s. 23A for other purposes. This contention has no force.

The appeal is allowed, and the case is remitted to the High Court for deciding the question in the light of the observations in our decision in the *Raghuvanshi Mills case* (1). As the case is remanded, the costs of this appeal shall be paid by the respondent, but the costs in the High Court will abide the result.

Appeal allowed.

WORKMEN OF THE HERCULES INSURANCE CO., LTD.

v.

HERCULES INSURANCE CO., LTD., CALCUTTA

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

Industrial Dispute—Claim of bonus—General Insurance business—Validity of reference—Industrial Disputes Act, 1947 (14 of 1947), s. 10(1)—Insurance Act, 1938 (IV of 1938), s. 31A(1)(c), proviso (vii).

In view of the unqualified and absolute prohibition contained in s. 31A(1)(c) of the Insurance Act, 1938, against payment of bonus to the employees in general insurance business, the exception made by proviso (vii) to that section must be strictly confined to the limits prescribed by the said proviso.

The policy underlying the proviso clearly is to exclude the intervention of Industrial Tribunals and leave the question of payment of such bonus entirely to the discretion of the Central Government.

Consequently, where the workmen in general insurance business claimed bonus and the Central Government referred the dispute for adjudication to the Industrial Tribunal under s. 10(1) of the Industrial Disputes Act, 1947, and the Tribunal, on a preliminary objection under s. 31A(1)(c) of the Insurance Act, 1938, read with proviso (vii) thereof, held that the reference was invalid,

(1) [1961] 2 S.C.R. 978.

1960

Workmen of the Hercules Insurance Co., Ltd. v. *Hercules Insurance Co., Ltd., Calcutta*

Held, the decision of the Tribunal was correct and must be upheld.

The Central Bank of India v. *Their Workmen*, [1960] 1 S.C.R. 200, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 531 of 1959.

Appeal by special leave from the Award dated October 21, 1957 of the Central Government Industrial Tribunal, Dhanbad, in Reference No. 6 of 1957.

N. Dutta Mazumdar, G. N. Bhattacharjee and *B. P. Maheshwari*, for the appellants.

M. C. Setalvad, Attorney-General of India and *R. Gopalakrishnan*, for the respondent.

1960. December 7. The Judgment of the Court was delivered by

Gajendragadkar J. GAJENDRAGADKAR, J.—The short question of law which falls to be decided in the present appeal is whether a dispute raised by the employees of a General Insurance Company against their employer for payment of bonus in any particular year can be referred for adjudication by an Industrial Tribunal under s. 10(1) of the Industrial Disputes Act, 1947 (XIV of 1947). This question arises in this way. The workmen of the Hercules Insurance Co. Ltd. are the appellants and the Insurance Company is the respondent before us. On April 11, 1957, the Central Government referred the appellants' claim for bonus for the years 1954 and 1955 for adjudication to the Industrial Tribunal, Dhanbad, constituted under s. 7A of the Industrial Disputes Act, and this reference has been made under s. 10(1)(d) of the Act. Before the Tribunal the respondent urged a preliminary objection against the validity of the reference itself. Its case was that the payment of bonus by an Insurance Company is conditioned entirely by the relevant provisions of the Insurance Act, 1938 (IV of 1938), and that the said provisions did not justify the reference of a dispute in that behalf for adjudication by any Industrial Tribunal. This preliminary objection was based on the provisions of s. 31A(1) and proviso (vii) of the

Insurance Act. It was also urged by the respondent that having regard to the limitations imposed on the General Insurance Companies by s. 40C of the Insurance Act the claim for bonus made by the appellants could not be sustained. The Tribunal has upheld the preliminary objection thus raised by the respondent and held that the reference is invalid. Incidentally it has also considered the plea raised under s. 40C and has observed that the said plea is also well founded. In the result the Tribunal refused to entertain the reference and dismissed it accordingly. It is against this order of the Tribunal that the appellants have come to this Court by special leave.

It is common ground that the respondent has paid the appellants bonus equivalent to two months' basic wages for each of the two years 1954 and 1955. The appellants claim two months' basic wages as additional bonus for each of the two years under reference. It is their case that if the trading profits made by the respondent are ascertained from the respondent's balance sheet and the Full Bench formula is applied, it would appear that the respondent has in its hands a substantial amount of available surplus from which the additional bonus claimed by them can be awarded. Since the reference has been rejected on the preliminary ground the Tribunal has naturally not considered this aspect of the problem.

The preliminary objection raised by the respondent is founded on the relevant provisions of s. 31A of the Insurance Act (hereafter called the Act) and so we must now turn to the said provisions. Section 31A(1)(c) of the Act provides, inter alia, that notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, or in the articles of association of the insurer, if a company, or in any contract or agreement, no insurer shall after the expiry of one year from the commencement of the Insurance (Amendment) Act, 1950, be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus in respect of the

1960

Workmen of the Hercules Insurance Co., Ltd. v. Hercules Insurance Co., Ltd., Calcutta

Gajendragadkar J.

general insurance business of the insurer. Thus looking s. at 31A(1)(c) by itself without the proviso the position is absolutely at clear. The respondent cannot be directed to employ the appellants in any capacity so as to include in their remuneration a liability to pay bonus in respect of the general insurance business of the respondent. Bonus under the Industrial Disputes Act is not a part of wages, but the right to claim bonus which has been universally recognised by industrial adjudication in cases of employment falling under the said Act has now attained the status of a legal right. Bonus can be claimed as a matter of right provided of course by the application of the Full Bench formula it is shown that for the relevant year the employer has sufficient available surplus in hand. Therefore a claim for bonus made by the appellants in the present proceedings is a claim in respect of the general insurance business of the respondent, and if allowed it would add to the remuneration payable to them. In other words, bonus claimed by the appellants, if awarded, would, for the purpose of s. 31A (1)(c), be a part of their remuneration, and that is precisely what is prohibited by the said provision.

There are, however, certain exceptions to this general prohibition, and it is to one of these exceptions that we must now turn. Proviso (vii) to s. 31A (1)(c) lays down that nothing in this sub-section shall be deemed to prohibit—

"the payment of bonus in any year on a uniform basis to all salaried employees or any class of them by way of additional remuneration, such bonus, in the case of any employee, not exceeding in amount the equivalent of his salary for a period which, in the opinion of the Central Government, is reasonable having regard to the circumstances of the case."

This provision which constitutes an exception to the rule prescribed by s. 31A(1)(c) allows the payment of bonus to the employees of Insurance Companies subject to the condition specified by it. Bonus intended to be paid to such employees must not exceed in amount the equivalent of their salary for a period which the Central Government regards as reasonable.

The result of this provision appears to be that the Central Government has to consider the circumstances of each insurer and then decide whether any bonus should be paid by the insurer to its employees. If the financial position of the insurer is sufficiently satisfactory, the Central Government may decide to allow the insurer to pay bonus to its employees, and in that context the Central Government would prescribe the maximum within which the payment should be made. In no case can payment exceed the maximum prescribed by the Central Government, and in all cases the matter has to be considered by the Central Government and no other authority. Having regard to the scheme of the Act which purports to supervise and regulate the working of Insurance Companies the legislature thought that the payment of bonus by the Insurance Companies to their employees should normally be prohibited and its payment should be permitted subject to the over-riding control of the Central Government to prescribe the maximum in that behalf. If the Central Government decides that no bonus should be paid, no bonus can be paid by the insurer. If the Central Government decides that bonus should be paid but not beyond specified limit the insurer cannot exceed that limit. That, in our opinion, is the effect of proviso (vii) to s. 31A(1).

It is, however, urged that proviso (vii) merely enables the Central Government to prescribe the maximum. It does not take away the Central Government's authority to refer an industrial dispute in respect of bonus for adjudication under s. 10 of the Industrial Disputes Act. In this connection it is urged by Mr. Mazumdar that in some cases the Central Government may take the view that the financial position of the insurer justified the payment of bonus, but the quantum may be better left to the Industrial Tribunal. In such a case the Central Government should have authority to make the reference. Similarly it is urged that the Central Government may decide that within the maximum prescribed by it, bonus should be paid by an insurer, but the insurer

1960

Workmen of the Hercules Insurance Co., Ltd. v. *Hercules Insurance Co., Ltd., Calcutta*

Gajendragadkar J.

may not comply with the Central Government's decision and in that case the only way to make the Central Government's decision effective is to refer the matter to adjudication and enable the employees to obtain an award which can be executed. That is why the appellants contend that the enabling provision contained in proviso (vii) should not be construed to constitute a bar against the Central Government's power to act under s. 10(1) of the Industrial Disputes Act.

We are not impressed by this argument. In our opinion the policy of the relevant clause of the proviso is absolutely clear. Payment of bonus by insurers was intended by the legislature to be conditioned by the provisions contained in the said clause, and we feel no doubt or difficulty in reaching the conclusion that the intervention of the Industrial Tribunals was intended to be excluded and the matter was intended to be kept within the discretion of the Central Government so far as the payment of bonus by the insurers is concerned. Then, as to the argument that the Government directive issued under proviso (vii) may not be obeyed by any insurer, we do not think that such an event is likely to happen; but theoretically it is conceivable that an insurer may refuse to comply with the decision of the Government. In that case all we can say is that there is a lacuna left and the legislature may consider whether it is necessary to provide adequate remedy for making the Government decision binding and final. Having regard to the unqualified and absolute prohibition contained in s. 31A(1)(c) it seems to us difficult to hold that the payment of bonus to the employees of Insurance Companies is not absolutely conditioned by proviso (vii). In the absence of the said provision no bonus could have been claimed by Insurance employees, and so the effect of the said provision must be to limit the said right to the conditions prescribed by it. That is why we think that the Tribunal was right in coming to the conclusion that the reference made by the Central Government is invalid. The fact that the Central Government took the view that it could make such a reference

is hardly relevant in determining the scope and effect of the relevant provisions of the Act. This question must be considered on what we regard to be the fair construction of the relevant statutory provision, and as we have just indicated the construction of the relevant provision clearly supports the view taken by the Tribunal. Incidentally, it may be pointed out that in its award the Tribunal has referred to several other decisions of Industrial Tribunals which have taken the same view though there are one or two decisions which have upheld the validity of the reference without duly considering the effect of s. 31A(1).

In this connection we may refer to the decision of this court in *The Central Bank of India* v. *Their Workmen* (1), where a similar question has been considered. In that case the Court had to consider the effect of s. 10 of the Banking Companies Act, 1949, prior to its amendment in 1956. The said section, according to that decision, prohibited the grant of industrial bonus to bank employees inasmuch as such bonus is remuneration which takes the form of a share in the profits of a banking company. In dealing with the character of bonus in relation to remuneration specified by s. 10, S. K. Das, J., who spoke for the Court, observed that "bonus in the industrial sense as understood in our country does come out of the available surplus of profits, and when paid it fills the gap, wholly or in part, between the living wage and the actual wage. It is an addition to the wage in that sense, whether it be called contingent or supplementary. None the less, it is labour's share in the profits, and as it is a remuneration which takes the form of a share in profits, it comes within the mischief of s. 10 of the Banking Companies Act". Section 10 of the Banking Companies Act is comparable to s. 31A of the Insurance Act, and so this decision supports the view that we have taken about the effect of s. 31A(1)(c). We have already held that the payment of bonus would be an additional remuneration to the employees of Insurance Companies and it would be

(1) [1960] 1 S.C.R. 200.

1960

Workmen of the Hercules Insurance Co., Ltd. v. *Hercules Insurance Co., Ltd., Calcutta*

Gajendragadkar J.

bonus in respect of the general insurance business of the insurer. In view of our conclusion that the Tribunal was right in upholding the preliminary objection, we do not propose to consider the other argument which had been urged by the respondent before the Tribunal under s. 40C of the Act, and which the Tribunal has incidentally considered and accepted.

The result is that the appeal fails and is dismissed. There will be no order as to costs.

Appeal dismissed.