

employees at Tiruvottiyur, factory did not call off the strike and resume work, in the said factory. As such, the petitioner Management issued a notice on 14.4.1977 to all the workmen including respondents 2 to 17 herein to resume work. On 28.4.1977, the workmen at Tiruvottiyur started coming back to work and by notice dated 13.5.1977, the petitioner Management once again called upon those who have not reported for work, to resume duty giving three days time. Out of respondents 2 to 17 herein, four were apprentices and hence the petitioner Management issued orders of termination as per contract of apprenticeship. The Union alleging that on 17.5.1977 they had actually met wherein a decision is said to have been taken to call off the strike and report for work, complained that they were prevented from entering the factory on that date. It seems that printed hand bills were issued on 17.5.1977 bearing the signature of the second respondents herein as the Secretary of the Union making it clear that they would enter the factory only to carry on the stay-in-strike. Since the same was not acceptable to the petitioner Management, the petitioner Management informed the Union that it was not possible to allow the workers inside the factory, who were not willing to work but to continue the stay-in-strike after entering the factory. It seems the State Government referred the matter of non-employment of 19 workmen to the Labour Court, Madras for adjudication. In I.D. No. 32 of 1978, the Labour Court passed an Award on 25.6.1979, rejecting the case of the petitioner Management and directing reinstatement of the 17 workmen (except No. 3 Masilamani and No. , 11 C. Shanmugam who have resigned with back wages from 17.5.1977 onwards with continuity of service. Against this order, a writ petition was filed by the petitioner Management in W.P No. 4347 of 1979, which was dismissed on 16.7.1979 confirming the Award of the Labour Court. Against the order in Writ Petition No. 4347 of 1979 a Writ Appeal No. 1078 of 1984 was filed by the petitioner Management and the same was dismissed by a Division Bench of this Court on 19.11.1984. After the disposal of the writ petition filed by the petitioner Management, a Claim Petition No. 428 of 1984 was filed by respondents 2 to 17 herein u/s 33-C (2) and 33-C (5) of the Industrial Disputes Act claiming Rs. 18,184, 526.40 out of the total amount of Rs. 21,56,073.00 after giving credit to a sum of Rs. 2,72,546.60

which had been received already. It is necessary to state at this stage, as per the orders of this Court, a sum of Rs. 1,20,108.15 was paid to the

respondents 2 to 17 herein before the Labour Court towards 50 per cent basic pay and dearness allowance from 15.5.1977 to 13.11.1979. Over

and above this from 1.12.1979 to July, 1984, the petitioner Management has paid to the concerned workmen 25 per cent of the wages, viz Rs.

1,49,486.40 as per the order of this Court. Though the petitioner Management raises objections to this payment, which is the subject matter of the

writ petition, it seems that even now the petitioner is paying 25 per cent of the wages to all the 17 workmen. It is further stated that even in the

claim statement, the demand of the workmen was only Rs. 18,84,526.40, and the Labour Court has wrongly computed a sum of Rs. 19,34,219

with these allegations, the petitioner Management has come before this Court with the prayer stated supra.

3. The petitioner Management alleges in the affidavit filed in support of the petition that the order of the Labour Court is contrary to law, totally

opposed to the evidence on record and also vitiated by material errors of law apparent on the face of the record. It is also alleged that the Labour

Court ought to have granted only the relief of back wages to the respondents 2 to 17 herein, after deducting the amounts Rs. 4,48,459.28 which

had been already paid by the petitioner Management and the balance of 50 per cent of the wages from 15.5.1977 to 13.11.1979 as per the

counter statement of the petitioner Management herein, before the Labour Court. It is also alleged that in the Award In I.D. No. 32 of 1978, the

Labour Court has not granted to the respondents any other relief excepting back wages and as such it is alleged that the Labour Court ought not to

have granted any other relief excepting the wages alone. It is also alleged that the Labour Court has failed to see that other reliefs would not call for

decision u/s 33-C (2) of the Industrial Disputes Act. It is stated in the affidavit that respondents 2 to 17 herein filed the petition u/s 33-C (2) read

with Section 33-C (5) of the Industrial Disputes Act, that except P.W.1 (Panneerselvam, the second respondent herein), no other person was

examined to prove their case, that on the basis of evidence of P.W.1 alone, the Labour Court ought to have granted the claim of respondents 2 to

17, that at no point of time the petitioner Management raised the point that the respondents 2 to 17 herein should not file a single petition u/s 33-C

(2) read with Section 33-C (5) of the Industrial Disputes Act and that the petitioner Management contended before the Labour Court that after the so-called termination of respondents 2 to 17 herein they were all gainfully employed elsewhere and as such the question of claiming the entire backwages and also other attendant benefits will not arise. It is further alleged by the petitioner Management that as per the decision in *Sadanand Patamkar v. New Prabhat Silk Mills* (1974) 2 L.L.J. 52 which was confirmed in *Andagalur Handloom Society v. Ramaswami* 47 F.J.R. 202 the burden was upon the workmen to prove that they were not gainfully employed during that period, that had the respondents workmen appeared before the Labour Court and given evidence, the petitioner Management would have an opportunity to cross-examine them and elicit materials in support of the contention of the petitioner Management. It is also alleged by the petitioner Management that the Labour Court has failed to follow the decision in *Kandaswamy v. Senthapatti Multipurpose Co-operative Society* 44 F.J.R. 357 in order to mitigate the quantum of compensation when deciding the matter u/s 33-C (2) of the Industrial Disputes Act. It is further stated that the respondents workmen are technically employed, that they ought to have approached the various employers for earning their livelihood and that they cannot say that they were sitting idle in their houses to claim back-wages and other attendant benefits from the petitioner Management claiming u/s 33-C (2) of I.D. Act It is further stated that when the matter was pending before this Court, the respondents workmen filed C.P. No. 535 of 1978 claiming the same relief which was dismissed by the Labour Court and only subsequent to this, they have filed C.P. No. 428 of 1984 which is the subject matter of this writ petition , and as such it is alleged that successive claim petitions are not maintainable. It is further stated that the Labour Court has wrongly calculated the backwages of the respondents workmen, especially when the calculation of backwages Ex. R.1, marked by R.W.1 was not disputed by workmen. The petitioner further alleges in the affidavit that the Labour Court, while analysing both oral and documentary evidence of the petitioner Management completely failed to appreciate Ex. R.1, the true copy of the salary working sheet, that the petitioner Management in order to prove the genuineness of Ex.R.1, has also filed the corresponding vouchers before the Labour Court and that this was specifically explained by R.W.1 in

his evidence. The complaint of the petitioner Management is that the Labour Court has failed to consider this point. The petitioner further alleges

that the Labour Court has erred in considering the relevant materials and accepting the contentions of the other side, discussing irrelevant facts. The

petitioner further alleges that the claim for annual value bonus by the respondents workmen is not maintainable, that workmen cannot rely upon

settlements u/s 18 (1) of I.D. Act to which the respondents are not parties. Referring to the decision in Major D. Aranha v. Universal Radiators

(1975) 1 L.L.J. 254 the petitioner Management states that bonus cannot be claimed u/s 33-C (2) of the Industrial Disputes Act, that the Labour

Court has granted only the relief of backwages in I.D. No. 32 of 1978 and as such bonus will not fall under the term "wages" as per Section 2 (rr)

of the Industrial Disputes Act. It is further alleged that the Labour Court ought to have rejected the claim of wages for festival holidays, wages for

earned leave as well as casual leave and that the Labour Court has completely misconceived and misunderstood the provisions of both Provident

Fund and E.S.I. Acts.

4. Respondents 2 to 17 herein, the workmen have filed a common counter affidavit claiming that the non-employment of 17 workmen was due to

the refusal on the part of the petitioner Management to provide them with work from 17.5.1977, that since various efforts taken for their

reinstatement failed they had to raise an Industrial Dispute in I.D. No. 32 of 1978 and an award was passed therein on 25.6.1979 to reinstate

them with all benefits. It is also stated in the counter affidavit that it is false to state that the workman are not entitled to various benefits, that the

order for reinstatement with continuity of service itself would prove that all the benefits are payable to the workmen and that once the workmen

were ordered to be reinstated in service, and when the petitioner Management has failed to take them back to duty, all the benefits would ensure

to workmen. It is further claimed in the counter affidavit that since the workmen have been prevented from working, they are deemed to be in

employment without any break in service, that it is not necessary to examine all workmen, since it is a petition filed u/s 33-C (2) and 33-C (5) of

the said Act; otherwise the very object of Sec. 33-C (5) would be lost and that the burden of proof that the respondents workmen were working

somewhere and continued to be employed is totally false and baseless, It is further claimed that it is the burden of the petitioner Management to prove that the respondents workmen were under some employment. It is also claimed in the counter affidavit that it is incorrect to state that successive petitions cannot be filed for different periods, that the workmen have filed their own correct working sheet showing the wages due to and the Labour Court has accepted the worksheet filed by the workmen and the Labour Court has proved that the work sheet Ex.R.1 and the evidence of R.W.1 were not acceptable for valid reasons and it cannot be said that the findings of the Labour Court are perverse. It is also claimed in the counter affidavit that had these workmen been in service, the annual value bonus would have been paid to them and the workmen could have also entered into 18 (1) settlement and could have also received the same benefits, and they are entitled to the annual value bonus. It is further claimed in the counter affidavit that festival holidays, wages are payable in terms of the Act itself, and that the workmen were prevented from taking or availing their earned leave because of non-employment and as such they will be entitled for the benefit of earned leave also. It is also the case of the workmen, similarly they are entitled to all the claims like earned leave, provident fund and E.S.I. also. It is also claimed that since the workmen have been prevented from working during the material time by the Management, they are entitled to the same benefits as computed by the Labour Court. It is also claimed that the workmen have claimed the disallowed amount by way of W.P. No. 5652 of 1987 and the same is pending before this Court.

5. Mr. N. Balasubramaniam, the learned counsel appearing for the petitioner Management contends that the Labour Court did not examine all the workmen but only P.W.1 with regard to non-employment of other workers on the relevant period and as such the non-examination of other workmen vitiates the Award passed by the Labour Court. The learned counsel relies upon :he decision in R. Maria Thangam v. U. Murugan (1979) 2 L.L. J. 29 : 1979 Lab.I.C. 455 for this proposition. The learned counsel also contends that the petitioner Management cannot prove where the workmen, the respondents herein, were working and that the burden is only on workmen to prove about their non-employment period

that they were not gainfully employed elsewhere. The learned counsel relies upon the decision of Ramanujam, J. which is reported in Andagalur

Handloom Society v. Ramaswami, 47 F.J.R. 202 the decision of Ramaprasada Rao, J, which is reported in Kandaswamy v. Senthapatti Multi-

Purpose Co-operative Society 44 F.J.R. 257 and the decision of Ramanujam, J, in Sathya Studios Pvt. Ltd. v. Labour Court 48 F.J.R. 104 and

also the decision of the Bombay High Court in Sadanand Patamkar v. New Prabhat Silk Mills (1974) 2 L.L.J. 52 for this proposition. The learned

counsel also contends that the petition under Sec. 33-C (2) and 33-C (5) of the Industrial Disputes Act is not at all maintainable on the facts of this

case. Coming to the merit of the case, the learned counsel for the petitioner contends that the calculation of the Labour Court is wrong, that the

Labour Court has calculated at flat rate for the scale salary for all the years and that when the document Ex.R.1 has been marked by R.W.1

showing the increments etc. and also a witness has been examined to that effect, the Labour Court has failed to consider this aspect. The learned

counsel also contends that the statement made by the Labour Court that all the wage sheets have not been produced is not correct and that in I.D.

No. 32 of 1978 the Labour Court has granted only the backwages and not all other reliefs, and as such no question of granting all benefits will

arise. The learned counsel further contends that only backwages alone ought to have been granted and as such the claims made in Items (b) to (n),

the attendant benefits cannot be granted by the Labour Court. For this proposition, the learned counsel relies upon the decision in Andhra

Scientific Company v. Labour Court 1971 Lab.I.C. 513.

6. With regard to bonus, the learned counsel contends that bonus is decided on a settlement u/s 18 of the Industrial Disputes Act, that the

respondents workmen were not parties to the said settlement in the year 1980-84 and as such the respondents workmen are not entitled to the

bonus and thus the Labour Court has erred in granting bonus to the respondents workmen, relying upon the decision in Ganapathiya v.

Swaminatha 1969 Lab.I.C. 1482. Relying upon the decision in Major D. Aranha v. Universal Radiators (1975) 1 L.L.J. 254 the learned counsel

contends that bonus cannot be claimed u/s 33-C (2) of the Industrial Disputes Act. The learned counsel also argues that u/s 3 of Festival Holidays

Act (Act 33 of 1958) only 9 days could be given and that it will come as 45 days and not 60 days as calculated by the Labour Court and as such

the calculation of Labour Court is wrong. With regard to the Earned Leave, the learned counsel contends that as per Section 79 of the Factories

Act, Earned Leave will accrue only if the workmen work and as the workmen did not work at all, they cannot enjoy the benefit of Earned Leave

for that period. The learned counsel further contends that the Standing Orders of the Company also do not provide for that. The learned counsel

further contends that the respondents workmen cannot obtain the benefits under the Employment Provident Act and Insurance Act for the period

in which they were not employed. It is further contended that the respondents are not in service and as such no question of Provident Fund arises.

The learned counsel also contends that Section 33-C (2) of the Industrial Disputes Act is not a forum to commute since Section 33-C (2) of the

said Act is only by way of execution. The learned counsel refers to the decisions in Mahadev v. Muniswami (1966) 1 L.L.J. 838 and in Central

Inland Water Transport Corporation Limited Vs. The Workmen and Another, for this proposition. The learned counsel further argues that in view

of the infirmities in the Award, the case has to be remanded to Labour Court for the correct calculations, especially when P.W.1 alone has been

examined. He further contends that whether all workmen has been employed gainfully or not was not examined by the Labour Court and the

workers cannot file successive applications. Referring to the decision in Sri R. Pandhubhai c/o. State Labour Union, Madras Vs. Management,

Bombay Cycle Importing Co., Madras and Another, for the proposition that workers cannot file successive applications, and that the earlier C.P.

No. 535 of 1989 has been dismissed the second application for the same relief is not maintainable u/s 33-C (2) of the Act.

7. Mr. T. Fenn Walter, the learned counsel appearing for the respondents workers contends that the workers are represented by one

Panneerselvam, Secretary to the said Union and he has given evidence as P.W.1 before the Labour Court and as such it is not necessary to

examine all the workers. The learned counsel also contends that the burden of proof lies on the Management to show that the workmen were

employed gainfully. Relying upon the decision in Sadanand Patamkar v. New Prabhat Silk Mills (1974) 2 L.L.J. 52 the learned counsel also,

contends that there cannot be any presumption that the respondents workmen are gainfully employed and also refers to the decision in Delhi

Transport Corporation v. Ram Kumar (1982) 2 L.L.J. 191 for this proposition. The learned counsel vehemently argues that the respondents

workmen are entitled to all the benefits as they have been reinstated with continuity of service and refers to the decision in Gammon India Ltd. v.

Noranjana Dass (1984) 1 L.L.J. 233 for this proposition. The learned counsel refers to the term ""all benefits"" referring the decisions in Andhra

Scientific Company v. Labour Court 1971 Lab.I.C. 513 and Section 33-C (2) of Industrial Disputes Act. With regard to calculation by the

Labour Court, the learned counsel contends that there is no pleading before the Labour Court and the petitioner Management never disputed the

claim before the Labour Court. Referring to paragraph 9 of the counter affidavit filed before the Labour Court in C.P. No. 428 of 1984, the

learned counsel for the respondents workmen contends that the claim petition was filed as on 1.8.1979 and in that petition what will be wages of

the juniors was worked out as back-wages of the respondents-workmen. The learned counsel contends that I.A. No. 105 of 1985 was filed by

the respondents-workmen calling for documents to prove wages and that it was not produced by the Management in spite of the order of the

Labour Court, especially when the Management is bound to maintain register u/s 13 (a) of the Payment Wages Act, 1936. The argument of the

learned counsel is that the Management has produced the record before the Labour Court and Ex.P.1 was marked subject to objection and that

even the admission by the witness for the Management is not correct. The learned counsel further argues that in view of this, the Labour Court has

preferred to accept the calculation of the respondents-workmen as against the record produced by the Management and the said finding of the

Labour Court is purely based upon facts and they cannot be interfered with under Article 226 of the Constitution. Relying upon the decision in

Thakur Ganga Prasad Singh v. State Bank of India, Kanpur (1972) 1 L.L.J. 259 the learned counsel states that a register has to be maintained by

the petitioner-management with regard to bonus, as per Section 26 of the Payment of Bonus Act, 1965. He argues that the settlement arrived at

u/s 18 and though the respondents-workmen are not Parties in the said Settlement, they are entitled to get all the benefits. The learned counsel

refers to the decision in The Andhra Pradesh Power Diploma Engineers Association (General Wing) v. The Andhra Pradesh State Electricity

Board 1988 Lab.I.C. 534 for this proposition. The learned counsel also argues that when the workmen were prevented from joining duty, they are

entitled to get the benefits for the festival holidays, referring to the decision in Madura Coats Limited v. The Inspector of Factories I Circle,

Madurai (1981) 1 L.L.J. 255. The learned counsel advanced his argument that when the respondents workmen are not taken back, the petitioner

Management cannot say that the respondents workmen are not entitled to the benefits like calculation and other increments with regard to Earned

Leave, Provident Fund and benefits under the Insurance Act. With regard to the claim of the petitioner Management that successive petitions

cannot be filed, the learned counsel argues that the present petition is maintainable, referring to the decision in Sri R. Pandhubhai c/o. State Labour

Union, Madras Vs. Management, Bombay Cycle Importing Co., Madras and Another, .

8. When a question is raised by this Court whether a single writ petition is maintainable, Mr. N. Balasubramaniam, the learned counsel for the

petitioner Management replies that a single writ petition is maintainable. He refers to the decision in Sallakumar Talkies v. The Board of Revenue

(C.T.) Madras 1984 W.L.R. (Supp), 113. The learned counsel also refers to the decision in Management of Singareni Collieries Co. Ltd. v. The

Industrial Tribunal, Andhra Pradesh (1975) 1 L.L.J. 470 for this proposition. The learned counsel stated that the statements filed by the petitioner

Management were not looked upon by the Labour Court and the finding of the Labour Court on this aspect is perverse, especially when the

computerised statements were filed, and relied on by them. The learned counsel replies that there is no decision to be relied upon for the

proposition that the employer alone has to prove whether the employees have been gainfully employed or not during the period of non-

employment. There decisions have been cited by the learned counsel for the petitioner Management to this effect which are as follows:- Andagalur

Handloom Society v. Ramaswami 47 F.J.R. 203 Sathya Studios Private Ltd. v. Labour Court 48 F.J.R. 104 and Kandaswamy v. Sentharapatti

Multipurpose Co-op. Society 44 F.J.R. 257.

9. I have given a careful consideration to the arguments of Mr. N. Balasubramanian the learned counsel for the petitioner Management and of Mr.

T. Fenn Walter, the learned counsel for respondents Workmen. One of the important points to be decided in this case is whether successive claim

petition is maintainable. As rightly held by the Labour Court the decision in S. Pandubhai v. Bombay Cycle Importing Company, Madras AIR

1970 Mad. 474 does not apply to this case, because the prior petition filed by the respondents workmen was for the earlier periods and one of the

petitions in C.P. No. 535 of 1978 was not pressed and dismissed and this was done on account of stay order granted to the petitioner

Management by this Court in W.P. No. 4347 of 1979. The other claim petition C.P. No. 535 of 1975 was for the period from 17.7.1977 to

31.7.1979 and it was pending when the present Claim Petition No. .428 of 1984 was enquired by the Labour Court. It is to be seen that the

present claim petition is for the period from 1.8.1979 to 30.6.1984. As such, I do not see that there is any substance in the contention of the

learned counsel for the petitioner Management that successive applications cannot be filed by respondents workmen. It cannot be said that the

previous claim petition was dismissed on merits, but it was dismissed only on technical grounds. If the earlier claim petitions had been rejected on

merits then there would have been some force in the argument of the learned counsel for the petitioner Management. That is not the case here. Nor

does it come within the ratio laid down by Sadasivam, J. in Sri R. Pandhubhai c/o. State Labour Union, Madras Vs. Management, Bombay Cycle

Importing Co., Madras and Another, . In the above mentioned decision, Sadasivam, J. came to the conclusion that a second or subsequent

applications would not lie in a Labour Court if the first application was rightly or wrongly rejected on the ground that it would not come within the

ambit of Section 33-C (2) of the Industrial Disputes Act. As I have already stated, the earlier petition filed by workmen was pending and it was for

a different period.

10. With regard to the question raised, whether a single writ petition will lie against the impugned award I am of the view that the decision of the

Division Bench of this Court in R. Maria Thangam v. U. Murugesan (1979) 2 L.L.J. 29 squarely applies to the facts and circumstances of the

present case. The Division Bench in the above mentioned case has held that a single writ petition seeking to displace different reliefs afforded to different workmen on independent consideration of the merits relating to each of them, could never be entertained. The Division Bench in the above mentioned case, has also come to the conclusion that "it is not correct even to contend that these writ proceedings are merely a continuation of the proceedings in the Labour Court" as such, I am bound by the decision of the Division Bench of this Court, cited supra, on the question whether a single petition will lie or not against the respondents workmen. The learned counsel for the petitioner Management states that this Court need not dismiss the writ petition on this technical ground and the petitioner Management is prepared to file separate writ petition individually against each of the respondents workmen. But I am not inclined to accede to the request of the petitioner Management, especially after a period of three years. When there was a decision of a Division Bench of this Court on this point in the year 1979, the petitioner Management ought to have been vigilant enough even at the stage of (SIC) of this writ petition and I am not inclined to show any indulgence to the writ petitioner on this ground. As such, the result will be that the writ petition will be confined to only one worker of the Union, i.e. the second respondent herein. The writ petition filed against other respondents workmen will have to fail and dismissed on this simple ground.

11. I am not able to accept that the decision in *Sellakumar Talkies v. The Board of Revenue (C.T.) Madras 1984 W.L.R. 113* will apply to the facts of this case. In that case, the Division Bench considered the principles of merger of orders of subordinate authority in the order of higher authority with regard to the assessment under the Entertainments Tax Act. The Division Bench of this Court in *B. Maria Thangam v. U. Murugqn*, (1979)2 L.L.J. 29 decided the case which arose u/s 33-C (2) of the Industrial Disputes Act taking the nature of the proceedings u/s 33-C (2) of the said Act. The Division Bench also took note of the fact that it is well settled that the procedures u/s 33-C (2) of the Industrial Disputes Act are by way of execution and the actual relief due in terms of money is distinct and separate as far as each workmen is concerned. In that decision the learned Judges took note of the joint interest of the workers. As such, I am inclined to follow the decision in *R. Maria Thangam v. U. Murugan*

(1979) 2 L.L.J. 29 in preference to the decision reported in Sellakumar Talkies v. The Board of Revenue (C.T.) Madras 1984 W.L.R.113 as I

find that the decision in B. Maria Thangam v. U. Murugan (1979) 2 L.L.J. 29 directly arose under Sec. 33-C (2) of the Industrial Disputes Act.

12. Having rejected the claim of the petitioner Management with regard to other respondents workmen, except only one respondent i.e. the

second respondent it is now necessary to decide the preliminary point with regard to only one respondent workmen. The important point to be

considered in this case is whether the burden of proof will lie on the petitioner or on the respondent workmen that the respondents was gainfully

employed during the period of non-employment. Ramanujam, J. in Andagalur Handloom Society v. Ramaswami 47 F.J.R. 203 while discussing

the case in Sadanand Patamkar v. Ram Prabhat Silk Mills (1974) 2 L.L.J. 52 observed as follows:

...The position that emerges on a due consideration of the decisions referred to above, is that an employee in whose favour an order of

reinstatement has been made but was not reinstated by the employer, is normally entitled to claim the full wages of remuneration which he would

have received had he been reinstated in service as per the award, in the absence of any cogent reasons to the contrary. One such reason may be

the extent of income, if any, earned by the employee elsewhere during the period of his enforced unemployment as a result of the non-

implementation of the order of reinstatement by the employer, or the nature of the efforts or the absence thereof on his part to secure alternative

implementation....

Ramaprasada Rao, J. (as he then was) in Kandaswamy v. Senthapatti Multi-purpose Co-op. Society 44 F.J.R. 357 held that lethargy on the

part of the workman was a relevant consideration to be taken into account when arriving at a compensation and computation of money u/s 33-C

(2) of the Industrial Disputes Act. The learned Judge held that the Labour Court has taken into consideration the lethargy on the part of the

workman in that case and held that the compensation awarded in that case cannot be said to be perverse or unreasonable. That is all. But, that is

not the case here. There is no iron-jacket formula to be followed and each case has to be decided on its own merits and circumstances. A Division

Bench of Bombay High Court in *Sadanand Patamkar v. New Prabhat Silk Mills* (1974) 2 L.L.J. 52 held as follows: at page 64

The position of law which emerges from the aforesaid decisions may be summarised as follows: The effect of reinstatement is to restore an

employee to his former capacity, status and emoluments, as if his services had never been terminated and the employee gets the benefit of

continuity of service. The general rule in industrial adjudication is that on reinstatement, the employee is to be duly compensated for the loss of

earnings during the period of his enforced idleness or unemployment. In the absence of cogent reasons to the contrary such compensation should

normally be equal to the full wages or remuneration which the employee would have received had he continued in service but for the order of

termination of his service. One such reason will be the extent of the income if any, earned by the employee elsewhere during the period of his

enforced unemployment and or the nature of the efforts or the absence thereof, on his part, to secure alternative gainful employment. Once the

relevant facts are brought on record there will be no difficulty in calculating the income, if any, earned by the employee elsewhere. The assessment

of efforts made by the employee or of his inability to make the same is bound to present difficulties, it being dependent upon several factors

including the nature of employment sought and the general conditions of employment in the country. Since, the facts about the employment or non-

employment and/or the efforts made or not made to secure an alternative employments during the period of enforced idleness, are within the

special knowledge of the employee it is only fair and proper that he should first state whether he was employed or not, and during what period, the

amount of income earned by him if any, the nature of efforts made by him for securing alternate employment or the circumstances which prevented

him from making such efforts. It is in that sense that the burden of proving the said facts lies on the employee. Once, however, the said burden is

discharged it is for the employer to prove facts to the contrary.

As such I am of the view that the second respondent's claim cannot be thrown out and even on the ground that he has not proved his non-

employment elsewhere. It is true that whether the respondents workmen were gainfully employed or not, is not within the knowledge of the

petitioner assessment. But there is no evidence contra to come to a different conclusion.

13. The next question is what is the meaning of the terms "all benefits". It is well settled that the Labour Court acts as an Executing Court u/s 33-C

(2) of the Industrial Disputes Act. The Supreme Court in *Gammon India Ltd. v. Naranjan Dass* (1964) 1 L.L.J. 233 held as follows:

...Employee would be entitled to all back-wages including the benefit of revised wages or salary if during the period there is revision in pay scale

with an yearly increment, revised dearness allowance or variable dearness allowance and all terms and benefits if he has reached the age of

Superannuation such as provident fund, gratuity etc. Backwages should be calculated as if the employee continued in service uninterruptedly....

The Supreme Court, in the abovementioned case, has further held that the worker therein is entitled to leave encashment and bonus if other

workmen in the same category were paid the same. The Supreme Court has also held that if the employee has been unlawfully kept out of service,

it is just the company shall pay all the arrears with interest till the date of realisation. As such, I have no hesitation to hold that the second

respondent worker is entitled to have "all benefits" which are questioned by the petitioner Management as if the Labour Court has awarded

wrongly. It is to be seen that in this case, the Award has been passed by the Labour Court ordering reinstatement of workmen with backwages

and with continuity of service, etc. The word "continuity of service" itself will show that the second respondent workmen is entitled to obtain all the

benefits as ordered by the Labour Court. In *Andhra Scientific Co. v. Labour Court* 1971 Lab. I.C. 513 it has been held as follows:

...Once it is held that the dismissal or termination is illegal, it will be difficult to hold that the employee will be only entitled to continuity of service as

if his service had never been terminated but not to other benefits to compute the same in terms of money which he would have derived had his

services not been illegally terminated. It is by reason of the illegal action of the employer that an employee could not be in active employment and if

there was no such illegal termination, the employer could not have denied to him the benefit of the new scale of pay. Therefore, it follows that it

makes no difference whether he was in active service or is deemed to have been in such service by reason of illegal dismissal. There is no question

of any fresh employment or any new terms of employment governing the employer and employee. The revision of pay scale is only an incidental

benefit accruing to a particular category or class of employees and when a dismissed employee is reinstated to the same post or in the same

capacity with no cut in his emoluments, he cannot be denied the incidental or ancillary benefit. The term ""benefit"" as already pointed out is of wide

amplitude as to take in all relevant and incidental benefits which a particular class of employees are entitled to.

In view of the decision of the Supreme Court, cited supra, I am not able to appreciate the argument of the learned counsel for the petitioner

Management that the calculation made by the Labour Court with regard to Festival Holidays, Earned Leave, Bonus, Provident Fund and E.S.I. is

wrong. As rightly pointed out by Mr. Fenn Walter, the settlement arrived at u/s 18, with regard to bonus, is binding on the petitioner even with

regard to respondent also. A reference in The Andhra Pradesh Power Diploma Engineers Association (General Wing) v. The Andhra Pradesh

State Electricity Board (1988) 1 L.L.J. 53.4 is as follows:

It was then argued by Mr. Shanti Bhushan that the implementation of the agreement would create several complications. He submitted that the

settlements arrived at herein are settlements arrived at under sub-Section (1) of Section 18, but not under sub-Sec. (3) of Sec. 16. The contention

is that, since it is binding only upon the parties to the settlement, and because many workers are not parties to the said settlement, it can be

implemented in the case of some workers but not in the case of others. I do not find this to be a sufficient answer. The settlement is binding upon

the management, i.e., the Board. It is beneficial to the workers. It would be impermissible, and even impracticable, for the Board to implement it in

the case of some workers and refuse in the case of other workers. It has to extend the benefit thereof to all workers.

With regard to ""all benefits"" for the provident fund and E.S.I., it is to be seen that had the respondents workers been allowed to work, they would

have got all these benefits and as such I do not see any reason why these workmen should be denied all these benefits. In my view, the judgment

of the Supreme Court in Gammon India Ltd. v. Naranjan Dass (1984) 2 L.L.J. 233 concludes the issue.

14. But with regard to the contention of the learned counsel for the petitioner that the findings of the Labour Court, with regard to Ex.R.1 is wrong,

I am inclined to agree with the learned counsel for the petitioner on this point. I find that the petitioner Management has filed Ex.R.1, R.10 and

R.11, Ex.R.10 is the working sheet and Ex.R.11 are the wage-sheets. Though the Labour Court has rejected the contents in Ex.R.10, no where it

had discussed Ex.R.11, the wage-sheets. I could see from the evidence of R.W.1 that wage-sheets have been produced. On this aspect I am of

the view that the findings of the Labour Court are erroneous in law and perverse. The learned counsel for the petitioner produced before me the

computerized wage-sheets which were produced before the Labour Court and I think that it is the duty of the Labour Court to examine the wage-

sheets and arrive at a finding on this aspect. I am not able to appreciate the argument of the learned counsel for the respondents that whether a

register is to be maintained. What all necessary have been done in the computerised wage-sheets which are produced before me As such, I am

inclined to set aside the order of the Labour Court on this issue and remit back the matter to the Labour Court to examine the wage-sheets

carefully and arrive at a conclusion correctly, with regard to calculation. To this limited extent the writ petition will stand allowed and the award of

the Labour Court is set aside to that limited extent and it is remitted back to the Labour Court for fresh consideration. As I have already stated the

writ petition is confined against only one respondent, viz, the second respondent herein, and the writ petition will stand dismissed as against all

other respondents. How-ever, there will be no order as to costs.