
(1998) 03 KL CK 0046
In the High Court Of Kerala
Case No : W.A. No. 657 of 1991

Abdul Rahim A.M.

APPELLANT

Vs

Commercial Employees" Union and Others

RESPONDENT

Date of Decision : 17-03-1998

Acts Referred:

Kerala Headload Workers Act, 1978 — Section 2, 21(4)

Citation : (1998) 2 ILR (Ker) 731 : (1998) 1 KLJ 631 : (1999) 1 LLJ 177

Hon'ble Judges : P.A. Mohammed, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : N.N. Sugunapalan, for the Appellant; P.K. Santhamma, G.P., for the Respondent

Final Decision : Allowed

Judgement

Mohammed, J.—This writ appeal is directed against the judgment of the learned single Judge in O.P.No. 5682 of 1989 dated January 31, 1991. The President of the Alleppey Food Grains Merchants" Association is the appellant before us. He filed the above writ petition praying to quash Ext.P-1 order passed by the Deputy Labour Officer dated September 22, 1988 in exercise of the powers u/s 21(4) of the Kerala Head Load Workers Act, 1978 (for short, the Act) and Ext.P-3 order passed by the Appellate Authority under the Act (Regional Joint Labour Commissioner, Quilon).

2. The prime question that is posed before us by the learned counsel for the appellant is whether the Deputy Labour Officer has the power or jurisdiction to deal with a dispute between the employer and employee involving wages as defined in Section 2(s) of the Act.

3. Section 21 of the Act empowers the Assistant Labour Officer to hold conciliation conferences for the purpose of bringing about a settlement of the dispute which is connected with the employment or non-employment or the terms of employment or with the conditions of work of any head load worker

exists. Section 9 mandates that every employer shall pay to any headload worker employed by him such wages as may be prescribed and Section 11 allows the headload worker or an official of the union of which he is a member to make an application to the conciliation officer, if there is refusal to pay such wages by the employer. When there is refusal to pay the wages, the Labour Officer, after an enquiry, can direct the employer to pay the wages as prescribed u/s 11 of the Act.

4. What is argued by counsel for the appellant is that any payment of bonus will not come within the definition of "wages" as defined in Section 2(s) of the Act. The above provision is extracted hereunder:

"2. Definitions: In this Act, unless the context otherwise requires,

... ..

(s) "Wages" means all remuneration, whether payable in cash or in kind which would, if the terms of employment, express or implied, were fulfilled, be payable to a headload worker employed in an establishment or for work done in such establishment, but does not include -

(i).....

(ii)

(iii)

(iv)

(v)

(vi) any bonus."

All remuneration, whether payable in cash or in kind which would, if the terms of the employment, express or implied, were fulfilled, be payable to a headload worker employed in an establishment or for work done in such establishment. The remuneration referred to above will not take in "any bonus", as specified in Clause (vi) thereof. Therefore, the dispute regarding payment Of "any bonus" between the employer and the employee cannot be decided by the Labour Officer, exercising power u/s 21(4) of the Act. In other words, the Deputy Labour Officer has no power or authority to decide a dispute between a headload worker and an employer, if such dispute relates to the demand and non-payment of bonus.

5. Ext.P-1 is an order passed by the Deputy Labour Officer u/s 21(4) of the Act on the dispute between the Alleppey Food Grains Merchants" Association and their workmen represented by the Commercial Employees Union (INTUC). Five issues were raised for conciliation before the Deputy Labour Officer, out of which we are in this writ appeal concerned only with regard to the payment of annual bonus. Learned counsel for the appellant submitted before, us that he is confining to the argument only with regard to the question of annual bonus. The demand relating to the payment of annual bonus has been discussed by the

Deputy Labour Officer in Ext.P-1 and observed that the concerned workmen were paid bonus at a rate agreed by negotiation year to year. In view of the said agreement, the third respondent came to the conclusion that the bonus for the concerned workmen for the year 1987-1988 shall be paid at the same rate as is paid to the other workmen of the employer establishments.

6. As against Ext.P-1, the appellant has filed an appeal before the Appellate Authority (2nd respondent herein). The Appellate Authority, by Ext.P-3 dated February 15, 1989, came to the conclusion that the conciliation officer has not exceeded his jurisdiction in deciding the question of bonus. However, the Appellate Authority observed that what was paid to the workmen is not a statutory bonus as per the provisions of the Bonus Act, but it is a customary bonus prevailing in the industry. Being aggrieved by Ext.P-3, the writ petitioner filed a writ petition before this Court as O.P.No. 5682 of 1989-B and a learned single Judge of this Court observed with regard to the question of bonus, that what is decided by the authorities is not a bonus under the Bonus Act, but the customary bonus prevailing in the industry. The learned single Judge further observed that "there is nothing wrong in the authorities conciliating on the question of bonus".

7. We cannot agree with the above observation of the learned single Judge. If the authorities have no jurisdiction to decide the dispute, the entire proceedings are non est and the orders passed by them cannot stand.

8. We have already found that the authorities under the Act have no power or jurisdiction to deal with the dispute relating to non-payment of bonus to the workmen. We cannot also agree with the observation of the learned single Judge to the effect that the jurisdiction can be conferred on the respondents if the rights and privileges which the workmen were enjoying earlier would allow them to raise the dispute.

9. We are of the view that the learned single Judge acted in error in confirming the orders (Exts.P-1 and P-3) insofar as they relate to the dispute for non-payment of bonus by the employer.

10. The question as to whether the customary bonus prevailing in the industry can be taken to be a "bonus" as specified in Section 2(s) of the Act. What is excluded from the definition of "wages" is "any bonus" that means it may be a customary bonus or a bonus due under an agreement or negotiation or a bonus under any other enactment. When "any bonus" is excluded from the ambit of the definition, we fail to understand as to how the customary bonus can be included within the scope of the definition and therefore there is no dispute between the employer and employee as to the "wages" coming within the scope of Section 2(s) of the Act.

11. In view of what is said above, Exts.P-1 and P-3 are set aside in so far as they relate to the question of bonus. In the result, the judgment of the learned single Judge is set aside insofar as it relates to the dispute regarding payment of bonus.

12. The writ appeal is allowed to the extent indicated above.