal factory which crushes sugarcane and produces sugar. It does not work for all the twelve monthe in a vear. There is an off-season during the year during which the factory remains closed. For this off-season during which the workmen suffer forced idleness, full wages are not paid. There are several categories of workmen employed by respondent No. 2 company. There are unskilled workmen who are paid 10% of basic wages and dearness allowance as retention allowance during the off-

1. A.I.R. 1980. S.C. 31 2. (1966), 2 L.L.J. 702 3. (1970) 2 L.L.J. 507

season. The second category consists of semi-skilled workmen who are paid 25% of basic wages and dearness allowance during the off-season. The rest are paid 50% of basic wages and dearness allowance during the off-season. The rest include skilled workmen, Class C, Class B, Class A and Class A/1 and supervisory staff, Class C, Class B, Class A/2 and Class A/1.

4. The Tribunal in its award has tried to amplify the nature and character of retention allowance. It has made the following obsevations. During the off-season, workmen are not required. Therefore, they are not retained. Therefore, they are discharged. The Tribunal does not appear to be correct in saying that during the off-season, the workmen are discharged. We shall revert to it a little later. Workmen in sugar factory require some sort of special skill. Therefore, if they return to the factory after expiry of the off-season, it helps the production. Workmen in sugar factories in Gujarat generally come from Uttar Pradesh. During the off-season, they engage themselves in different occupations. Retention allowance is a sort of incentive which is offered to the workmen to attract them to return to the factory after the expiry of the off season The Industrial Court has further observed that the word "retaining" itself suggests that the workmen are retained in service for the next season. We are taking note of this observation because retention of a workman for the next season is inconsistent with his discharge during the off-season. Both these observation have been made by the Industrial Court in its award. They appear to us to be contadictory. Retention allowance is paid to a workman, if he reports to duty during the next season. He is actually paid after he completes work for about 40 days during the next season. From these facts, the Industrial Court has drawn an inference that it is not a deferred wage. This is the nature of retention allowance which is paid by respondent No. 2 company to its workmen during the off-season. This allowance is paid in pursuance of the report of the Second Central Wage Board on sugar industry. If is not necessary for us to make a detailed reference to the report of the Second Central Wage Board because between this very company and its workmen, there was an industrial dispute which went to the Supreme Court. The decision is reported in The Management of Shri Chalthen Vibhag Khand Udyog Sahakari Mandli Ltd, v. G. S. Barot and Another, AIR 1980 S. C. 31. The contentions which were raised in that decision indeed reiterated the industrial dispute between the parties but they did not directly touch the question of retention allowance. However, it is necessary to refer to the observations which the Supreme Court has made in paragraph 27 of the report. In regard to the retention allowance payable to unskilled workmen, this is what has been observed in that paragraph : "Regarding the award relating to the retention allowance of the unskilled workers at 10% of the basic wage and the dearness allowance payable during the crushing season, it was not challenged before the High Court." The next observation which the Supreme Court has made in that paragraph is as follows :So far as the increment of the graded dearness allowance from Rs. 21 to Rs. 40 from the date of the award and the retention allowance at 10% of the basic wage and dearness allowance

payable during the crushing season to the unskilled workers is concerned, it is confirmed." This decision makes it clear beyond all doubts that retention allowance is paid by respondent No. 2 company to its workmen under the award made in that behalf by the Industrial Court. In so far as the award regarding the retention allowance is concerned, it was not challenged. Therefore, payment of retention allowance during the off-season is now a statutory obligation of respondent No. 2 company and is a condition of service for its workmen.

5. The next question which arises for our consideration is whether retention allowance falls within the definition of the expression -'salary or wage" given in the Payment of Bonus Act, 1965 so as to attract payment of bonus in the context thereof under sec. 10 of the Act. The obligation to pay bonus to the workmen has been created for employers under sec. 10. Under sec. 8, every employee has been rendered eligible for being paid bonus. Sec. 2(21) of the Act defines "salary or wage" as follows:

> "(21) "salary or wage" means all remuneration (other then remuneration in respect of overtime work) capable of being expressed in terms of money which would, if the terms of employment, express or implied, were fulfilled, be payable to any employee in respect of his employment or of work done in such employment and includes 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, but does not include-
>
> (i) any other allowance which the employee is for the time being entitled to;
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> (ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
>
> (iii) any travelling concession;
>
> (iv) any bonus including incentive, production and attendance bonus;
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> (v) any contribution paid or payable by the employer under any law for the time being in force:
>
> (vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;
>
> (vii) any commission payable to the employee.
>
> *Explanation*- Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee."

In light of this long definition of "salary or wage", what is the nature of retention allowance which respondent No. 2 company pays to its workmen during the off season under the force of an industrial award? There is no doubt or dispute about the fact that out of the seven exceptions which have been specified in sec. 2 (21), except the first exception, none other is indisputably attracted to retention allowance. The question, therefore, is whether retention allowance is a remuneration or is it an allowance "which the employee is for the time being entitled to"? In our opinion, one who is an employee is entitled to his salary or wages which will be his remuneration. A person may be paid allowance in addition to his salary or wages. It is difficult for us to imagine that an allowance can be paid in lieu of salary or wages. No person is employed merely on allowances. Therefore, in our opinion, an allowance is something which is paid either under the contract or under the law in addition to the

basic wages or basic salary of a workman. It is, therefore, clear that every employee is entitled, for rendering service to his employer, to his wages or salary. He may be paid allowance in addition to it if otherwise he is entitled to it.

6. The industrial Court was in error in making a loose observation in the impugned award that during the off-season the workmen are discharged. During an off-season, the workmen are not discharged. They are retained in service. Retention in service and discharge are two contradictory concepts and cannot go together. It is in this context that we have stated in earlier part of our judgment that the Tribunal has made contradictory observations in its impugned award. The very fact that retention allowance is paid to workmen clearly shows that services of workmen are retained. Therefore, the relationship of employer and employee subsists between them during that period. The only difference which is made during the off-season is that an employer is not in a position, on account of natural factors or other reasons, to provide work to his workmen. Therefore, on account of the inability of the employer, the workmen are forced to suffer idleness. However, even though the employer is not able to provide work to his workmen, he is eager not to do away with them during the off-season because he wants them, with their skill and experience, to return to work when the next crushing season commences.

7. Mr. Nanavaty who appears on behalf of respondent No. 2 company has argued that, during the off-season, the workmen are discharged. That is an incorrect submission which he has made to us. If they are discharged, they are not entitled to retention allowance. The very fact that retention allowance is paid to them, points in disputably to their being retained in service without work. Therefore, retention allowance is a remuneration on a lower scale which is paid to workmen by his employer during the off-season. It is not as incorrectly argued by Mr. Nanavaty, an incentive so attract the workmen to return to work when the next crushing season starts. A workman may not return to work and may take up some other job or ernloyment. The payment of retention allowance to its workmen during the off-season when there is no work and when the factory is not working clearly shows that it is the employer who is eager to retain their services for the next crushing season rather then the workmen being eager to return to work. Secondly bearing in mind the basic proposition that respondent No. 2 company retains the services of its workmen during the period of forced idleness in order that they may be available when the next crushing season starts, we must come to the conclusion that relationship of employer and employee subsists between respondent No. 2 company and its workmen during the off-season.

8. Mr. Nanavaty has further argued that remuneration means "basic wages" and not an "allowance". He is absolutely right in that submission of his. However, he forgets that an allowance does not become an allowance merely because it is so called. The Court has got to examine the

basic nature and character of the payment which an employee is paid. The nomenclature with which it is clothed by the employer is not at all important.

9. In the instant case, as observed above, retention allowance is the "basic wage" on a diminished scale which the employer pays to his workmen during the off-season. It is not an allowance because it is not paid in addition to basic salary or wage. This is the only payment which is made by the employer to his workmen during the off-season. There fore, it cannot be anything else but remuneration on a diminished scale. Merely because it is called an allowance, it does not attain the character of an allowance in the sense that it is a payment made in addition to basic wages.

10. Let us now turn to find out whether other ingredients of the de finition are satisfied. We have already observed that it is a remuneration. There is no doubt or dispute about the fact that it is capable of being expressed in terms of money. Wages of the workmen are fixed. Payment of 10% of wages or any other part of wages during the off-season is capable of being expressed in terms of money. Next, in terms of employ ment, express or implied, it must be payable to an employee in respect of his employment or work done in such employment. In the instant case, it is payable in terms of the award made by the Industrial Court in that behalf. Therefore, it is one of the express terms of employment between respon dent No. 2-cotnpany and its workman and is, therefore, payable. It is payable, not for the work done in such employment" but it is payable to a workman "in respect of his employment". The definition given in sec. 2 (21) of the Payment of Bonus Act, 1965 is wide enough to cover payment which is made during an off-season for retaining the services of a workman. In our opinion, therefore, all ingredients of sec. 2 (21) are satisfied in so far as the retention allowance is concerned.

11. Coming to the first exception, we find that it is not an allowance contemplated by that exception. We have given reasons to show why it is not an allowance. To repeat, it is not an allowance because it is not some thing which is paid in addition to the salary or wage. Secondly, it is not a payment to which an employee is ‘'for the time being entitled" under the terms of the industrial award made between the parties and but it is payable permanently, that is to say, so far as the award remains in force. After the expiry of the period of award or after it is terminated, a fresh dispute arises. Quantum then may be varied but not the basic liability to pay it. Therefore, it is not a payment to which an employee is "for the time being entitled". Therefore, it does not fall within the first exception specified in sec. 2 (21). If a workman who receives a retention allowance during the off-season does some other work in order to supplement his income, he does so for living and not because he has been discharged from service. It is difficult to imagine that a workman during off-season can live on 10%, 25% or 50% of his usual wages In that view of the matter, mere engagement of a workman in some occu pation or work for the purpose of supplementing his depleted income during the off-season does not detract whatsoever from his employment

under his original employer who has retained his services during the off-season so that they may be available when the next crushing season starts.

12. The petitioner who is the General Secretary of the Chalthen Kamdar Mandal and who has argued the case in person has tried to in-vite our attention to the definition of "wages" given in the Employees' Provident Funds Act, 1952 and the Payment of Wages Act, 1936. He has unnecessarily referred to these definitions because the concepts in those definitions are different from the one in sec. 2 (21) of the Payment of Bonus Act, 1965.

13. Mr. Nanavaty has further tried to argue that if we take the view that the relationship of an employer and an employee subsists between the parties during the off-season, it may give rise to claims for gratuity for the off-season under the Payment of Gratuity Act, 1972 and for com pensation under the Workmen's Compensation Act, 1923. Having posed this question before us, he did not examine it with reference to the Payment of Gratuity Act or the Workmen's Compensation Act or conditions of service in relation to seniority. He raised the contention the soundness of which he did not examine. Suffice it to say for the purpose of this case that what we decide in this case has relation only to the Payment of Bonus Act, 1965, and to no other Act. Payment of gratuity depends upon the provisions contained in the Payment of Gratuity Act, 1972. Claim to com pensation in case of an accident to a workman will be governed by the provisions of Workmen's Compensation Act, 1923. They have nothing to do with the Payment of Bonus Act, 1965.

14. Lastly, Mr. Nanavaty has invited our attention to two decisions, one of which is irrelevant for the purpose of the present case. The first decision is of *Allahabad High Court in Amba Prasad v. Jaswant Sugar Mills Ltd., Meerut and Others*, (1966), 2 Labour Law Journal 702. It was a case under the Payment of Wages Act, 1936. The question which arose in that case was whether, under the provisions of the Payment of Wages Act, "retaining allowance" which the employer had not paid to its workmen could be recovered through the Payment of Wages Authority. It was held by a Division Bench of that Court that retaining allowance was not 'Wages' within the meaning of sec. 2 (vi) of the Payment of Wages Act and that, therefore, the Payment of Wages Authority had no jurisdiction to order its payment. We are unable to concur in the view which Allahabad High Court has expressed. Firstly, Allahabad High Court was concerned with examining the definition of "Wages" given in sec. 2 (vi) of the Payment of Wages Act with which we are not concerned in the instant case. Secondly, we are unable to agree, on general interpretation, that retention allowance is not "Wages". In our opinion, they are "wages" on the diminished scale for the off-season during which the services of the workmen are retained. According to the Allahabad High Court, retention allowance is in the nature of compensation. With great respect to the learned Judges, we are unable to agree with them. In our view, the retention allowance is not in the nature of compensation payable to a workman during the off ason but it is 'basic wage' for retaining him for the next crushing season

15. The next decision to which he has invited our attention is in *T. C. Ponnuswamy v. Labour Court, Coimbatore and Another*, (1970) 2 Labour Law Journal 507. It was a case under the Payment of Bonus Act, 1965. The question which arose in that case was whether the value of uniforms and chappals could be said to be remuneration falling within the definition of "wages" given in the Payment of Bonus Act, 1965. The second question which arose was whether food allowance formed a part of "salary or wages" as defined in the Payment of Bonus Act, 1965. The facts of the case show that there was no evidence in that case to show that the allowances which the workmen claimed were payable under the terms of employment. In any case, the nature of allowances which were claimed in that case were fundamentally and basically different in character from the retention allowance which the workmen claimed in the instant case.

16. In the result, we allow the petition, quash the impugned award made by the Industrial Court and declare that bonus is payable under the Payment of Bonus Act, 1965, to the workmen on retention allowance which is paid to them for the off-season. Rule is made absolute with-costs.

Petition allowed.

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SUPREME COURT NOTES

Present : A. P. Sen & E. S. Venkataramiah, JJ.

MANAGING DIRECTOR, CHALTHAN VIBHAG SAHAKARI KHAND UDYOG, CHALTHAN v. GOVT. LABOUR OFFICER & ORS.*

Payment of Bonus Act (XXI of 1965) - Sec. 2(21) - Salary or Wage -Meaning thereof - Retaining allowance payable to seasonal workmen during off-season - Such allowance amounts to pay within the meaning of the definition.

Shri Chalthen Vibhag Khand Udyog Sahakarl Mandli Ltd. v. G.S. Barot[1], referred to.

F. M. Kolia v. Member, Industrial Tribunal[2], approved.

Retaining allowance paid to the workmen during the off-season falls within the substantive part of the definition of the expression 'salary or wage'. It undoubtedly is remuneration which would if the terms of employment, express or implied, were fulfilled, be payable to any employee in respect of his employment. The retaining allowance is a remuneration on a lower scale which is paid to the workmen by the management during the off-season for their forced idleness. The payment of such allowance by the management to its workmen during the off-season when there is no work and when the factory is not working, is indicative of the fact that it wants to retain their services for the next crushing season, 'the very fact that retaining allowance is paid to the workmen clearly shows that their services are retained, and therefore, the jural relationship of

*Decided on 4-2-1981. Spl. Leave Petition (Civil) No. 1122 of 1981 against the Judgment and Order dt. 28-11-1980 of the Gujarat High Court in Spl. C. A. No. 2003 of 1980.

1. (1979) 4 SCC 622. 2. XXII G. L. R. 541