
(1979) 08 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 2392/78, 920/79 and 1311 of 1979

M/s. Penguin Textiles Ltd.

APPELLANT

Vs

Sri V. Shankar and others

RESPONDENT

Date of Decision : 22-08-1979

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(d), 18, 18(1), 33(2), 33C(2)
Payment of Bonus Act, 1965 — Section 22

Citation : (1979) 08 AP CK 0026

Hon'ble Judges : Ramachandra Rao, J;P.A. Choudary, J

Bench : Division Bench

Advocate : I.A. Naidu, for the Appellant; D. Reddappa Reddy for Respondent-1 and Government Pleaders for Industries for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Choudary, J.—The management have filed these three writ petitions challenging the three orders passed by the Additional Labour Court, Andhra Pradesh, Hyderabad in three Miscellaneous Petitions filed by their workmen under Sections 33-C (2) of the Industrial Disputes Act (herein after called "the Act"). By means of those orders, the Additional Labour Court decided certain amounts as payable to the workmen who are the respondents in these three writ petitions and petitioners before the Additional Labour Court. It is that determination made by the Additional Labour Court which is challenged in these writ petitions. The three workmen, who have filed the aforesaid Miscellaneous Petitions u/s 33-C (2) of the Act before the Labour Court, were the employees of the Penguin Textiles Limited, Tarnaka, Hyderabad, which is the petitioner before us. An industrial dispute was raised by the Union of the workmen of the Penguin Textiles which has been referred to the Industrial Tribunal by the Government of Andhra Pradesh through G.O.Ms. No. 238 dated 15-3-77 u/s 10 (1) (d) of the Act. The two questions which had been referred for adjudication are :

1. Whether the demand of the Penguin Textiles Workers Union for payment of

bonus at 20% for the year 1975 is justified?

2. If not, what should be the quantum of bonus payable to them for the year 1975?

The Industrial Tribunal numbered the reference as Industrial Dispute No. 10/77 and by its order dated 17th of September 1977 answered the first question in favour of the employers, and in answer to the second question, the Industrial Tribunal determined that the Workmen are entitled to be paid for the year 1975 bonus at the rate of 18%. This determination by the Industrial Tribunal was expressly based upon the terms of the settlement dated 15-8-77 entered into between the Union of workmen and the management.

2. It appears that there was a dispute raised by the Workers Union some time in the early part of 1977 regarding the payment of bonus for the year 1975. This dispute has been admitted in conciliation and, after report of failure of conciliation, the matter has been referred by the Government for adjudication by the Industrial Tribunal and it is this reference which has been numbered as Industrial Dispute No. 10/77 and adjudicated by the Industrial Tribunal on the 17th of September, 1977. These facts would clearly show that every workman who had been in the service of the petitioner Company in the year 1975 would be covered by the Industrial adjudication. It is on that basis the present respondents--workmen who had been in service of the management in the year 1975 and some of whom had also been in the Union in the year 1977 at the time when the claim was made leading to conciliation, had preferred these claims u/s 33-C (2) of the Act.

3. Mr. I.A. Naidu, the learned Counsel appearing for the Penguin Textiles Limited, the petitioner before us, challenged the orders passed by the Additional Labour Court on the ground that the petitioners before the Additional Labour Court, now respondents before us, are not covered by the Award of the Labour Court given in Industrial Dispute No. 10/77, on the ground that they had ceased to be workmen by 15-9-77. The argument is that while the dispute was pending adjudication before the Industrial Tribunal, the Union and the management had entered into a voluntary agreement u/s 18 of the Act regarding the payment of bonus and as these respondents who were the petitioners before the Additional Labour Court had ceased to be in the employment of the management by that date, they were not covered by the agreement dated 15-9-77 and that, therefore, they should not be entitled to claim any benefit under the award passed in Industrial Dispute No. 10/77. This argument does not appear to be correct. Under the Industrial Disputes Act, any adjudication made by Industrial Tribunal would cover and govern every workman, whether he is or he is not a member of the Union and whether he is or he is not in the service on the date of the adjudication so long he had been a workman on the relevant date on which the dispute and adjudication relate. Without doubt, the present respondents satisfied those requirements by being the workmen of the management for the period of the dispute. Even according to the management, they had ceased to be

workmen of the petitioner's Company only some time later. The adjudication made by the Industrial Tribunal related to the settlement of the claims of the workmen in the year 1975 when these respondents had been working with the petitioner's company. From this, it would be clear that the Award which settles the question of quantum of bonus which the workmen of the petitioner's company should get in the year 1975, would clearly cover these workmen of the management.

4. Mr. Naidu has also argued that the agreement is binding u/s 18(1) of the Act only between the parties, and therefore these workmen who are not in the service of the management would not derive any benefit out of such an agreement. This proposition of law is not and cannot be objected to. Sec. 18 (1) clearly says that any settlement voluntarily entered into would bind only the parties to such a settlement. But this argument would not help the petitioner's case, because the workmen are tracing their rights and ascertaining their claims not on the basis of the settlement arrived at between the Union and the management on 15-9-77 but on the basis of the adjudication made by the Industrial Tribunal on 17-9-77. The fact that the Industrial Tribunal has, in fixing the quantum of bonus payable to the workmen of the management, relied upon the rate agreed to between the Union and the management, in their agreement dated 15-9-77 does not restrict in any way the applicability of the Award to all the workmen who had been in the service of the management in the year 1975, and also on the date when the reference has been made.

5. Mr. Naidu has also argued that what was agreed to be paid under the Settlement was only an exgratia payment and not bonus and the Industrial Tribunal erred in treating that settlement as providing for payment of bonus. Mr. Naidu's argument was that there was no allocable surplus in the year 1975 and that there was no law providing for minimum payment of bonus for that year and that, in those circumstances, the management had agreed only for the exgratia payment in order to promote the interest of industrial peace. It is the contention of the management that the industrial Tribunal erred in thinking that what was agreed to be paid by means of settlement is not exgratia payment but bonus. All this argument would hardly make any difference as to the validity or the applicability of the industrial adjudication. The settlement itself used the following Language:

The management has agreed to pay ex-gratia 18% of the annual wages for the year 1975 by way of bonus to the workmen.

If the Tribunal has called it either as ex-gratia payment or as bonus, it would hardly make any difference, because what the Industrial Tribunal was doing is only to take and adopt the rate of bonus which in its opinion is appropriate to be ordered to be paid to the workmen. In doing so, if the Industrial Tribunal had called it as bonus instead of ex-gratia payment, that would not, in any way, affect the validity of the industrial Award. Further, in this writ petition, the validity of that Award of the year 1977 had not been challenged. Therefore, we

must proceed on the basis that the Award is valid and the rights of the parties must be adjudicated on that basis.

6. Finally, Mr. Naidu contended that the applications of the workmen u/s 33-C (2) of the Act are incompetent. He has cited judgment of the Division Bench of the Madras High Court reported in *Major D. Arandha vs. Universal Radiators* 1975 (1) LLJ 254 where the learned Judges clearly held, that section 22 of the Payment of the Bonus Act bars the applicability of Section 33-C (2) of Industrial Deputes Act, the reasoning of the learned Judges in that case is based mainly upon the language of Section 22 of the Bonus Act which is in the following terms: 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 or of any corresponding law relating to investigation and settlement of the industrial dispute in force in a State and the provision of that Act, or as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly.

The decision based is not, in our opinion, applicable to the facts of, this case. Earlier in our case, there was dispute between the employer and the employees regarding the payment of bonds and that dispute was treated as an industrial dispute and was adjudicated upon. Now, what the workmen have claimed through their applications filed u/s 33-C (2) is only for the enforcement of the Award. Section 22 of the bonus Act, as interpreted by the judgment of the Division Bench of Madras High court, does, not say that even for the enforcement of an industrial dispute already settled the workmen should again raise another industrial dispute. In fact, it would simply preposterous for anybody to think that a workman asking for bonus should engage themselves in this endless litigation. What should happen if the workmen again raise the same question as an industrial dispute and the Industrial Tribunal again gives an Award in their favour this arguments should only be stated to be rejected. On the other hand, Section 33 (2) clearly provides that, where any workman should receive from the employer any money, that question should be decided by the Labour Court.

In this view of the matter, we cannot but reject the Argument of Mr. Naidu that these workmen should have once again raise an industrial dispute for the enforcement of an award earlier passed by the industrial Tribunal on 17-9-77. We accordingly, dismiss these three writ petitions with costs.