
(1973) 03 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 176 of 1972

Bawa Singh and others

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 29-03-1973

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1975) 2 ILR (P&H) 160

Hon'ble Judges : Prem Chand Pandit, J;Bhopinder Singh Dhillon, J

Bench : Division Bench

Advocate : B.N. Sehgal with Mr. Amar Dutt, for the Appellant; N.K. Sodhi for Respondent No 3, for the Respondent

Final Decision : Allowed

Judgement

Bhopinder Singh Dhillon, J.—The brief facts giving rise to this Letters Patent Appeal are that the appellants namely, Bawa Singh, Jagdish Lal and Gurbachan Singh made applications u/s 33C(2) of the Industrial Disputes Act, 1947, before the Labour Court, Jullundur, claiming certain amounts from the respondent-Company. One of the items claimed was bonus, as in the claim application filed by Bawa Singh, appellant, it was specifically averred that bonus for the years 1965 66 and 1966-67 at the rate of 20 per cent as declared by the respondent Company was being given and therefore, this amount was claimed. The other appellants also made a specific claim claiming that bonus at the rate of 20 per cent as had been given to other workers. In reply to the claim petitions, the respondent Company filed the written statement generally denying the claim of the appellants also. As regards the specific plea of the bonus at the rate of 20 per cent, there was no denial about the rate of bonus at the rate of 20 per cent, but it was pleaded that the amount of bonus due to the claimants was in, fact, as follows:--

1. Gurbachan Singh Rs. 18-52 for 1966-67.

2. Bawa Singh Rs. 9-36 for 1966-67.

3. Jagdish Lal Rs. 67-50 for 1966-67.

Rs 49-76 for 1967-68.

2. The appellants appeared as their own witnesses before the labour Court and the statement of Bawa Singh, appellant which is annexure "C" to the written statement of Bawa Singh filed in this Court, is relevant, wherein he specifically stated that the respondent-Company had paid bonus of 20 per cent to the other workmen and he is claiming at the same rate. It may be pointed out that there is no cross examination of Bawa Singh though opportunity was given to the respondent-Company. On the basis of this material, the labour Court came to the conclusion that the appellants were entitled to the bonus at the rate of 20 per cent.

3. This decision of the labour Court was impugned by the respondent-Company in a writ petition, which petition has been accepted by a learned Single Judge of this Court by his judgment dated March 2, 1972, mainly on the ground that the labour Court under the provisions of Section 33C, of the Industrial Disputes Act, had no jurisdiction to go into the question of payment of bonus, as the Company had raised the dispute regarding the payment of the bonus to the claimants, and, therefore, the order of the Labour Court was without jurisdiction. Against this judgment of the learned Single Judge, this Letters Patent Appeal has been filed by the appellants-workers.

4. In order to appreciate the contention raised by the learned counsel for the parties, relevant provisions of the Payment of Bonus Act, 1965, may be reproduced. Section 22 of the Payment of Bonus Act, 1965 provides as under :--

22. Reference of disputes 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 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.

Section 39 of the Payment of Bonus Act, 1965, is in the following terms:--

39. Application of certain laws not barred, Save as otherwise expressly provided, the provisions of this Act shall be in addition to and not in derogation of the Industrial Disputes Act, 1947 (14 of 1947), or any corresponding law relating to investigation and settlement of Industrial Disputes in force in a State.

5. It is contended by the learned counsel for the appellants that in view of the fact that the respondent-Company did make the payment of bonus at the rate of 20 per cent to the other workers and the only question which remained to be

adjudicated was as to how much amount the appellants were entitled to, therefore, this dispute cannot be said to be an industrial dispute within the meaning of Industrial Disputes Act, 1947. According to the learned counsel, the appellants are admittedly entitled to the bonus as was admitted by the Company in its written statement but the only dispute was as regards the amount to be paid, and according to him this matter could be gone into by the Labour Court u/s 33C(2) of the Industrial Disputes Act. The learned counsel relies in *M/s Allahabad Labour Supply Agency v. First Labour Court, Nagpur* ILR 1970 Bom 490, for the proposition that the Industrial Dispute within the meaning of Section 22 of the Payment of Bonus Act would only come into existence when a number of workmen raised a dispute. Individual dispute, cannot be turned as Industrial dispute, and, therefore, in the matter of individual dispute, the provisions of Section 33 C(2) of the industrial Disputes Act are available to an aggrieved worker.

6. Mr. N.K. Sodhi, learned counsel for the Company on the other hand contends that Section 22 of the Payment of Bonus Act makes a redeeming provision, wherein it provides that any dispute regarding the payment of the bonus would be deemed to an Industrial dispute and the recourse must be taken to Section 10(1) of the Industrial Disputes Act. He, therefore, contends that where the claim of a worker for the payment of bonus is disputed qua liability or qua quantum, the Labour Court has no jurisdiction u/s 33-C(2) to go into that question. The other contention raised by the learned counsel is that since the appellants at the time of making the applications before the Labour Court were not in the employment of the respondent-Company, therefore, they could not be termed as "workmen" within the meaning of Section 2-S of the Industrial Disputes Act, and, therefore, the claim applications made by them are not maintainable.

7. As regards the second contention of the learned counsel for the respondent-Company, it may be pointed out that this contention is no more available to him after the pronouncement of the Supreme Court in *National Buildings Construction Corporation, Ltd. and Pritam Singh Gill* 1972 L.L. Notes 99, In the above referred case a workman who was in the employment of the appellant-Company was suspended in 1964 and dismissed in 1967 After his dismissal he applied to the Labour Court u/s 33C(2) of the Industrial Disputes Act, 1947, for computing the benefits and amount he was entitled to prior to his dismissal. A contention was raised that the Labour Court has no jurisdiction, on the ground that the applicant was not a workman on the date of the application before Labour Court, but it was held by their Lordships that the context and the subject-matter for in connection with which the word "workman" is used in the Industrial Disputes Act must be construed as to enable a workman who was employed during the period in respect of which he claimed relief even though he is no longer employed at the time of filing the application. It was held that the Labour Court had jurisdiction to go into such an application u/s 33 C(2) of the Industrial Disputes Act.

8. As regards the first contention of the learned counsel for the respondent No 3 we are unable to construe Section 22 of the Payment of Bonus Act, 1965, in the manner that every minor dispute regarding the payment of bonus, even when there is no dispute regarding the rate at which it is to be paid and the only dispute is regarding the exact amount to be paid, should be termed as Industrial dispute. Their Lordships of the Supreme Court in the *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, at length considered the provisions of Section 33-C(2) of the Industrial Disputes Act, and after tracing the history of the legislation in enacting this provision, held that when sub-section (2) of Section 33-C refers to any workman entitled to receive from the employer any benefit there specified, it does not mean that he must be a workman whose right to receive the said (sic) is not disputed by the employer. It was also held that the provisions of Section 33C(2) are in the nature of execution proceedings and the same have been enacted with a view to provide a speedy remedy to the individual aggrieved workman to enable him to claim his dues, rather than direct him to follow a wrong procedure of raising an industrial dispute, in the present case, as I have already narrated the facts, it was not denied by the respondent Company in the written statement before the Labour Court at all that the bonus was not paid by the Company to the other workmen at the rate of 20 per cent. The only denial was regarding the amount. Therefore, the dispute before the Labour Court was as to what amount the appellants were entitled to. It is further note-worthy that in the statement of flaws Singh and other appellants who appeared as their own witnesses, it was stated that the other workman had been paid at the rate of 20 per cent, but no cross-examination was directed to challenge this part of their statements. It is of course true that in the writ petition for the first time, a plea was raised that the bonus was not being paid at the rate of 20 per cent but was being paid at the rate of 4 per cent but this plea cannot be locked into because this Court could only base its finding on the evidence produced before the Labour Court on which the Labour Court based its findings. It is also clear that according to the provisions of Section 39 of the Payment of Bonus Act, until and unless specifically provided in this Act over-riding the provisions of Industrial Disputes Act, the provisions of the Industrial Disputes Act have been made applicable. Section 22 of the Payment of Bonus Act, in our opinion, does not exclude filing of an application u/s 33-C(2) of the Industrial Disputes Act, for the payment of bonus. Therefore, in our opinion, the Labour Court has the jurisdiction to go into this matter and the award of the Labour Court cannot be held to be without jurisdiction. The authority in *M/S Allahabad Labour Supply Agency's case* (Supra) goes so far that even the question whether the bonus was payable under the Payment of Bonus Act, 1965, or not, could also be gone into by the Labour Court under the provisions of Section 33-C(2) of the Industrial Disputes Act, but we need not go so far in the present case, as in our opinion the payment of bonus at the rate of 20 per cent to the other workmen was not at all denied by the respondent-Company at any stage before filing of the writ petition and the only question which the Labour Court was to determine was as to on what amount the appellants were entitled to receive as bonus, which claim was

appropriately determined by the Labour Court. In our opinion, the Labour Court had jurisdiction at least to determine this limited question which was only a question of calculation of amount to which the appellants were entitled.

9. For the reasons recorded above, this Letters Patent Appeal is accepted with costs. The judgment of the learned Single Judge is set aside and the award of the Labour Court is restored.

P.C. Pandit, J

10. I agree.