(1998) 09 KAR CK 0048

In the Karnataka High Court

Case No : Writ Appeal No. 10149 of 1996

Dr. (Mrs.) Sita Bhateja, Nursing Home (Trust), Bangalore — APPELLANT

Vs

The Presiding Officer, Second Additional Labour Court, Bangalore and another — RESPONDENT

Date of Decision : 11-09-1998

Acts Referred:
Industrial Disputes Act, 1947 — Section 33 C (2)
Payment of Bonus Act, 1965 — Section 32 (v) (c), 36

Citation : (1999) 4 KarLJ 220 : (1999) 2 LLJ 1194

Hon'ble Judges : R.P. Sethi, C.J;K.R. Prasada Rao, J

Bench : Division Bench

Advocate : M/s. Kumar and Kumar, for the Appellant; Sri. D. Leelakrishna, for the Respondent

Judgement

1. Having not been paid closure compensation, one month''s salary and bonus, the 2nd respondent herein filed an application u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter called the ''Act'') before respondent 1. It was submitted that closure compensation amounting to Rs. 925/- from 1-6-1973 to 1-8-1978, balance of pay of Rs. 50/- for the month of July 1978, one month''s salary in lieu of notice of Rs. 250/-, bonus at 20% from 1-6-1973 to 1-9-1980 amounting to Rs. 4,990/-, leave wages for 30 days from 1973 to 1978 amounting to Rs. 400/-, unpaid salary from 1-9-1980 to 14-9-1980 amounting to Rs. 125/-and double wages for national and festival holidays for the years 1977-78 and 1979-80 amounting to Rs. 313/- had not been paid to the said respondent despite closure of the Dispensary in which he was serving.

The claim of respondent 2 was denied by the appellant submitting that he was rendering professional service as a Doctor in the dispensary only for few hours in a day and was being paid nominal service charges; there did not exist relationship of employer and employee between the parties; respondent 2 was stated to be not a workman under the Act; the appellant-Trust was claimed to be not an Industry, therefore, no relief could be granted against it u/s 33-C(2) of the Act and the appellant claimed itself to be a charitable trust, which was not engaged in making any profits, therefore not liable to pay any bonus.

The Labour Court vide its order dated 14th January, 1987 allowed the claim of respondent 2 by directing the appellant to pay a sum of Rs. 2,889/- within one month, failing which with interest of 18% per annum and cost of Rs. 50/-. The amount directed to be paid was on account of minimum bonus of Rs. 2,000/- and unpaid wages of Rs. 889/-.

Not satisfied with the order of the Labour Court, the appellant herein filed a writ petition in this Court, which was dismissed vide the order impugned in this appeal.

2. We have heard the learned Counsel for the parties and perused the record.

3. The learned Counsel appearing for the appellant submitted that the order impugned insofar as it directed the payment of bonus was illegal and contrary to law. It is submitted that the Labour Court as also the learned Single Judge committed a mistake of law by applying Section 36 of the Payment of Bonus Act, 1965 (hereinafter called the ''Bonus Act'') instead of applying Section 32(v)(c) of the Bonus Act.

4. It is common knowledge that bonus is cash payment made in addition to wages as a stimulus to extra work and efficiency by the workman. The claim for bonus, therefore, cannot be considered as an ex gratia payment. However, in order to claim bonus, one has to satisfy the requirements of the Bonus Act, which has been enacted to provide the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith. Sub-section (3) of Section 1 of the Bonus Act provides that it shall apply to every factory and every other establishment in which 20 or more persons are employed on any day during an accounting year. The appropriate Government can however apply the provisions of the said Act to any establishment or class of establishment in accordance with the procedure prescribed under proviso to the aforesaid sub-section. Establishment is, however, not defined under the Bonus Act. The ordinary meaning of the ''establishment'' would be the place in which one is personally fixed for business with necessary equipment, any office or place of business. Establishment has been held to be a fairly wider term than ''the factory'', which has special legal connotation and meaning. Section 32 of the Bonus Act provides that it shall not apply to certain class of employees, which include the employees employed by institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit. Section 36 authorises the Government to exempt any establishment for such period as may be specified from all or any of the provisions of the Bonus Act. Such an exemption is required to be granted having regard to the financial position and other relevant circumstances of any establishment or class of establishments. The provisions of Section 36 would authorise the Government to grant exemption only after it is

found that the employees of the establishment seeking exemption were otherwise entitled to bonus and that the Bonus Act was applicable to them notwithstanding the provisions of Section 32 of the Bonus Act. Institutions referred to in sub-clause (3) of Section 32 of the Bonus Act would cover such establishments, organisations or associations which are instituted for the promotion of some object especially one of public utility, religious, charitable and educational purpose. Before deciding the applicability of clause (v)(c) of Section 32, it has to be seen whether the concerned institution was established for purpose of profit or for charitable purpose. The purpose of not bringing the institution within the ambit of the provisions of the Bonus Act is to ensure better amenities and raising the standard of life of the community as a whole and for encouragement of the charity for the cause of the poor people. For the applicability of Section 32(v)(c) of the Bonus Act, no specific exemption is required, if it is otherwise shown that the institution was a charitable institution. The Labour Court was not justified in holding the applicability of Section 36 in the instant case and the learned Single Judge was not justified in observing that there was no evidence on record to show that the Nursing Home in question was a charitable institution.

5. The Deed of Amendment to the Original Deed of Trust-Annexure-B, which was executed on 29th of March, 1978 unequivocally declare:

"Whereas, the object of the said Trust was to promote public charity and to help the poor and sick by providing medical relief and education,

Whereas, in pursuance of the said object, the Trust has been running a Nursing Home, which term embraces a charitable hospital and a rural charitable dispensary."

The object of the Trust was substituted by prescribing that;

"The object of the Trust shall be to promote public charity and to help the poor and the sick by providing medical relief, education and the like and do so not for the purpose of profit including".

6. The mere fact that despite being a charitable Trust some profit had accrued to it would not change its nature or deprive the trust from claiming benefit of Section 32(v)(c) of the Bonus Act. We are fortified in our view by a Division Bench judgment of the Allahabad High Court in Uttar Pradesh Engineers'' Association v Uttar Pradesh State Electricity Board and of this Court in A.C. Shive Gowda v Coffee Board and Others .

7. In view of what has been stated herein above, this Appeal is allowed and the order of the learned Single Judge as well as of the first respondent passed in Application No. 11 of 1981 impugned in the writ petition is set aside.

