IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 25.11.2022	Delivered on 16.12.2022

CORAM

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN**

AND

THE HONOURABLE MR.**JUSTICE K.KUMARESH BABU**

Writ Appeal No.3828 of 2019

Pudiya Jananayaga Vagana
Ottunargal Mattrum Technciangal Union,
No.110/63, NSK Salai,
Kodambakkam, Chennai 600 024. ..Appellant/2nd Respondent

Vs.

1. The Management
   Sathyabama University,
   Rep. by its Registrar Mr.S.S.Rau,
   Jeppiar Nagar, Chennai 600 119.

2. The Presiding Officer,
   Industrial Tribunal,
   Chennai. .. Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court dated 30.04.2019 passed in W.P.No.9215 of 2017.

For Appellant : Mr.Balan Haridas

For Respondents : Mr. S.Ravindran, Senior Counsel
for Mr.P.Nehru, for R1

R2 - Tribunal

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The employees Union which failed in its attempt to garner the benefits of the Payment of Bonus Act, 1965 to its Members, who work as Drivers in the Transport Department of the first respondent University is on Appeal.

2. The Union raised the Industrial Dispute under Section 2(k) of the Industrial Disputes Act, seeking an award to the effect that the Payment of Bonus Act, 1965, would apply to its members, who are employed as Drivers and Technicians in the Transport Section of the first respondent University. The dispute was referred to the Conciliation Officer and before the Conciliation Officer, the respondent University claimed that it is exempt from the purview of the said enactment in view of Section 32(v)(b) of the

Payment of Bonus Act, 1965.

3. The contention of the Union was that since the respondent University is collecting huge fees from the students and is running it as a business making profit out of the operation, cannot claim exemption under Section 32(v)(b) of the Payment of Bonus Act, 1965. It is also contended that the Transport Department of the University will be an establishment by itself and if the operations result in profit then the workers of the Transport Department would be entitled to Bonus. The principle that bonus is a part of the profit is also invoked by the Union.

4. Reliance was also placed on the provisions of the Motor Transport Workers Act, 1961, which applies to a Transport undertaking drawing inspiration from the said enactment which confers certain benefits on workers employed in Motor Transport undertakings, the Union attempted to contend that the Payment of Bonus Act, 1965, would apply to them *dehors* the exemption granted under Section 32(v)(b) of the Payment of Bonus Act, 1965. Resort was also made to the provisions of the Employees State Insurance Act, 1948 to draw a parallel and to strengthen the claim.

5. The claim of the Union was resisted by the Management of the University contending that the University being an Educational Institution is exempt from the applicability of the Payment of Bonus Act. Once the Act exempts the operations of the respondent University from the purview of the Act external aid cannot be ushered to conclude that the Act would apply.

6. Since conciliation failed the claim was referred to the Industrial Tribunal. The Industrial Tribunal concluded that since the University is a profit making Institution and a deemed to be University the exemption granted under Section 32(v)(b) of the Payment of Bonus Act, will not apply and therefore, the workman would be entitled to Bonus. The Industrial Tribunal took note of the fact that the concept of University that prevailed in 1965 when the Act was enacted is no longer relevant and today with privatisation of education and the private Universities being allowed to make certain profits, the exemption cannot be invoked by them.

7. Aggrieved the Management challenged the award in WP No.9215 of 2017. The Writ Court, however, held that in view of the decision

of the Hon'ble Supreme Court in ***P.A.Inamdar and others v. State of Maharashtra and others,*** reported in ***(2005) 6 SCC 537***, an University though an undertaking within the meaning of the Motor Transport Workers Act, 1961, cannot indulge in profiteering and therefore, the exemption granted under Section 32(v)(b) of the Payment of Bonus Act, 1965, would apply. Rejecting the contention of the learned counsel for the Union to the effect that since an University is allowed to make a certain profits it would not fall within the exclusion or exemption, the Writ Court concluded that merely because the University makes certain amount of profit it would not be dis-entitled to the exemption automatically. The Writ Court noted the difference between an exemption provision and an applicability provision to conclude that in view of Section 32(v)(b) of the Payment of Bonus Act, the conclusion of the Industrial Tribunal that the University will not be entitled to the exemption is flawed. On such conclusion, the Writ Court allowed the Writ Petition, setting aside the award of the Tribunal, leading to the present Appeal by the appellant Union.

8. We have heard Mr.Balan Haridas, learned counsel appearing for the appellant and Mr.S.Ravindran, learned Senior Counsel instructed by

Mr.P.Nehru, for the first respondent.

9. Mr.Balan Haridas, learned counsel appearing for the appellant would vehemently contend that the Writ Court erred in applying the exemption provisions strictly without looking into the profitability aspect. He would also contend that once it is found that the Transport section of the University is an undertaking within the meaning of the Motor Transport Workers Act, 1961, it would automatically qualify to be an establishment under the Payment of Bonus Act and hence the exclusion under Section 32(v)(b) of the Payment of Bonus Act, will not apply. The learned counsel would also draw our attention to the judgment of the Division Bench of this Court in ***Tamil Nadu Water Supply and Drainage Board Engineer's Association v. State of Tamil Nadu,*** reported in ***1991 (2) LLJ 394***, wherein an exemption that was claimed by the Tamil Nadu Water Supply and Drainage Board under Section 32(v)(c) of the Payment of Bonus Act, was negated on the ground that Section 32(v)(c) of the Act, would not exclude the Water Supply and Drainage Board, since it makes certain profits.

10. Reliance is also placed by the learned counsel for the appellant

Union on the judgement of the Hon'ble Supreme Court in ***Housing Board of Haryana and Haryana Housing Board the Employees Union and others*** reported in ***1996 (1) SCC 95***, wherein the claim of the Housing Board of Haryana for exemption under Section 32(iv) of the Payment of Bonus Act, on the ground it is a Local Authority was repelled by the Hon'ble Supreme Court. The judgment in ***Tamil Nadu Water Supply and Drainage Board v. Tamil Nadu Water Supply and Drainage Board Engineers' Association and others*** reported in ***1998 (5) SCC 370*****,** affirming the judgment of the Division Bench of this Court in ***Tamil Nadu Water Supply and Drainage Board Engineer's Association v. State of Tamil Nadu*** reported in ***1991 (2) LLJ 394***, referred to supra, is also pressed into service by the learned counsel for the appellant Union, in support of his contention.

11. Reliance is also placed by the learned counsel on the judgment of the Hon'ble Supreme Court in ***Christian Medical College v. Employees' State Insurance Corporation,*** reported in ***(2001) I SCC 256***, and the judgment of ***Gujarat Mazdoor Sabha and another v. State of Gujarath,*** reported in ***2020 (10) SCC 459***, relating to the provisions of the Factories

Act. The learned counsel would also direct us to the judgment of the Hon'ble Supreme Court in ***P.A.Inamdar and others v. State of Maharashtra and others,*** reported in ***(2005) 6 SCC 537***, wherein the Hon'ble Supreme Court had permitted Universities to attain profitability at a certain percentage with certain restrictions.

12. Contending contra Mr.S.Ravindran, learned Senior Counsel appearing for the first respondent would draw our attention to the judgment of a Single Judge of this Court in ***Christian Medical College and Hospital, Vellore v. The Presiding Officer, Industrial Tribunal, Madras and Ors.,*** reported in ***(2002) 1 MLJ 720***, wherein it was held that in view of Section 32(v)(b) of the payment of Bonus Act, which provides for an exemption, *dehors* the profitability or otherwise, Educational Institutions and Universities will stand exempt from the provisions of the Payment of Bonus Act. Reliance is also placed on the judgment of the Hon'ble Supreme Court in ***Management of Gordon Woodroffe Agencies Pvt. Ltd v. Presiding Officer, Principal Labour Court & Ors,*** reported in ***2004 AIR (SC) 4124***, to contend that once a statutory provision has been made to govern a particular subject external Aid cannot be taken to impose the enactment on a particular

institution.

13. Reliance is also placed by the learned Senior Counsel on the judgment in ***Steel Authority of India Ltd v. National Union Water Front Workers,*** reported in ***2001 AIR (SC) 3527***, in support of his submission that a statute should be interpreted by the Court based on its language. If the language is clear and explicit the same should be given effect to and external aid cannot be invoked. The learned Senior Counsel would also point out that the Hon'ble Supreme Court in ***P.A.Inamdar's,*** referred to *supra*, had held that Universities can make a certain amount of profit, but the same should be used for Educational purposes only.

14. We have considered the rival submissions.

15. The essential question is, as to whether the Payment of Bonus Act would apply to a University which also provides an additional facility to the students by operating Transport Buses. No doubt, the Payment of Bonus Act is a welfare legislation meant for ensuring that the workers get a share out of the profits made by the employer. Various exemptions are carved out

under Section 32 of the said Act.

Section 32 of the Payment of Bonus Act, reads as follows:

*32. **Act not to apply to certain classes of employees** – Nothing in this Act shall apply to --*

(i) employees employed by the Life Insurance Corporation of India;

(ii) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);

(iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), and employed by registered or listed employers;

(iv) employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a Local authority;

(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;

(vi) employees employed through contractors on building operations;

(vii) Omitted by Act 66 of 1980;

(viii) employees employed by the Reserve Bank of India;

(ix) employees employed by --

(a) the Industrial Finance Corporation of India;

(b) any Financial Corporation established under section 3, or any Joint Financial Corporation established under section 3A, of the State Financial Corporations Act, 1951 (63 of 1951);

(c) the Deposit Insurance Corporation;

d) the National Bank for Agriculture and Rural Development;

(e) the Unit Trust of India;

(f) the Industrial Development Bank of India;

(fa) the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989;

(ff) the National Housing Bank;

(g) any other financial institution (other than a banking company), being an establishment in public sector, which the Central Government may, by notification in the Official Gazette, specify, having regard to --

(i) its capital structure;

(ii) its objectives and the nature of its activities;

(iii) the nature and extent of financial assistance or any concession given to it by the Government; and

(iv) any other relevant factor;

(xi) employees employed by inland water transport establishments operating on routes passing through any other country

16. As pointed out by the Hon'ble Supreme Court in ***Steel***

Authority of India Ltd and ***Management of Gordon Woodroffe Agencies Pvt. Ltd,*** referred to supra, when the language of the enactment is clear and unambiguous, the Court must give effect to the said language. No external aid could be invoked either to expand or to shrink the sweep of the provisions of the enactment. A reading of Section 32 of the Payment of Bonus Act, extracted above would show that the legislature has thought it fit to carve out certain exceptions to the applicability of the Act and those exceptions are based on an intelligible classification. While Section

* 32(i) exempts employees of Life Insurance Corporation of India;
* 32(ii) exempts seamen;
* 32(iii) exempts employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948;
* 32(iv) exempts employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority;

* 32 (v) takes within its ambit, three kinds of employees,

namely the employees of the Indian Red Cross Society or any other Institution of a like nature under Clause (a);

employees of Universities and Educational Institutions under Clause (b); and

employees of institutions (including Hospitals, Chambers of commerce and social welfare institutions) established not for purposes of profit under Clause (c).

The other Sub Sections may not be very relevant for our purposes.

17. Even in the three kinds of employees falling under 32(v), the legislative intent could be gathered to the effect that the legislature intended exemption of employees of Universities and Educational Institutions *dehors* the fact that they may make profit. While Clauses (a) and (b) of Section 32(v) of the payment of Bonus Act, did not make any reference to profit making activities or otherwise, Clause (c) of Section 32(v) specifically refers to Institutions established not for purposes of profit. The legislative

intent that we could gather from the three Sub Clauses of Section 32(v) is while the Indian Red Cross Society or any other Institution of like nature, Universities and other Educational Institutions covered by Clauses (a) and (b) would be fully exempt *dehors* profitabillity. The Institutions that come under Clause (c) would be exempt only if they show that they do not make profit. If we are to apply the Law laid down by the Hon'ble Supreme Court regarding interpretation, the inescapable conclusion would be that Universities and Educational Institutions would stand exempt from the provisions of Payment of Bonus Act, even if they make profit.

18. The reliance placed on Mr.Balan Haridas, learned counsel appearing for the appellant Union, on cases regarding applicability of the Employees State Insurance Act, or the Payment of Bonus Act, viz., ***the Tamil Nadu Water Supply and Drainage Board*** and ***the Housing Board of Haryana and Haryana Housing Board the Employee Union and others,*** may not cover the situation as the exemption claimed by those Institutions were on the ground that they are either Local Authorities or that they are Institutions established not for the purposes of profit, i.e. under Sections 32(iv) or 32(v)(c) of the Payment of Bonus Act. For the same reasons, we

are unable to countenance the submission of Mr.Balan Haridas, to the effect that a parallel should be drawn between the provisions relating to applicability of a statute and provisions relating to exemption found in a statute. No doubt, the Hon'ble Supreme Court has found that the provisions of Employees State Insurance Act, would apply to a unit of an Educational Institution, in ***Christian Medical College and Hospital, Vellore v. The Presiding Officer, Industrial Tribunal, Madras and Ors.*** The principles relating to interpretation of the applicability of the provisions of the Employees State Insurance Act to Educational Institutions and Universities cannot be resorted to in order to deny exemption under Section 32(v)(b) of the Payment of Bonus Act.

19. We are also unable to accept the contention of the learned counsel for the appellant to the effect that once the University is found to be a Motor Transport undertaking under the Motor Transport Workers Act, 1961, the provisions of the Payment of Bonus Act would apply. The intendment behind enactment of the Motor Transport Workers Act, 1961, is to provide for welfare of Motor Transport workers and to regulate the conditions of their work. A reading of the statement of objects and reasons

of the Act would show that the said Act was necessarily enacted to provide for better working conditions for motor transport workers, since it was felt that neither the Factories Act nor the Motor Vehicles Act, govern such situation.

20. As rightly pointed out by Mr.S.Ravindran, learned Senior Counsel appearing for the respondent Management external aid cannot be invoked to interpret a welfare legislation and if we may add in particular an exemption provision in a welfare legislation. In ***Lalappa Lingappa v. Laxmi Vishnu Textile Mills,*** reported in ***1981 (2) SCC 238***, the Hon'ble Supreme Court held that in construing a welfare legislation, the Court should adopt a beneficial Rule of construction if a Section is capable of two constructions. The Hon'ble Supreme Court also added that when the language is plain and unambiguous, it should be given effect to, whatever may be the consequence. While doing so, the Hon'ble Supreme Court observed as follows:

> "*In construing a social welfare legislation, the Court should adopt a beneficent rule of construction. If a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is*

more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous, as here, we must give effect to it whatever may be the consequences, for, in that case, the words of the statute speak the intention of the legislature and not for the Courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are two methods of construction. In their anxiety to advance beneficent purpose of legislation, the Courts must not yield to the temptation of seeking ambiguity when there is none."

21. In ***Deddappa and others v. Branch Manager, National Insurance Company Ltd,*** reported in ***(2008) 2 SCC 595***, the Hon'ble Supreme Court held that a beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. Reference was made to the judgment of the Hon'ble Supreme Court in ***Regional Director ESI Corporation v. Ramanuja Match Industries,*** in support of such conclusion wherein it was observed:

"10…. We do not doubt that beneficial legislations should have liberal construction witha view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme."

22. Reference may also be made to the judgment of the Hon'ble Supreme Court in ***Project Director National Highways v. M.Hakeem & Anr.,*** wherein the Hon'ble Supreme Court pointed out that the Judiciary should not cross the ***Lakshman Rekha,*** and import its wisdom or substitute its wisdom to that of the legislature. We have already concluded that the language of Section 32(v)(b) of the Payment of Bonus Act, is explicit and clear to the effect that the Act shall not apply to Educational Institutions and Universities. While the legislature thought it fit to qualify certain Institutions on the basis of profit, it did not do so when it came to Universities and Educational Institutions. Therefore, we are unable to fault

the Writ Court, when it concluded that the provisions of the Act being unambiguous and clear they will have to be given effect to.

23. A valiant attempt was made by Mr.Balan Haridas, learned counsel appearing for the appellant Union to justify his contention by drawing our attention to the time at which the Act was enacted, viz. In 1965. The learned counsel would contend that the concept of University and Educational Institution that was visualized by the Parliament in the year 1965, when it enacted the Payment of Bonus Act, was wholly different from what it is today and therefore, the Courts should step in and qualify the exemptions taking note of the present situation. We do not think that we can embark upon such an exercise. We would be transgressing and entering upon the arena of law making, if we are to carry out the exercise suggested by the learned counsel for the appellant.

24. As rightly pointed out by learned Senior Counsel, Mr.S.Ravindran, the Code on Wages 2019, enacted by the Parliament and had been assented to by the President of India on 08.08.2019, contains a similar exemption clause in Section 41 of Chapter IV, which deals with

Payment of Bonus. Therefore, the Parliament even while enacting the Code on Wages 2019 thought it fit to exempt Educational Institutions and Universities from the purview of Payment of Bonus and this would largely establish that the intendment remains the same as of today.

25. We therefore uphold the conclusion of the Writ Court and dismiss the Writ Appeal, leaving the parties to bear their own costs.

(R.SUBRAMANIAN, J.) (K.KUMARESH BABU, J.)

16.12.2022

jv

Index: Yes
Internet: Yes
Speaking Order

To

1. The Management
   Sathyabama University,
   Rep. by its Registrar Mr.S.S.Rau,
   Jeppiar Nagar, Chennai 600 119.

2. The Presiding Officer,
   Industrial Tribunal,
   Chennai.

R.SUBRAMANIAN, J.
and

K.KUMARESH BABU, J.

(jv)

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