
(2005) 03 PAT CK 0008
In the Patna High Court
Case No : CWJC No. 615 of 2000

M/s. Pradip Lamp Works

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 11-03-2005

Acts Referred:

Payment of Bonus Act, 1965 — Section 36

Citation : (2005) 2 PLJR 217

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard Learned Counsel for the petitioner-works, counsel for the State as also the counsel for the recognized Labour Union of the works. The present writ application has been filed to set aside the order dated 7.10.1999, Annexure-1 whereunder prayer of the petitioner-works to exempt it from making payment of bonus to the workmen as per the provisions contained in Section 36 of the Payment of Bonus Act, 1965 (hereinafter referred to as "the Act") has been rejected holding that the public interest would suffer, if the petitioner-works is exempted from making payment of bonus, as exempting the petitioner-works from making payment would be detrimental to the interest of the workmen employed by the petitioner-works.

2. Learned Counsel appearing in support of this application, has assailed the aforesaid order dated 7.10.1999, Annexure-1 on the ground that the finding that exemption of the petitioner-works from payment of bonus tantamounts to acting contrary to the interest of the workmen, has been recorded without there being any basis for recording such finding. In consideration of the deteriorating financial condition prevailing in the petitioner-works as also the fact that many of the workmen of the works have since been retrenched, the recognized Labour Union of the petitioner-works itself had represented before the Labour Secretary, in response to the notice dated 7.7.1999, Annexure-6, that the Labour Union is agreeable to the grant of exemption to the petitioner-works, in view of the

deteriorating financial condition and in that context the General Secretary of the Labour Union had written communication dated 22.7.1999, Annexure-7 and further reiterated the same stand by making reference to their counter affidavit filed before this Court in CWJC No. 2867 of 1989 in which the General Secretary of the Union had conceded the prayer of petitioner-works for granting exemption from making payment of bonus to the workmen as Lamp Industry in general and petitioner-works in particular was passing through a difficult financial phase, in which it was not possible to continue the factory going, and the General Secretary of the Labour Union was of the view that petitioner-works may be exempted from making payment of bonus to its workmen and thereby it was likely that the company may rehabilitate itself by getting over the financial crisis. It appears in the impugned order learned Secretary has not taken into account either the contents of the letter dated 22.7.1999 or the contents of the counter affidavit filed in CWJC No. 2867 of 1989, which was also referred to and relied upon in the letter dated 22.7.1999, Annexure-7 rather it appears that the learned Secretary made an error of record in paragraph 4 of the said order by recording that Labour Union was pressing for grant of bonus and was not agreeable to the grant of exemption to the petitioner-works. Learned Counsel for the petitioner-works submitted that the statement recorded in paragraph 4 to the aforesaid effect is an error of record in view of the clear stipulation of the General Secretary of Union contained in letter dated 22.7.1999, Annexure-7 and the counter affidavit filed in CWJC No. 2867 of 1989 that the company be allowed exemption from making payment of bonus in order to enable them to tide over the financial crisis in which they have landed since 1976 itself. Counsel for the Labour Union also supported the argument put forward by the Learned Counsel for the company that the Labour Union was all along agreeable to grant of exemption to the petitioner-works from making payment of bonus under the provisions of the Bonus Act.

3. Counsel for the State Respondents, however, opposed the aforesaid prayer with reference to the statement recorded in paragraph 4 of the impugned order dated 7.10.1999, Annexure-1, as according to him the Labour Union was not agreeable to grant of exemption to the petitioner. In reply to the aforesaid submission of the State counsel, counsel for the petitioner again reiterated that the statements recorded in paragraph 4 of the impugned order is an error of record.

4. Having heard counsel for the parties, I am satisfied that the learned Secretary, while passing the impugned order has not taken note of the stand taken by the Labour Union in the letter written by the General Secretary dated 22.7.1999, Annexure-7 and the counter affidavit appended with the said letter and committed error of record in paragraph 4 of the said order. Perusal of the letter dated 22.7.1999, Annexure-7 and the counter affidavit en-Closed therewith indicate that it is the consistent case of the General Secretary of the Labour Union to allow exemption to the petitioner-works in order to enable the works to tide over the financial crisis. Since the aforesaid aspect is very much germane for

recording the finding as to whether it is in public interest to exempt the petitioner-works from payment of bonus under the Act, accordingly, I deem it expedient to set aside the impugned order and remit back the matter to the Secretary of the Labour and Employment Department to reconsider the exemption application of the petitioner company for grant of bonus in accordance with law in the light of the stand taken by General Secretary of the Labour Union in the letter dated 22.7.1999, Annexure-7 and the counter affidavit filed in CWJC No. 2867 of 1989 as also in the present writ case.

5. Parties are also at liberty to raise any other submission which they consider appropriate in the matter before the Secretary, Labour Department during the hearing of the exemption matter u/s 36 of the Act. This application is, accordingly, disposed of. No cost.