
(1979) 10 MAD CK 0013
In the Madras High Court

R. Sivagnanam

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 10-10-1979

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(c)(2)

Citation : (1980) ILR (Mad) 160 : (1980) 93 LW 82 : (1980) 1 MLJ 441

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The petitioner had been employed as a clerk in the second respondent company in their Salem branch office on a salary

of Rs. 400 per month. For the year ending 31st December, 1974, the second respondent paid bonus to all the employees, excepting the petitioner.

The petitioner claims to have requested the management to pay his bonus amount but his request had been turned down. The petitioner has

thereafter filed a petition u/s 33(c)(2) of the Industrial Disputes Act, claiming a sum of "Rs. 1,440 as bonus.

2. The said claim was opposed by the second respondent management. The management's contention was that the petitioner was employed as a

branch Manager in their Salem branch and as such he was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

Further it was contended that the Labour Court at Coimbatore had no jurisdiction to entertain the petitioner's claim, as on the date of the filing of

the petition the petitioner has been transferred from Salem to Bangalore and therefore it is the Labour Court at Bangalore which can entertain the

petitioner's claim. Further it was contended by the management that as the petitioner has been suspended, pending enquiry into certain acts of

misconduct, he is not entitled to claim the bonus in view of Section 9 of the Payment of Bonus Act. The management raised a far more formidable objection to the maintainability of the claim of the petitioner stating that the dispute relating to bonus between the petitioner and the management, should be taken to be industrial dispute and that therefore, the matter could not be agitated by an application filed u/s 33(c)(2) of the Industrial Disputes Act.

3. The Labour Court, while examining the question of the maintainability of the claim petition filed by the petitioner followed the decision of the Division Bench of this Court in Major D. Aranha v. Universal Radiators, Coimbatore (1975) 1 L.L.J. 254 : (1975) L.I.C. 1180 and dismissed the claim petition as not maintainable. It is as against the dismissal of the claim petition by the Labour Court the petitioner has come up this Court by way of this writ petition.

4. In this writ petition, the learned Counsel for the petitioner contends that the decision of a Division Bench in Major D. Aranha v. Universal Radiators, Coimbatore (1975) 1 L.L.J. 254 : (1975) L.I.C. 1180, referred to by the Labour Court, had not been accepted as laying down the correct law by a Full Bench decision in Anand Oil Industries Vs. Labour Court, Hyderabad and Others, , that as per the said Andhra Pradesh Full Bench decision, a dispute as to bonus payable by the management to an individual employee cannot be taken to be an industrial dispute and such a dispute could be agitated by filing an application u/s 33(c)(2) and that in view of the said decision, the decision of the Labour Court in this case has to be set aside with a direction to the Labour Court to go into the claim of the petitioner on merits.

5. On a close perusal of the Full Bench decision in Anand Oil Industries Vs. Labour Court, Hyderabad and Others, , we find that the Full Bench was of the view that the minimum bonus payable under the Payment of Bonus Act is a right vested in an employee under a statute, that such a right to receive the minimum bonus constituted an existing statutory right and that for enforcement of such a right an employee can certainly file an application u/s 33(c)(2) of the Industrial Disputes Act, and the Labour Court is competent to compute the amount due to the employees in this behalf. It was also of the view that a claim for payment of minimum bonus

cannot constitute an industrial dispute within the meaning of Section 22

of the Payment of Bonus Act, that when such a claim is made by an employee, it is not necessary that it should be referred to adjudication by an

Industrial Tribunal and that the Labour Court has jurisdiction to entertain the petition u/s 33(c)(2) and to actually determine the amount of bonus

due. According to the Full Bench of the Andhra Pradesh High Court, the decision in Anand Oil Industries Vs. Labour Court, Hyderabad and

Others, , holding that any dispute arising between the employer and the employees with respect to the bonus payable under the Act was an

industrial dispute within the meaning of the Industrial Disputes Act, in view of Section 22 of the Payment of Bonus Act and that being so, such a

dispute will have to be adjudicated in the regular way and not resolved by an application u/s 33(c)(2) was not correct.

6. As far as the claim for minimum bonus is concerned, it is possible to say that it could be agitated in an application u/s 33(c)(2) of the Industrial

Disputes Act as it is a statutory right and there is no necessity to have it either established or declared by raising an industrial dispute or otherwise.

It is true the decision in Major D. Aranha v. Universal Radiators, Coimbatore (1975) 1 L.L.J. 254 : (1975) L.I.C. 1180, proceeded on the basis

that even an individual dispute relating to bonus between an employer and an individual workman will become an industrial dispute u/s 22 of the

Payment of Bonus Act, while a Full Bench of the Andhra Pradesh High Court took the view that it is only the collective dispute with respect to

bonus that will become an industrial dispute u/s 22 of the Payment of Bonus Act, 1965 and not an individual dispute between an employer and an

employee with respect to the bonus payable to that particular employee. However, we feel it unnecessary to go into this controversy and to resolve

one way or the other the said question as to whether Section 22 of the Payment of Bonus Act, 1965 will take in an industrial dispute with respect

to bonus, as we are of the view that this case can be disposed of without reference to that question. The case before the Division Bench in Major

D. Aranha v. Universal Radiators, Coimbatore (1975) 1 L.L.J. 254 : (1975) L.I.C. 1180 related to a claim for bonus payable to the employees

for the year 1965-66. The management contended that no bonus has been declared so far for that year, and therefore, the workman cannot claim

bonus and that in the event the employee having received a consolidated sum of Rs. 3,000 towards all the benefits due to him inclusive of bonus for

the year 1965-66, he cannot claim any further amount as bonus. It is in the light of these pleadings, the Court held that the claim cannot be agitated

under the provisions contained u/s 33(c)(2) of the Industrial Disputes Act. We are of the view that the actual decision rendered by the Division

Bench of this Court in Major D. Aranha v. Universal Radiators, Coimbatore (1975) 1 L.L.J. 254 : (1975) Lab. I.C. 1180, cannot be taken

exception to. The Full Bench of the Andhra Pradesh High Court in Anand Oil Industries Vs. Labour Court, Hyderabad and Others, , has not laid

down that any claim for bonus by individual workman against the management can be agitated u/s 33(2)(c) of the Industrial Disputes Act, but it has

restricted the employee's right to proceed under this section only to claims for minimum bonus treating that claim as a claim to enforce a statutory

right. Even taking the decision of the said Full Bench of the Andhra Pradesh High Court as laying down the correct law, the petitioner herein

cannot maintain the claim which he has made in his application u/s 33(c)(2) before the Labour Court in his case. The petitioner has not restricted

his claim to minimum bonus and the claim petition makes no reference to the minimum bonus payable to him, even as an alternative claim. The

petitioner has claimed in his claim petition a bonus of 30% and the management has disputed the said claim on various grounds. Therefore, the

claim as put forward by the petitioner before the Labour Court cannot be sustained even on the basis of the Full Bench judgment of the Andhra

Pradesh High Court. The claim of 30% made by the petitioner does not spring from any settlement or award nor does it spring from the statute.

Therefore, the petitioner cannot straightway proceed u/s 33(c)(2) to claim the 30% bonus.

7. In our view, the claim made by the petitioner has rightly been rejected by the Labour Court. The learned Counsel for the petitioner submits that

it is always open to the petitioner to make a restricted claim for minimum bonus payable to him u/s 10 of the Payment of Bonus Act, and to enforce

the same by filing an application u/s 33(c)(2) on the basis of the decision of the Andhra Pradesh High Court in Anand Oil Industries Vs. Labour

Court, Hyderabad and Others, . It is always open to the petitioner to restrict his claim for minimum statutory bonus payable to him by the

management, u/s 10 of the Payment of Bonus Act and file an application u/s 33(c)(2) of the Industrial Disputes Act, and as and when such an

application is filed, the Labour Court will have to entertain that claim and dispose of the same on merits after considering the management's

contention that the petitioner is not a workman as defined u/s 2(s) of the Industrial Disputes Act and that even otherwise, the petitioner has

disqualified himself from getting the bonus u/s 9.

8. Therefore, subject to the above observations the writ petition is dismissed. There will be no order as to costs.