
(1968) 08 MAD CK 0021
In the Madras High Court

Coimbatore District Co-operative Central Bank Employees'
Association

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 23-08-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1969) 2 LLJ 432 : (1972) 85 LW 428

Hon'ble Judges : P. Ramakrishnan, J

Bench : Single Bench

Judgement

P. Ramakrishnan, J.—This writ petition 18 filed by the Coimbatore District Co-operative Central Bank Employees" Association

represented by the secretary, for the issue of a writ of certiorari quashing the award of the industrial tribunal, Madras (Sri S. Ganapathia Pillai) in

Industrial Dispute No. 3 of 1965. The industrial tribunal was called upon on a reference by the Government of Madras u/s 10 of the Industrial

Disputes Act, to decide the issue whether the demand of the workers, who are the employees of the Coimbatore District Co-operative Central

Bank, for additional bonus for the year 1962-63 was Justified, and, if so, to fix the quantum. It would appear that for the year in question, the

board of directors of the bank distributed the net profits in accordance with the bylaws and rules under the Madras Co-operative Societies Act,

1932, which was the Act in force for the period. The Madras Co-operative Societies Act, 1961, came into force only subsequently, that is, from 1

October 1963. The relevant bylaw, bylaw 23 permitted the award of bonus only up to a ceiling of three months" pay. The board of directors took

into consideration the available balance and granted two months" pay as bonus,

after getting the approval of the Registrar of Co-operative

Societies. The employees, however, made a claim that on the basis of the Labour Appellate Tribunal's formula, and taking also the need to bridge

the gap between a living wage and the actual wage, a bonus calculated at five to six months' basic pay would be Justified in the case. In the view

of the industrial tribunal the employees of the bank are governed by the rules and bylaws framed under the authority of the statute, and it is

necessary, therefore, to respect the ceiling of three months for award of bonus. Thereafter, taking into account the available surplus and also the

fact that the existing scales of pay of the staff in the bank are comparatively low scales and also having regard to the high cost of living, the

industrial tribunal held that the claim for bonus should be increased to three months' basic pay. Against the above award the workers' union has

filed this writ petition.

2. The main contention urged on behalf of the workers' union is that, when the dispute has been brought before the industrial tribunal, that tribunal

for the purpose of deciding about the quantum of bonus, need not be fettered by the maximum or ceiling; which the bylaws have provided for the

award of bonus. The industrial tribunal, having in mind the paramount need of ensuring to the employees a due share in the profits, which they have

helped to earn, and also bearing in mind the need to give them an allowance commensurate with the high cost of living, should have applied the

Labour Appellate Tribunal's formula and awarded the bonus at a higher rate. On the other hand, the management contended before me that,

where there is a statutory limitation, as in this case, to the computation of bonus, the industrial tribunal cannot overstep that limit.

3. I am inclined to agree with the arguments put forward by the management in this case. I have already mentioned that the relevant Act which

governed the affairs of the bank in 1932-68, was the Co-operative Societies Act of 1932. Unlike the Act of 1961, which in Section 62 gave

precise directions for the disposal of the net profits, and also contained a provision for the payment of bonus to members and paid employees at

such rate and subject to such conditions as may be specified in the rules, the main body of the Act of 1932 contained no similar provision. But Rule

XII-(a) framed u/s 65 of the 1932 Act, which has statutory force, provided for

the manner in which the net profits should be distributed in a financing bank with shares and limited liability (the District Co-operative Central Bank in the present case falls in this category). Not less than one third of the net profits shall be carried to the reserve fund until the total of the reserve fund and the other reserves of the bank equals the paid up share capital of the members held by it and thereafter not less than one-quarter of the profits shall be so carried; ten per cent of the net profits should be set apart to an audit fund; the remainder of the net profits may be used in such manner and for such purposes as are prescribed by the bylaws of the society. Now, Rule II of the rules framed under the 1932 Act lays stress on the fact that the bylaws of a society should contain provisions for the disposal of the net profits. The bylaws shall be consistent with the Co-operative Societies Act and the rules made by the Government thereunder. A draft copy of the bylaws shall be submitted with every application for registration. Rule III says that after the Registrar has examined the application and the bylaws and satisfied himself that they are in conformity with the Act and the rules and that they are suitable for carrying out the objects of the society he is empowered to register the society and its bylaws and grant to the society a certificate of registration. The above provisions show that the bylaws form an integral part of the constitution of a co-operative society, and the co-operative society is bound to act up to the bylaws. Any act not in conformity with the bylaws would imperil the very life of the society and expose it to the risks of supersession and its directors to the risk of a surcharge. In the context of this peremptory obligation which the society has to discharge, if it ignores the bylaws including the bylaw about the ceiling for computation of bonus, it will do so at its peril. It is idle to contend that the tribunal exercising jurisdiction under industrial adjudication can permit the society, or the bank, as in this case, to do what its own bylaws as well as the Act under which it is constituted prohibits it from doing.

4. It is a well-recognized principle that industrial adjudication, while dealing with the question of bonus, if it is subject to particular statutory laws and restrictions in the case of particular types of management or industries will have to respect them. The decisions which were cited in this connexion before me go to confirm this position. In *State Bank of India, Ltd. v.*

their workmen 1959 II L.L.J. 205, It was held that the provision in the Banking Companies Act, 1949, which stated at p. 214:

no banking company...shall employ any person whose remuneration or part of whose remuneration takes the form of...a share In the profits of the company

would disentitle the bank employees to bonus, even if it is raised as an industrial dispute. Per contra the counsel for the petitioner drew my attention to a decision of the Supreme Court in The Tinnevely-tuticorin Electric Supply Co. Ltd. Vs. Its Workmen, . In that case the Supreme Court had to deal with the provisions of the Electric Supply Act intended for the control of rates chargeable to consumers and for that purpose the Act required the electricity companies to prepare a working sheet, which was essentially different from the balance sheet and profit and loss account which the companies are required to keep under the Companies Act. The determination of clear profits on the basis of the working sheet proceeded on the consideration of previous losses, contributions towards the arrears of depreciation and several appropriations authorized by the State Government, matters which, however, had no relevance to commercial accounting. It was urged that in view of these statutory provisions, principles different from those laid down by the Labour Appellate Tribunal Full Bench should be applied for deciding the quantum of bonus. The Supreme Court held that the Act, which made detailed provisions in respect of matters intended to be covered by it, would not stand in the way of claim to bonus being decided in the light of the relevant industrial principles including the Labour Appellate Tribunal Full Bench formula. It is clear that in that case there was no upper limit to the computation of bonus prescribed by a binding provision like the provision in the bylaw in this case; nor was there a total prohibition as in the case of the earlier Banking Companies Act. It was in such circumstances that the Supreme Court recognized the advisability of settling the quantum of bonus on the broad industrial principles as laid down by the Labour Appellate Tribunal formula.

5. It is pointed out by the learned Counsel for the management that for the subsequent accounting year 1964 and later years, the principles laid down in the Bonus Act will acquire statutory force. The Supreme Court in a recent unreported decision in Civil Appeal No. 1630 of 1967 has laid

down that after the statute had thus provided in the Bonus Act for the computation and award of bonus as an essential obligation, it is the provision of that Act that should be applied for the calculation of bonus and not the general industrial principles laid down by the Labour Appellate

Tribunal's formula. While in the case of 1932 Co-operative Societies Act there is no statutory obligation to provide for bonus as in the Payment of

Bonus Act, the bylaws framed under the Act restrict the computation of bonus if it is to be awarded, by limiting it to a ceiling of three months' pay.

The statute was in force only to the limited extent as stated above in regard to the upper limit. But where it is in force to the limited extent stated

above, it is not open to the industrial tribunal to ignore the statute or the rules and the bylaws framed under it. The writ petition is dismissed. No

order as to costs.