

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A.No.2595 of 2018 and
C.M.P.No.21099 of 2018

The Managing Director,
M/s.Vinayaka Missions Medical
College and Hospital, Keezhakasakudimedu,
Kottucherry PO, Karikal. ...Appellant

Vs

1.The Presiding Officer,
Hon'ble Industrial Tribunal cum Labour Court,
Puducherry.
2.N.Ramar
Rep. by the V.M.M.C. & Hospital
Ozhiyargal Sangam. Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent
against the order dated 05.09.2018 in W.M.P.No.11117 of 2018 in
W.P.No.9314 of 2018.

W.M.P. 11117/2018 in W.P.No.9314 of 2018:

Petition praying that in the circumstances stated therein
and in the affidavit filed therewith the High Court will be
pleased to grant an interim of the operation of the award passed
in I.D.(T) No. 03 of 2014 dated 08.01.2018 (in W.M.P.No.11117 of
2018) Pending disposal of the Writ Petition No.9314/2018 has
been filed by the Petitioner/Management, challenging the award
dated 02.01.2018 passed in I.D.(T) No. 03/2014, directing the
Management to pay bonus to its workers for the period 2012-
2013in accordance with law.

For Appellant : Mr.Ravindran
Senior Counsel for
Mr.L.Swaminathan

For Respondents : Mr.Balan Haridas for R2

J U D G M E N T
[Judgment of the Court was made by
M.SATHYANARAYANAN, J.]

By consent, this writ appeal is taken up for final disposal and is disposed of by this judgment.

2. The second respondent raised an Industrial Dispute and it was referred to Industrial Tribunal cum Labour Court at Puducherry in I.D.(T)No.03/2014 and it is relevant to extract the reference made by the Government as per G.O.Rt.No.70/AIL/LAB/BJ/2014, dated 21.04.2014:-

"Whether the dispute raised by the petitioner union Vinayaga Mission Medical College & Hospital Ozhiyargal Sangam against the management M/s.Vinayaga Mission Medical College & Hospital, Kariakal over non-payment of Bonus to its employees is justified?"

3. The Tribunal on consideration of oral and documentary evidence allowed the said dispute and held that the Industrial Dispute raised by the Union against the Management over non-payment of Bonus to its employees is justified and also passed an Award directing the Management to pay the Bonus to its workers for the period from 2012 to 2013 in accordance with law.

4. The Management of Vinayaka Mission Medical College and Hospital, Karaikal, aggrieved by the said Award of the Industrial Tribunal cum Labour Court, dated 08.01.2018, made in I.D.(T)No.03/2014, has filed writ petition in W.P.No.9314 of 2018 and during the pendency of the writ petition, filed WMP No.11117 of 2018 praying for stay of all further proceedings pursuant to the said Award.

5. The writ petition was entertained and the learned single Judge vide interim order dated 05.09.2018 has passed the conditional order of stay and it is relevant to extract the same:-

" 3. There shall be an order of interim stay, subject to the condition that 50% of bonus payable for the year 2012-2013 for the eligible employees shall be paid by the Management, within a period of four weeks from the date of receipt of a copy of this order, which, however, shall be subject to the result of the writ petition."

The writ petitioner/Management aggrieved by the conditional interim order has filed this appeal.

6. Mr.Ravindran, learned Senior Counsel assisted by Mr.L.Swaminathan, appearing for the appellant/writ petitioner

has invited the attention of this Court to the typed set of documents and would submit that in the counter statement to the dispute raised by the second respondent herein, a stand has been taken that industrial dispute can be raised by a recognised union or by a union having a following of majority of workmen engaged in the said institution and since the second respondent Union herein had failed to prove the fact that they are having majority of employees and that they have not filed their Member's Register of copy or General Body Resolution authorizing them to raise the dispute, the Award passed by the Tribunal is per se unsustainable and on merits of the Award, the learned Senior Counsel had pointed out that admittedly, the Management had paid a sum of Rs.7,000/- by way of ex-gratia to the regular employees and Rs.1,000/- for daily rated employees and though its nomenclature has been cited as ex-gratia, it actually represents 16.66% in terms of bonus and as such, it is not liable to pay any amount and the said fact has not been taken into consideration by the learned Judge. It is further submitted by the learned Senior Counsel that Payment of Bonus Act is not applicable to the appellant institution for the reason that as per Section 32(v)(b) and (c), the employees of Universities and other Educational institutions and Hospitals, establishments not with the aim of earning profit are not be covered under said Act and it need not pay bonus at all and hence prays for setting aside the impugned conditional interim order.

7. Per contra, Mr. Balan Haridass, learned counsel appearing for the second respondent/Union would submit that admittedly, the petitioner is running many medical institutions, para medical colleges and hospitals and it is not open to them to claim that they are running the said institutions without profit motive. The learned counsel would further contend that the grounds raised in the Memorandum of Grounds of writ appeal as well as the points urged by the learned Senior Counsel appearing for the appellant/writ petitioner would revolve around the merits of the writ petition and the learned Judge has taken note of all the relevant aspects and by exercising the discretion, he has passed the conditional interim order and this Court in exercise of its appellate jurisdiction under Clause 15 of the Letters Patent may interfere with the same and prays for dismissal of this writ appeal.

8. This Court has carefully considered the rival submissions and also perused the materials placed before it.

9. The grounds urged by the learned Senior Counsel as to the competency of the Union to raise the Industrial Dispute and whether the appellant institution is exempted from the provisions of Payment of Bonus Act or not, cannot be adjudicated by this Court in this writ appeal as the same is to be done in the writ petition.

10. The Industrial Tribunal in Paragraph 7 of the Award, which is the subject matter of challenge in the writ petition has recorded the finding that the Management has paid a sum of Rs.7,000/- for regular employees and Rs.1,000/- for daily rate employees as ex-gratia and they did not pay bonus.

11. It is to be noted at this juncture that the Award passed by the Industrial Tribunal is yet to be set aside for the reason that the writ petition challenging the same is still pending. It is also to be pointed out at this juncture that the Industrial Tribunal in Paragraph 15 of the Award while allowing the same, directed the respondent Management to pay bonus, but did not quantify the same either in terms of money or in terms of percentage as per the Payment of Bonus Act.

12. While passing the conditional impugned order, the learned single Judge directed the appellant/Management to pay 50% of the bonus payable for the year 2012-13 for the eligible employees within a period of four weeks from the date of receipt of a copy of the order. Since in the impugned order also, no quantification is done, this Court taking into consideration the rival submissions and the facts and circumstances, is inclined to modify the said conditional order by directing the appellant/writ petitioner Management to pay a sum of Rs.1,000/- to each of the workman covered under the impugned Award dated 08.01.2018 in I.D.(T)No.03/2014 and the same is without prejudice to the rights of the appellant Management as well as the second respondent Union and the said payment is to be effected within a period of two weeks from the date of receipt of a copy of this order.

13. The conditional interim order dated 05.09.2018 is modified to the extent indicated above. The writ appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते
s/d-

Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

svki
To

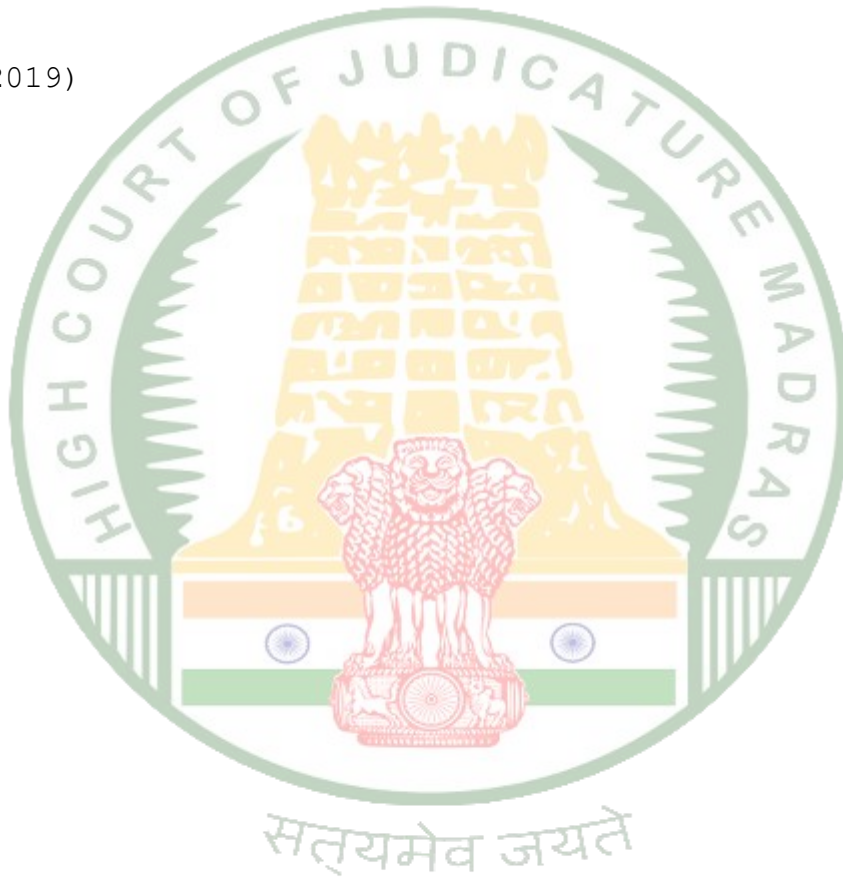
1. The Presiding Officer,
Hon'ble Industrial Tribunal cum Labour Court,
Puducherry.

2. The Section officer
Writ Section, High Court, Madras 104.

+1 CC to Mr.C. Swaminathan, Advocate sr 83453.
+1 CC to Mr. Balan Haridas, Advocate sr 83537.

WA.No.2595 of 2018

PPA (CO)
SP (09/01/2019)



WEB COPY