

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.06.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21405 of 2015

and

MP.No.1 of 2015

M/s.Venkateshwara Hatcheries Pvt.Ltd.,
rep. by its General Manager-M.R.I.Magdum,
HCF Post, Attibele Road,
Mathigiri,
Hosur-635 110. ..Petitioner

vs

1.Assistant Commissioner of Labour,
Salem.
2.S.Balamurugan .. Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue Writ of Certiorari, to
call for the records of the 1st respondent in case
No.B1/9901/2014 and quash it order dated 01.06.2015.

For Petitioner : M/s.Ravindran, Senior Counsel
for S.Bazeer Ahamed

For R 1 : M/s.A. Sri Jayanthi,
Special Government Pleader

For R2 : No Appearance

सत्यमेव जयते
O R D E R

The order passed by the Assistant Commissioner of Labour,
Salem in case No.B1/9901/2014 dated 01.06.2015 is under
challenge in this writ petition.

2. The writ petitioner establishment is covered under the
provision of Payment of Bonus Act, 1965. The second respondent
workman joined the services of the writ petitioner establishment
on 25.11.2005 and he left the service of the writ petitioner
establishment on 06.05.2014. During the period of his service,
the second respondent was paid bonus to the maximum of 20% as
detailed below.

Sl. No.	Year	Basic Pay in Rupees	Bonus paid with ceiling of Rs.3500/-	Superannuation allowance
1	2006-07	Rs.3750	Rs.8400	Not eligible
2	2007-08	Rs.4250	Rs.8400	Not eligible
3	2008-09	Rs.4590	Rs.8400	Not eligible
4	2009-10	Rs.6000	Rs.8400	Rs.200/pm x 12 = 2400/-
5	2010-11	Rs.6720	Rs.8400	Rs.308/pm x 12 = 3696/-
6	2011-12	Rs.7300	Rs.8400	Rs.395/pm x 12 = 4740/-
7	2012-13	Rs.7884	Rs.8400	Rs.483/pm x 12 = 5796/-

3. In view of the fact that the entire bonus as applicable as per scheme had been paid to the second respondent workman, the learned Senior Counsel contended that there is no further liability on the part of the petitioner to pay any amount to the second respondent by way of bonus. However, the second respondent approached the first respondent / Assistant Commissioner of Labour, Salem under the Payment of Bonus Act, 1965. The learned Senior Counsel cited the findings in the proceedings which categorically states that the second respondent workman had admitted the fact that he received the bonus from the year 2006 to 2013. The admission made by the second respondent workman was endorsed by the first respondent during the course of proceedings and the same was recorded in Question No.2. However, the competent authority came to the conclusion that the details of accounts had not been produced before the competent authority and therefore, the petition filed by the second respondent workman was allowed. Except the finding that the writ petitioner establishment failed to submit the break up details, there is no other reason has been provided for allowing the claim of the writ petitioner filed under the provision of Payment of Bonus Act, 1965.

4. The learned Senior Counsel in this regard, urged this Court by stating that the second respondent workman claimed bonus before the competent authority and when the petitioner establishment proved beyond doubt that the bonus as applicable as per the scheme had been paid to the second respondent and further, the same was admitted by the second respondent, there is no reason to claim any further amount from the petitioner

establishment.

5. This apart, the counter now filed before this Court by the second respondent states that the Ex-gratia bonus to be paid beyond the payment of bonus already made by the writ petitioner establishment. The learned counsel in this regard clarified that the claim of payment of bonus has been clearly enumerated before the Assistant Commissioner of Labour, Salem in the counter and more specifically as stated in the counter statement in paragraphs 5, 6 and 7 which are extracted hereunder.

5. If employees drawing a Basic salary from Rs.4668/- and above will receive an amount equal to Ex-gratia payment @ 15% per month of the Basic Salary earned less amount of Bonus as per new amendment, added along with the monthly salary every month with effective from 1st April 2008, In the name of Superannuation allowance. This is nothing but the Bonus amount over and above ceiling was paid as Superannuation allowance as per the Superannuation Scheme of the Company. This amount was paid over & above the statutory Bonus for the welfare of the employees even though they were not entitled for it as per the Payment of Bonus Act In view of the ceiling fixed in the Act.

6. Under the Scheme above said the petitioner was also paid 15% of his Basic salary ie over and above the ceiling amount @ Rs.4667/- every month.

7. The petitioner's salary has exceeded 4667/- with effect from 2009-10 Bonus Period and he was paid as per details below:

Sl. No.	Year	Basic Pay in Rupees	Bonus paid with ceiling of Rs.3500/-	Superannuation allowance
1	2006-07	Rs.3750	Rs.8400	Not eligible
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Sl. No.	Year	Basic Pay in Rupees	Bonus paid with ceiling of Rs.3500/-	Superannuation allowance
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6. The payment of Ex-gratia will be adjusted with the bonus already paid. When that is the scheme formulated and accepted by the union, there is no reason to claim any further Ex-gratia payment beyond the Payment of Bonus admittedly received by the second respondent workman. This being the factum, the first respondent / Assistant Commissioner of Labour, Salem has failed to consider the said counter statement filed by the writ petitioner.

7. This court is of an opinion that the payment admittedly has been made. The only question arises whether such a payment was made in accordance with the scheme formulated or not. The second respondent workman has admitted that he received the bonus for the year 2006 to 2013. However, in the counter, he has stated that the Exgratia bonus as applicable has not been paid. Now it is clear that the Ex-gratia bonus has to be adjusted with the bonus already paid. There cannot be any two bonus payment for the employee. The Ex-gratia bonus, if any to be paid, is to be adjusted with the bonus to be claimed as per the scheme formulated by the petitioner establishment. This being the factum, the claim of the second respondent is not only unsustainable but also not substantiated with the terms and conditions of the scheme formulated by the petitioner establishment.

8. The first respondent / Assistant Commissioner of Labour, Salem also has not considered the scope of the scheme and the terms and conditions as formulated, which has to be adjudicated before the Assistant Commissioner of Labour, Salem. Contrarily, the findings are made that the petitioner establishment has not submitted the break up details and accordingly the petition filed by the second respondent workman was allowed. Non furnishing of statement will not provide a cause for the workman to claim any additional bonus beyond the scope of scheme itself.

9. The learned Senior Counsel clarified that they have filed the statement before the Assistant Commissioner of Labour, Salem even in the counter, which has not been looked into by the Assistant Commissioner of Labour, Salem.

10. May that it be, even after filing of this writ petition before this Court, the second respondent has not established his claim for any additional bonus or Ex-gratia bonus. Admittedly, the bonus as applicable had already been received by the second

respondent workman. Thus, the writ petition deserves to be considered. Accordingly, the order passed by the first respondent in Case No.B1/9901/2014 dated 01.06.2015 is quashed. The writ petitioner company is permitted to withdraw the amount already deposited before the first respondent by filing an appropriate application.

11. With the above observations, the writ petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

lok

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To
Assistant Commissioner of Labour,
Salem.

+1cc to Mr.S.Bazeer Ahamed, Advocate SR.No.36483

+1cc to Government Pleader sR.No.37538

KJI (CO)

Srg (22.6.2018)

W.P.No.21405 of 2015

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