(1994) 06 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 2779 of 1980

The Project Manager, Ahmedabad Project, O.N.G.C. APPELLANT

Vs

Sham Kumar Sehgal (Since Decd.) through his Heirs and Lrs. Krishnadevi RESPONDENT

Date of Decision : 21-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Oil and Natural Gas Commission (Conduct, Discipline and Appeal) Regulations, 1964 — Regulation 25
Payment of Bonus Act, 1965 — Section 8

Citation : (1995) 71 FLR 176 : (1995) 1 GLR 116 : (1995) 1 LLJ 863

Hon'ble Judges : J.M. Panchal, J

Bench : Single Bench

Judgement

Panchal, J.—By means of this petition which is filed under Art. 226 of the Constitution of India, the petitioner has prayed for issuance of a writ of Certiorari or any other appropriate writ, order or direction to quash and set aside the order dated April 23, 1980 passed by the Presiding Officer, Labour Court (Central), Ahmedabad in Recovery Application (LCA) No. 197 of 1979 direction the petitioner to pay an amount of Rs. 6,448.78 ps. to deceased Sham kumar Sehgal and issuing necessary certificate for recovery of the said amount.

Deceased Sham Kumar Sehgal was employed as an Assistant Grade (I) (R) with the Oil and Natural Gas Commission (ONGC for short). It was the case of the ONGC that, while functioning as Junior Assistant, Technical and Purchase Section, ONGC, Cambay, late Mr. Sham Kumar Sehgal committed misconduct. The ONGC, therefore, initiated disciplinary action against him under Regulation 25 of the Oil and Natural Gas Commission (Conduct, Discipline and Appeal) Regulation, 1964. During the pendency of departmental proceedings, he was placed under suspension in October, 1963. Pursuant to the directions given by this court in Special Civil Applications Nos. 166 of 1976 and 722 of 1978, the Inquiry Officer completed the inquiry and recorded his findings on Sept. 2, 1978. The

Disciplinary Authority held that, late Mr. Sehgal was guilty of charge 2(i) mentioned in charge-sheet and awarded penalty of stoppage of one increment with cumulative effect. The Disciplinary Authority also directed that the period of suspension would not be counted as on duty for any purpose except for continuity of service. The deceased respondent was served with the order of reinstatement on April 6, 1978 and immediately, on the next day, i.e., on April 7, 1978, he resumed his duties.

2. The deceased respondent submitted an application u/s 33-C(2) of the Industrial Disputes Act, 1947 for recovery of bonus amount due from the petitioner to him. In the said application, it was contended by the respondent that, though he was ready and willing to serve he was not allowed to do so by the petitioner and therefore, he was entitled to receive bound for the disputed period. By filing the said application, the deceased respondent claimed a total amount of Rs. 6,448.78 ps. being the amount of bonus which he was entitled to receive for the years 1966-67 to 1976-77.

3. On being served in the recovery application, the petitioner contested the said application by filing written statement at Exh. 2. The petitioner, inter alia, contended that the deceased respondent was under suspension during the relevant period and had not rendered any service to the ONGC, and therefore, he was not entitled to claim the amount of bonus from the petitioner. It was also pleaded by the petitioner that deceased employee had not worked in the establishment for 30 working days during the relevant period and as he was not eligible for bonus in view of the provisions of Section 8 of the Payment of Bonus Act, 1965, the application deserved to be dismissed.

4. The deceased employee examined himself at Exh. 3 in respect of this claim made in the recovery application. After considering the evidence on record and hearing the parties, the Presiding Officer, Labour Court (Central) Ahmedabad came to the conclusion, the pursuant to the directions given by this Court, deceased employee was paid full wages as if he was in service and though he was ready and willing to work, he was prevented from discharging duties and so it cannot be said that the deceased employee did not work in the establishment of the petitioner for a period

of 30 days during the period in question. In view of the said conclusion, the Presiding Officer, Labour Court, (Central), Ahmedabad, vide order dated April 23, 1980 allowed the recovery application filed by the deceased employee and directed the petitioner to pay an amount of Rs. 6,448.78 ps. to him. As noted earlier, the legality and validity of the said order has been challenged in the present Special Civil Application.

5. The submission that the deceased employee had not worked in the establishment of the petitioner for 30 days during the relevant years and, therefore, he was not entitled to bonus in view of the provisions of Section 8 of the Payment of provisions of Section 8 of the Payment of Bonus Act, 1965 and

therefore, the impugned order should be set aside, has no merits. From the record of the case, it is evident that the deceased employee was placed under suspension from May 22, 1965 to April 7, 1978 pending Departmental inquiry against him. For the first year to suspension, he was paid subsistence allowance at the rate of 50% of his regular wages. Thereafter, he was paid subsistence allowance at the rate of 75% in view of the rules governing his service condition. Pursuant to the directions given by this Court in Special Civil Application No. 166 of 1976, the petitioner was required to pay full wages to the deceased employee in respect of the entire period of suspension. It is also not in dispute that the deceased employee was reinstated in service with effect from April 7, 1978.

6. Section 8 of the Payment of Bonus Act, 1965 reads as under :

"8. Liability for Bonus - Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than 30 working days in that year."

Section 9 of the payment of Bonus Act, 1965 prescribes certain disqualification which disentitle an employee from claiming bonus. It reads as under :

"9. Disqualification of Bonus - Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bons under this Act, if he is dismissed from service, for -

(a) fraud; or

(b) riotous or violent behaviour while on the premises of the establishment : or

(c) thereat, misappropriation or sabotage of any property of the establishment."

It is an admitted position that the case of the deceased employee is not covered by any of the disqualifications enumerated in Section 9 of the Payment of Bonus Act, 1965 and it has not been argued on behalf of the petitioner that the deceased employee was disqualified from receiving bonus u/s 9 of the said Act. Section 13 lays down a principle for proportionate reduction in bonus in certain cases. It reads as follows :

"13. Where an employee has not worked for all the working days in any accounting year, the minimum bonus of forty rupees or as the case may be, of twenty-five rupees, if such bonus is higher than four per cent of his salary or wage for the days he has worked in that accounting year shall be proportionately reduced."

Section 14 laying down the method of computation of number of working days, runs as follows :

"14. Computation of number of working days - for the purposes of Section 13 an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which -

(a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders Act, 1946 (20 of 1946) or under the Industrial Disputes Act, 1947 or under any law applicable to the establishment;

(b) he has been on leave with salary or wage;

(c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(d) the employee has been on maternity leave with salary or wage during the accounting year."

7. It is true that, in order to earn bonus in an accounting year, an employee should work at lest for 30 working days in that year. However, the question which arises for the consideration of the court, is whether an employee who has been prevented from discharging work should be deemed to have worked in the establishment for the purposes of the Payment of Bonus Act, 1965.

8. The concept that bonus is a gratuitous payment by an employer to an employee is an outmoded one. By various stages, the real content of the word "Bonus" was the subject-matter of several judicial precedents and now, it is well settled that the payment of bonus is not the product of generosity of the employer but it is one paid in the name of industrial peace and to make available to every employee a living wage which more often is more than the actual wage. It is thus the difference between the actual wage and the living wage which is ascertained on the basis of available material such as available surplus industrywise wages or regionwise wages and various other aspects connected with bonus and organisations. In view of the observations of the Supreme Court in The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka Vs. Its Workmen and Another, a high powered Commission called the Bonus Commission was set up and on its recommendations, the Payment of Bonus Act was passed.

9. Section 8 speaks of an employee working in the establishment for not less than 30 working days in the accounting year to make him eligible for bonus. When an employee, for no fault of his and involuntarily is prevented from working in the establishment for the prescribed number of days, does it axiomatically follow that he is ineligible for bonus ? The contribution of physical labour or otherwise by an employee in the interest of the industry and for the benefit of the employer, which is reflected in the phrase "work in the establishment" postulates a normal atmosphere where in there is no strife or misgiving between the employer and the employee during he year. In the absence of such normalcy, to wit, when an employee is suspended, it cannot be said that such an employee" did not work in the establishment" as is normally understood. The word "worked'' in Section 8 of the payment of Bonus Act, 1965, having regard to the historic background already referred to, should mean "ready and willing to work". Such working should not be understood with reference to

the dictionary meaning of the word and the eligibility understood in the abstract. "Bonus" itself being a payment made by an employer to an employee, to maintain industrial harmony and to give a fillip to the employees to exert their utmost to keep up the industry active and aloft, such involuntary stepping down from work by an employee cannot be termed or equated to non-working of the employee in the establishment. It is only in the wake of such a clear, undisturbed and normal atmosphere that the formula of eligibility prescribed in Section 8 has to be worked and understood. In this sense, if everything is normal, the worker to sustain a case for bonus or to be eligible for it, should work in the establishment for not less than 30 working days in that year. But in abnormal circumstances wherein he is prevented from working by an overt act on the part of the employer which is ultimately set aside and the employee is reinstated in service, then the reasonable inference is that the employee''s statutory eligibility for bonus within the meaning of Section 8 of the Payment of Bonus Act, 1965 cannot be said to have been lost. Nor can employer refuse to accede to a demand for such bonus, if it is otherwise payable under the provisions of the Act.

10. In Dhandapani (V.) Vs. Salem Co-operative Wholesale Stores Ltd., , following the decision in Balasundaram Mudaliar v. Elappa Mudaliar (1957 (1) MLJ 7), it has been held that, if the termination of the service of a person employed in an the concerned employees must be deemed to have continued in service without a break.

11. Here, in the present case, but for the suspension order, the deceased employee would have continued in service, put in the necessary attendance and performed the required work to be eligible for bonus under the Payment of Bonus Act, 1965. The fact that the Court directed the petitioner to pay full backwages for the period of suspension indicates that the action of the petitioner in suspending deceased employee from service was illegal and not justified at all. Even otherwise, the misconduct provided against deceased employee was not serious one and having regard to the facts of the case, the disciplinary authority had though it fit to impose penalty of only stoppage of one increment with future effect. In view of the misconduct held to have been proved against deceased employee, his suspension was not justified at all and the said action was totally illegal. The deceased employee was prevented from rendering work in the establishment by an overt act of the petitioner. But for the suspension order, normal circumstances would have prevailed and he would have worked so as to be eligible for claiming bonus. The order passed by the petitioner itself also makes it very clear that the period of suspension of the deceased employee was to be taken into consideration for continuity of his service. The fact that the deceased employee was ready and willing to perform his work is apparent as he resumed duty on April 7, 1978 pursuant to the order dated April 6, 1978 issued by the petitioner. It cannot, therefore, be said that though the deceased employee was deemed to have been in service pursuant to the reinstatement, he could not be deemed to have put in the attendance required by the relevant statutory provisions to claim the bonus.

12. In view of the above discussion, it cannot be said that any error of law is committed by the Presiding Officer, labour Court (Central). Ahmedabad in passing the impugned order so as to call for interference of this Court in exercise of powers under Art. 226 of the constitution of India. I do not find any substance in the petition. The same, therefore, fails. Rule is discharged with no order as to costs.

