

H.P. STATE ELECTRICITY BOARD AND ANR. A

v.

RANJEET SINGH AND ORS.

(Civil Appeal No. 7056-7065 of 2001)

MARCH 5, 2008 B

(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

Industrial Disputes Act, 1947:

s.33-C(2) – Application by daily wagers claiming minimum bonus under Payment of Bonus Act – HELD: In case of pre-existing right there must be agreement by both sides about existence of such rights – If there is dis-agreement this has to be decided by the competent authority – The question of entitlement to bonus could not have been decided by the Labour Court – Since High Court has not decided primary issues of (i) applicability of s.33-C(2), (ii) jurisdiction of Labour Court to decide such a matter and (iii) applicability of Bonus Act to daily wagers, matter remitted to it for decision afresh. C D

The respondent-daily wagers filed applications u/s 33-C (2) of the Industrial Disputes Act, 1947 claiming minimum bonus under the Payment of Bonus Act, 1965. The Labour Court as also the High Court held in favour of the claimants. Aggrieved, the employer H.P. State Electricity Board filed the instant appeals. E F

Allowing the appeals, the Court

HELD: 1.1 The instant case belongs to claimant's right to relief which falls in category (i) as elaborated in *Central Inland's case . Further, the High Court seems to have lost sight of the fact that the Labour Court under the Industrial Disputes Act, 1947 can decide only the matters specified in Second Schedule thereto. "Bonus" appears as Item 5 in the Third Schedule. Therefore, the question of entitlement to bonus could not have been decided by** G H

A the Labour Court. In case of pre-existing rights there must
be agreement by both sides about existence of such
rights. If there is dis-agreement this has to be decided by
the competent authority. The stand that the expression
'bonus payable' relates to the quantum and not payability
B is also not correct. [para 14-15] [1122-E, F, G; 1123-A]

*Central Inland Water Transport Corporation Ltd. vs. The
Workmen and Anr. AIR 1974 SC 1604 – relied on.*

1.2 The primary issues before the High Court, besides
C applicability of s.33-C(2) of the Industrial Disputes Act,
1947, were that daily wagers could not get bonus, and
the Labour Court had no jurisdiction to adjudicate such a
matter. Stand of the appellants that Section 2(11) of the
Bonus Act is applicable only to persons who receive
D monthly salary, has also not been dealt with. Besides, the
claim was made for the period from 1977 to 1986, but the
application was filed long after in 1991. The High Court
has not considered these issues. The grievance is also
that in some of the cases there was no claim for any
E interest, but the Labour Court and the High Court wrongly
decided the entitlement of interest @ 12%. [para 3,6-8 and
16] [1117-G, H; 1118-A, B, E, F, G]

1.3 The matter is remitted to the High Court for
F considering (i) applicability of Section 33-C(2) of the Act,
(ii) the jurisdiction of the Labour Court to decide the matter;
and (iii) the applicability of the Bonus Act to daily wagers.
[para 16] [1123-A, B]

*U.P. State Road Transport Corporation vs. Birendra
Bhandari 2006(10) SCC 211; State Bank of India vs. Ram
G Chandra Dubey & Ors. [2001] 1 SCC 73; and Vijay Kumar
vs. Whirlpool of India Ltd. 2007(13) SCALE 379 – referred
to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
H 7056-7065 of 2001.

From the final Judgment and Order dated 30.12.1998 of the High Court of Himachal Pradesh at Shimla in C.W.P. Nos. 4, 5, 6 of 1992, 541, 542, 545, 546, 547, 548 and 549 of 1993.

WITH

Civil Appeal Nos. 8490 of 2001, 87 of 2002, 331 of 2002 and 2802 of 2007.

Naresh K. Sharma, Sanjay Sarin, Manjusha Wadhwa, Gagandeep, Ashok Mathur and Y Prabhakara Rao for the Appellants.

Ashwini Gupta, Gaurav Dhingra and M.C. Dhingra for the Respondents.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. These appeals involve an identical question and therefore are disposed of by a common judgment.

2. The Himachal Pradesh High Court disposed of several writ petitions by a common judgment dated 30.12.1998. The primary issue was whether a petition in terms of Section 33-C(2) of the Industrial Disputes Act, 1947 (in short the Act) is maintainable and whether daily wager can claim minimum bonus under the Payment of Bonus Act, 1965 (in short the 'Bonus Act').

3. Factual position is almost undisputed and needs to be noted in brief:

The respondents were employed on daily wages basis. The Labour Court by order dated 6.7.1991 held that the respective applicants were entitled to be paid minimum statutory bonus within the stipulated time. The decision was rendered on a reference made.

Primary stand before the High Court was that daily wagers cannot get bonus. Additionally, the Labour Court has no

A jurisdiction to adjudicate such a matter. The High Court held that since there was a statutory obligation to pay minimum bonus the application under Section 33-C(2) of the Act was maintainable.

B 4. In support of the appeals, learned counsel for the appellants submitted inter-alia as follows:

(i) the Labour Court has no jurisdiction to decide the issue.

(ii) the Bonus Act was not applicable.

C 5. The Act has application only when the concerned employees get salaries or wages per mensem. Dearness allowance is not payable to daily wagers. The reference to Section 8 of the Bonus Act to decide eligibility was not correct. Merely because a person is working for 30 days in a year, that does not entitle him to bonus.

D 6. Stand of the appellants that Section 2(11) of the Bonus Act is applicable only to persons who receive monthly salary, has also not been dealt with.

E 7. The claim was made for the period from 1977 to 1986. But the application was filed long after in 1991. The High Court was wrong in saying that only the quantum and not the question of liability can be decided in a reference under Section 22. Section 33-C(2) is in the nature of execution application. Section 33-C(2) relates to pre existing right and the claim for bonus cannot be included within the scope of Section 33-C(2) of the Act.

F 8. In Civil Appeal No.87/2002, 8490/2001 and 331/2002 the grievance is that there was no claim for any interest. But the Labour Court and the High Court wrongly decided the entitlement of interest @12%.

G 9. Learned counsel for the respondents submitted that Sections 10 and 11 of Bonus Act deal with payment of minimum H bonus. Section 22 of Bonus Act uses the expression 'bonus

payable'. It relates to the quantum and varies between minimum and the maximum. A

The High Court was right in holding that the application in terms of Section 33-C(2) of the Act was maintainable.

10. The scope and ambit of Section 33-C(2) has been examined by this Court in several cases. B

11. In *U.P. State Road Transport Corporation v. Birendra Bhandari* (2006 (10) SCC 211) it has been stated as under:

"7. The benefit which can be enforced under Section 33-C(2) is a pre-existing benefit or one flowing from a pre-existing right. C

8. In the case of *State Bank of India v. Ram Chandra Dubey & Ors.* (2001 (1) SCC 73), this Court held as under:

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen. D
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8. The principles enunciated in the decisions referred H

A by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we

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are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.” A

12. The above position has also been highlighted in *Vijay Kumar v. Whirlpool of India Ltd.* (2007 (13) SCALE 379). B

13. In *Central Inland Water Transport Corporation Ltd. v. The Workmen and Anr.* (AIR 1974 SC 1604) it was inter-alia held as follows: C

“13. In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff’s right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant’s liability, if any. The Working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant’s liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under Section 33(C)(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under Section 33(C)(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely ‘incidental’. To call determinations (i) and (ii) ‘incidental’ to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out D E F G H

A are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under Section 33(C)(2) that court must clearly understand the limitations under which it is to function. B cannot arrogate to itself the functions—say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as ‘incidental’ to its main business of computation. In such cases determinations (i) and (ii) are not ‘incidental’ to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in *State Bank of Bikaner and Jaipur v. R.L. Khandelwal* [1968] 2 L.L.J. 589 (SC) that a workman cannot put forward a claim in an application under Section 33(C)(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute which requires a reference under Section 10 of the Act.” E

14. The case at hand belongs to category (i) as elaborated in *Central Inland's* case (supra).

F 15. Further, the High Court seems to have lost sight of the fact that the Labour Court under the Act can decide only the matters specified in Second Schedule. “Bonus” is not covered by the Second Schedule. Item 6 of Second Schedule says that it deals with all matters except those covered by the Third Schedule. “Bonus” appears as Item 5 in the Third Schedule. G Therefore, the question of entitlement to bonus could not have been decided by the Labour Court. In case of pre existing rights there must be agreements by both sides about existence of such rights. If there is dis-agreement this has to be decided by the competent authority. The stand that the expression ‘bonus

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'payable' relates to the quantum and not payability is also not correct. A

16. Since the High Court has not considered the above aspects, we remit the matter to it for considering (i) the applicability of Section 33-C(2) of the Act and (ii) the jurisdiction of the Labour Court to decide the matter; and (iii) the applicability of the Bonus Act to daily wagers. B

17. The appeals are allowed with no order as to costs.

R.P.

Appeals allowed.

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