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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3405/2014

INDIAN TEA ASSOCIATION AND ANR.
AN ASSOCIATION REGD. UNDER THE PROVISIONS OF THE SOCIETIES REGD. ACT,1860 AND HAVING ITS PRINCIPAL PLACE OF BUSINESS SITUATED AT 295, MOTHER TERESSA ROAD, GHY-24, DIST- KAMRUP METRO, ASSAM

2: SANDIP GHOSH
SECRETARY, ASSAM BRANCH, INDIAN TEA ASSOCIATION, 295, MOTHER TERESA ROAD, GUWAHATI - 781024

VERSUS

STATE OF ASSAM AND ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, DEPARTMENT OF LABOUR DISPUR, GHY - 781006

2:THE LABOUR COMMISSIONER, ASSAM
GOPINATH NAGAR, GUWAHATI - 781006, IN THE DISTRICT OF KAMRUP, ASSAM

3:ASSAM SANGRAMI CHAH SRAMIK SANGHA
REPRESENTED BY SRI BIBEK DAS, PRESIDENT OF THE SANGHA, BORGANG, P.O. BORGANG, DIST. SONITPUR, ASSAM

Advocate for the Petitioner : MR. D BARUAH

Advocate for the Respondent : MR. S DAS

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Date of hearing : 12.03.2020

Date of judgment : 22.05.2020

JUDGMENT & ORDER (CAV)

Heard Mr. D. Baruah, learned counsel for the petitioners as well as Mr. S. Das, learned counsel for the respondent No. 3.

2. The petitioners have made a challenge to the Order dated 27.12.2013 passed by the office of the Labour Commissioner, Guwahati, whereby, he has held that the term "Salary or Wages" defined under the Payment of Bonus Act, 1965, includes the money value of concessional food grains supplied to workers (Rs. 14.20 per day) given in lieu of part of the wages and therefore, directed that the bonus be paid on the money value of concessional food grains prospectively.

3. The petitioners' counsel submits that the Labour Commissioner has wrongly come to the above conclusion by relying upon the definition of wages given under the Minimum Wages Act, 1948 and by applying the Judgment dated 07.08.2012 of this Court passed in WP(C) No. 5481/2011 to the facts of this case.

4. The petitioners' case is that the definition of wages, as provided in the Payment of Bonus Act, 1965 expressly excludes the value of any concessional supply of food grains. However, the definition of wages under the Minimum Wages Act, 1948 does not exclude the

value of any concessional supply of food grains, even if there is no specific inclusion of the same in Section 2 (h) of the Minimum Wages Act, 1948.

5. The petitioners' counsel submits that the issue decided in WP(C) No. 5481/2011 has no relation to the case in hand. The issue in WP(C) No. 5481/2011 was with regard to whether there was any difference in the "cash value of food grains" and the "cash value of food concession" and the Court held that they had the same meaning, as both the terms rested on the term; eatable things.

The petitioners' counsel submits that the decision made in WP(C) No. 5481/2011 was in relation to the Minimum Wages Act, 1948 and the Assam Tea Plantations Provident and Pension Fund Scheme Act, 1955 (ATPPPFS Act, 1955), which included the value of food concessions under the definition of wages.

6. He submits that the definition of wages is different in the various Acts made by the Government and the Labour Officer committed an error in applying the definition of wages given under the Minimum Wages Act, 1948 and the ATPPPFS Act, 1955 to the facts of this case and in the impugned Order dated 27.12.2013. The petitioners' counsel submits that the fact situation in the present case is different, inasmuch as, the issue herein is whether the value of concessional food grains can be taken into account, for the purpose of computing wages under the Payment of Bonus Act, 1965. He submits that as the fact situation is different in the present case, the decision of this Court passed in WP(C) No. 5481/2011 cannot be used as a precedent.

In support of his submission, the learned counsel for the petitioners has relied upon the judgment of the Apex Court in the case of ***Steel Authority of India Ltd. and Ors. Vs.***

National Union Waterfront Workers and Ors., *reported in* ***(2001) 7 SCC 1, Maruti Udyog Ltd. Vs. Ram Lal and Ors.,*** *reported in* ***(2005) 2 SCC 638, Rohitash Kumar and Ors. Vs. Om Prakash Sharma and Ors.,*** *reported in* ***(2013) 11 SCC 451 and Hardev Motor Transport Vs. State of M.P. and Ors.,*** *reported in* ***(2006) 8 SCC 613.***

7. Mr. S. Das, the learned counsel for the respondent No. 3, on the other hand, submits that the wages of workmen has to be calculated in terms of the definition of wages given under the Minimum Wages Act, 1948. He also submits that though the definition of wages as given in Section 2 (21)(ii) of the Payment of Bonus Act, 1965 does not include the value of any concessional supply of food grains, the Explanation to Section 2 (21) allows for the inclusion of the value of concessional supply of food grains to be a part of the salary or wages of the workmen. He thus submits that the meaning of wages under the Payment of Bonus Act, 1965 and as per the Minimum Wages Act, 1948 would include the value of concessional food grains.

8. The learned counsel for the respondent No. 3 also submits that the Payment of Bonus Act, 1965 and the Minimum Wages Act, 1948 have been repealed by the Code on Wages, 2019, which came into effect on 08.08.2019. He submits that the Explanation given in Section 2 (y) of the Code on Wages, 2019 provides that the value of remuneration given to an employee in kind, which does not exceed 15% of the total wages payable to him, shall be deemed to form part of the wages of the employee. Accordingly, the value of concessional supply of food grains to an employee has to be included in the wages of an employee and bonus has to be given on the value of concessional supply of food grains.

9. In support of his submission, the learned counsel for the respondent No. 3 relies

upon the judgment of the Apex Court in the case *of* ***Management of all Tea Estates in Assam Vs. Indian National Trade Union Congress Dibrugarh and Ors., reported in 1957 AIR (SC) 206.***

10. I have heard the learned counsels for the parties.

11. The first issue that is to be decided by this Court is whether the Code on Wages, 2019 has come into force. The Code on Bill, 2019, which was passed by both Houses of Parliament received the assent of the President on 8th August, 2019. Section 1 (3) of the Code on Wages, 2019 states that it shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint, and different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the coming into force of that provision.

12. None of the parties herein could provide any document/evidence to show that the Code on Wages, 2019 had come into force in terms of Section 1 (3). As such, this Court finds that the Code on Wages, 2019 has not come into force as on date.

13. The operative portion of the impugned order dated 27.12.2013, issued by the Labour Commissioner, Assam, which is under challenge is reproduced below:-

"*I, therefore, am of the considered opinion that, the term 'Salary or Wages' defined under the Payment of Bonus act, 1965, includes the money value of concessional food grains supplied to workers (Rs. 14.20 per day) in lieu of part of the wages and therefore, it is hereby directed that the bonus be paid on the money value of concessional food grains prospectively.*"

14. Thus, the issue to be decided is whether the definition of salary or wages under the Payment of Bonus Act, 1965 would include the value of any concessional supply of food grains. Further, whether concessional supply of food grains, as provided in Section 2 (21)(ii) of the Payment of Bonus Act, 1965, is the same as "value of free food allowance" or the "value of free food", inasmuch as, the Explanation to Section 2 (21) provides that where an employee is given free food allowance or free food by his employer, in lieu of the whole or part of the salary or wage payable to him, such food shall, for the purpose of this clause**,** be deemed to form part of the salary or wage of such employee.

15. To answer the above, Section 2 (21) of the Payment of Bonus Act, 1965 is reproduced below:-

"2 (21) 'salary or wage' means all remuneration (other than remuneration in respect of over-time work) 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 (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), **but does not include -**

(i) any other allowance which the employee is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or **of any concessional supply of food grains** or other articles;

(iii) any travelling concession;

(iv) any bonus (including incentive, production and attendance bonus);

(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to

the employee or any ex gratia payment made to him;

(vii) any commission payable to the employee;

Explanation.- Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee;"

16. The definition of wages as per Section 2 (h) of the Minimum Wages Act, 1948 does not make any mention of value of any concessional supply of food grains. However, the definition of wages under Section 2 (h) means all remuneration, capable of being repressed in terms of money, which would include the value of concessional supply of food grains. The definition of wages as given in the Plantations Labour Act, 1951 has the same meaning assigned to it as given in Section 2 (h) of the Minimum Wages Act, 1948. Also, a perusal of Section 4 and Section 11 of the Minimum Wages Act, 1948 shows that the value of supplies of essential commodity at concessional rates is a component of the wages of an employee.

The definition of wages as per Section 2 (RR)(ii) of the Industrial Disputes Act, 1947 includes the value of any concessional supply of food grains.

The definition of wages as given in the Payment of Gratuity Act, 1972, is to the effect that wages means all emoluments, which are earned by an employee, while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent, allowance, over time allowance and any other allowances. Thus, the definition of wages as per the Payment of Gratuity Act, 1975 cannot include the value of concessional supply of food grains, unless the same is clearly spelt out as per the terms of an

employee's employment.

The definition of wages as given in Section 2 (h) of the ATPPPFS Act, 1955 is to the following effect:-

"(h) "Wages" means any amount capable of being expressed in terms of money for the time being payable to an employee by the employer for works in or in connection with a plantation and includes dearness allowance, value of food concessions, amount payable for plucking whether calculated on time or piece rates or otherwise, and leave with wages and maternity allowance or benefits but does not include-

(a) bonus or,
(b) commission."

17. A perusal of the various definitions of wages of an employee, as provided in the different Acts shown above, clearly shows that the value of any concessional supply of food grains may or may not be included in the definition of wages, depending upon the particular Act in question. As can be seen from Section 2 (21)(ii) of the Payment of Bonus Act, 1965, the definition of salary or wage categorically excludes the value of any concessional supply of food grains. However, the Explanation to Section 2 (21) provides that food allowance or the value of food given, in lieu of the whole or part of an employee's salary or wage shall be deemed to form part of the salary or wage of such employee. The question is whether there is any conflict between the Explanaiton and Section 2 (21)(ii) and if so, whether the Explanation can over-ride Section 2 (21)(ii).

Section 2 (21)(ii) of the Payment of Bonus Act, 1965 clearly shows that the value of any concessional supply of food grains or other articles cannot be included within the definition of salary or wage. The Explanation given to Section 2 (21) provides for giving of free food

allowance or free food. The said Explanation does not mention the "value of any concessional supply of food grains".

18. The impugned Order dated 27.12.2013, by which the Labour Commissioner has come to a decision that salary or wages defined under the Payment of Bonus Act, 1965, includes the money value of concessional supply of food grains supplied to workers, has been made by following the judgment of this Court in WP(C) No. 5481/2011, wherein, it was held that the "value of food concession" and "cash value of food grains" bear the same meaning, for the purpose of the Assam Tea Plantations Provident and Pension Fund Scheme Act, 1955 (herein after referred to as ATPPPFS Act, 1955), as the meaning of both the terms rest on a common term, which are eatable things. Also the term "Wages" as defined under Section 2(h) of ATTPPPFS Act, 1955 includes within its fold the value of food concession and not the value of food grains.

19. On a perusal of the Judgment & Order dated 07.08.2012 passed by this Court in WP(C) No. 5481/2011, it is seen that the issue to be decided in the said case was with regard to the fixing of the cash value for supply of concessional food grains to Tea Garden employees and providing cash equivalent for the food grains, as provident fund contribution was to be deduced on the cash value of the food concessions at the rate fixed by the Government of Assam. Thus, the petitioners challenge in WP(C) No. 5481/2011 was that the terms "wages", as defined under Section 2 (h) of the ATPPPFS Act, 1955 included within its fold, the value of food contribution and not the value of food grains. The stand of the petitioners therein was that the provident fund contribution should have been made only on the value of the food concession and not on the value of food grains. This Court in WP(C) No. 5481/2011, however held that the cash value of food concession and the cash value of food

grains meant the same thing. The operative portion of the order in WP(C) No. 5481/2011 is in paragraph Nos. 21 & 22 of the judgment, which is reproduced below:-

"21. Section 2(a) of the ATPPF Scheme act, 1955 defines contribution as the deduction from the wage of an employee for deposit to the Provident Fund or Pension Fund or the Insurance Fund and the amount payable by the employer in respect of each employee to the PF or pension Fund or the Insurance Funds under the Scheme. Section 2(h) defines 'Wages' as any amount capable of being expressed in terms of money for the time being payable to an employee by the employer for works and / or in connection with a plantation and includes DA, value of food concession, amount payable for plucking, whether calculated at time or basis rates or otherwise, and leave with wages and maternity allowance or benefits but does not include (a) bonus, or (b) commission.

22. As noted above, the term 'food' is a general term commonly used and cannot be put to any ambiguity in reference to food grains. Cash value of food concession and cash value of food grains bear the same meaning for the purpose of the Act as the meaning of both the terms rests in a common term as eatable things."

20. Thus, the above would go to show that the Judgment & Order passed in WP(C) No. 5481/2011 was made on a different set of facts than the present case herein. The issue in the present case is with regard to the payment of bonus under the Payment of Bonus Act, 1965, while the issue in WP(C) No. 5481/2011 was with regard to whether the term "wages" as defined under the Minimum Wages Act, 1948 and the ATPPPFS Act, 1955, included within its fold, the value of food concession and not the value of food grains.

A reading of Section 2 (21)(ii) of the Payment of Bonus Act, 1965 clearly goes to show that the value of any concessional supply of food grains is excluded from the ambit of the definition of salary or wage. Though the Office of the Labour Commissioner has passed the impugned Order dated 27.12.2013, on the interpretation given by this Court in WP(C) No.

5481/2011, which was made in terms of the ATPPPFS Act, 1955, the issue in the present case is only with regard to payment of bonus under the Payment of Bonus Act, 1965. The decision taken by the learned Single Judge in WP(C) No. 5481/2011 is with regard to the calculation for contribution of provident fund, in terms of the ATPPPFS Act, 1955 and as such, this Court finds that the said judgment passed in WP(C) No. 5481/2011 cannot have any bearing in this particular case, as the definition of wages in the ATPPPFS Act, 1955 is different from the definition of wages in the Payment of Bonus Act, 1965.

21. The Payment of Bonus Act, 1965 excludes the value of any concessional supply of food grains in the definition of wages or salary. The Explanation to Section 2 (21) of the Payment of Bonus Act, 1965 cannot come to the aid of the respondent No. 3, inasmuch as, the explanation does not speak of value of any concessional supply of food grains. The decision taken by this Court in WP(C) No. 5481/2011 cannot be applied to the facts of this case like a Euclid's Theorem. It is settled law that a decision is an authority for what it decides and not what logically follows from it. A little difference in facts diminishes the precedential value of a decision. In Para 9 and 12 of the judgment in the case of ***Bharat Petroleum Corporation Ltd. Vs N.R. Vairamani***, reported in ***(2004) 8 SCC 579***, the Apex Court has held as follows:-

"*9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not be construed as statues. To interpret words, phrases and provisions of a statue, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not*

to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton[2] (AC at p.761) Lord MacDermott observed: (AII ER p. 14 C-D)

12. The following words of Hidayatullah, J. in the matter of applying precendents have become locus classicus: (Abdul Kayoom v. CIT[5a,] AIR p. 688, para 19)

"*19….. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*

22. In the case of ***Rohitash Kumar and Ors. Vs. Om Prakash Sharma and Ors.,*** *reported in* ***(2013) 11 SCC 451***, the Apex Court has held at paragraph Nos. 23 & 24 as follows:-

"*23. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the court has no choice but to enforce it in full rigour. It is a well-settled principle of interpretation that hardship or inconvenience caused cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the statue. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice.*

24. In Bengal Immunity Co. Ltd v. State of Bihar, it was observed by a Constitution Bench of this Court that, if there is any hardship, it is for the legislature to amend the law, and that the court cannot be called upon to discard the cardinal rule of interpretation for the purpose of mitigating such hardship. If the language of an Act is sufficiently clear, the court has to give effect to it, however inequitable or unjust the result may be. The words, "dura lex sed lex" which mean "the law is hard but it is the law" may be used to sum up the situation. Therefore, even if a statutory provision causes hardship to some people, it is not for the court

to amend the law. A legal enactment must be interpreted in its plain and literal sense, as that is the first principle of interpretation."

In the case of ***Steel Authority of India Ltd. and Ors. Vs. National Union Waterfront Workers and Ors.,*** *reported in* ***(2001) 7 SCC 1***, the Apex Court has held at paragraph No. 105 as follows:-

"*105. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature."*

In the case of ***Maruti Udyog Ltd. Vs. Ram Lal and Ors.,*** *reported in* ***(2005) 2 SCC 638***, the Apex Court has held in paragraph No. 44 as follows;

"*44. While construing a statue, "sympathy" has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the workmen concerned."*

In the 3 judgments quoted above, it is clear that if the meaning of the statutory provision is clear and has only one meaning, the same has to be interpreted in the plain and literal sense, where sympathy has no role to play.

23. In view of the reasons stated above, this Court is of the view that the Explanation given in Section 2 (21) of the Payment of Bonus Act, 1965 is not in conflict with Section 2 (21)(ii) of the Payment of Bonus Act, 1965. Free food allowance/free food or the value of such food cannot be said to be the value of any concessional supply of food grains. The

Explanation speaks only of free food while Section 2 (21)(ii) speaks of value of concessional supply of food grains. The word "concessional" cannot have the same meaning as "free".

Further, the concessional supply of food grains is not in lieu of salary or wages under Section 2 (21)(ii), while free food allowance or free food mentioned in the Explanation is given in lieu of the whole or part of the salary or wage.

24. In the case of ***Hardev Motor Transport Vs. State of M.P. and Ors.*** **(Supra),** the Apex Court has held that the insertion of an Explanation in the Schedule of an Act is to explain the meaning and intendment of the Act and it cannot interfere or change the enactment, although it can assist the Court in interpreting the true purport and intendment of the Act, where there is a gap. In the present case, the value of any concessional supply of food grains has been specifically excluded from the definition of salary or wage under the Payment of Bonus Act, 1965. Accordingly, even if it is assumed that there is a conflict between the Explanation given in Section (21) and Section 2 (21)(ii), the Explanation cannot over-ride the statutory provisions of the Act and the same will have to give way to the statutory provision. In the case of ***Hardev Motor Transport Vs. State of M.P. and Ors.*** **(Supra),** the Apex Court has held at paragraph No. 31 as follows:-

"*31. The role of an Explanation of a statute is well known. By inserting an Explanation in the Schedule of the Act, the main provisions of the Act cannot be defeated. By reason of an Explanation, even otherwise, the scope and effect of a provision cannot be enlarged. It was so held in S. Sundaram Pillai v. V.R. Pattabiraman in the following terms:*

53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is—

(a) to explain the meaning and intendment of the Act itself

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same

so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment,.."

25. The learned counsel for the respondent No. 3 has relied upon the judgment of the Apex Court in ***Management of all Tea Estates in Assam Vs. Indian National Trade Union Congress Dibrugarh and Ors.,*** **(Supra)** to support his argument that all concessions enjoyed by the workmen under the Minimum Wages Act, 1948 would include the value of any concessional supply of food grains. In the case of ***Management of all Tea Estates in Assam Vs. Indian National Trade Union Congress Dibrugarh and Ors.,*** **(Supra)**, the Apex Court has held at paragraph No. 12 as follows:-

"12. Assuming Wages Committee included within its calculation of minimum wage the cash compensation which was being paid by the employers to the workmen for, the cut in rice ration, it was open to the Government nevertheless to give the go by to it and recommend that the cash compensation be paid by the employers to the workmen as hithertofore in addition to the minimum wage which was fixed by the Committee. The terms of paragraph 2 of the notification make it abundantly clear that whatever may have been at the back of the Committees mind in fixing the minimum wage the Government thought it proper that the employers should make available to the workmen, all concessions enjoyed by them in respect of the supply of foodstuffs and other essential commodities and the other amenities which they used to enjoy."

The above judgment of the Apex Court is not applicable to the facts of this case.

Further, it has to be kept in mind that the at the time the judgment of the Apex Court in the case of ***Management of all Tea Estates in Assam Vs. Indian National Trade Union Congress Dibrugarh and Ors.,*** **(Supra)** had been decided, i.e., on 21.09.1956, the Payment of Bonus Act, 1965 was not in force, as it came into force only on 25.09.1965. Also, the decision of the Apex Court in the above case was with regard to the Minimum Wages Act, 1948 and not the Payment of Bonus Act, 1965.

26. In view of the reasons stated above, this Court finds that the impugned Order dated 27.12.2013 passed by the office of the Labour Commissioner is not sustainable and in consonance with the Payment of Bonus Act, 1965. The same is accordingly set aside. This Court accordingly holds that the term "salary or wages" defined under the Payment of Bonus Act, 1965 cannot include the value of any concessional supply of food grains and therefore, bonus cannot be paid on the value of any concessional supply of food grains under the Payment of Bonus Act, 1965.

The writ petition is accordingly allowed.

JUDGE

Comparing Assistant