(2022) 09 MP CK 0069

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4401, 4617 Of 2022

Sadashiv Engineering Pvt. Ltd And Others — APPELLANT

Vs

State Of Madhya Pradesh And Others ? — RESPONDENT

Date of Decision : 05-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Payment Of Bonus Act, 1965 — Section 4, 8, 10, 11, 21, 22, 23, 23(2)

Citation : (2022) 09 MP CK 0069

Hon'ble Judges : Vivek Rusia, J;Amar Nath (Kesharwani), J

Bench : Division Bench

Advocate : Girish Patwardhan, Kirti Patwardhan

Final Decision : Dismissed

Judgement

Vivek Rusia, J

1. Regard being had to the similitude in the controversy involved in the present case, with the consent of the parties, these petitions are finally heard and decided by a common order. Facts of W.P. No.4401 of 2022 are narrated hereunder.

The petitioner has filed the present petition under Article 226 of the Constitution of India being aggrieved by the order dated 14.10.2019 passed by the Labour Commissioner in Case No.708/7/Teen/2019/48768-74 and order dated 10.01.2022 passed by the Presiding Officer, Industrial Tribunal (pronounced on 25.01.2022) in Reference No.16/ID/19.

2. The facts of these cases in short are as under:-

2.1. The petitioner is a Company registered under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and sale of small auto parts and auto components which are used by EICHER Motor & Force Motors. Respondent No.2 is a registered trade union and the members of the Union are working in the plant of the petitioner.

2.2. Respondent No.2 raised a dispute about the payment of bonus for the year, 2017 – 18 @ 20% of their wages. A demand letter dated 11.09.2019 was submitted before respondent No.1. The petitioner was called upon by a Labour Officer, Pithampur to supply the balance sheet and form No.A, B & D for the year, 2017

– 18 for the purpose of conciliation between them. The petitioner appeared and produced the aforesaid balance sheets and forms and submitted that the bonus @ 8.33% has already been paid to the members of the Union, hence, claim of 20% is not tenable. Since no settlement arrived, the conciliation proceedings ended into failure and the dispute was referred to the Labour Court for adjudication on the following terms of reference:-

2.3. The aforesaid reference was registered as Reference No.16/ID/19 and the parties were directed to submit the statement of claims and written statement. Respondent No.2 submitted a claim and the petitioner / Company submitted a reply and issues were framed. All the parties have examined their witnesses and after evaluating the evidence and material that came on record vide award dated 25.01.2022, learned Tribunal has partly allowed the claim by directing the petitioner / Company to pay bonus @ 13% to all the workmen / members of respondent No.2, hence, the present writ petition is before this Court.

3. Shri Girish Patwardhan, learned Senior Counsel for the petitioner submits that respondent No.2 claimed a bonus of 20% before the Labour Commissioner as well as before the Industrial Tribunal but they have not filed any evidence in support of the claim. The learned Tribunal has arbitrarily directed the petitioner / Company to pay a bonus of 13% without appreciating the evidence. Learned Senior Counsel further submits that on the basis of profit & loss of the Company, bonus for the year, 2017 – 18 @ 8.33% had already been paid to all the workers. It is further submitted by the learned senior counsel that Section 23 of the Payment of Bonus Act gives presumption about the accuracy of audited balance sheets and profits & loss accounts of the Company. The petitioner has filed account books, profit & loss statement duly certified by the Chartered Accountant in which the profit for the year 2017 – 18 was declared and on the basis of which bonus @ 8.33% has rightly been paid to the workmen, therefore, without any basis and material, bonus @ 13% has been awarded which is per se illegal and liable to be set aside.

4. We have heard learned Senior Counsel for the petitioner and perused the record.

5. The Payment of Bonus Act, 1965 enacted by the Central Government in order to provide rights of bonus to persons employed in certain establishments on the basis of profit or on the basis of production activities. Section 4 of the Act provides for the computation of gross profits derived from establishment in respect of each accounting year.

6. Section 8 of the Act provides for eligibility criteria for bonus and according to which every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

7. Section 10 of the Act provides that every employer shall be bound to pay to every employee in respect of accounting year a minimum bonus @ 8.33% of the salary of wages during the accounting year. Likewise Section 11 of the Act provides for maximum limit of bonus up to 20% of the salary or wages. Therefore, in view of Sections 10 & 11 of the Act, it is mandatory on the part of the employer to give bonus ranging from 8.33% up to 20%.

8. Section 21 of the Act provides for recovery of bonus due from the employer, where any money is due to an employee by way of bonus from his employer, he may make an application before appropriate Government for recovery of money and on certification issued by the authority of the appropriate Government, the Collector shall recover the amount as land revenue.

9. Section 22 of the Act provides for reference of a dispute for adjudication as an industrial dispute to an arbitrator or Tribunal constituted under the Industrial Disputes Act, 1947. Shri Patwardhan has rightly said that Section 23 of the Act gives presumption about accuracy of balance sheets and profit & loss in the account of the Company.

10. Sub-section (2) of Section 23 gives an authority to the learned Presiding Officer to call clarification from the employer relating to any item in the balance sheet and profit & loss account.

11. In the present case, the petitioner examined Sudhanshu Sharma before the Tribunal and he deposed that the financial condition of the Company was not sound at the relevant financial years, therefore, bonus more than 8.33% could not be paid to the workers. In cross-examination, he has admitted that he and his wife are Director in Galaxy Components Private Limited and Sadashiv Engineering Private Limited i.e. the petitioners in both the writ petitions and likewise his son Varun Sharma is also working as Manager in both the Company and getting the salary. Both the companies are purchasing the oil from J. J. Sharma and making the payment. After examining the record, the Tribunal has found and held that with an intention to give less bonus to the worker, the petitioner / Company has shown the expenditure as zero allocable surplus. If the salary paid to Sudhanshu Sharma is deducted, then sufficient amount would be available to the Company to pay the bonus more than 8.33%. It has also been noted that in order to conceal the allocable surplus of 2017 – 18, balance sheets of last five years have not been submitted. The petitioner / Company earned total income of Rs.8,50,301/- in the year 2017 – 18, but showing the expenditure, it remained Rs.3,14,301/- and Company paid bonus of Rs.3,71,702/- @ 8.33%, therefore, the Tribunal after examining the profit & loss statement of the Company and appreciation of evidence, has rightly awarded

bonus @ 13%. We are not inclined to interfere with the well reasoned order in exercise of power conferred under Article 227 of the Constitution of India.

In view of the above, present Writ Petition stands dismissed.

The order passed by this Court in the present case shall govern the connected petition also, therefore, W.P. No.4617 of 2022 also stands dismissed. Let a copy of this order be kept in the connected petition also.

