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 Bharat Barrel &
 Drum Mfg. Co.
 (P) Ltd.

v.
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tax authorities assess as actual income-tax in a particular year; it is concerned with working out the Full Bench formula in accordance with its notional calculations and this is what has been done in this case. There is no ground therefore for interference with the award of bonus for this reason either.

We therefore dismiss the appeal, but in the circumstances pass no order as to costs.

Appeal dismissed.

B. N. ELIAS AND CO., LTD., EMPLOYEES'
 UNION AND OTHERS

v.

B. N. ELIAS & CO., LTD., AND OTHERS.

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

1960
 March 24.

Industrial Dispute—Bonus—Implied term of agreement or condition of service—Ex gratia payments—Customary bonus—Puja bonus.

Since 1942 the respondents had been making *ex gratia* payments to their employees (appellants) in addition to wages and salaries, but these were not regular and in 1956, no *ex gratia* payments were made at all. The appellants claimed that their right to be paid bonus had become an implied term of agreement or a condition of service and, at any rate, it should be paid as customary bonus, and relied on the case of *The Graham Trading Co. (India) Ltd. v. Its Workmen*, [1960] 1 S.C.R. 107. The evidence showed that though the payments were made from 1942 to 1952 it was made clear every time that the payments were made as *ex gratia*:

Held, (1) Where payments are made to workers *ex gratia* and are accepted as such, it is not possible to imply a term of service on the basis of an implied agreement to pay bonus.

(2) that there cannot be a customary payment of bonus between employer and employee where terms of service are governed by contract, express or implied, except where the bonus may be connected with a festival, whether Puja in Bengal or some other equally important festival in any other part of the country.

The Graham Trading Co. (India) Ltd. v. Its Workmen, [1960] 1 S.C.R. 107, explained.

(3) that for the year 1956 one month's basic wage should be paid as Puja bonus to the subordinate staff as it has become customary and traditional in the respondents' concerns.

CIVIL APPELLATE JURISDICTION: Civil Appeal
No. 121 of 1959.

1960

Appeal by special leave from the Award dated
June 3, 1957, of the Second Industrial Tribunal, West
Bengal.

*B. N. Elias & Co.
Ltd. Employees'
Union.*

v.

*N. C. Chatterjee, D. L. Sen Gupta and Dipak Datta
Choudhri*, for the appellants.

*B. N. Elias & Co.
Ltd.*

*C. K. Daphtary, Solicitor-General of India, H. N.
Sanyal, Additional Solicitor-General of India and
S. N. Mukherjee*, for the respondents.

1960. March 24. The Judgment of the Court was
delivered by

WANCHOO, J.—This appeal by special leave raises
the question of bonus. There was a dispute between
the workmen of *B. N. Elias & Co. Ltd.* (hereinafter
called the appellants) and their employers, *B. N. Elias
and Co. Ltd.* and others (hereinafter called the res-
pondents) with respect to bonus for the years 1954,
1955 and 1956. The case of the appellants was that
they were entitled to bonus as a condition of service
irrespective of profit or loss on the following scale:—

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I—Clerical staff.

- 1 month's basic pay as bonus in April,
- 1 month's basic pay as bonus in August,
- 1 month's basic pay as bonus in December.

II—Subordinate staff.

- 1 month's basic wages as bonus in April,
- 1 month's basic wages as bonus in August,
- 1 month's basic wages as bonus at Puja time,
- 1 month's basic wages as bonus in December.

According to the appellants this bonus was always
paid from 1942 to 1952. Later as there were some
disputes between the appellants and the respondents,
the respondents wanted to stop the payment of bonus
from 1953, though something less was paid that year.
In 1954 the amount of bonus was further reduced.
Consequently, a dispute was raised which was referred
by the Government of West Bengal in May 1956.
Subsequently another dispute was raised with respect
to the bonus for the years 1955 and 1956 and this
time it was claimed as a customary bonus or as a con-
dition of service payable at regular intervals of four

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months and at a uniform rate. Thereupon a consolidated reference was made by the Government of West Bengal in September 1956 with respect to all the three years, i. e., 1954, 1955 and 1956, to the same tribunal.

When the matter came up before the tribunal, the respondents contended that they were not in a prosperous condition and were unable to pay any further bonus besides what had already been paid for the years in dispute. It was admitted that since about 1942 the respondents had been making *ex gratia* payments to their employees in addition to wages and salaries. These payments were made at the rate of one month's basic wage each time but their number in the course of one year used to vary. At one time four *ex gratia* payments were made to clerical and subordinate staff but later the number of *ex gratia* payments was reduced for the clerical staff to three per year but it remained at four for the subordinate staff until the year 1952. As, however, the trading result in 1952 deteriorated as compared with the previous years, the respondents made only two *ex gratia* payments to clerical staff and three to subordinate staff for the year 1953. A dispute was then raised by the workmen with regard to that year but the Government refused to make a reference to the tribunal. In 1954 and 1955 two *ex gratia* payments were made to clerical staff and two to the subordinate staff. In 1956, no *ex gratia* payments were made at all. The respondents denied that these payments were made as a condition of service or as an implied term of agreement irrespective of profit or loss. They also denied that these were customary payments irrespective of profit and loss. It was alleged that they were truly and strictly *ex gratia* payments made by the respondents voluntarily out of goodwill in circumstances in which no tribunal would award a bonus. The respondents therefore resisted the claim for any further payment as bonus for these three years.

Before the tribunal, the appellants abandoned their claim for bonus on the basis of the Full Bench formula. They however pressed their claim on the

ground that bonus was payable as an implied condition of service and had also acquired the status of customary bonus. The tribunal, however, negatived the contention that the payment of bonus as claimed had become an implied condition of service. It also held that the case of the employees based on custom was not tenable. In consequence it refused to grant any further bonus for the years 1954 and 1955 beyond what the appellants had been already paid and rejected the claim for 1956 altogether.

Shri N. C. Chatterjee for the appellants has mainly pressed the claim for bonus on the ground that it is a customary bonus and relies on *The Graham Trading Co. (India) Ltd. v. Its Workmen* (1). Before we deal with this aspect of the matter we may shortly dispose of the claim based on an implied agreement or condition of service. The evidence shows that though payment was made uninterruptedly from 1942 to 1952 three times a year to the clerical staff and four times a year to the subordinate staff, it was made clear every time the payment was made that it was an *ex gratia* payment. Further the receipts given by the employees, a sample of which was produced, show that the bonus was accepted as *ex gratia* bonus. As is pointed in *The Graham Trading Co.* (1) it would not be possible to imply a term of service on the basis of an implied agreement when the payment was clearly made *ex gratia* and had even been accepted as such, as in this case. Therefore, the contention of the appellants that the bonus claimed by them has become an implied term of agreement or a condition of service must fail.

Our attention in this connection was drawn to a letter of appointment issued to one C. V. Thomas in which under the head "other allowance", the following appears—

"Equivalent to a month's salary every 4th month will be allowed after your confirmation in employment."

That is, however, an express term in the contract between the National Tobacco Company of India Limited (which is one of the respondents before us)

(1) [1960] 1 S.C.R. 107.

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and Thomas and cannot be a basis for a finding of an implied term of agreement to give bonus three times a year. Thomas may have a claim on the basis of this term of agreement between him and the company, about which we say nothing. Another letter of appointment also of National Tobacco Co. of India Limited with respect to one Ram Shankar Misra was referred to. In that letter, however, among the terms we find a term relating to bonus at the rate of Rs. 15 per month after confirmation. That is again an express term between that employee and the National Tobacco Co. of India Limited and cannot support the case of an implied term of agreement by which a month's bonus is paid thrice a year in April, August and December. The tribunal was therefore right in rejecting the contention based on the implied term of agreement or condition of service.

Turning now to the case of customary bonus which has been pressed before us on the authority of *The Graham Trading Co.* (1) we may point out that that was a case of a customary and traditional bonus payable at Puja which was a special festival of particular importance in Bengal. That case cannot be held to have laid down that there can be customary bonus as such unconnected with some festival. It is difficult to introduce a customary payment of bonus between employer and employee where terms of service are governed by contract, express or implied, except where the bonus may be connected with a festival whether Puja in Bengal or some other equally important festival in any other part of the country. The principles laid down in that case for governing customary and traditional bonus connected with a festival cannot in our opinion be extended to what may be called a customary bonus unconnected with any festival. We are therefore of opinion that the appellants having failed to prove (except in one matter with which we shall deal presently) that there was an implied agreement or condition of service for payment of bonus, they cannot ask for payment of any bonus on the basis of any customary payment unconnected with any festival.

(1) [1960] 1 S.C.R. 107

This brings us to one of the payments to subordinate staff which was "one month's basic wages as bonus at Puja time". It will be noticed that this payment to the subordinate staff at Puja time is in addition to the other payments which are common between the clerical and the subordinate staff. This payment of one month's basic wage as bonus at Puja appears to have continued uninterrupted from the time it started in 1942 or thereabout upto the time the dispute arose in 1954. The payment was invariably of one month's basic wage and it appears that it was paid even in a year of loss, vide Ex. E. We are therefore of opinion that the principles laid down in *The Graham Trading Co.* (1) apply to one month's Puja bonus payable to the subordinate staff and it should be held that this payment has become customary and traditional in the respondents' concerns when the dispute was raised for the first time in 1954. We have no doubt that if the judgment in *The Graham Trading Co.* (1) was available to the tribunal it would have held that one month's basic wage as bonus at Puja time to subordinate staff had become customary and traditional in the respondents' concerns. We therefore partly allow the appeal and hold that one month's basic wage as Puja bonus to the subordinate staff has become customary and traditional in the respondents' concerns and we order the respondents to pay that for the year 1956 for which no bonus whatsoever has been paid. The rest of the appeal fails and is hereby dismissed. In the circumstances we order the parties to bear their own costs.

Appeal allowed in part.

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