IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.03.2019

Order Reserved on: 12.03.2019	Order delivered on: 20.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.1732 of 2013
and
M.P.No.1 of 2013

The Management of WORTH Trust,
48, New Thiruvalam Road,
Katpadi 632 007. ...Petitioner/Appellant

-vs-

1. The Presiding officer,
   Industrial Tribunal,
   Chennai.

2. The Secretary,
   WORTH Trust Workers Union,
   2/101, Kumaran Street,
   Lakshmipuram, Katpadi,
   Chennai - 632 006. ... Respondents/Respondents

PRAYER:

Writ appeal filed under Clause 15 of Letters and Patents Act against the order made in W.P.No.22392 of 2004 dated 25.03.2013.

W.P.No.22392 of 2004:-

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the first respondent in I.D.No.109 of 1998 and quash its award dated 28.04.2004.

For Appellant : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

For Respondents : Mr.V.Ajoy Khose
for Mr.R.Krishnaswamy (For R2)

R1 - Court

JUDGMENT

(Judgment was delivered by T.S.Sivagnanam, J.)

This appeal has been filed by the Management of Workshop for Rehabilitation and Training for the Handicapped (WORTH) Trust challenging the order passed in W.P.No.22392 of 2004 dated 25.03.2013.

2.The said writ petition was filed by the appellant Trust challenging the correctness of the order passed by the Industrial Tribunal, Chennai in I.D.No.109 of 1998 dated 28.04.2004. The employees/workmen of the appellant Trust raised a dispute under the provisions of the Industrial Disputes Act, 1947 claiming that for the year 1996-97, they are entitled to be paid bonus under the provisions of the Payment of Bonus Act and ex-gratia. The Government vide G.O.(D).No.559 Labour and Employment Department dated 25.07.1998 referred the said dispute for adjudication before the Industrial Tribunal, Chennai. The second respondent, the Workers Union filed the statement of claim before the Industrial Tribunal demanding that the members of their Union are entitled to 20% bonus with 5% ex-gratia for the account year 1996-97. The appellant Trust filed counter affidavit resisting the claim of the workmen and among other things contended that the provisions of Payment of Bonus Act will not apply to the appellant Trust as they would fall within the scope of either Section 32(v)(a) or 32(v)(c) of the Payment of Bonus Act (hereinafter referred to as "the Act"). Before the Industrial Tribunal, one Mr.M.Doss was examined as WW1 and 25 documents were marked as Exs.W1 to W25. On behalf of the appellant Management, Mr.C.Antonysamy, one of the Trustee of the appellant Trust was examined as MW1 and 20 documents were marked as Exs.M1 to M20. The Labour Court after considering the oral and documentary evidence by award dated 28.04.2004 held that the demand of the second respondent Union for payment of bonus and ex-gratia for the year 1996-97 is justified and the workmen, members of the second respondent Union are entitled to minimum bonus of 8.33% for the relevant period and also entitled to ex-gratia amount for that year similar to the amount already received by them in the previous and succeeding years. Accordingly, the dispute raised by the workmen was allowed. The appellant challenged the award passed by the Industrial Tribunal in the said writ petition which was dismissed by the impugned order. Aggrieved over the same, the appellant is before us by way of this appeal.

3.Mr.Anand Gopalan, learned counsel for M/s.T.S.Gopalan & Co., counsel for the appellant submitted that the scheme of the Act is required to be looked into to examine the correctness of the order passed by the Industrial Tribunal as confirmed by the Writ Court. It is submitted that the underlying principle behind the Act is that the factory or establishment should generate a profit as the computation of bonus is based on the profit earned by the factory or an establishment. To substantiate this argument, the learned counsel referred to Sections 4 and 5 of the Act. Referring to Sections 10 and 11 of the Act, it is submitted that the provision uses the expression "allocable surplus" and therefore, the provisions of the Act would stand attracted only if there is a surplus and even if it is no so, the minimum bonus payable is in terms of Section 10 of the Act. Therefore, it is submitted that essentially the factory or an establishment should have been established with an intention to make profit and if it is not so, the provisions of the Act cannot be applied. Elaborating his submissions, Mr.Anand Gopalan, learned counsel referred to Section 32 of the Act which states that nothing under the Act will apply to certain class of employees and Clause (v) of Section 32 enumerates three categories of employers to whose employees the provisions of the Act will not apply, namely, (a) the India Red Cross Society or any other institution of a like nature; (b) Universities and other educational institutions and (c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit. It is submitted that the rigour of Section 32 of the Act is different from the effect of Section 36 which is the power of exemption and the appellant Trust falls within Clause (a) of Section 32(v) and therefore, the provisions of the Act will not apply to its employees or if it is contended that Clause (a) of Section 32(v) of the Act is not applicable, then the appellant would fall within Clause (c) of Section 32(v) of the Act and accordingly, the provisions of the Act will not be applicable to its employees. To explain as to how the appellant Trust was established, the purpose of its establishment, etc. the learned counsel referred to the counter statement filed by the appellant before the Industrial Tribunal in I.D.No.109 of 1998. It is further submitted that the witness examined on the side of the workmen, WW1 has accepted in his deposition that the employees of the appellant are leprosy cured persons and persons who are differently abled. It is submitted that the Industrial Tribunal erroneously held that the provisions of the Act would apply and not only ordered payment of bonus at 8.33% but also directed ex-gratia to be paid without specifying the amount. It is further submitted that the learned Writ Court erroneously confirmed the order of the Tribunal but made an observation that the ex-gratia paid to the workmen can be adjusted against the bonus. It is further submitted that in the year 1985 the only change which was effected to the Trust Deed was change of name and it does not take away the purpose for which the Trust was established, namely, for training and/or employment of leprosy cured and differently abled persons.

4.The learned counsel relied upon the following decisions to support his contentions that the provisions of the Act will not apply to its employees:

1. 1973 (2) LLJ 243 (Uttar Pradesh Engineers Association vs. Uttarpradesh State Electricity Board
2. (1980) 1 SCC 583 (Workmen of Tirumala Tirupathi Devasthanam vs. Management and another)
3. (1991) 2 LLJ 394 (Tamil Nadu Water Supply and Drainage Board Engineers Association etc. vs. State of Tamil Nadu and Tamil Nadu Water Supply and Drainage Board)
4. (1995) 1 LLJ 486 (Swarajya Ashram Karamchari Sangh vs. Swarajya Ashram, Kanpur)
5. (1999) 2 LLJ 1194 (Dr.(Ms.) Sita Bhateja Nursing Home (Trust), Bangalore vs. Presiding Officer, Bangalore and another)

5.Mr.Ajoy Khose, learned counsel for the second respondent submitted that on 15.11.1985 not only the name of the Trust was changed but substantial amendments were made to the Trust Deed and they were no longer accountable to the Swedish Red Cross, Stockholm. It is submitted that when the Society was part of the Swedish Red Cross only training was imparted to leprosy cured and differently abled persons and no commercial activity or production activity was carried out and only in the year 1985, the Trust started commercial activities such as production of various industrial items and therefore, the entire character of the Trust stood altered. Referring to the Government Order in G.O.Ms.No.1857 dated 06.09.1969, it is submitted that it has been accepted that profit is generated by the Trust which goes for rehabilitation work. Thus the objects of the Trust are achieved by the profits earned from the Industrial undertakings and factories established by the appellant Trust and the provisions of the Act would be clearly applicable. It is further submitted that in terms of Section 1(3) of the Act, the provisions of the Act shall apply to every factory and admittedly the appellant has established factories in various centres in the State of Tamil Nadu and having accepted that those are factories, automatically the provisions of the Act will apply. Therefore, the question of applying Clause (b) of Section 1(3) would not arise as the factories established and owned by the appellant Trust clearly fall within the first limb of Section 1(3), namely Clause (a) thereunder.

6.In the light of the above submission, Mr.Ajoy Khose, learned counsel contends that the question of examining as to whether the appellant is an Institution or not and whether it was established for profit or not does not arise because it is a factory to which the provisions of the Act are automatically attracted. It is further submitted that the Trust may be an Institution established not for the purpose of profit but the factory was established as a separate entity and the profits were to be utilized for achieving the objects of the Trust. Thus, the factory being a separate unit the provisions of Section 32(v)(c) will not apply. It is submitted that the decision of the Hon'ble Supreme Court in the case of Workmen of Tirumala Tirupathi Devasthanam (supra) and the decision in the case of Christian Medical College support the stand taken by the workers Union. It is further submitted that the appellant does not dispute that the workmen are employed in its factory and all labour enactments are made applicable to the factory and therefore, the contention that the provisions of the Act would not apply to the employees working in the factory is not tenable. It is further submitted that the appellant cannot equate the amount paid as ex-gratia to that of the payment of bonus which is statutory and ex-gratia being in the nature of a gratis, the same cannot be treated as equivalent to payment of bonus in terms of the provisions of the Act.

7.In reply, Mr.Anand Gopalan, learned counsel for the appellant would contend that even before the name of the Trust was changed during 1985, they were carrying on manufacturing activities which is evident on a reading of G.O.Ms.No.1857 dated 06.09.1969. Further, it is reiterated that what is important to see is the purpose for which the Institution was established and what is important is the word 'purpose' and if this is construed in the manner it ought to be construed then it goes without saying that the provisions of the Act will not be applicable to the employees of the Trust.

8.We have heard the learned counsel appearing on either side and perused the materials available on record.

9.The unsuccessful Management is before us assailing the correctness of the order passed by the learned Single Bench affirming the award of the Industrial Tribunal on the dispute raised by the second respondent Workers Union. The dispute which was referred by the Government of Tamil Nadu in G.O.Ms.No.1857 dated 06.09.1969, to the Industrial Tribunal, for adjudication is with regard to the payment of bonus to the members of the second respondent Union, employees, for the period 1996-97 and payment of ex-gratia. The appellant Management takes a stand that the provisions of the Act are inapplicable to its employees. The first contention is that Section 32 of the Act deals with classes of employees to whom the provisions of the Act is not applicable. The appellant's case is that Section 32 is not an exemption provision which is contained in Section 36 and by virtue of Section 32, the Act is made inapplicable in certain cases. The appellant claims umbrage under Section 32(v)(a) or (c). The said provision reads as follows:

> "32.Act not to apply to certain classes of employees:- Nothing in this Act shal apply to-
>
> (i) ....
>
> (ii) ....
>
> (iii) ....
>
> (iv) ....
>
> (v) employees employed by
>
> (a) the Indian Red Cross Society or any other institution of a like nature (including its branches);
>
> (b) universities and other educational institutions;
>
> (c)institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;

10.The case of the appellant is that it was and is part of the Red Cross Society and therefore, the provisions of the Act will not apply to its employees. If for any reason it is to be held that the appellant is not a Red Cross Society, it will fall within the second limb of the same clause as being an institution of a like nature, i.e. similar to Red Cross Society. The alternate submission of Mr.Anand Gopalan, learned counsel for the appellant is that the appellant would fall within Clause (c) of Section 32(v) of the Act as the appellant Trust is an institution, a social welfare institution, established not for purposes of profit. The appellant Trust was established by a

Deed of Trust dated 25.08.1969 registered as Document No.10 of 1969 on the file of the Sub-Registrar, Katpadi. The Deed of Declaration was executed by the Swedish Red Cross Society, an organization registered in Sweden. The Deed of Declaration states that the Swedish Red Cross Society is an institution devoting its activities among others towards charitable objects and are desirous of constituting a charitable trust in India for the purpose of promoting rehabilitation of leprosy cured and other handicapped by training and/or employment. During 1985 the Trust Deed underwent an amendment vide agreement dated 15.11.1985, whereby the name of the Trust was changed from Red Cross Rehabilitation Trust to WORTH, the requirement to furnish annual reports and accounts to the Swedish Red Cross, Stockholm was deleted, the condition in the Trust Deed regarding concurrence of Swedish Red Cross was deleted, approval of the Swedish Red Cross for certain decisions were deleted and the Clause "Subject to the approval of the Swedish Red Cross" in the Trust Deed was deleted. Thus, on and after the amendment the Trust became an entity in its own right not subject to any control by the Swedish Red Cross Society. Therefore, the appellant cannot claim itself to fall within the expression of a Red Cross Society. Firstly the provisions of the Act mentions only Indian Red Cross Society and not a Swedish Red Cross Society. Therefore, the first limb of Clause (a) of Section 32 (v) of the Act will not apply to the appellant.

11.The second argument is that it would fall within the scope of other institution of a like nature. There is nothing on record to show that the objects of the appellant Trust is akin to that of the Indian Red Cross Society. It may be true that the appellant Trust was established with a laudable object of rehabilitating leprosy cured and the differently abled. However, to qualify to be an institution of like nature as that of the Red Cross Society, there should be sufficient material. No such material was placed before the Industrial Tribunal to state that they are an institution similar to or like that of Indian Red Cross Society. Therefore, Clause (a) of Section 32 (v) of the Act will not come to the rescue of the appellant. The alternate submission of Mr.Anand Gopalan, learned counsel for the appellant is that it would fall within Clause (c) of Section 32(v) of the Act as the appellant is an institution established not for purposes of profit. "Institution" has not been defined under the Act. We may decipher the meaning by taking note of the categories of institutions shown within parenthesis and it appears to be an inclusive definition or appears to give an inclusive meaning, namely, institutions including hospitals, chambers of commerce and social welfare institutions. Therefore, unless and until the appellant does not fall in any other category anywhere described under the Act, then alone we are required to see whether it will fall within the scope of an "institution" as described in Clause (c) of Section 32(v) of the Act. In our considered view, Section 32(v)(c) will never come to the aid and assistance of the appellant as we are concerned about the workmen employed in a factory established by the appellant Trust. Clause (a) of Section 1(3) of the Act states that the provisions of the Act shall apply to every factory. Section 2(17) of the Act defines "factory" to have the same meaning as in Clause (m) of Section 2 of the Factories Act, 1948. The appellant does not deny the fact that they have established factory/s in different locations in the State. The factories are engaged in manufacture of industrial and commercial products. The provisions of the Employees State Insurance Act, Employees Provident Fund Act and all other labour enactments are made applicable to the factory. The appellant has obtained a license for all its factories. These facts are not denied by the appellant. Therefore, at the very threshold the provisions of the Act will apply to the factory. It may be true that the appellant Trust has established the factory, but factory so established is a distinct and separate entity to which various statutes including labour welfare statutes are mandatorily made applicable.

12.Thus the members of the second respondent Union being employed in the factory established by the appellant would be sufficient to hold that the provisions of the Act are made applicable to the employees who are employed in the factory. The decision of the High Court of Allahabad in the case of Uttar Pradesh Engineers Association (supra) dealt with the case of the employees of the Uttar Pradesh State Electricity Board claiming that they are entitled to receive bonus under the provisions of the Act. The Court after examining the facts of the case took note of the provisions of the Electricity (Supply) Act, 1948 held that the Electricity Board is not owned by shareholders to whom the profit might go or for whose benefit the profits might be earned and therefore, the Electricity Board cannot be presumed to be an institution established for purposes of profit and accordingly held that the Electricity Board is an institution established not for profit purposes and falls within the exception provided under Clause (c) of Clause (v) of Section 32 of the Act and the provisions of the Payment of Bonus Act will not apply. The facts in the case of Uttar Pradesh Engineers Association is entirely different, it is a Board established by a statute and on the given facts and circumstances, the Court found that it will be an institution which falls within the exception provided under Section 32(v)(c). The said decision is clearly distinguishable on facts and does not render any assistance to the case of the appellant.

13.In the decision in the case of Tamil Nadu Water Supply and Drainage Board Engineers Association (supra), this Court after taking note of the decision in Workmen of Tirumala Tirupathi Devasthanam (supra) held that the Tamil Nadu Water Supply and Drainage (TWAD) Board was created and all the projects were transferred to the TWAD Board to be of service to the community and it was an institution established not for purposes of profit. As mentioned above, the facts of the appellant's case cannot be brought under either Sub-clause (a) or Sub-clause (c) of Section 32(v) of the Act as the answer to the question raised lies under Section 1(3)(a) and the provisions of the Act will apply to the appellant.

14.The fine but a marked distinction is required to be seen in the instant case. This distinction is between the institution called the WORTH Trust and the factory established by the Trust. It may or may not be true that there were manufacturing activities much prior to 1985. However, in our considered view the same is not very material. This is so because the appellant Trust has established a factory, true, with a laudable object to rehabilitate the leprosy cured and differently abled. Nevertheless, the factory which has a full fledged manufacturing facility is an independent entity though may fall within the umbrella of the Trust. The factory has a distinct position, in law it is recognized as a separate unit, all labour welfare legislations have been made applicable and there can be no denying the fact that for all purposes it falls within the definition of factory as defined under Section 2(17) of the Act. This is sufficient to hold that the provisions of the Act are fully applicable.

15.In the light of the above, we are of the clear view that the Industrial Tribunal was right in holding that the provisions of the Payment of Bonus Act would apply to the employees of the factory/s established and administered by the appellant Trust. With regard to the claim for ex-gratia, the Industrial Tribunal had directed the appellant to pay ex-gratia amount. The Management were successful before the learned Writ Court which directed that the ex-gratia which has been paid to the workmen can be adjusted as against the bonus payable at 8.33%. Had the workmen filed an appeal against this finding, we may be required to examine the said aspect. However, the workmen chose to accept the order passed by the learned Writ Court. Therefore, we do not venture into the correctness of the order passed by the learned Writ Court in permitting the appellant to adjust the ex-gratia amount paid to the workmen from and out of the bonus payable.

16.For the above reasons the writ appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(I Cell)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Presiding officer,
   Industrial Tribunal,
   Chennai.

2. The Secretary,
   WORTH Trust Workers Union,
   2/101, Kumaran Street,
   Lakshmipuram, Katpadi,
   Chennai - 632 006.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.26373
+1cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.26041

W.A.No.1732 of 2013
and M.P.No.1 of 2013

BR(CO)
CS/25/04/2019