IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 1872 of 1995 (O&M)
Date of decision : 7.9.2016
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Workmen of the Punjab State Cooperative Milk Producers Federation Ltd., through their Regd. Union namely, 'The Cattle Feed Plant & Farm Workers Union, Bhattian, District Ludhiana, through its General Secretary.
................Petitioner

vs.

The Managing Director, Punjab State Cooperative Milk Producers Federation Ltd, Chandigarh and another .................Respondents

**Coram: Hon'ble Mr. Justice P.B. Bajanthri**

Present: Mr. A.P. Bhandari, Advocate for the petitioner.

Mr. B.S. Patwalia, Advocate for
Mr. D.S. Patwalia, Advocate for the respondents

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**P.B. Bajanthri, J.**

The petitioners – Workmen Union presented this petition challenging award dated 16.6.1994 passed by the Industrial Tribunal, Punjab, Chandigarh. Members of the petitioner Union are workmen of Punjab State Cooperative Milk Producers Federation Ltd., (for short hereinafter to be referred as 'Milkfed') is a society registered under the Punjab Cooperative Societies Act, 1961. It has more than one plant under its control, management and ownership. The Cattle Feed Plant, Bhattian is one of the plant. Earlier ownership of the plants were vested with the Punjab Diary Development Corporation

Ltd. The Cattle Feed Plant, Bhattian, where the petitioners were working, was established in the year 1973-74. State Government framed a policy to bring Milkfed in the Punjab Diary Development Corporation Ltd. In other words, Cattle Feed Plant, Bhattian, is one of the taken over plant by Milkfed.

2) The grievance of the petitioners – Union before the Labour Court was that they are entitled to bonus more than 20% of their wages for the years 1983-84 to 1989-90 and not @ 8.33% as granted by the management. Claim of 20% bonus is with reference to huge profits made by the Cattle Feed Plant, Bhattian, during the period from 1983 to 1990. The huge profit is because of hard work and more production given by the workers like the petitioners. Therefore, they are claiming bonus @ 20% under Section 3 of the Payment of Bonus Act, 1965. Section 3 of the said Act reads as under :-

> " 3. Establishments to include departments, undertakings and branches.- Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act:

> Provided that where for any accounting year a separate balance- sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus."

3) For claiming 20% bonus by the Workers Union, they failed to establish before the Industrial Tribunal, to contend that Cattle Feed Plant, Bhattian, where the petitioners were working, gave huge profits, though the petitioners' Union produced balance sheet of the Cattle Feed Plant, Bhattian, by pointing out that huge profit has been made by Cattle Feed Plant, Bhattian. Further they have produced Auditor's report also. The same has been discarded by the Industrial Tribunal on the score that balance sheet in the year 1983-84 to 1989-90 was not made available by either of the parties, whereas the respondents have contended before the Industrial Tribunal that Cattle Feed Plant, Bhattian, is not an independent entity so as to prepare balance sheet of that plant independently. Therefore, version

of the respondents has been accepted by the Industrial Tribunal while declining grant of relief to the petitioners - Union. Thus, the petitioners - Union presented this writ petition.

4) Learned counsel for the petitioner submitted that Section 3 of the Payment of Bonus Act, 1965, provides that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year. In the present case the respondents have failed to furnish balance sheet for the disputed years, the petitioners are entitled to more than 20% of bonus on the score that Cattle Feed Plant, Bhattian, is to be treated as an independent establishment. In support of the claim of the petitioners, the petitioners' counsel relied on balance sheet document which is produced alongwith Annexure P-7, supported by Auditor's report, which reads as under :-

"<u>AUDITOR'S REPORT</u>

We have examined the forgoing balance sheet of the Milkfed, Cattle Feed Plant, Bhattian (Khanna) for the period from 1.7.83 to 30.6.84 and the manufacturing, trading, profit and loss accounts of the plant.

1. In our opinion the balance sheet is full and fair one containing necessary particulars &

is properly drawn up so as to exhibit a true and correct view of the affairs of the plant, according to the best of our information and explanation given to us and as shown by the books of the plant.

2. Where we have called any information and explanation such information & explanation have been given to us and found satisfactory except where mentioned in the body of the report.

True copy from the photostat copy of the document."

5) It was further contended that petitioner presented application before the Industrial Tribunal on 14.10.1993 (Annexure P-10) for production of balance sheet. Extract of application reads as under :-

"Before the Presiding Officer, Industrial Tribunal, Punjab, Chandigarh Camp at Ludhiana

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Reference No. 66 of 1991

Workmen vs. Milkfed, Punjab, Chandigarh etc.

APPLICATION FOR PRODUCTION OF DOCUMENTS FOR CROSS EXAMINATION.

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Sir,

The following documents are in power and custody of the respondents:-

Profit and Loss Account, Trading Account and balance sheet of the Cattle Feed Plant, Bhattian, for the year 1983-84 to 1989-90.

The above mentioned documents are necessary and relevant for deciding the controversy involved in the case.

It is, therefore, prayed that in the interest of justice, the respondents may be directed to produce the said documents at the time of cross examination.

Sd/-

WORKMEN"

The respondents failed to produce.

6) In the absence of balance sheet the profit and loss accounts prepared for common, consisting of all the plants/units, Cattle Feed Plant, Bhattian, is to be treated as independent entity. Thus, the balance sheet of Cattle Feed Plant, Bhattian, is prepared

separately in the disputed year. Admittedly, the respondents have failed to produce balance sheet relating to all the plants one consolidated balance sheet pertaining to all the units, despite this Court directing the respondents. Therefore, the Industrial Tribunal has erred in declining to grant relief sought by the petitioners – Union. Award of the Industrial Tribunal dated 16.6.1994 is liable to be set aside.

7) On the other hand, learned counsel for the respondents submitted that Milkfed consists of various plants, including Cattle Feed Plant, Bhattian. Consolidated balance sheet of various plants have been prepared. Accordingly with reference to consolidated balance sheet read with profits, bonus of 8.33% has been paid in accordance with law. Therefore, the petitioners have not made out a case so as to interfere with the award of the Industrial Tribunal. The Industrial Tribunal after recording the evidence adduced both on behalf of the petitioners and respondents, finding has been given that there is no independent balance sheet pertaining to the Cattle Feed Plant, Bhattian. Therefore, there is no error in the finding given by the Industrial Tribunal.

8) Heard counsel for the parties.

9) Admittedly Milkfed, Punjab Chandigarh, consists of various milk plants, among them Cattle Feed Plant, Bhattian, is one of the unit. The Industrial Tribunal recorded evidence on behalf of both the parties. However, no material has been produced by either of the parties like a balance sheet and profit and loss accounts of the

Milkfed or Cattle Feed Plant, Bhattian, as a unit. The petitioners have produced extract of balance sheet alongwith Annexure P-7 supported by Auditor's report. However, the same has been discarded by the respondents. At the same time, the respondents failed to produce balance sheet and profit and loss accounts of Milkfed in entirety, before the Industrial Tribunal as per application made by the petitioner and despite specific direction given to them by this Court. Therefore, an inference can be drawn to the extent that the respondents have prepared balance sheet and profit and loss accounts of Cattle Feed Plant, Bhattian independently. Had they prepared consolidated balance sheet and profit and loss accounts of Milkfed, for the disputed years they could have placed on record, so as to demonstrate that Cattle Feed Plant, Bhattian, is part and parcel of Milkfed for the purpose of preparation and publication of balance sheet and profit and loss accounts of Milkfed. Hence, documents attached to Annexure P-7, namely, balance sheet and Auditors report, which supports the claim of the petitioners – Union, is to be taken into consideration and the fact that the respondents failed to produce consolidated balance sheet before the Industrial Tribunal and in the present matter. Cattle Feed Plant, Bhattian, undisputedly maintaining separate balance sheets and profit and loss accounts. Therefore, proviso to Section 3 of the 'The payment of Bonus Act, 1965' has full application.

10) Accordingly, award of the Industrial Tribunal dated 16.6.1994 is set aside. The respondents are directed to pay the

difference of bonus, to the members of the petitioner Union in accordance with Payment of Bonus Act, 1965, as if the balance sheet and profit and loss accounts of Cattle Feed Plant, Bhattian, prepared independently, within a period of six months from today.

**( P.B. Bajanthri )**
**Judge**

**September 7th, 2016**
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No