

(1982) 09 BOM CK 0024

In the Bombay High Court

Case No : Appeal No. 184 and 335 of 1982

Scindia Steam Navigation Co. Ltd.

APPELLANT

Vs

Scindia Employees Union and others

RESPONDENT

Date of Decision : 21-09-1982

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10A, 12, 18, 18(1)
Payment of Bonus Act, 1965 — Section 10, 12, 2(13), 2(21), 31A
Trade Unions Act, 1926 — Section 26, 28

Citation : (1983) 2 LLJ 476 : (1983) MhLj 1058

Hon'ble Judges : M.N. Chandurkar, J; B. Lentin, J

Bench : Division Bench

Judgement

Chandurkar, J.—This judgment will dispose of two appeals, namely, Appeal 184 of 1982 filed by the Scindia Steam Navigation Co. Ltd., and Appeal 335 of 1982 filed by the Scindia Employees' Union and others. Both these appeals arise out of a decision given by the learned Single Judge in Miscellaneous Petition 1302 of 1978, in which the learned Judge has taken the view that the settlement dated 5th December, 1974 provides for bonus which is profit-based and in view of the provisions of Payment of Bonus Act, 1965 (hereinafter referred to as the "Bonus Act"), the claim for bonus under the agreement could not be validly made by employees of the Scindia Steam Navigation Co. Ltd. (hereinafter referred to as "the Company"). The learned Judge has further held that the bonus under the said agreement of 5th December, 1974 in respect of employees who were drawing salary in excess of Rs. 1600/- is not affected and that in computing the salary of such employees, all the four allowances drawn by the employees should be taken into account as all of them comprise in the concept of dearness allowance. The first finding is challenged by the Union in Appeal 335 of 1982 and the latter finding is challenged by the Company in Appeal 184 of 1982.

2. The facts which led to the filing of the petition under Art. 226 of the Constitution by the Union against two Companies, namely, the Scindia Steam Navigation Co. Ltd., and the Scindia Workshop Ltd. may now be briefly stated.

Petitioner 1 was the union of the employees of the Company and petitioners 2, 3 and 4 were employees of the Company. At the time when the petition was filed, petitioner 2 drew a salary of more than Rs. 1600/- per month, while petitioners 3 and 4 drew less than the said amount. It is not in dispute that right from the year 1953 the shore staff of the two companies in question had been receiving bonus linked with dividend declared and paid to the shareholders of the Company. The other employees of the two companies, namely, shore floating staff and daily rated staff had also been receiving bonus at the rate paid to the shore staff. The original formula in accordance with which bonus was received by the employees of the companies was arrived at by agreements between the Company and the Union entered into from time to time. The first agreement dated 8th May, 1953, which was effective for the period 1st January, 1953 to 31st March 1953 and which provided for a scale of bonus relating to the dividends paid by the Company to its shareholders was continued by the second agreement dated 14th March, 1957 which was effective for the period 1st June 1955 to 30th June, 1960. Similar formula was adopted under agreements for further years, that is, for the period 1st July, 1960 to 30th June, 1965, 1st July 1965 to 31st December, 1969 and 1st January, 1970 to 31st December, 1973. We are concerned with the settlement dated 5th December, 1974.

3. Paragraph 8.1 of this agreement provides for bonus to be paid to the members of the Bombay Union as well as to members of the Calcutta Union. The employees are divided into two categories, one consisting of employees drawing basic salary up to Rs. 400/- and the other consisting of employees drawing basic salary above Rs. 400/-. Under this agreement the bonus payable was linked to the dividend paid in respect of that particular year to the shareholders of the Scindia Steam Navigation Co. Ltd. By way of illustration it may be pointed out that the agreement provided that if dividend was declared up to 50 paise per share or 2 1/2%, then bonus payable to the employees drawing up to Rs. 400/- was "3/50th of annual salary plus D.A. earned during the year" and the same amount was payable to employees who drew salary above Rs. 400/-. If dividend was declared up to Re. 1/- per share or at 5%, then the first category of employees was to get 3/25th of the annual salary plus D.A. earned during the year, while the other employees drawing basic salary above Rs. 400/- were to get 1/50th of annual salary plus D.A. earned during the year.

4. The opening part and the concluding part of para 8.1 which relates to bonus may be reproduced because some emphasis has been laid upon it by the learned Counsel for the Company. These parts read as follows :

"Pursuant to S. 34(3), Payment of Bonus Act, 1965, and subject to conditions laid down therein, it is agreed that the scales of bonus payment to staff in respect of any year will be linked as under to the dividends paid in respect of that year to the shareholders of the Scindia Steam Navigation Co. Ltd.

It is urged that the aforesaid scales of bonus will be discussed and modified if necessary in consultation with the Union in the event of any amendment to the

Payment of Bonus Act, 1965."

5. There is no dispute that bonus for the year 1973-74 ending 30th June, 1974 was paid at the rate of 36% of salary or wages.

6. It is necessary at this stage to refer to certain amendments which were made to the Bonus Act. We are not concerned with all the amendments which were made from time to time, but it is necessary to mention that before the Bonus Act was amended by Ordinance 11 of 1975, which is replaced by Act 23 of 1976 with effect from 25th September, 1975, there was a provision in S. 34(3) of the Bonus Act which read as follows :- S. 34 was headed : "Effect of laws and agreements inconsistent with the Act". Then S. 34(3) provided as follows :

"Nothing contained in this Act shall be construed to preclude employees employed in any establishment or class of establishments from entering into agreement with their employer for granting them an amount of bonus under a formula which is different from that under this Act :

Provided that any such agreement whereby the employees relinquish their right to receive the minimum bonus under S. 10 shall be null and void in so far as it purports to deprive them of such right."

7. By the Bonus Amendment Act, 23 of 1976 two amendments, which are relevant for our purpose, were made. A new provision in the form of S. 31A was introduced in the Act. This section read as follows :

"31-A. Special provision with respect to certain employees for payment of bonus.
- Notwithstanding anything contained in this Act, where an agreement or a settlement has been entered into by the employees with their employer before the commencement of the Payment of Bonus (Amendment) Ordinance, 1975, or where the employees enter into any agreement or settlement with their employer after such commencement for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then such employees shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be :

Provided that such employees shall not be entitled to be paid such bonus in excess of twenty per cent of the salary or wages earned by them during the relevant accounting year."

Then the original S. 34 was deleted and new S. 34 was introduced in the following form :

"34. Effect of laws and agreements inconsistent with the Act. - Subject to the provisions of S. 31-A, the provisions of this Act, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service."

8. In order to complete the narration of the relevant amendments made to the Bonus Act, it is necessary to refer to the provisions of Ordinance 9 of 1977 which

was replaced by Act 43 of 1977 and the amendments took effect from 3rd September 1977. Apart from certain other provisions to which we shall refer, it is necessary to point out that by this amending Act even the long title of the Act was amended and in place of the original long title, the new title given was "An Act to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith". By the same Act, a new provision was introduced in sub-s. (2A) of S. 10 which made it obligatory on the employer to pay to every employee a minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or 100 rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year and this provision was to operate notwithstanding anything contained in S. 10(1) regarding the payment of minimum bonus. Once again an amendment in S. 34 was made and the substantive provisions in S. 34 along with its first proviso, which is material, read as follows :

"34. Employees and employers not to be precluded from entering into agreements for grant of bonus under a different formula. - Nothing contained in this Act shall be construed to preclude employees employed in any establishment or class of establishments from entering into agreement with their employer for granting them an amount of bonus under a formula which is different from that under this Act :

Provided that no such agreement shall have effect unless it is entered into with the previous approval of the appropriate Government."

A new provision in S. 34A was inserted to provide for effect of laws and agreements inconsistent with the Act. This section read as follows :

"Subject to the provisions of Ss. 31A and 34, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service."

9. The grievance which the petitioners have made in the petition is that for the year ending 30th June, 1975 the two companies refused to pay bonus to their employees in accordance with the settlement of 5th December, 1974 on the plea that S. 34 of the Bonus Act, as amended by Ordinance 11 of 1975, which is replaced by Act 23 of 1976, had abrogated the said settlement. According to the petitioner-Union, tentatively the members of the Union accepted the bonus at the rate of 20% of the gross salary for the year ending on 30th June, 1975. A grievance is also made that payment of bonus according to the settlement of 5th December, 1974 was also declined for the year 1975-76 and that the Companies had unilaterally paid 20% bonus as provided under the Bonus Act.

10. There is then a second agreement between the Company and the Union which was a settlement under S. 2(p), Industrial Disputes Act, 1947, entered into on 29th March, 1978 in which a provision was made that bonus would be paid at the rate of 20% of the gross salary/wages for the year 1975-76 without

ceiling to all staff members subject to approval of the Shipping Development Fund Committee. There is no dispute that though the said Committee granted approval it was conditioned by the fact that the grant would be subject to ceiling of wages or salary as per the Bonus Act.

11. In the meantime, on 31st January, 1977 the Union had filed a complaint before the Industrial court at Bombay under S. 28, Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. The unfair labour practice complained of was failure to implement a settlement which fell under item 9 of Schedule IV of the Act. This complaint was, however, withdrawn on 23rd February, 1979 and the fact that the complaint was filed or withdrawn is not very relevant for the purposes of the petition.

12. Now, the relief which the Union had asked in the petition is primarily a writ of mandamus or any of the appropriate writ order or direction under Art. 226 of the Constitution requiring the Companies to pay to the employees of the two Companies bonus for the period 1st July, 1974 to 30th June, 1977 as per the settlement of 5th December, 1974.

13. The petitioner-Union has also challenged the constitutional validity of the provisions of Ss. 2(13), 12, 31A, 34 and the first and the third provisos to S. 34 of the Bonus Act as being violative of Arts. 14, 19(1)(f) and 31 of the Constitution.

14. Before the learned Single Judge the petition was contested on behalf of the Company on the ground that the claim to bonus under the settlement of 5th December, 1974 was not maintainable in view of the provisions of the Bonus Act because the bonus contemplated by the settlement of 5th December, 1974 was profit-based bonus. The learned Judge took the view that the bonus agreed to be given by the Companies to their employees under the settlements were within the compass of the provisions contained in the Payment of Bonus Act and not outside them and that such bonus, although in pursuance of a settlement, could not be accepted as traditional, festival or customary. The learned Judge further took the view that employees who were drawing gross salary exceeding Rs. 1600/- would, however, be entitled to receive bonus under the agreement and the learned Judge felt that the matter was concluded by a Division Bench decision of this "Court in *Petroleum Employees Union v. Industrial Court* (1980) 40 Fac LR 279 . An argument advanced on Behalf of the Companies that writ jurisdiction of the High Court should not be utilised for giving such relief as was asked for by the Union when the employees had failed to avail of the ordinary remedy under the Labour law and that a writ should not be issued against private employers was negatived by the learned Judge relying on observations of the Supreme Court in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, . It appears that it was argued before the learned Single Judge on behalf of the Companies that four allowances, namely, (1) ad hoc allowance at the rate of Rs. 40/- per month, (2) family allowance at the rate of Rs. 30/- per month, (3) house rent allowance at the rate of Rs. 60/- per month

and (4) tiffin allowance at the rate of Rs. 25/- per month, should not be considered for the purpose of determining the gross salary of the employees. This contention was negated and the learned Judge held that for the purpose of calculating the salary or wage of Rs. 1600/-, all the four allowances should be included. Consequent to the finding recorded by the learned Judge, an order as prayed in prayer Cl. (d) of the petition for a writ of mandamus referred to above was made. The learned Judge, however, gave liberty to the Union to agitate the question with regard to the validity of the statutory provisions of the Bonus Act in further proceedings, if necessary. As already observed, both the Union and the Companies are aggrieved by the findings recorded against them and that is how these two appeals have been filed.

15. Mr. Singhvi appearing in the appeal filed by the Validity of the different provisions of the Act, primarily contended that the view taken by the learned Single Judge that the bonus linked with dividend is a specie of profit-based bonus is erroneous and that thought the Bonus Act is a complete Code, so far as profit-based bonus is concerned, the provision of the Bonus Act did not prevent the employer and the employees from entering into an agreement with respect to any other kind of bonus.

16. Mr. Rele appearing on behalf of the Companies has at the outset raised a question as to the maintainability of the petition filed by the Union and, according to the learned Counsel, a writ in the nature of mandamus, direction or order cannot be issued against the Company which is not required to perform a public or statutory duty and further that a writ in the nature of mandamus, direction or order cannot be issued to enforce a contractual obligation. It was contended that for issue of writ, direction or order in the nature of mandamus, there must be a legal right to the performance of a legal duty and right to bonus under a settlement is neither fundamental nor legal.

17. According to Mr. Singhvi, it was perfectly permissible for the High Court under its power under Art. 226 of the Constitution to issue a mandamus to any person including a company and obviously with a view to bring the instant case within the well established principles governing the jurisdiction under Art. 226 of the Constitution, Mr. Singhvi has contended that a settlement under S. 2(p), Industrial disputes Act, creates a statutory obligation against the employer by virtue of the provisions of S. 18(1), Industrial Disputes Act, 1947, and even otherwise, payment of bonus must be considered as a public duty of the employer and since a writ under Art. 226 lies to enforce a public duty against an individual, the learned Judge was justified in rejecting the objections raised on behalf of the Companies to the maintainability of the writ petition.

18. These contentions raised necessitate firstly a reference to the well established principle governing the exercise of jurisdiction under Art. 226 of the Constitution and an ascertainment of the true nature of the rights created by a settlement under S. 2(p), Industrial Disputes Act, 1947.

19. It is now well established that a mandamus lies to secure the performance of a public or statutory duty, though it is not necessary that the person or authority on whom the statutory duty is cast need be a public official or an official body. If it is found that the Company has some obligation to perform a statutory or a public duty, then it may not be possible to contend that no writ can be issued to the company merely because it is a company registered under the Companies Act to enforce the performance of the public duty or a statutory duty. Mr. Rele has referred us to the decision of the Supreme court in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, . The propositions laid down in this decision, in our view, make a reference to any other case wholly unnecessary in view of the well established position now with regard to the jurisdiction under Art. 226 of the Constitution. In page 753 of the judgment, the Supreme Court has observed as follows :

"No doubt, Art. 226 provides that every High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus, etc., or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute.

..... Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings."

The paragraph reproduced above clearly lays down that it is only the performance of a public or a statutory duty in the performance of which the petitioner has a sufficient legal interest for which a mandamus can be issued.

20. The position is no different as stated in de Smith's *Judicial Review of Administrative Action*, fourth edition, page 540, on which reliance has been placed by Mr. Singhvi. The learned author has observed as follows :

"Mandamus lies to secure the performance of a public duty, in the performance of which the applicant has a sufficient legal interest

The duty to be performed must be of a public nature To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute."

The crucial question which, therefore, must fall for consideration on the facts of the present case is whether the rights created under the settlement of 5th December, 1974 can properly be said to create a legal duty, a statutory duty or a public duty against the Companies or does it merely create a contractual obligation between the parties to the agreement or the settlement. So far as this question is concerned, it will have to be decided on the terms of the provisions of the Industrial Disputes Act.

21. It is not in dispute in the present case that the agreement for payment of bonus dated 5th December, 1974 is a settlement within the meaning of S. 2(p), Industrial Disputes Act, 1947. S. 2(p) defines settlement as follows :

"'Settlement' meant a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer."

The definition of "settlement" indicates that an agreement of the kind we are concerned with, that is, an agreement which is arrived at otherwise than in the course of conciliation proceedings is brought within the definition of settlement by an inclusive clause. Now, when we go to the provisions of S. 18, it will be noticed that the provision of S. 18(1), which provides that a settlement arrived by agreement between the employer and workmen otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement, was not there originally but was introduced with effect from 7th October, 1956. If S. 18(1) is now contrasted with the provisions of S. 18(3), which was really S. 18 in the original Act, it will be clear that while under S. 18(1) a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceedings is made binding only on the parties to the agreement, a settlement arrived at in the course of conciliation proceedings is made binding on parties referred to or described in Cls. (a) to (d) in S. 18(3). It is important to point out that the limited effect of S. 18(1) of the Act, which was introduced for the first time in 1956, was merely to make an agreement binding on the parties to the agreement. Now, S. 29 no doubt provides for penalty for breach of a settlement or an award and any person who commits a breach of any term of any settlement or award which is binding on him shall be punishable with imprisonment for a term which may extend to six months or with fine or with both and what is argued before us by Mr. Singhvi is that in view of the provisions in Ss. 18(1) and 29, the "settlement" must be so construed as to create either a statutory duty or a public duty against the employer.

22. Now, it is difficult for us to see how the declaration made in S. 18(1) that an agreement arrived at between the two parties shall be made binding on the parties to the agreement does anything more than to make the agreement a binding one. It is well known that normally it is the Union or the representative of the employees who enter into an agreement with the employer. As a matter of fact under the Bombay Rules it is provided under R. 62 that the settlement contemplated by S. 2(p) shall be signed "in the case of workmen, either by the President or Secretary or such other officer of a trade union of the workmen as may be authorised by the Executive Committee of the Union in this behalf, or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for that purpose". All the employees do not as a matter of fact become parties to the agreement except for the provisions in S. 18(1) and all that S. 18(1) does, in our view, is that the fact that the settlement is binding on the parties to the settlement is declared, thereby meaning that though only the representatives have signed it, the agreement also binds those whom the representatives represented.

23. We may with advantage refer to a Division Bench decision of the Madras High Court in *Workers of Buckingham and Carnatic Company v. Commissioner of Labour and Chief Conciliation Officer* 1964 I L.L.J. 253, where the learned Chief Justice has highlighted the fact that S. 18(1) was introduced in the year 1956 with a view to remedy a defect in the then existing law. The following observations at page 263 (of Lab LJ) are instructive :-

"Section 18(1) was introduced in the year 1956, with a view to remedy a defect in the then existing law. Prior to that amendment, there was no provision to make such settlement binding even on the parties thereto, with the result that the workmen notwithstanding a settlement could raise an industrial dispute on the identical matter agreed upon by their union. In *Trade Union Law* by N.A. Citrine (2nd Edn.) at p. 121 the rule under the common law has been stated to be :

"Under the ordinary law of contract apart from the enactment to be mentioned below the terms of a collective agreement do not automatically become part of the individual contracts of employment which work-people enter into with their employers; an employer and an employee are free in law to agree on terms inconsistent with those of a collective agreement, even though they are members of the organizations which have concluded the collective agreement. Only if and so far as the terms of a collective agreement are expressly or tacitly made part of the individual bargain, will they be binding as between employer and employee. Because of the difficulty which may be encountered - particularly when the employer is a non-federated firm - in proving that by express agreement or by usage the provisions of a collective agreement have become incorporated in the employee's contract of employment, certain enactments in recent years have provided means by which in stated circumstances the terms of a collective agreement can be enforced by or on behalf of an employee against

the employer".

Section 18(1) of the Act is merely intended to cure that defect in the law and to make an agreement come to with reference to an industrial dispute binding on the parties thereto. It is intended to go no further. If it were to be binding on others as well, there is really no need for any reference in Sub-s. (3) to the binding nature of a conciliation settlement. As we indicated earlier, a conciliation is not the same thing as an adjudication. It is in essence an agreement between capital and labour arrived through the good offices of the governmental agency."

We agree with the position as set out by the learned Chief Justice of the Madras High Court. It cannot be disputed that prior to the enactment of S. 18(1), there was no provision which extended the binding nature of an agreement between the employer and the representative of employees to individual employees whom the Union represented and that situation was sought to be remedied by the enactment of S. 18(1).

24. In our view, the only manner in which S. 18(1) can be read is that it has the effect of making the terms of the settlement a part of the contract of employment of each individual workman. Thus if the terms of an agreement, which is described as a settlement under S. 2(p), by virtue of the effect of extension brought about by S. 18(1) of the Act in nothing more than making the terms of settlement a part of contract of employment or terms of employment, it is difficult for us to hold that provisions of S. 18(1) have the effect of creating a statutory duty or a public duty against any party to the agreement. Reliance on the penal provision in S. 29 would not take the matter any further and it would not have the effect of converting what in essence is a contractual obligation into a statutory obligation. The fact that a breach of a settlement is made punishable cannot be taken as conclusive of any intention on the part of the Legislature to give a settlement, which in essence is nothing more than an agreement, the status of an instrument creating a statutory right or obligation.

25. The Industrial Disputes Act no doubt is intended to secure peace and harmony in the industrial field, as contended by Mr. Singhvi. But we fail to see how this must necessarily lead to the conclusion that what in essence is a contractual obligation must be construed as a public duty. When it is said that mandamus will issue for the enforcement of a public duty, then, as observed by Garner in Administrative Law, 5th Edition, p. 208. "The duty which it is sought to enforce by order of mandamus must be of a public nature." A contractual obligation between an employer and employee can hardly be said to have the character of a public nature. It is purely a private contract between two parties to the agreement, namely, the employer and the employee.

26. Once we hold this to be correct nature of the rights created by the settlement under S. 2(p), Industrial Disputes Act, then we must accept the argument of Mr. Rele that a writ will not lie to enforce a contractual obligation. We have been referred to two decisions of the Supreme Court by Mr. Rele. In

Radhakrishna Agarwal and Others Vs. State of Bihar and Others, , an argument was advanced before the Supreme Court that whenever a State or its agents or officers deal with the citizen, either when making a transaction or, after making it, acting in the exercise of powers under the terms of a contract between the parties, there is a dealing between the State and the citizen which involves performance of "certain legal and public duties". This argument was rejected with the following observations :

"If we were to accept this very wide proposition every case of a breach of contract by the State or its agents or its officers would call for interference under Art. 226 of the Constitution. We do not consider this to be a sound proposition at all."

In The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, , the Supreme Court has clearly held that where all that is sought to be enforced is an obligation flowing from the contract, the party is not entitled to apply for grant of a writ of mandamus under Art. 226 of the Constitution. Dealing with the writ of mandamus, it has been observed in para 5 as follows :

"There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance."

27. Mr. Singhvi has heavily relied on the decision of the Supreme court in Rohtas Industries v. Its. Staff Union (supra). It may be recalled that the learned single Judge has drawn support from this decision in order to hold that writ of the kind asked for in the present case can be issued to the Company. It is no doubt true that in that decision, the Supreme Court has observed, "The expansive and extraordinary power of the High Courts under Art. 226 is as wide as the amplitude of the language used indicates and so can affect any person - even a private individual - and be available for any (other) purpose, even one for which, another remedy may exist." Emphasis has been laid on the use of the words "language used". Now, these observations cannot be read as setting at naught the other limitations on the power of the High court under Art. 226 such as that writ will issue only to enforce the performance of public duty or a statutory obligation or a statutory duty. It is necessary to point out that the question raised in that decision was that an arbitrator under S. 10A, Industrial Disputes Act, was a private arbitrator and, therefore, not amenable to the jurisdiction under Art. 226 of the Constitution. It is that question which the Supreme Court

was called upon to deal with. The Supreme Court referred to the earlier decision in *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, , in which while dealing with the question whether an appeal will directly lie to the Supreme Court under Art. 136 of the Constitution, the Supreme Court had observed, "..... even if the arbitrator appointed under S. 10A is not a Tribunal under Art. 136 in a proper case, a writ may lie against his award under Art. 226", and all that the Supreme Court decided in the decision in *Rohtas Industries*" case was that an arbitrator under S. 10A, Industrial Disputes Act, was amenable to jurisdiction under Art. 226.

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28. Mr. Singhvi has relied before us on a decision of the Supreme Court in *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, , in support of the contention that the right to bonus payable under an agreement can be enforced by a writ petition under Art. 226 of the Constitution. A reference to the decision will, however, show that what the Supreme Court was in that case concerned with was not whether a writ lies to enforce a contractual obligation for payment of bonus, but the Court was directly concerned with the validity of an agreement under the Life Insurance Corporation Modification of Settlements Act, 1976, and on a construction of the provisions of that Act, it was held that the effect of the impugned Act was to transfer the ownership of the debts due to and owing to Class III and Class IV employees in respect of annual cash bonus to the Life Insurance Corporation and since the Life Insurance Corporation was a Corporation owned by the State, the impugned Act was a law providing for compulsory acquisition of those debts by the State within the meaning of cl. 2(a), Art. 31 of the Constitution. That decision thus turned on the effect of a statute which purported to modify the terms of settlement dated 24th January, 1974 in the matter of payment of cash bonus.

29. Reliance has been placed by Mr. Singhvi on another decision of the Supreme Court again arising out of a claim for bonus against the Life Insurance corporation of India. That decision is reported in *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*, . The fact of that decision will show that the Life Insurance Corporation had issued a notice terminating the settlements of 24th January, 1974 and 6th February, 1974 between the Life Insurance Corporation and its Class III and Class IV employees regarding payment of annual cash bonus, and notice under S. 9A, Industrial Disputes Act, 1947, stating that the Corporation intended to effect a change in the conditions of service of the workmen relating to existing provision for bonus was also issued. These notices were challenged and it was held that unless the settlements of 1974 were subsequently altered by fresh agreement, award or valid legislation, the same would continue to be in force and the notification dated 26th May, 1978 purporting to amend the standardization order by substituting cl. (9) was valid

and the newly enacted Regn. 58 did not affect the contract in respect of bonus embodied in the settlements of 1974. In considering the question as to whether the settlements of 1974 still continue to be operative, as contended on behalf of the employees or whether they ceased to be operative because of the subsequent orders and notices issued by the Life Insurance Corporation, the Supreme Court held that after the expiry of the specific period, contractual or statutorily fixed, as the period of operation of an award or settlement, the same does not become non est but continues to be binding and that actually new contractual award replaces the previous one and the former settlement or award regulates relations between the parties. The decision thus turned mainly on legality or validity of the action of the Life Insurance Corporation in attempting to put an end to the settlement and it was that action which was challenged. This decision cannot, in our view, be considered as an authority for the proposition that a contractual obligation could be enforceable under Art. 226 of the Constitution.

30. We may also point out that there are certain observations in this decision which affirm the view that the settlement is nothing but a contract between the parties. In para 75 of the judgment the Supreme Court observed as follows :

"It is desirable to appreciate what is a settlement as understood in the Industrial Disputes Act. In essence, it is a contract between the employer and the workmen prescribing new terms and conditions of service. These constitute a variation of existing terms and conditions. As soon as the settlement is concluded and becomes operative, the contract embodies in it takes effect and the existing terms and conditions of the workmen are modified accordingly."

These observations would support the view which we have taken that a settlement under S. 2(p) is nothing more than a contract and it embodies terms and conditions of service between an employee and an employer in addition to other terms which may be agreed upon or which may be governing the relationship between the employer and the employee.

31. Reference has been made to a decision of the Andhra Pradesh High Court in T. Gattaiah and Others Vs. Commissioner of Labour and Another, . The question in that case was whether a writ of mandamus will issue against a private management for the enforcement of its statutory duties under Chapter V of the Industrial Disputes Act and a learned single Judge of the Andhra Pradesh High Court held that in appropriate cases, a writ of mandamus under Art. 226 of the Constitution could issue even against a private person and the petition in that case would be maintainable against the management for the enforcement of its statutory duties under Chap. V, Industrial Disputes Act. This decision does not lay down any new principle but only gives effect to the established principle that if there is any statutory duty cast upon an individual, that will be enforced under Art. 226.

32. Another decision relied upon by Mr. Singhvi arose out of a claim to

enforcement of certain regulations framed by the Reserve Bank of India. In *R. M. Joshi v. Reserve Bank of India* 1982 1 L.J. 77, the Regulations were Reserve Bank of India (Staff) regulations, 1948 and the question was whether the Regulations were statutory in nature and whether a writ will lie to enforce those Regulations. It was held by the Delhi High court that while the Reserve Bank of India Regulations are not statutory in character and are contractual, the question whether writ petitions are maintainable will depend upon whether the petitioners have the right to equality under the Constitution or any other constitutional rights and whether any such rights is contravened by the action of the Bank. It was further held that if a constitutional right is contravened, the writ petition cannot be resisted on the ground that the contravention also relates to the terms of service contract, because to the extent of constitutional and statutory protection enjoyed by the petitioners, the nature of the relevant terms of service which enjoy such protection is more a matter of status than of contract. Thus the decision of the Delhi High Court turned mainly on the question as to whether any constitutional right has been violated or not and it was further held that the protection enjoyed by the employee in such a case was not a matter of contract but a matter of status.

33. We may in passing refer to a decision of the Mysore High court in *S. Dasarathy v. Mysore State Electricity Board* (1974) LIC 705 , on which reliance has been placed by Mr. Rele appearing for the Company. The Division Bench in that case held that an award of an Industrial Tribunal was not law and the manner of enforcement of the award made under the Industrial Disputes Act was provided under the Act itself and if the respondents had not implemented one of the terms of the award, the remedy of the petitioner was to seek relief under S. 29 of the Act or to move the State Government to make a reference under S. 36A of the Act. The Division Bench followed a decision of the Calcutta High Court in *K.M. Mukherjee Vs. Secretary and Treasurer, S.B.I. and Others*, in which the Calcutta High Court held as follows (Para 4) :

"The award of an Industrial Tribunal is the decision of an industrial adjudication by a statutory tribunal and can have no more statutory force than the decree of a Civil Court. Either may be executed or otherwise implemented in the manner laid down in the relevant law, but it cannot be enforced by the prerogative writ of mandamus as an instrument having the force of law of itself."

34. Undoubtedly we are not in the present case concerned with an award, but in any case, a settlement arrived at in an agreement signed by both the parties cannot stand on any higher footing than an award of an industrial tribunal.

35. Having regard to the discussion above, we are constrained to hold that the learned single Judge was in error in holding that the rights under the settlement of 5th December, 1974 could be enforced under Art. 226. We must accordingly reject the contention of Mr. Singhvi that the said settlement could be enforced in these proceedings under Art. 226 of the Constitution.

36. One of the arguments advanced before us on behalf of the Company was that the writ petition should not have been entertained by the learned single Judge because an alternative remedy was open to the employees by way of an application under S. 33C(2), Industrial Disputes Act, 1947.

37. Strictly speaking, this question is now purely academic in view of the finding recorded by us about the maintainability of the petition. It may, however, be pointed out that it is now well established that the existence of an alternative remedy is not an absolute bar to the exercise of jurisdiction under Art. 226 of the Constitution and in a given case, a Court is not precluded from permitting a petitioner to invoke the jurisdiction under Art. 226 of the Constitution. Even otherwise, it would be wholly improper now at this stage, after the matter has been disposed of by the learned single Judge on merits to hold that the learned Judge should have held that the petitioners should have approached the Labour Court under S. 33C(2), Industrial Disputes Act, or that the petition should have been dismissed on the ground of delay.

38. These findings are strictly speaking sufficient to dispose of both the appeals. However, since the question as to whether the finding recorded by the learned single Judge that the bonus linked to dividend is a profit-based bonus was erroneous has been argued at some length before us, it will not be proper for us not to deal with that question. Challenging the finding of the learned single Judge Mr. Singhvi has contended before us that the bonus linked to dividend does not fall in the category of profit-based bonus and such bonus must be construed as outside the provisions of the Bonus Act, with the result, according to Mr. Singhvi, that the agreement of 5th December, 1974 must not be held to have been superseded or rendered ineffective by the provisions of the Bonus Act. According to Mr. Singhvi, the two decisions of the Labour Tribunals relied upon by the learned single Judge do not lay down an absolute proposition that dividend-linked bonus is profit-based, Mr. Rele on behalf of the Company has argued before us that it is now settled by the decision of the Supreme Court in *Sanghvi Jeevraj Ghewar Chand and Others Vs. Secretary, Madras Chillies, Grains and Kirana Merchants Workers Union and Another*, that the Bonus Act is exhaustive of the right to profit-based bonus and that there can be no agreement with regard to profit-based bonus outside the Act and consequently, the employees cannot claim any right to bonus under the agreement of 5th December, 1974.

39. It is not now in dispute that a claim to profit-based bonus must be based only on the provisions of the Bonus Act. We have earlier reproduced certain provisions of the Bonus Act. At the material time when the agreement of 5th December, 1974 was entered into, the provisions made in S. 34(3) provided that nothing contained in the Bonus Act would be construed to preclude, employees employed in any establishment or class of establishment from entering into agreement with their employer from granting them an amount of bonus under a formula which is different from that under the Bonus Act. We are not concerned

with the proviso under which any agreement whereby the employees relinquished their right to receive the minimum bonus under S. 10 is declared to be null and void in so far as it purports to deprive them of such a right. It has been stressed before us by Mr. Rele that the agreement dated 5th December, 1974 expressly refers to S. 34(3) of the Bonus Act. This is not in dispute, as will be clear from the clause relating to bonus which has been extracted by us earlier. Later on by Act 23 of the 1976 by incorporating a new provision in S. 31A liberty was given to the employer and the employees to enter into an agreement for payment of an annual bonus linked with production or productivity in lieu of bonus based on profit payable under the Bonus Act with a proviso that the employees shall not be entitled to be paid such bonus in excess of 20% of the salary or wages earned by them during the relevant accounting year. Thus while permitting bonus linked with production or productivity to be paid, a ceiling of 20% of the wages was put. By the same Act an overriding provision was made in S. 34 that the provisions of the Act will have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any terms of any award, agreement, settlement or contract of service. The obvious object of S. 34 was to undo the effect of the terms of any award, agreement, settlement or contract of service which dealt with profit-based bonus, but at the same time provision was made for an agreement for production or productivity bonus in lieu of bonus based on profit and that also subject to the maximum of 20%. Section 34 underwent a second change brought about by Ordinance 9 of 1977 and Act 43 of 1977. As a result of this new provision in S. 34, employees and employers were not precluded from entering into agreements for grant of bonus under a different formula, but such an agreement had to be entered into with the previous approval of the appropriate Government. Now, it is obvious on a bare reading of the new provisions in S. 34 that all that was permissible was to adopt a formula different from the one provided for in the Act. The Act contemplated the concept of allocable surplus, but if the parties intended to adopt some other formula for the purpose of a profit-based bonus, that was made permissible subject to previous approval of the appropriate Government. The overriding effect, which was originally contained in S. 34, as it existed prior to the amendment by Ordinance 9 of 1977 and Act 43 of 1977, was reinserted in S. 34A which was substantially in the same terms as original S. 34 with the addition that the overriding effect of the provisions of the Bonus Act was made subject to the provisions of S. 31A and S. 34.

40. Considering the general scheme of the provisions of the Bonus Act, the Supreme Court in the case of *Sanghvi Jeevraj* (supra) pointed out that considering the history of the legislation, the background and the circumstances in which the Act was enacted, the object of the Act and its scheme, it was not possible to accept the construction that the Payment of Bonus Act is not an exhaustive Act dealing comprehensively with the subject matter of bonus in all its aspects or that Parliament still left it open to those to whom the Act does not apply by reason of its provisions either as to the exclusion or exemption to raise

a dispute with regard to bonus to industrial adjudication under the Industrial Disputes Act or other corresponding law. It was also held in that case that in view of the non-applicability of the Act to establishments, not being factories and which employ less than 20 persons therein and the exemption of employees in an establishment in public sector though employing more than 20 persons, the employees in both these establishments cannot claim bonus dehors the Act.

41. It is obvious that the only argument which was open to the Union in the instant case to wriggle out of the rigours of the provisions of the Bonus Act, which was exhaustive on the question of profit-based bonus, was to contend that the bonus provided for by the agreement of 5th December, 1974 was not profit-based and reliance was placed by Mr. Singhvi on a decision of the Supreme Court in *The Mumbai Kamgar Sabha, Bombay Vs. Abdulbhai Faizullabhai and Others*, , to contend that bonus which is not profit-based is not affected by the Bonus Act. In the decision in *Mumbai Kamgar Sabha's* case, the Supreme Court pointed out that the Bonus Act speaks and speaks on the sole subject of profit-based bonus but is silent on and cannot therefore annihilate by implication other distinct and different kinds of bonus such as the one oriented on custom and that the Bonus Act did not bar claim to customary bonus or those based on conditions of service. It was pointed out that customary bonus does not require calculation of profit or available surplus because it is a payment founded on long usage and justified often by spending on festivals and the Bonus Act gives no guidance to fix the quantum of festival bonus nor did it expressly wish such a usage. Thus customary, traditional or contractual bonus was held to be outside the rigour of the Bonus Act.

42. Therefore, there is no doubt that if it was possible to establish for the Union that the dividend-linked bonus was not profit-based, it could have been held in their favour that such bonus was outside the Act. The position, however appears to be to the contrary. A dividend under the Companies Act is payable under S. 205 out of the profits of the Company. Section 205 of the Companies Act, in so far as it is material, reads as follows :

"No dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-s. (2) or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with those provisions and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government."

Under the statutory provisions of S. 205, Companies Act, therefore, dividend cannot be declared except out of the profits of the Company for the year concerned or out of the profits of the Company for any previous financial year. The concept of dividends embodied in S. 205, Companies Act, will clearly, therefore, indicate that dividends and profits are so closely interconnected that if

there are no profits which could be distributed to the shareholders, then there will be no dividends which could be paid to the shareholders. Merely because dividends are paid in a given year out of the profits of the previous year, dividends do not cease to be distribution of profits. An argument was advanced before us that in three years, that is, in 1959-60, 1961-62 and 1964-65, dividends were distributed out of the profits of the previous year and an argument was advanced before us that the claim to bonus, as contemplated by the agreement of 5th December, 1974, was dividend-linked simpliciter because bonus could be claimed only if dividends were paid and if no dividends were paid to the shareholders, no bonus could be demanded. By merely linking the quantum of bonus to the quantum of dividend, the basis of the right to bonus does not undergo any change because dividend itself is paid on the basis of profits. It is obvious that when under the agreement in question, the quantum of bonus to which the workmen or the employees were entitled to was set out, the reference to dividend was only for the purpose of mode of computation of bonus. The different percentages really were intended to decide how much bonus a person will get, but the basis of the bonus remained profits earned by the Company. Apart from the fact that we do not find any other view possible on the question as to whether a dividend-linked bonus is profit-based or not, in our view, the learned single Judge was more than justified in taking notice of the consistent practice which has been adopted by Industrial Tribunals in treating a dividend-linked bonus as profit-based. We need not refer in detail to those decisions, and we may refer only briefly to those decisions. In *The Chrome Leather Co. Ltd. v. Their Workers* 1949 I L.L.J. 20, the Industrial Tribunal Mathurai, while making an award for bonus observed at page 31 :

"As in the case of *Buckingham and Carnatic Mills*, the bonus paid should be linked to the profits distributed, i.e., dividend declared."

The other decision is of the Labour Appellate Tribunal reported in *The Bihar Firebricks and Potteries Ltd., Manbhum v. Their Workmen* 1953 I L.L.J. 587, in which the observations of the Full Bench of the Labour Appellate Tribunal in *Millowner's Association's* case were reproduced in the award appealed against before the Calcutta Bench of the Labour Appellate Tribunal. In the *Millowners' Associations'* case, the Full Bench had observed as follows :

"As no analysis, far less a detailed analysis of the account figures, was attempted to be made on behalf of either party and as the claim in this case is for a profit bonus, I would consider it expedient to link the profit bonus to the dividend declared by the company"

These decisions, therefore, indicate that the dividend linked bonus has always been considered as providing for bonus based on profits.

43. Mr. Singhvi has relied on a decision in *Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur*, . The observations of the Supreme Court of that judgment show that the Labour Appellate Tribunal had not accepted the

contention of the Union that the bonus should be linked to dividend and the Supreme Court observed : "Linking of bonus to dividend would obviously create difficulties." It was further pointed out that if the theory of linking of bonus to dividend was accepted, a company would not declare any dividend but accumulate the profits, building up reserve and distribute those profit in the shape of bonus shares or reduce the capital in which event the workers would not be entitled to claim anything as and by way of bonus. It was further pointed out that workers not being members of the company would not have any right, title and interest in the reserves or undistributed profit which would form part of the assets of the company. Now, it is difficult for us to see how the observations in para 15 of the judgment can lead us to any conclusion that dividend-linked bonus is not profit-based. All that these observations intended was that if bonus was linked to dividend, there was a possibility of a company not distributing any dividend at all and thereby depriving the workmen of bonus. That, however, is not relevant for the purposes of the present case because admittedly bonus has been linked to dividend and bonus has been paid earlier according to the same formula.

44. If bonus in the instant case is not anything else except profit-based, as is our view, it is difficult for us to see how any claim under that agreement can now be made.

45. That would now bring us to the appeal filed by the Company in respect of the finding recorded by the learned single Judge that the benefit of the agreement would be available to those who are drawing more than Rs. 1600/-. The learned single Judge has taken the view that the employees of two employer companies drawing gross salary exceeding Rs. 1600/- will be entitled to receive bonus linked with dividend for the period covered by the settlement and that they cannot be held to have lost the right to receive bonus under the settlement by reason of the provisions of the Payment of Bonus Act even after the amendment thereof. The learned Judge felt that there was no alternative to take this view in view of the decision of a Division Bench of this Court in *Petroleum Employees Union v. Industrial Court*. The order of the learned single Judge does not disclose any other ground. As the order of the learned single Judge seems to be based solely on the decision in *Petroleum Employees Union's* case, it is necessary to refer to that decision. A reference to the facts in that case will show that what was payable under the agreement in that case was "ex gratia payment in lieu of bonus to the employees earning more than Rs. 1600/- per month". The letter on the basis of which such payment was to be made refers to the fact that employees will be paid by the Corporation "an ex gratia amount calculated on the same rate as bonus payable to employees drawing gross salaries up to Rs. 1600/- under the Payment of Bonus Act" and such ex gratia amount was agreed to be calculated on the first Rs. 1600/- of gross salary. The Central Government advised the Corporation to withdraw its commitment in the letter referred to above probably assuming that the letter could be withdrawn in view of the provisions of S. 31-A and S. 34 of the Bonus Act. The Company treated ex gratia

payments as over payments and decided to recover the same in instalments. A complaint, therefore, came to be filed in the Industrial Court under S. 26 read with Item 9 of Schedule IV, Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices act, 1971. The complaint was dismissed. When that order was challenged, the Division Bench took the view that ex gratia payment made to the employees of the Corporation cannot amount to bonus within the meaning of the Bonus Act and it was pointed out that the amount which was payable under the agreement was not one in respect of which there was any statutory obligation under the Bonus act. The employer was held to be bound to honour and implement the agreement like any other agreement or contract with any other person. The Division Bench held that there was nothing in this section to prevent the employer from implementing the agreement dated 12th May, 1975 and the Industrial Court was in error in assuming that S. 34 prohibited such payment or that such payment was illegal. The order of the Industrial Court was accordingly set aside.

46. A careful study of this decision will show that there is nothing in the decision to indicate that what was paid was bonus or that the payment was in any way profit-based. The agreement took care to describe the payment as ex gratia and the question as to whether this ex gratia payment was to be construed as profit-based or not was neither debated before the Division Bench nor was it decided by the Division Bench. On the facts of that case the Division Bench was entitled to come to the conclusion that ex gratia payment was not covered by the Bonus Act. We fail to see how it follows from this decision that in the case of profit-based bonus, if the right to profit-based bonus is to be found only in the Act and it is exhaustive of profit-based bonus, any person other than those who fall within the definition of employee can make any claim to profit-based bonus under an agreement dehors the Act. This, in our view, would be the natural result of the decision of the Supreme Court in *Sanghvi Jeevaraj v. M.C.G. & K.M.W. Union* (supra). We must, therefore, differ from the finding recorded by the learned single Judge that any claim for bonus by employees drawing more than Rs. 1600/- was maintainable dehors the provisions of the Bonus Act.

47. The learned single Judge had also taken the view that four allowances, namely, the family allowance, the house rent allowance, the ad hoc allowance and the tiffin allowance could be taken into account for the purpose of considering whether an employee draws salary of more than Rs. 1600/-. What has been pressed before us by the learned Counsel for the Union is that S. 2(21) of the Bonus Act defines "salary or wage" as meaning all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance. The definition excludes from salary or wage, among other things, any other allowance which the employee is for the time being entitled to. The contention is that all these allowances must be treated as remuneration received by the employee and must be treated as a part of the salary. What the learned

judge has held in that these allowances must be treated as having a character of a dearness allowance on the ground that these were cash payments introduced from time to time by the employer for the purpose of meeting the rise in cost of living which has been going up right from 1961 onwards.

48. Now, the claim which is canvassed is on the basis of the agreement of 5th December, 1974 and if the basis of the claim is looked into, the division of the employees into two categories, namely, Those drawing up to Rs. 400/- and other above Rs. 400/- is on the basis of basic salary. The finding recorded by the learned single Judge has the effect that the provisions of the Bonus Act being out of the way of those who draw more than Rs. 1600/-, they will be entitled to the benefit of the agreement. If that is so, one must look to the agreement itself and if the agreement only provides for basic salary, unless all the allowances in question are included in basic salary or there is positive material on which one can come to the conclusion that it is dearness allowance, it is difficult to see how any one of these allowances could be taken into consideration for the purposes of the agreement. The agreement in question itself provides for dearness allowance and under para 3.4 dearness allowance is linked to the consumer price index number and the scale of dearness allowance is again determined on the basis of the basic salary. There is no averment anywhere that these four allowances are in the nature of dearness allowance and in the absence of any material we do not see how a finding could have been recorded that for the purposes of the agreement of which benefit was sought, these allowances must be treated as dearness allowance. Having regard to what we have said above, we do not think it is necessary to refer in detail to the decisions cited by Mr. Singhvi in *The Divisional Engineer, G.I.P. Railway Vs. Mahadeo Raghoo and Another*, which dealt with wages under the Payment of Wages Act; in *Balaram Abaji Patil and Others Vs. M.C. Ragojiwalla and Another*, , as well as in *Madanlal Tiwari Vs. The Superintendent and Manager, The Bengal Nagpur Cotton Mills Ltd., and Bank of Madurai v. Employees' Union* (1970) L IC 1215.

49. At this stage it has to be made clear that we were inclined to dispose of these petitions on the findings recorded by us above. But Mr. Singhvi has contended before us that his contentions with regard to the constitutional validity of the several provisions of the Bonus Act must also be considered by us. We were not inclined to go into the questions with regard to the constitutional validity of a statutory provision in the present case because we have already earlier recorded a finding that the petition itself is not maintainable and it would be improper for us to go into a detailed discussion of the arguments advanced by Mr. Singhvi with regard to the constitutional validity of certain provisions. It is true that liberty was reserved by the learned single Judge to the Employees' Union to challenge the constitutional validity of the several provisions of the Bonus Act and it is also true that we have heard Mr. Singhvi on the constitutional validity of the provisions of Ss. 2(13), 12, 31A and 34 of the Bonus Act in the course of hearing before us, but this was because at the earlier stage, we were not sure as to what the result of this appeal is going to be. Mr. Singhvi has again

pressed upon us that we should deal with the question of validity of the different provisions because, according to the learned Counsel, having regard to the finding that the agreement is affected by the overriding provisions of the Bonus Act, even if the employees go to the Labour Courts under S. 33-C(2), Industrial Disputes Act, the claims will be rejected. We are firmly of the view that unless it is absolutely necessary for a proper decision and disposal of a writ petition, a Court should not normally go into the question of validity of a statutory provisions. In the instant case, we have held that the petition itself is not maintainable and it is our considered view that having regard to that finding, it will be wholly improper to dilate on the arguments with regard to the constitutional validity of the provisions of the Bonus Act. It may also be pointed out that so far as the overriding effect of the provisions of the Bonus Act is concerned, we have confirmed the view of the learned single Judge, though with regard to employees drawing a salary of more than Rs. 1600/-, we have reversed his view on grounds indicated above, it was absolutely necessary for us to go into the merits of the arguments with regard to the question as to whether the agreement related to profit-based bonus or not, but that cannot, in our view, be so with regard to the question of validity of the statutory provisions in the light of our findings recorded with regard to the maintainability of the petition. We must, however, record the fact that both the Counsel for the appellants and the respondents in the respective appeals have exhaustively argued on the question of validity, but we are not inclined to go into those arguments.

50. Having regard to the view which we have taken above, we must allow the appeal filed by the Company, being Appeal No. 184 of 1982, with the result that we must set aside the finding recorded against the Company by the learned single Judge on the two points. We must dismiss the appeal filed by the Employees' Union, being Appeal No. 335 of 1982. We, however, make no order as to costs of any of the two appeals.

51. Mr. Singhvi has requested orally for leave to appeal to Supreme Court.

52. The questions involved are important questions of law and of public importance and are likely to affect a large number of workers. We, therefore, certify under Art. 133(1) of the Constitution that the case involves substantial questions of law of general importance and that, in our opinion, the questions need to be decided by the Supreme Court.