
(1997) 01 RAJ CK 0030

In the Rajasthan High Court

Case No : .C.W.P. No's. 3523 and 3524 of 1995

J.K. Acrylics

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-01-1997

Acts Referred:

Payment of Bonus (Amendment) Act, 1995 — Section 34

Citation : (1997) 2 LLJ 608 : (1997) 1 RLW 612 : (1997) WLC 1

Hon'ble Judges : M.G. Mukherji, C.J.;J.C. Verma, J

Bench : Division Bench

Advocate : Paras Kuhad, for the Appellant; Suresh Kasyap, B.L. Samdariya and V.S. Gujar, for the Respondent

Final Decision : Dismissed

Judgement

Verma, J.—Admittedly the petitioner's Establishment in both the above writ petitions are fully covered under the provisions of the Payment of Bonus Act, 1965 (hereinafter called as the Act). The Bonus Act has been enacted as a welfare measure to the working class employed in certain establishments and the employees are entitled to the bonus on the basis of the production or productivity or profit and for the matters connected therewith. The bonus is regarded as a deferred wage payable to the employees which can be claimed by them as a matter of right under the provisions of the Bonus Act. Statutory liability for payment of bonus to employees (sic) employed in establishment is also caused on the employer. Bonus is to be paid by the employer in the accounting year in accordance with the provisions of the Act after calculating the allocable surplus. u/s 8 of the Bonus Act, every employee is entitled to be paid the bonus by the employer in the accounting year in accordance with the provisions of the Act. Section 12 (sic) deals with the payment of minimum bonus to be paid to the employee which shall not be less than 8.33% of the salary or wage. This minimum bonus is to be paid irrespective of the fact whether company has earned any profit or not or there is any allocable surplus or not.

Section 11 provides for payment of maximum bonus i.e. upto 20%. Section 2(13) of the Act defines "employee" and employee had been defined before the latest amendment as an employee drawing a salary or wages upto Rs. 2500/- per mensem. But, the bonus was to be calculated for payment upto the salary or wage of an employee up to the limit of Rs. 1600/-.

2. The President of India had promulgated an Ordinance. The Payment of Bonus Amendment Ordinance, 1995 (No. 8 of 1995) published in the Gazette of India, Extra-ordinary Part II, dated July 9, 1995. The Ordinance has been promulgated in exercise of the powers conferred upon the President of India under Article 123(1) of the Constitution of India and was made effective from April 1, 1993 and whereby certain amendments have been made in Section 2 and Section 12. The figures "2500/-" have been substituted by the figures "3500/-" by the amending Ordinance and the figures "1600/" have been substituted by "2500/-"

3. The principle Act had been amended by the Ordinance w.e.f. April 1, 1993 and all those employees drawing salary up to Rs. 3500/- were brought under the purview of the Act to receive the benefit of bonus by taking the maximum limit of salary of Rs. 2500/- instead of Rs. 1600/- meaning thereby, earlier to the amendment, employees drawing salary up to Rs. 2500/- per month were entitled to receive the bonus at a salary of Rs. 1600/- per month and this clause has been enlarged and made applicable to the employees drawing salary upto Rs. 3500/- per month and the wage limit for payment of bonus has been extended upto Rs. 2500/- to be calculated for the purpose of payment of bonus.

4. This amendment in ordinance has been promulgated on July 19, 1995 w.e.f. April 1, 1993, and therefore, all those employees who had been benefited by this amendment, were entitled to ask for the bonus as per the Statute and made a demand on the petitioner. Being aggrieved by the demand, the petitioner filed the above two writ petitions challenging the Ordinance 8 of 1995. During the pendency of the writ petition, the Parliament had passed the Payment of Bonus (Amendment) Act, 1995 (hereinafter called Amending Act) and the Ordinance was replaced by Act 34 of 1995. The petitioners were allowed to amend the writ petition and by way of Amendment, the petitioners have challenged the Act 34 of 1995, the amending Act which replaced the Ordinance with all its provisions. The Amending Act was published on August 30, 1995. Section 2(13), the definition of the "employee" and also Section 12, whereby the applicability had been raised upto the employees drawing monthly salary of Rs. 3500/- but the benefits will be calculated at Rs. 2500/- of the Ordinance had been kept intact in the Amending Act. The petitioners have challenged the Ordinance as well the Amending Act. After the amendment has been incorporated by replacing the Ordinance and the amendment prescribes the same liabilities for the employer and benefits to the employees w.e.f. April 1, 1993 as provided in the Ordinance, the petitioners are challenging now the Amending Act, as it would be futile to lay any challenge on the Ordinance, which stands replaced by the Amending Act.

5. The petitioners in the writ petitions had averred that there was no urgency for

the President of India to promulgate the Ordinance and that it was contrary to all democratic norms. It is stated in the petition that no reason has been assigned as to why the Government had not passed the Amending Act when the Parliament was in session before passing the Ordinance i.e. during the session from April 1, 1993 to July 9, 1995. It is stated that the petitioners had already entered into an agreement (settlement) with the Union on January 17, 1995 i.e. prior to the passing of the Ordinance and no dispute could be raised for the year 1993- 94. In nutshell the petitioners want to submit that there was hardly any necessity to pass the Ordinance. But in view of the fact that the Ordinance has been replaced by the Amending Act 34 of 1995 and the amendment had also been made applicable with same provisions as that of Ordinance w.e.f. April 1, 1993, the petitioners rightly did not press any such point during the arguments on the vires of Ordinance.

6. The only point argued before the Bench by the learned counsel for the petitioner is that amending Bonus Act could not be made applicable retrospectively i.e. from April 1, 1993. He has rightly conceded that the Ordinance or Act could be made applicable prospectively and he has also rightly conceded that the benefits now being accrued to the employees drawing salary up to Rs. 3500/- per month and that a wage limit of Rs. 2500/- per month for the purpose of calculating the monthly bonus is beyond challenge, if it is made applicable prospectively and not retrospectively. The only grievance of the petitioners is that the Bonus Act could not be made applicable retrospectively i.e. from April 1, 1993. It is admitted that the Amending Act is being implemented by the petitioner and the employees have been paid bonus as well as per Amending Act prospectively.

7. The only question argued before the Courts whether the Ordinance/amending Bonus Act could be enacted retrospectively i.e. from April 1, 1993. Counsel for the petitioners submit that the retrospective applicability of the Act is illegal, arbitrary, ultra vires and void. He has submitted that non-payment of the bonus or delayed payment of bonus means that the contravention of the provisions of the Bonus Act have been made and is punishable u/s 28 of the Act, and for the reason that he had already paid the bonus for accounting year 1993-94 before coming into force of the Amending Act, as per the terms of the settlement arrived at between the employer and the employees, and additional liability cannot be created to pay bonus to those employees, who have now been brought under the provisions of the Act to receive the bonus by making the Act applicable to all those employees drawing monthly salary upto Rs. 3500/-. Counsel for the petitioners has further argued that because of settlement made in January, 1995 with the employees who were admittedly falling under the purview of the original Bonus Act, this settlement being binding, this section of employees now brought under the applicability of the Act cannot make any demand, even though, the Amending Act creates a right in them, and therefore, the demand raised By the Union for implementing the Amending Act is illegal. The petitioners submit that it was their vested right to pay only that bonus as was due before the Amending

Act and creation of any liability is bound to affect his vested right of not paying the bonus to the employees now coming into the fold of the Amending Act. The petitioners have prayed to declare the amending Act as ultra vires and also to declare the demand notice dated July 14, 1995 issued by the Union to be invalid and unenforceable.

8. The respondents have opposed the writ petition of the petitioners and it has been submitted that the Ordinance or Amending Act had been validly promulgated and passed. It is submitted that the Act could also be made applicable from April 1, 1993 i.e. for the year 1993-94.

9. It shall be necessary to reproduce the provisions of Section 2(13) and Section 12 of the Act, which have been amended by the Ordinance and later on replaced by the Amending Act. Provisions of amending the principal Act read as under:-

"Amendment of Section 2 - In Section 2 of the Payment of Bonus Act, 1965 (hereinafter referred to as the principal Act), in Clause (13) for the words "two thousand and five hundred rupees" the words "three thousand and five hundred rupees" shall be substituted.

Amendment of Section 12 - In Section 12 of the principal Act, for the words "one thousand and six hundred rupees" at both the places where they occur, the words "two thousand and five hundred rupees" shall be substituted."

10. The Ordinance 8 of 1995 as published in the Gazette dated July 9, 1995 reads as under:-

"Promulgated by the President in the Forty-sixth year of the Republic of India. An Ordinance further to amend the Payment of Bonus Act, 1965.

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action.

Now, therefore, in exercise of the powers conferred by Clause(1) of Article 123 of the Constitution, the President is pleased to promulgate the following Ordinances:-

1. Short title and commencement (1) This Ordinance may be called the Payment of Bonus (Amendment) Ordinance, 1995. (2) It shall be deemed to have come into force on the 1st day of April 1993.

2. Amendment of Section 2 - In Section 2 of the Payment of Bonus Act, 1965 (2 of 1965) (hereinafter referred to as the principal Act.) in Clause (13) for the words "two thousand and five hundred rupees" the words "three thousand five hundred rupees shall be substituted.

3. Amendment of Section 12 - In Section 12 of the principal Act, for the words "one thousand and six hundred rupees" at both the places where they occur, the words "two thousand and five hundred rupees" shall be substituted."

11. This Ordinance was replaced by the Amending Act 34 of 1995 with the same

clauses as in the Ordinance reproduced above. Counsel for the petitioners submit that he has no dispute so far the enlargement of the scope of applicability of the Payment of Bonus Act by way of Amendment from the prospective date is concerned, but he is only disputing the applicability from the retrospective effect. He submits that amending Act is violative of Articles 14 and 19 as it effects his vested right. He further submits that the non compliance of the payment of bonus is penal and if the Act is made retrospective, he is bound to face the penal consequences. According to the counsel for the petitioners, no new liability can be affixed on him. To establish his contention, counsel is mainly relying on the cases reported in Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, , Escorts Limited and Others Vs. Union of India and others, and other authorities mentioned hereinafter.

12. To substantiate that his vested right has been violated, he has relied on Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, and for the proposition that the liability cannot be fixed retrospectively. Learned counsel has relied on Indian Metals and Ferro Alloys Ltd. and Another Vs. State of Orissa and Others, , P.D. Aggarwal and Others Vs. State of U.P. and Others, and Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, .

13. The point involved before the Hon"ble Supreme Court in case of Lohia Machines and Anr. v. Union of India, (supra) was, the interpretation of Section 80J of the Income Tax Act, 1961 and validity of Section 19A of the Income Tax Rules, 1962. The question of Constitutionality of the retrospective amendment made in Section 80J was involved, as amended by Finance (No.2) Act, 1980. The Hon"ble Supreme Court was seized of the matter of the provisions involved as under:-

"The Finance Bill (No.2) of 1980 ultimately culminated in the Finance (No.2) Act, 1980 and by this Act, Section 80J was amended and Sub-section (1-A) was introduced with retrospective effect from April 1, 1972. The newly introduced Sub-section (1-A) was in the same terms as Rule 19-A, so that the manner of computation of the "capital employed" in an industrial undertaking or the business of a hotel or a ship remained the same but it was not set out in Sub-section (1-A) instead of Rule 19-A. The words "computed in the prescribed manner" which occurred in Sub-section (1) of Section 80J were also substituted by the words "computed in the manner specified in Sub-section (1-A)" with retrospective effect from the date, namely, April 1, 1972."

And ultimately held as under: -

"We are therefore, of the view that Rule 19-A insofar as it excluded borrowed moneys and debts in computation of the "capital employed" and provided for computation of the "capital employed" as on the first day of the computation period was not ultra vires of Section 80J and was a perfectly valid Rule within the rule-making authority conferred upon the Central Board of Revenue. So also, for the same reasons, Rule 19-A insofar as it provided that the "capital employed" in

a ship shall be taken to be the written-down value of the ship as reduced by the aggregate of the amounts owned by the assesses as on the computation date on account of moneys borrowed or debts incurred in acquiring that ship must be held to be valid as being within the rule-making authority of the Central Board of Revenue. Since, on the view taken by us, Rule 19-A did not suffer from any infirmity and was valid in its entirety. Finance Act (No.2) of 1980 insofar as it amended Section 80J by incorporating Rule 19-A in the Section with retrospective effect from April 1, 1972, was merely clarificatory in nature and must accordingly be held to be valid."

14. This judgment is of no help to the counsel for the petitioner.

The power and competence of the Parliament to amend any statutory provision with retrospective effect cannot be doubted. Any retrospective amendment to be valid must, however, be reasonable and not arbitrary and must not be violative of any of the fundamental rights guaranteed under the Constitution. The mere fact that any statutory provision has been amended with retrospective effect does not by itself make the amendment unreasonable. Unreasonableness or arbitrariness of any such amendment with retrospective effect has necessarily to be judged on the merits of the amendment in the light of the facts and circumstances under which such amendment is made.

15. In *Madan Mohan Pathak v. Union of India*, reported (supra) a vested right in the employees by way of payment of ex gratia/ the bonus by way of agreement, was taken away by the Life Insurance Corporation (Modification of Settlement) Act of 1970 and it was held that under the settlement the annual cash bonus, accruing to Class III and Class IV employees was a debt in the nature of property within the meaning of Article 31 (2). It was further held that the Act had not provided any compensation for compulsory acquisition by way of transfer to L.I.C. of the said property of the employees and hence it was violative of Article 31(2) of the Constitution of India.

16. *Madan Mohan's* case (supra) has no relevancy, nor it is applicable in the case of the petitioners for the reason that no property of the petitioner which might have vested in them has been taken away. Hence, *Madan Mohan's* case does not help the petitioner as no vested right of the petitioners is effected.

17. In *Indian Metals and Ferro Alloys Ltd. and Anr. v. State of Orissa and Ors.*, (supra), the orders passed u/s 22(B) of the Electricity Act, 1910, imposing the restriction on the consumption and power with retrospective effect in the middle of the year was held to be invalid on the ground that benefit cannot be taken away with retrospective effect, thereby saddling on the consumer with heavy financial burden in respect of the past period, where he had drawn and consumed power on the faith of the orders extended to him. That was a case, where the benefit had already been enjoyed by the consumer and an order was being passed under the Electricity Act with retrospective effect and the benefit already enjoyed of clubbing all the previous years was being taken away.

18. This case has no relevancy on the facts to the present case. In the bonus matter, there is no benefit, which might have been enjoyed by the employer in the previous years and might have now been taken away by the Amending Act.

19. In *P.D. Agrawal and Ors. v. State of U.P. and Ors.*, (supra), it was held that a vested right cannot be taken away by retrospective amendment of the Statute or Statutory Rules. This case related to seniority and promotions, whereby by way of retrospective amendment of the Rules, the right of the holders of the temporary posts and requiring them to qualify against the prescribed quota in the examination for recruitment to Assistant Engineers to permanent posts in order to become members of the Service was affected. It was held that Assistant Engineers already appointed to the temporary posts under the unamended Rules were entitled to the benefit of the entire period of their services from the date of their appointment for the purpose for inter se seniority and promotion along with appointees to the permanent posts. The case has no relevancy and is of no help to the petitioners.

20. In *Union of India v. Tushar Ranjan Mohanty*, (supra) it was held that when a person is deprived of an accrued right vested in him under a Statute or under the Constitution and he successfully challenges the same in the Court of law, the legislature cannot render the said right and such relief obtained nugatory by enacting retrospective legislation. Because of the reason that a vested right already accrued to the petitioners in Tushar Ranjan's case has been taken away, it was held that the retrospective effect of the Rules affecting the accrued vested right cannot be sustained. This case, too, is of no help to the petitioners.

21. Another case relied upon by the counsel for the petitioners is *K.S. Paripoornan Vs. State of Kerala and Others*, which case related to the provisions under the Land Acquisition Act. Section 23(1-A) which deals with the substantive rights, and is to be construed accordingly, as made applicable to the pending proceeding initiated prior to the commencement of the Amending Land Acquisition Act as on September 24, 1984, it was held that it does not apply to all proceedings pending in the reference Court on September 24, 1984, irrespective of the date in which award was made by the Collector. It applied only to those pending proceedings, which were specifically mentioned in Clause A and Clause B of Section 30(1) i.e. proceedings commenced prior to April 30, 1982 and where no award had been made by the Collector till that date, and where award was made prior to September 24, 1984 and award was made after September 24, 1984. It was held that the cases pending before the reference Court on September 24, 1984 where award was made by the Collector prior to April 30, 1982 are not covered by the Amending Act. It was held by the Hon'ble Supreme Court that for making Act retrospective, intendment must be clear in the law itself.

This case is also of no help to the petitioners for the reason that in the Bonus Act, the Legislature had specially intended the Act to be made applicable from April 1, 1993.

22. Admittedly, the Parliament has power to legislate with retrospective effect and create fiscal liabilities. In this respect, the only safeguard is that the law should be reasonable. In the present case, it has been invariably held that the Payment of Bonus Act itself is intra vires. Making the law applicable to certain set of employees, drawing salary upto certain limit is for the consideration of the Parliament to Judge. The Parliament was well aware of the fact that because of the rise of the price and living index and because of the revision of the pay scales, and high cost of living, the salary is being increased in the Governmental and non-Governmental establishments. Initially, when the law was enacted in the year 1965, the limit of the monthly salary drawn by the employee was very less. In the year 1985, a further amendment was made, because of the compelling circumstances and the Act was made applicable to the employees by modifying the definition of the "employees" u/s 2(13) of the Bonus Act, who were drawing salary upto Rs. 2500/-per month, and the bonus limit of such employee was fixed as Rs. 1600/- u/s 12 of the Bonus Act. Much water has flown ever since. Not only cost of living has increased, but to cope with a cost of living, there is constant revision of pay scales with the result that the Payment of Bonus Act had become an almost non existing welfare Act formajority of the employees, who since crossed the limit of Rs. 2500/-per month. Realising this aspect, the Legislature and on the persistent demands of the working class had rightly raised the limit up to Rs. 3500/- as to include the employees drawing this much of amount for the purpose of payment of bonus up to the limit of Rs. 2500/- per month for the calculation of the bonus. This is a welfare legislation and it is up to the Legislature to ascertain as to what should be the maximum salary of an employee who should be brought under the applicability of the Payment of Bonus Act and from which date, he should be entitled to. There is no vested right, vested in the employer to say that initially he was paying bonus to the employees with a lesser wage and because of the revision of the pay, and despite the high cost of living, the scope should not be enlarged to certain other sections of employees drawing wages upto Rs. 3500/-. As a matter of fact, this aspect has not even been challenged rightly in the arguments, by the learned counsel for the petitioner. No vested right of the petitioners nave been violated, which might have accrued to him, and is being taken away by the Amended Act by retrospective effect. It is also settled law that if a bonus is made applicable retrospectively by way of Notification, no prosecution could be made or have been launched against the petitioners for non payment of the bonus or for delayed payment of the bonus when the Amending Bonus Act has not even seen the light of the day nor can they be prosecuted for period of 1993-94 on the ground of payment of delayed bonus. This apprehension has no basis for the petitioners to challenge the Amending Act from retrospective effect. The petitioners are already paying bonus from prospective date as submitted by the counsel for the petitioners.

23. The petitioners have also made a prayer to set aside the demand notice, dated July 15, 1995 served upon the petitioners by the Union for payment of

bonus, as per the amending Act, to the employees, who have been brought in by way of the Amending Act. The contention of the petitioners that because of settlement for payment of bonus in January, 1995 with the employees, he is not bound to pay any other bonus, is to be rejected. The agreement in January, 1995 was entered into between the parties i.e. the employer and the employees, who were entitled to the Bonus at the relevant time i. e. employees who had fallen under the definition of Section 2(13) of the Bonus Act at that time, meaning thereby, those employees whose salary was Rs. 2500/- per month. But, the Ordinance promulgated later on in July, 1995 and the amending Act replacing the Ordinance in August, 1995, had enlarged the scope of the definition of the employees, who are drawing salary of Rs. 3500/- per month. Thus, those employees ranging from 2500/- to 3500/- were also included, who had earlier no right under the old Act to claim benefits. The benefit of bonus now accrued to the employees under the definition of "employee" u/s 2(13) up to the salary of Rs. 3500/- is to be awarded to all those employees who have fallen under the definition of "employees" from the date when the Act had come into way i.e. April 1, 1993 by calculating the bonus at the rate of Rs. 2500/-per month for all the employees drawing salary of Rs. 3500/- per month. The contention of the petitioner that prior to the Ordinance, he had entered into a settlement with the then existing employees entitled to bonus and had paid more bonus under the settlement, even though, that much bonus was not to be paid, has no relevancy for the purpose of this case. Even otherwise, any agreement or settlement, which negates the provisions of the payment of bonus is illegal per se as per provisions of Section 34 of the Payment of Bonus Act, Section 34 of the Act prescribes that subject to the provisions of Section 31A, the provisions of the Payment of Bonus Act shall have effect notwithstanding anything inconsistent carried on in any law for the time being in force or in terms of any award, agreement, settlement or contract of service. It has been repeatedly held that in view of the statutory provisions, the Act cannot be negated by way of any settlement by the parties. Even otherwise, because of the reason that the provisions of Statute are to prevail over the settlement, the petitioners are bound to comply with the provisions of the Amending Act. But in the present case so called settlement was not in regard to the employees who have now been benefited under the provisions of the Amending Act and to deprive the applicability of the Act by taking a shelter in the imaginative settlement by another set of employees, who were then covered under the provisions of the Act at that time, shall amount to bypassing the statutory provision itself. The demand notice issued by the employees, covered under the Amending Act, cannot be interfered by this Court under Article 226 of the Constitution of India.

24. It has been held by the Apex Court in the Entertainment Tax Officer-I and Anr. v. Ambae Picture Palace 1993 JT SC 223, that no reasons or explanation was (1) are required for the State for Amending Act having retrospective effect. In the facts of that case certain writ petitions were filed challenging the Andhra Pradesh Entertainments Tax as amended by Act 24 of 1984 i.e. the Amendment

Act introduced for levying the tax on gross collection capacity was challenged in the High Court of Andhra Pradesh. The High Court struck down the retrospective effect of the Amendment Act No. 16 of 1985 on the ground that no explanation had been given in the Act, for retrospective effect (sic) of the amending Act. It was held by the Apex Court that if the Parliament or the State Legislatures are competent to pass legislation, they can do so prospectively as well as retrospectively, and tax laws are no exception to this power. For this proposition assistance was also sought from the case of *Union of India v. Madan Gopal Kabra*, 1954 SCR 451, wherein it has been held that the legislative power conferred on the appropriate legislatures to enact laws in respect of topics covered by the several entries in the three lists can be exercised both prospectively and retrospectively. It was further held in *Rai Ramkrishna and Others Vs. The State of Bihar*, that where the legislature can make a valid law, it can provide not only for the prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions. Yet, in another case of *Tahiban v. Kewalbhai* 1995 (2) SCC 295 it was held that the amendment has to be held as applicable to the pending suit. The Supreme Court has gone further to say that even a vested right which has accrued to the landlord by the time the amendment of 1952 came into force, a view could well be taken that the Amendment should apply retrospectively, even in the case of accrued right.

25. It is settled law that where the amendment affects the vested right, that normally would be operative prospectively unless it is expressly made retrospectively or the same follows as a matter of necessary implications as has been held in *Moti Ram Vs. Suraj Bhan and Others*, .

26. It had been held by the Apex Court in *Lucknow Development Authority Vs. M.K. Gupta*, that while construing a social benefit oriented legislation, the primary duty of the Court while construing the provisions of such an Act, is to adopt a constructive approach subject to that it should not do violence to the language of provisions and is not contrary to the attempted objective of the enactment, and the provisions are to be construed in favour of the beneficiary for achieving the purpose of enactment, and it is a social benefit oriented legislation.

27. In *Mithilesh Kumar and Another Vs. Prem Behari Khare*, , it has been held that every law that impairs or takes away rights vested agreeably to existing law is retrospective, and is generally unjust and may be oppressive. But laws made justly and for the benefit of individual and the community as a whole may relate to time antecedent to their commencement. The presumption against retrospective effect (sic.) may in such cases be rebutted by necessary implication from the language employed in the statute. It cannot be said to be an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the Section which had to be construed.

28. Counsel for the petitioner tried to make a feeble attempt that as per the agreement not only, he had paid the bonus to those employees, who were

entitled to at that time when the settlement was entered into, but he had also paid sufficient amount as ex gratia to all the employees whether they were falling under the ambit of the Payment of Bonus Act or not and thus, if the petitioner is forced to comply with the provisions of the Amending Act for the Accounting Year 1993-94, it will amount to a double payment.

29. This contention of the petitioner has no force. Ex gratia payment of some amount is always at the option of the employer, which is paid to the employees as a grace and are not wages, whereas the bonus has been termed as wages. The ex gratia payment is paid to the employees as a reward, as an incentive for their past productive activities.

30. In case of Coffee Board Employees' Association v. A. C. Shida Gowad 1992 SCC 500, it has been held that an ex gratia payment to the staff is a well recognised legitimate mode of incentive payment. Incentives are necessary for securing from the workmen cooperation and efficient work. In the absence of efficiency, the cost of the work undertaken is bound to increase. In the long term such payment helps to keep down the costs and acts in the interests of the industry. The decision to make the ex gratia payment, has therefore, to be left entirely to the discretion of the management.

31. Yet another case decided by Division Bench of Rajasthan High Court in R.F. C. Officers Association v. R.F.C. 1989 (1) RLR 820, it had been categorically held that the ex gratia payment of emoluments to employees cannot be said to be "bonus" within the meaning of the Bonus Act. If the management had decided to bestow the grace of ex-gratia payments to all its employees whether falling within the ambit of Bonus Act or not, and also given in addition to the bonus to the employees, who were entitled to the bonus, the petitioners cannot now turn round and say that in case for the year 1993-94, the petitioner is compelled to comply with the statutory provisions of the Payment of Amending Bonus Act, that will amount to double payment to the employees.

This contention of the petitioner has no force and is to be rejected.

32. For the reasons mentioned above, it is held that the Legislature has power to enact with retrospective effect even though that Act creates some liabilities. No vested right of the petitioner has been violated by the Amending Bonus Act, as no vested right ever accrued to the petitioner, which might have become final. If the Legislature had power to pass an Act, it had been categorically held that the Legislature can pass the Statute prospectively or retrospectively. Therefore, the writ petitions of the petitioners are likely to be dismissed and are therefore, dismissed. In view of the Amending Bonus Act, all those employees drawing salary up to Rs. 3,500/- per month for the accounting year 1993-94 are entitled to receive bonus with the salary limit of Rs. 2,500/- for the purpose of payment of bonus at the same rate which had been awarded to the other employees for the same accounting year 1993-94. The petitioners are bound to implement the statutory provisions of the Amending Bonus Act and pay bonus to all its

employees falling under the definition of "employees" as defined u/s 2(13) of the Amending Act by calculating the bonus at the rate of Rs. 2,500/- per month of such employees as per Section 12 of the Amending Act, and thus the agreement already entered prior to the Amending Act shall have no bearing at all for Payment of Bonus as per Amending Act to the employees now brought under the provisions of Act for payment of bonus or to those employees, who were paid less bonus then prescribed by the amending Act w.e.f. April 1, 1993.

33. In view of the above discussions, the writ petitions are dismissed with no order as to costs.