

CR No.140 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.140 of 2015
Date of decision:15.01.2015

Hukam Singh

...Petitioner

Versus

M/s India Yamaha Motors Pvt. Ltd. (SPD) & anr.

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ravinder Malik, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner has challenged the order passed by the Authority under the Payment of Wages Act, 1936 (here-in-after referred to as the “Act”) by which his application filed under Section 15 of the Act was dismissed on 30.04.2012 and also order dated 04.01.2014 by which his appeal was dismissed. The relevant findings of the Court below, recorded in para nos.13 and 15 of its order, are reproduced here-as-under for the ready reference:-

“13. The instant case is squarely covered by the above authority **Cement Corporation of India Ltd. (supra)**. The appellant and others were employees of the contractor Sudhir Sharma as per him. Aside from the receipts, Ex.AW1/1 to AW1/45, they have been unable

to produce any oral or documentary evidence to prove their employment. Their assertion is that the respondent No.1 had deposited their ESI/PF amounts for a few months. This fact is not in dispute but merely because such deposit was made by the principal employer, it does not indicate that the workers were the employees of M/s India Yamaha Motor Pvt. Ltd. (SPD). In contrast to this judgment, it has been argued by the Ld. Counsel for the appellants that they were the employees of the respondent No.1 even if it was presumed that they were working under the contractor and reliance in this regard was placed upon **Chet Ram Vs. P.O. Industrial Tribunal-cum-Labour Court-I and another**, 2010 (127) FLR 379. The facts of this case are inapplicable to the instant case as in **Chet Ram's case (supra)** the workman was held to be an employee of the contractor and as the contractor's establishment did not have a valid contract, he was deemed to be the workman of the principal employer and entitled to all consequential benefits. The appellants have not led any evidence to show that the contract of M/s Strength India Enterprises was not legally valid. In fact, the appellants do not even admit that they were working under the contractor i.e. the said firm, rather they are contending to be direct

employees of the respondent No.1 and this fact has not been proved.”

“15. It may further be pointed out here that as per **Junior Labour Inspector (Central) Jabalpur, Inspector under the Payment of Wages Act and Authority under the Payment of Wages Act, Presiding Officer, Labour Court No.2, Jabalpur and others 1976 (32) J. Lab 312 MP**, it has been clearly held that every dispute between an employer and employee with regard to bonus cannot be covered under Section 22 of the Bonus Act or with respect to the application of the Act. In the instant case, no bonus is payable under the Payment of Bonus Act and as such, the claim of the appellant is not maintainable.

It may further be pointed out that as per Section 2 Clause 21 of the Payment of Bonus Act, salary or wage means all remunerations other than that for over time work which is 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 but does not include various allowances etc. including bonus. By the very definition of “wages”, bonus is not

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covered therein and is as such not payable. A similar definition is also given under the Payment of Wages Act and it is apparent from the bare reading of the same that it is to be paid by the employer to the person employed and not by the person engaging the employer.”

Learned counsel for the petitioner has vehemently argued that the Court below has erred in holding that there was no relationship of employer and employee between the parties. It is, however, could not be denied with the documentary proof that the petitioner was the employee of the contractor.

In view thereof, there is no error committed by the Court below in dismissing the application of the petitioner and hence, the present revision petition is hereby dismissed being denuded of any merit.

January 15, 2015
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Rakesh Kumar Jain
Judge