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(1999) 07 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No. 7072 of 1993

Ashok Leyland Limited — APPELLANT

Vs

Industrial Tribunal and Another — RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:
Payment of Bonus (Amendment) Act, 1985 — Section 12, 2(13)
Payment of Bonus Act, 1965 — Section 18(1), 22, 34

Citation : (2000) 1 LLJ 1234

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : Sanjay Mohan, for Ramsubramaniam Associates, for the Appellant; A.L. Somayaji, for K. Ramesh, for the Respondent

Final Decision : Partly Allowed

Judgement

P.D. Dinakaran, J.—The petitioner seeks a writ of Certiorari, to call for the records relating to the award dated November 30, 1992 made

in I.D. No. 13 of 1988 on the file of the first respondent-Industrial Tribunal, and to quash the same.

2. The above writ petition relates to the payment of bonus for the accounting year 1984 by the petitioner-Management to the 2nd respondent

employees'' Union, working under the petitioner- Management, as per the provisions of the Payment of Bonus Act, 1965 (hereinafter referred to

as the ""Bonus Act"").

3. Section 2(1) of the Bonus Act defines the term ""accounting year""; Section 2(13) defines the term ""employee"" with reference to ceiling on wages

to claim bonus; Section 4 provides for computation of gross profit; Section 5 provides for computation of available surplus; Section 6 prescribes

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the sums deductible from gross profit and Section 7 provides for the calculation of direct tax payable by the employer.

4. Section 10 of the Bonus Act prescribes the payment of minimum bonus which shall be 8.33% of the salary or wages earned by the employee

during the accounting year or one hundred rupees, whichever is higher; Section 11 prescribes the payment of maximum bonus, which shall be 20%

of salary or wages; Section 12 provides for the calculation of bonus with respect to certain employees; Section 13 deals with the proportionate

reduction in bonus in certain cases; Section 14 deals with the computation of number of working days; Section 15 deals with the set on and set off

of allocable surplus; Section 17 deals with adjustment of customary or interim bonus payable under the Act; Section 18 deals with the deduction of

certain amounts from bonus payable under the Act and Section 19 prescribes the time-limit for payment of bonus.

5. As per Section 22 of the Bonus Act, where a dispute arises between an employer and his employees with respect to the bonus payable under

the Act or with respect to the application of the Act to an establishment in public sector, then such dispute shall be deemed to be an industrial

dispute within the meaning of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act), or of any corresponding law relating to

investigation and settlement of the industrial dispute in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as

otherwise expressly provided, apply accordingly.

6. Section 31A of the Bonus Act provides for a special provision for the payment of bonus linked with production or productivity, which reads as

follows:

Notwithstanding anything contained in this Act, -

(i) where an agreement or a settlement has been entered, into by the employees with their employer before the commencement of the Payment of

Bonus (Amendment) Act,

(ii) where the employees enter into an agreement or settlement with their employer after the commencement of the Act, -

for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such

employees shall be entitled to receive bonus due to them under such agreement

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or settlement, as the case may be:

Provided that any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus u/s 10 shall be null and

void insofar as it purports to deprive them of such right:

Provided further that such employees shall not be entitled to be paid such bonus in excess of twenty per cent of the salary or wage earned by them

during the relevant accounting year.

7. Section 34 of the Bonus Act deals with the effect of laws and agreements inconsistent with the Act. Section 34 reads as follows:

Subject to the provisions of Section 31A, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in

any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service.

8. The First Schedule prescribes the method of computation of gross profit with reference to Section 4(a) of the Bonus Act, applicable in the case

of a banking company; and the Second Schedule deals with the computation of gross profit with reference to Section 4(b) applicable in the cases

other than banking company. Therefore, the Second Schedule is alone applicable to the instant case.

9. The second respondent, the sole recognised union of the workmen under the petitioner-Management, raised an industrial dispute in the year

1984 with regard to payment of bonus for the accounting year 1984. The said dispute was, ultimately resolved by a settlement, dated April 10,

1985, entered u/s 18(1) of the I.D. Act, between the petitioner-Management and the second respondent employees'' Union and the said

settlement dated April 10, 1985 reads as follows:

Whereas discussions were held between the Company and Ashok Ley land Employees'' Union (Ennore) on the issue of Bonus for 1984 on

March 21, 1985, March 22, 1985, April 3, 1985 and April 6, 1985.

Whereas the Union made a demand of 20% bonus without any ceiling and an ad hoc payment of Rs. 2000/- per head additionally.

Whereas the Company had stated that payment of Bonus has always been in accordance with the ceiling on pay as per other provisions of the

Payment of Bonus Act and that there is a specific provision to this effect in the Wage Settlement in force.

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Whereas the Company offered 15% bonus as per the Payment of Bonus Act and the Union pressed for additional bonus having regard to the

general improvement in the working atmosphere in 1984 and the continued gains in production.

Whereas after prolonged discussions both parties agreed for the payment of bonus for the year ended December 31, 1984 for the employees at

Ennore Unit as per terms below.

Now this settlement witnesseth as follows:

Terms of settlement

1. Having regard to the whole-hearted and unstinted cooperation extended by the Union in achieving the various production levels by adhering to

the productivity standards and their assured cooperation to increase it further the Company hereby agrees to pay all eligible employees as referred

to in the preamble about the number and broad description of the workmen covered by the Settlement, 20% of basic wages, dearness allowance

etc. as bonus as per the provisions of the Payment of Bonus Act, 1965 as in force on the date of this agreement.

2. The Union hereby agrees to accept this payment in full and final settlement of all its claims towards Bonus for the year 1984 and further assures

full cooperation to the Management in enhancing production.

3. The Company hereby agrees to make the payment referred to above on April 12, 1985.

In witness thereof, the parties hereto hereby have set their hands on April 10, 1985.

10. As per Section 2(13) of the Bonus Act, as stood on April 10, 1985, viz., the date on which the settlement was entered u/s 18(1) of the I.D.

Act between the petitioner-Management and the 2nd respondent employees'' Union, ""employee"" means any person other than apprentice

employed on a salary or wage not exceeding Rs. 1600/- per month and similarly as per Section 12 of the Bonus Act as stood on April 10, 1985,

where the salary or the wage of an employee exceeded Rs. 750/- per month, his salary shall be deemed to be Rs. 750/- per month for the purpose

of calculation of bonus. The petitioner-Management paid the bonus on April 12, 1985 itself, as agreed under the settlement dated April 10, 1985,

of course, as per the provisions of the Bonus Act that was in force as on April 10,

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1985, namely at the maximum salary of Rs. 750/- per month

and, admittedly, the employees under the petitioner- Management received the bonus for the accounting year 1984 without any protest. However,

the petitioner-Management received a letter on April 19, 1985 stating that if there was to be any amendment regarding the ceiling of monthly salary

for the purpose of calculation of bonus, then the same should be applied to all employees. But the Management, by their reply dated April 24,

1985, sharply questioned the reopening of the concluded and settled issue, as they had already received the bonus on April 12, 1985 itself, and

there was no dispute relating to the bonus for the accounting year 1984 existed after April 12, 1985.

11. The Central Government, promulgated the Payment of Bonus (Amendment) Ordinance, 1985 on May 22, 1985 and deleted Section 12 of the

Bonus Act. By another amendment, namely, the Payment of Bonus (Second Amendment) Ordinance, 1985 dated November 7, 1985, the Central

Government reinforced Section 12 again with a raise in the ceiling limit of the monthly salary or wage from Rs. 750/- per month to Rs. 1600/- per

month and also brought an amendment to Section 2(13) of the Bonus Act, defining the eligible and qualified employees as persons who receive Rs.

2500/- as monthly salary or wage instead of Rs. 1600/- per month, as it stood on April 10, 1985 and the said amendment was deemed to have

effect in respect of the accounting year commencing on any day in the year 1984 and in respect of every subsequent accounting year. Therefore,

the second respondent employees'' union demanded larger amount as bonus for more employees, who became eligible, in view of the increase in

the ceiling limit of the salary as Rs. 1600/- per month. But the demand for reopening the issue was not accepted by the Management. Hence, the

Government by G.O. Ms. No. 192, Labour Department dated March 2, 1988, referred the dispute for adjudication u/s 10(1)(d) of the I.D. Act,

wherein the following issues were referred for adjudication:

(1) Whether the contention of the management that bonus for the year 1984 paid as per the settlement u/s 18(1) of the Industrial Disputes Act,

1947 dated April 10, 1985 with reference to the provisions of the Bonus Act as in force on the date of agreement in full and final is justified; and

(ii) Whether the demand of the workmen that bonus for 1984 should be

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calculated and paid in terms of the Payment of Bonus (Second

Amendment) Ordinance (8 of 1985) relating to the amendments to Section 2(13) (revised ceiling in wages) and Section 12 of Payment of Bonus

Act, (regarding coverage of employees) is justified and if so to give suitable direction.

12. The above dispute was taken on the file of the first respondent herein and numbered as I. D. No. 13 of 1988 and the first respondent, after

adjudication, by an award dated November 30, 1992, which is impugned in the above writ petition, held that the amended provisions of the Bonus

Act have created fresh right for the 2nd respondent employees'' Union in determining their eligibility to bonus, to reopen the bonus claim for the

accounting year 1984 and thus overrides the settlement dated April 10, 1985. It is further held that the number of workers eligible and qualified to

get bonus for the accounting year 1984 shall be ascertained by the petitioner-Management by accepting the promise that every workman whose

monthly emoluments does not exceed Rs. 2500/- shall be paid bonus as per the amended Section 2(13) of the Bonus Act at the settled rate of

20% of the salary or wage earned by the employees during the accounting year 1984.

13. Aggrieved by the said Award dated November 30, 1992 in I.D. No. 13 of 1988 the petitioner has filed the above writ petition.

14. Mr. Sanjay Mohan, learned counsel for the petitioner- Management, inviting my attention to Section 18(1) of the I.D. Act, and contends that

the settlement dated April 10, 1985 entered u/s 18(1) of the I.D. Act is binding on the petitioner- Management and the second respondent

employees'' Union, as the same is a package deal arrived at and settled finally, without reference to the particulars mentioned in the Second

Schedule to the Bonus Act; the issue relating to bonus for the accounting year 1984 had become a concluded contract in view of the settlement

dated April 10, 1985, but not a subsisting or executory contract; the very scope and spirit of the settlement dated April 10, 1985 entered u/s 18(1)

of the I.D. Act had concluded the issue relating to the payment of bonus for the accounting year 1984 and, therefore, the same cannot be

reopened by subsequent amendments unless and otherwise the amendments expressly provide to set aside the settlement dated April 10, 1985.

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15. Mr. Sanjay Mohan, contends that the petitioner-Management, as per the settlement dated April 10, 1985, had paid 20% of basic wage and

dearness allowance etc. as bonus as per the provisions of the Bonus Act, 1965, as was in force on the date of the settlement dated April 10, 1985

and that the acceptance of such payment by the 2nd respondent employees'' union in full and final settlement of all its claim towards bonus for the

accounting year 1984 on April 12, 1985 would show that the said settlement was already concluded and got executed and nothing subsists to be

executed; if the Second Amendment dated November 7, 1985 had created any fresh right to the second respondent employees'' Union to claim

bonus for the financial year 1984 notwithstanding the settlement dated April 10, 1985, such fresh right should be worked out without reference to

any of the terms of the settlement dated April 10, 1985, including the fixation of maximum bonus at 20% of the salary or wage; otherwise, if the

settlement dated April 10, 1985 was to be acted upon by paying the bonus at 20% of the wage, it would be only with reference to the eligibility of

employees u/s 2(13) and ceiling limit of the salary u/s 12 of the Bonus Act that was in force as on April 10, 1985; if the eligibility of the employees

and the ceiling limit for calculating the salary or wage earned is to be worked out as per the amended provisions of the Bonus Act, the second

respondent employees'' Union are not entitled to claim 20% of the salary or wage earned as per the settlement dated April 10, 1985 and, in which

event, the bonus have to be calculated only as per the Second Schedule to the Bonus Act but not with reference to the terms of the settlement

dated April 10, 1985. In other words, Mr. Sanjay Mohan contends that the settlement dated April 10, 1985 cannot be partially acted upon and

partially ignored.

16. Mr. Sanjay Mohan, effectively contends that the terms of the settlement dated April 10, 1985 shall prevail over the amendments to Section

2(13) and Section 12 of the Bonus Act, in view of the machinery to be adopted in settling the dispute relating to the payment of bonus u/s 22 of the

Bonus Act as there was no inconsistency between the settlement and the provisions of the Bonus Act, which was in force on April 10, 1985 in

compliance of Section 34 of the Bonus Act.

17. In support of his contentions, Mr. Sanjay Mohan places reliance on the

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decisions in Herbertson Ltd. v. Workman, reported in AIR 1977 SC

322; New Standard Engineering Company Ltd. Vs. N.L. Abhyankar and Others, ; Tata Engineering and Locomotive Company Limited Vs. Their

Workmen, and P. Virudhachalam and Others Vs. Management of Lotus Mills and Another, .

18. Per contra, Mr. A.L. Somayaji, learned senior counsel appearing for the 2nd respondent employees'' Union, relying on the decision in

Narcotics Control Bureau Vs. Kishan Lal and others, , contends that even though the Settlement dated April 10, 1985 entered u/s 18(1) of the

I.D. Act is a package deal arrived at as a result of the collective bargaining in order to maintain industrial peace and harmony, the same is subject

to the benefits conferred under the provisions of the Bonus Act, which is a special enactment; that the Bonus Act being a labour welfare legislation

should be interpreted liberally and in favour of the labour force, who are considered to be the beneficiaries under the Bonus Act inasmuch as the

bonus is treated as deferred wages as laid down in The K.C.P. Employees'' Association, Madras Vs. The Management of K.C.P. Ltd., Madras

and Others, ; Workmen Vs. Williamson Magor and Co. Ltd. and Another, ; M/s. Cochin Shipping co. Vs. E.S.I. Corporation, ; Hindustan Lever

Ltd. Vs. Ashok Vishnu Kate and others, and State of Tamil Nadu v. K. Sabanayagam, reported in (1998) I LLJ 214 (SC) the members of the

2nd respondent employees Union are entitled for the benefits of the amendment dated November 7, 1985 which confers more benefits to a large

number of employees in view of the legal fiction created by the amendment dated November 7, 1985 as the said amendment dated November 7,

1985 is deemed always to have had the effect in respect of the accounting year commencing on any day for the year 1984 and in respect of every

subsequent accounting year; and that the deeming provision in the Amendment dated November 7, 1985 has created a fresh right for the large

number of employees of the petitioner-Management for more statutory benefits of bonus coupled with a right to raise an industrial dispute within

the meaning of Section 2(k) of the I.D. Act to demand the payment of the difference of bonus for the accounting year 1984 as per the amended

Section 2(13) and Section 12 read with Section 22 and Section 34 of the Bonus Act notwithstanding the settlement dated April 10, 1985; and that

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in the absence of any reservation in the amendment to save the settlement dated April 10, 1985, which was accepted and acted upon by the

petitioner-Management and the 2nd respondent employees'' Union, the 2nd respondent employees'' Union are entitled for the statutory benefits

conferred under the amendment for more bonus to a large number of employees by operation of legal fiction in view of the deeming provision as

the provisions of the Bonus Act, being a labour welfare legislation, has to be interpreted in favour of the employees in order to achieve the object

behind it.

19. Mr. Somayaji, learned senior counsel placing reliance on the decision in H.S. Atwal and others Vs. Union of India and others, and Kuldeep

Singh Vs. Ganpat Lal and another, contends that the terms of the settlement dated April 10, 1985 shall not be applicable only to the extent which

is contrary to or inconsistent with the amended provisions of Section 2(13) and Section 12 of the Bonus Act, but the same would be applicable

insofar as it is providing the maximum bonus of 20% of the salary or wage earned by the employees, which is fully in compliance, with the

provisions of the Bonus Act.

20. Mr. A.L. Somayaji, learned senior counsel further contends that the 1st respondent Tribunal had rightly held that the retrospective effect of the

amendment shall not disturb any mutual settlement dated April 10, 1985 on the percentage of the bonus, but at the same time, the amendment shall

have the overriding effect to the settlement dated April 10, 1985 insofar as the eligibility of the employees to claim bonus u/s 2(13) of the Bonus

Act and the quantum of bonus payable to them u/s 12 of the Bonus Act and therefore the 2nd respondent employees'' Union is entitled to reopen

the claim for more bonus for larger number of employees of the petitioner-Management for the accounting year 1984 at the rate of 20% of the

salary or wage earned by them under the settlement dated April 10, 1985 and hence the reasons and findings of the 1st respondent Tribunal is fair,

reasonable and permissible in law which cannot be interfered by a judicial review under Article 216 of the Constitution though some other view is

possible as per the ratio laid down in Agnani v. Badri Das, reported in (1963) I LLJ 684 (SC).

21. Placing reliance on the decisions in Sanghvi Jeevraj Ghewar Chand and

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Others Vs. Secretary, Madras Chillies, Grains and Kirana Merchants

Workers Union and Another, and K. T.P. Pvt. Ltd. v. Presiding Officer, Nagpur reported in AIR 1986 Bom 342: Mr. A.L. Somayaji, learned

senior counsellor the 2nd respondent Union contends that Section 22 of the Bonus Act only provides a machinery to resolve a dispute between the

employer and employees, where such dispute relates either to the bonus payable under the Bonus Act or with regard to the application of the

Bonus Act to certain establishments. Therefore any settlement entered into between the employer and the employees u/s 18(1) of the I.D. Act,

assuming it has got an effect of an Award or a decision arrived u/s 22 of the Bonus Act, the same would be subject to the benefits conferred under

the provisions of the Bonus Act in view of the non-obstante clause in Section 34 of the Bonus Act.

22. Mr. A.L. Somayaji, learned senior counsel contends that in view of the deeming provisions in the amended Act, large number of employees

would become eligible for more bonus as permissible u/s 2(13) and Section 12 of the Bonus Act, which shall prevail over the settlement dated

April 10, 1985 in view of the non-obstante clause in Section 34 of the Bonus Act. In this regard, Mr. A.L. Somayaji, learned senior counsel for

the 2nd respondent employees'' Union relies on the decision in Narcotics Control Bureau v. Kishan Lal, (supra), wherein the Apex Court, while

interpreting the powers of investigation under the Code of Criminal Procedure and the powers conferred u/s 37 of the N.D.P.S. Act, held that

when there is a special enactment in force, the powers conferred under the provisions of a general enactment should be subject to the provisions of

the special enactment. Mr. A.L. Somayaji, learned senior counsel interpreting Section 34 of the Bonus Act contends that the words ""for the time

being in force"" should be given a meaning that fulfils the object of the provisions under the Bonus Act, the purpose being to confer more benefits to

a large number of persons. Therefore, it is contended that the settlement dated April 10, 1985 entered u/s 18(1) of the I.D. Act is subject to the

right conferred on the employees pursuant to the amendments dated May 22, 1985 and November 7, 1985 in view of Section 34 of the Bonus

Act.

23. Mr. A.L. Somayaji, learned senior counsel contends that the intention of the

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legislature should be taken into account while interpreting the

terms of the settlement dated April 10, 1985 in the light of Section 22 and Section 34 of the Bonus Act, keeping in view the object of the Bonus

Act, viz. to provide for payment of bonus to the persons employed in industries and not to refuse or reduce the same. Any other interpretation

which would run counter to the object of the legislation should be rejected unless and otherwise the intention of the Legislature is clearly spelt out in

the very amendment to save the settlements with reference to the provisions of the Bonus Act that were in force on April 10, 1985 in spite of the

deeming provisions provided in the amendment.

24. In reply, Mr. Sanjay Mohan, learned counsel for the petitioner-Management contends that unless the intention of the legislature to reopen any

settlement entered into between the employer and employees u/s 18(1) of the I.D. Act read with Sections 22 and 34 of the Bonus Act prior to the

amendment is expressly and clearly provided in the amendment, the amendment shall not confer any fresh right on the employees and, therefore,

the members of the 2nd respondent employees'' Union are not entitled to reopen the issue which had already been accepted and acted upon

merely in view of the deeming provisions of the amended Act, creating a legal fiction, otherwise it would be attracted by the doctrine of frustration.

Mr. Sanjay Mohan, learned counsel for the petitioner contends that in the absence of any such express provision to reopen the settlement already

arrived at and acted upon, it would only frustrate Clauses (1) and (2) of the settlement dated April 10, 1985 whereby the parties have agreed for

20% of the salary or wages earned by them as bonus as per the provisions of the Bonus Act that was in force on the date of the settlement and

also accepted the payment in full and final settlement of all their claims towards the bonus for the accounting year 1984.

25. Mr. Sanjay Mohan, learned counsel for the petitioner, placing reliance on the decision in Life Insurance Corporation of India Vs. D.J. Bahadur

and Others, and referring to Section 18(1) of the I.D. Act further contends that the settlement dated April 10, 1985 is binding on the parties as it

had already been given effect to. Mr. Sanjay Mohan therefore contends that the deeming clause provided under the amendment with regard to the

eligibility of the employees and the ceiling limit of the bonus shall have effect

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only in case where no settlement was arrived at and acted upon for the

accounting year 1984 or for the subsequent accounting years. Mr. Sahjay Mohan contends that in the absence of any clear indication to override

the terms of settlement, it cannot be said that the legislature had intended to confer fresh rights on the employees who have reached a settlement

with the employer u/s 18(1) of the I.D. Act or otherwise it would be perverse, superficial and illegal. In this connection, learned counsel for the

petitioner relied upon the decision in Metal Powder Co. Ltd., Tirumangalam and Another Vs. The State of Tamil Nadu and Another, .

26. Mr. Sanjay Mohan, learned counsel for the petitioner, further contends that the decision in Agnani v. Badri Das, (supra), relied on by the

learned counsel appearing for the 2nd respondent employees'' Union is inappropriate to the facts and circumstances of the present case where the

parties have admittedly resolved the dispute relating to the payment of bonus by arriving at a settlement on April 10, 1985. Therefore, the deeming

provision will not in any way create any fresh right on the 2nd respondent employees'' Union more than what was concluded under the settlement

dated April 10, 1985, which was accepted and acted upon by them as per the provisions of the Bonus Act that were in force as on April 10,

1985.

27. I have given my careful consideration to the submissions of both sides.

28. The issue that arises for my consideration in the above writ petition is:

Whether the amended provisions of Section 2(13) of the Bonus Act with regard to the revision of ceiling in wages for claiming bonus and Section

12 of the Bonus Act with regard to the coverage of employees create any fresh right for the 2nd respondent-employees'' Union, who have already

entered into a settlement u/s 18(1) of the I.D. Act on April 10, 1985, which had been accepted and acted upon by the petitioner-Management and

the 2nd respondent-employees'' Union, with regard to payment of bonus for the year 1984 notwithstanding the terms of the said settlement dated

April 10, 1985 and, if so, to what extent?

29. It is relevant to refer to Section 18(1) of the I.D. Act, which read as follows:

18. Persons on whom settlement and awards are binding -

(1) A settlement arrived at by agreement between the employer and workman

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otherwise than in the course of conciliation proceedings shall be

binding on the parties to the agreement.

(2) Subject to the provisions of Sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the

agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been

issued under Sub-section (3-A) of Section 10-A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable

shall be binding on -

(a) all parties to the industrial disputes;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or

National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the

dispute relates;

(d) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment, or part of

the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed

in that establishment or part.

19. Period of operation of settlements and award. -

(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date

on which the memorandum of settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six

months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties

after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing on an intention to terminate the

settlement is given by one of the parties to the other party or parties to the

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settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award

becomes enforceable u/s 17A:

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not

exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date

on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the

award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award

or a part of it to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National

Tribunal for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Labour Court or the

Tribunal, as the case may be, on such reference shall be final.

(5) Nothing contained in Sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has

been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under Sub-section (3), the award shall continue to be binding on the parties until a period

of two months has elapsed from the date on which notice is given by any party bound by the award to other party or parties intimating its intention

to terminate the award.

(7) No notice given under Sub-section (2) or Sub-section (6) shall have effect, unless it is given by a party representing the majority of persons

bound by the settlement or award, as the case may be.

30. It is also relevant to refer to Section 19, Section 22 and Section 34 of the Bonus Act, which read as follows:

19. Time-limit for payment of bonus. -

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All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer -

(a) where there is a dispute regarding payment of bonus pending before any authority u/s 22, within a month from the date on which the award

becomes enforceable or the settlement conies into operation, in respect of such dispute;

(b) in any other case, within a period of eight months from the close of the accounting year:

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application

made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or period as it thinks

fit; so, however, that the total periods so extended shall not in any case exceed two years.

22. Reference of dispute under the Act -

Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the

application of this Act to an establishment in public sector, then such dispute shall be deemed to be an industrial dispute within the meaning of the

Industrial Disputes Act, 1947 (14 of 1947), or of any corresponding law relating to investigation and settlement of industrial disputes in force in a

State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly.

34. Subject to the provisions of Section 31A the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained

in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service.

31. It is not in dispute that the dispute relating to payment of bonus for the year 1984 was resolved by the settlement dated April 10, 1985 entered

into between the petitioner-Management and the 2nd respondent-employees'' Union and the same was accepted and acted upon by the parties to

the settlement. It is also not disputed by the learned counsel for the petitioner-Management that the terms of the settlement dated April 10, 1985

are not inconsistent with any of the provisions of the Bonus Act that were in force as on April 10, 1985. Therefore, in compliance with the

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provisions of Section 34 of the Bonus Act The dispute relating to payment of bonus for the year 1984 was settled and accepted by the parties in

terms of the settlement dated April 10, 1985 u/s 18(1) of the I.D. Act read with Section 22 of the Bonus Act and in compliance of Section 34 of

the Bonus Act. The said settlement was duly concluded and also got executed. Therefore, the terms of the said settlement dated April 10, 1985, as

rightly pointed out by Mr. Sanjay Mohan, learned counsel for the petitioner-Management, placing reliance on the three-Judges Bench decision of

the Apex Court in Herbertsons Ltd. v. Workmen, (supra), is binding on the parties to the settlement unless it is alleged that the said settlement was

attracted by the allegations of mala fide or corruption or any other inducement. The justness and reasonableness of the terms of the said settlement

dated April 10, 1985 has to be considered in the light of the conditions that prevailed at the time of reference. The object and purpose for arriving

at such a settlement u/s 18(1) of the I.D. Act through negotiations is to achieve the industrial peace and harmony, keeping in view the general

interests and well being of the Management and the labour force and there is always a give and take approach in arriving at such package deal.

Therefore the terms of the settlement dated April 10, 1985, settling the dispute relating to payment of bonus for the year 1984, cannot be judged

on the touchstone of the principles applicable for adjudicating the disputes by the Tribunal, which requires the application of Sections 4 to 7, 10 to

15 and 18 of the Bonus Act. A three-Judge Bench of the Apex Court in New Standard Engineering Co. Ltd. v. N.L. Abhyankar, (supra), has

held that the justness and fairness of a settlement in a given case has to be examined with reference to the situation as it stood on the date on which

it was arrived at. Again, a three-Judge Bench of the Apex Court in Tola Engineering and Locomotive Co. Ltd. v. Workmen, (supra), relied on by

Mr. Sanjay Mohan, learned counsel for the petitioner, held as follows at p. 431:

A settlement cannot be weighed in any golden scale and the question whether it is just and fair has to be answered on the basis of principles

different from those which came into play where an industrial dispute is under adjudication.

32. In P. Virudhachalam v. Lotus Mills, (supra), the Apex Court held as follows at p. 392:

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Under the Industrial Disputes Act, the principal techniques of settlement of disputes are -

(1) Collective bargaining;

(2) Mediation and conciliation;

(3) Investigation;

(4) Arbitration; and

(5) Adjudication

The scheme of the Act shows that adjudication is to be resorted to as the last alternative. Before any matter is referred for adjudication u/s 10 of

the Act, there should be an attempt for conciliation. Any settlement between the employer and the employees is placed on a higher pedestal than

an award passed after adjudication.

33. In view of the above well settled principles, I am of considered opinion that the settlement dated April 10, 1985, settling the disputes relating to

payment of bonus for the year 1984, entered u/s 18(1) of the I.D. Act between the petitioner-Management and the 2nd respondent-employees''

Union has to be placed on a higher pedestal than an award passed after adjudication by applying Sections 4 to 7, 10 to 15 and 18 of the Bonus

Act. Further, there is absolutely no conflict between the terms of the settlement dated April 10, 1985 and any of the provisions of the Bonus Act

that was in force as on April 10, 1985. It is also the admitted case of both parties that the settlement dated April 10, 1985 was concluded and

acted upon by the petitioner-Management and the 2nd respondent-employees'' Union. However, the controversy sprouted in view of the

promulgation of Payment of Bonus (Second Amendment) Ordinance, 1985, on November 7, 1985, where Section 2(13) of the Bonus Actwas

amended by increasing the ceiling of salary or wages to Rs. 2500/- (Rupees Two Thousand Five Hundred) and Section 12 of the Bonus Act was

amended with regard to coverage of the employees. The said amended provisions of the Bonus Act had the prospective effect and deemed to

have been in force on the date of the settlement viz. April 10, 1985 and made applicable for settling the dispute relating to payment of bonus for

the year 1984, conferring right on larger number of employees to receive more statutory bonus coupled with a right to raise an industrial dispute

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within the meaning of Section 2(k) of the I.D. Act read with Section 22 of the Bonus Act to demand the difference of bonus payable for the year

1984 notwithstanding the settlement dated April 10, 1985. Therefore, I do not agree with the contention of Mr. Sanjay Mohan, learned counsel

for the petitioner-Management that the amended provisions of Section 2(13) and Section 12 of the Bonus Act do not confer any right on the 2nd

respondent- employees'' Union to claim the difference of bonus from the petitioner-Management. That apart, in view of the express provisions in

the amended Sections 2(13) and 12 of the Bonus Act, read with Section 34, to the effect that the said provisions were deemed to have had effect

in respect of the accounting year commencing on any day in the year 1984 and in respect of every subsequent accounting year, no independent

express provision is required in the amendment to reopen the settlement dated April 10, 1985. Therefore, I am of considered opinion the reference

to the ratios laid down by the Apex Court in L. I. C of India v. D.J. Bahadur, (supra), and in Metal Power Co. Ltd. v. State of Tamil Nadu,

(supra), relied on by Mr. Sanjay Mohan, learned counsel for the petitioner-Management are inappropriate. I am therefore, of considered opinion

that the contention of Mr. A.L. Somayaji, learned senior counsel for the 2nd respondent-employees'' Union that even though the terms of the

settlement dated April 10, 1985 had been accepted and acted upon by the parties to the settlement, in view of the amendment dated November 7,

1985, it should be presumed that the 2nd respondent-employees'' Union are entitled for more statutory bonus as the said amendment was deemed

to be in force as on April 10, 1985, has to be accepted in view of the deeming provision in the amendment to the above effect. Further as held in

Agnani v. Badri Das, (supra), where two different views are possible, taking the object of the Bonus Act into consideration, the view which is

favourable to the labour force has to be accepted.

34. That apart, following its earlier decision reported in The K.C.P. Employees'' Association, Madras Vs. The Management of K.C.P. Ltd.,

Madras and Others, : the Apex Court in Workmen, Williamson Magor & Co. v. Williamson M. & Co., (supra), held as follows at p. 38:

In Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if

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there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without

overstepping the proved facts.

35. In Cochin Shipping Co. v. E.S.I. Corporation, (supra), the Apex Court, while interpreting Section 1(4) and Section 5 of the Employees'' State

Insurance Act, held as follows at p. 798;

Under Section 1(4), in the first instance, the Act is made applicable to all factories. The Act envisages the extension of benefit to the employees in

other establishments or class of establishments, industrial, commercial, agricultural or otherwise. The extension of benefit is to be done by means of

a notification by the appropriate Government. Thus the benefit conferred by the Act cover a large area of employees than what the Factories Act

and the akin legislations intended. The conclusion is inescapable that it is a welfare legislation. The endeavour of the Court should be to place (sic.)

a liberal construction so as to promote its objects to which a reference has been made.

36. In Hindustan Lever Ltd. v. Ashok Vishnu Kate, (supra), the Apex Court has held as follows at p. 912:

We have also to keep in view that the Maharashtra Act is a social welfare legislation and in interpreting such a welfare legislation, such a

construction should be placed on the relevant provisions which effectuates the purpose for which such legislation is enacted and does not efface its

very purpose of prevention of unfair labour practice.

37. In State of Tamil Nadu v. K. Sabanayagam, (supra), the Apex Court has held as follows at p. 227:

Now it is obvious that but for the exercise of power of exemption u/s 36, the employees of an institution governed by the sweep of the Act would

be entitled to minimum statutory bonus as per Section 10 of the Act. It has also to be kept in view that the Bonus Act is a piece of welfare

legislation enacted for the benefit of a large category of workmen seeking a living wage to make their lives more meaningful and for fructifying the

benevolent guarantee of Article 21 of the Constitution of India. Bonus is treated as deferred wage.

38. It is therefore clear that the amendment dated November 7, 1985 has to be given effect to for settling the dispute relating to payment of bonus

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for the year 1984 even though the said settlement was arrived at u/s 18(1) of the I.D. Act read with Section 22 of the Bonus Act in view of the

deeming provision in the amendment. Even though the settlement dated April 10, 1985, arrived at u/s 18(1) of the I.D. Act fits in with Section 22

of the Bonus Act and therefore has the effect of an award in settling the dispute relating to payment of bonus for the year 1984, without any conflict

or any inconsistency with any of the provisions of the Bonus Act as on April 10, 1985, still in view of the legal fiction created by the deeming

provisions in the amendment, the 2nd respondent-employees'' Union are still entitled for the benefits of the amendment as the said amendment was

deemed to be in force as on April 10, 1985 because the Bonus Act being a labour welfare legislation, the same has to be interpreted in favour of

the beneficiaries thereunder, viz. labour force, which shall certainly prevail over the settlement dated April 10, 1985 entered u/s 18(1) of the I.D.

Act, by applying the ratio laid down by the Apex Court in Narcotics Control Bureau v. Kishan Lal, (supra).

39. Then a question arises whether the 2nd respondent-employees'' Union can still claim the maximum bonus of 20% of the salary or wage earned

by the employees while claiming more bonus to a larger number of employees as per the amended sections, viz. Section 2(13) and Section 12 of

the Bonus Act for the year 1984 on the ground that the amended provisions of the Bonus Act shall have the overriding effect to the terms of the

settlement dated April 10, 1985 insofar as the same is inconsistent with or contrary to the amended provisions of the Bonus Act. I am unable to

accept the argument of the learned senior council for the 2nd respondent-employees'' Union, placing reliance on the decisions in K.S.

Dharmadatan Vs. Central Government and Others, and H.S. Atwal and others Vs. Union of India and others, , that the 2nd respondent-

employees'' Union are still entitled to claim the maximum bonus of 20% of the salary or wage earned by them as per the terms of the settlement

dated April 10, 1985 as the said settlement cannot be judged on the principles applicable in adjudicating the dispute relating to the payment of

bonus with reference to Sections 4 to 7, 10 to 15 and 18 of the Bonus Act, which prevails over the said settlement as per Section 34 of the Bonus

Act, but as a package deal between the petitioner- Management and the 2nd respondent-employees'' Union and hence, it would be a violation of

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Section 34 of the Bonus Act. Therefore, the ratio laid down in Dharmadattan''s case (supra) and H. S. Atwal''s case, (supra) that when a fiction is

created by a legal provision, it cannot be carried beyond the purpose for which it has been created, is not applicable to the instant case.

40. A reading of Section 34 of the Bonus Act, makes it clear that the provisions of the Bonus Act shall have the overriding effect on the terms of

any award, agreement, settlement or contract of service that are inconsistent with the provisions of the Bonus Act. In the instant case, admittedly,

the settlement dated April 10, 1985, entered u/s 18(1) of the I.D. Act read with Section 22 of the Bonus Act was in strict compliance of Section

34 of the Bonus Act that was in force as on April 10, 1985. The said settlement, which was a package deal arrived at between the petitioner-

Management and the 2nd respondent-employees'' Union, got executed and acted upon by the parties to the settlement to attain the industrial peace

and harmony on the basis of give and take approach, but not with reference to, the provisions of Sections 4 to 7, 10 to 15 and 18 of the Bonus

Act that are applicable for adjudicating the bonus dispute by the Tribunal. As held by the Apex Court in Herbertsons Ltd. v. Workman, (supra) it

is not possible to scan such settlements in bits and pieces and hold some parts good and acceptable and others bad. Since the 2nd respondent-

employees'' Union are staking their claim for bonus as per the amended provisions of Section 2(13) and Section 12 of the Bonus Act, which were

deemed to have been in force as on April 10, 1985 for settling the dispute relating to payment of bonus for the year 1984, notwithstanding the

settlement dated April 10, 1985, it is illogical and unreasonable for the 2nd respondent-employees'' Union to claim the maximum bonus of 20% of

the salary or wage earned by them on the basis of the very settlement dated April 10, 1985, which had been overridden by operation of law, viz.

Section 34 of the Bonus Act inasmuch as the terms of the said settlement were arrived not with reference to Sections 4 to 7, 10 to 15 and 18 of

the Bonus Act, but by a settlement entered u/s 18(1) of the I.D. Act. Hence I am obliged to accept the argument of Mr. Sanjay Mohan, learned

counsel for the petitioner-Management that the settlement dated April 10, 1985 cannot be partially acted upon and partially ignored. Therefore,

while holding that the amended provisions of the Bonus Act would prevail over and override the terms of the settlement dated April 10, 1985, I do

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not agree that the 2nd respondent-employees'' Union are entitled for the maximum bonus of 20% of the salary or wage earned by the employees

for the year 1984 as per the terms of the settlement dated April 10, 1985 as it would otherwise nullify the applicability of Sections 4 to 7, 10 to 15

and 18 of the Bonus Act to determine the bonus payable to the 2nd respondent employees'' Union.

41. In the result, the writ petition is partly allowed and the matter is remitted to the 1st respondent-Tribunal to adjudicate the rate of bonus payable

by the petitioner-Management to the 2nd respondent-employees'' Union in the light of the amended provisions of Section 2(13) of Section 12 of

the Bonus Act. While determining the rate of bonus payable, the 1st respondent-Tribunal shall, of course, take into consideration the bonus already

paid to the employees in terms of the settlement dated April 10, 1985. The 1st respondent Tribunal shall adjudicate the dispute and pass

appropriate award within six months from the date of receipt of copy of this order.

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