

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

BEFORE:

The Hon'ble JUSTICE RAJA BASU CHOWDHURY

WPO/2775/2022

**GENO PHARMACEUTICALS PVT. LTD.
(FORMERLY GENO PHARMACEUTICALS LTD.)
VERSUS
STATE OF WEST BENGAL & ORS.**

For the Petitioner	:	Mr. Kushal Paul, Advocate
For the State	:	Ms. Tapati Samanta, Advocate
For the Respondent Nos. 4 to 9:	:	Mr. Suvadip Bhattacharjee, Advocate
Heard on	:	10.05.2023.
Judgment on	:	10.05.2023.

RAJA BASU CHOWDHURY, J:

1. The present writ application has been filed, *inter alia*, challenging the order dated 23rd February, 2022 passed in case no. Comp 54 of 2015 under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'said Act'). The petitioner is an existing company within the meaning of Companies Act, 2013. The petitioner claims that the respondent no.4 in his representative capacity had filed a computation

case under Section 33C(2) of the said Act, in the year 2015, in Form Q-2 in accordance with Rules 74(3) of the West Bengal Industrial Disputes Rules, 1958. Although at the time of institution of the proceeding, there were 22 applicants, however, in course of hearing only 9 applicants, who are the respondents herein, had continued with the proceedings while the rest had withdrawn from the proceeding by issuing 'no claim' in favour of the petitioner. It is the petitioner's case that the applicants had prayed for disbursal of salary and other allowances.

2. The petitioner participated in such proceeding and had filed written statement. On contested hearing, the Second Labour Court, West Bengal, Kolkata was, *inter alia*, pleased to pass the impugned order directing the petitioner to make payment of not only the salary and bonus but also field expenses to the respective applicants on the basis of the determination made in the said order. Challenging the aforesaid order dated 23rd February, 2022, the present writ application has been filed.
3. Mr. Paul, learned Advocate representing the petitioner by referring to the Provisions of Sections 33C(1) and 33C(2) of the said Act, submits that the aforesaid provisions can only come into play for determination of entitlements, provided the same are in respect of pre-existing entitlements of a workman. He says that disputed question cannot be decided within the framework of a proceeding under Section 33C(2) of the said Act. No adjudication of any right is permissible in a proceeding under Section

33C(2) of the said Act. It is contended that since the respondent nos.4 to 11 who were the applicants in the said application, did not carry out the standing instructions by not uploading the field work report in the respective portals, payment of salary in their favour had been stopped. He, however, candidly submits that there is no dispute with regard to factum of respondent nos.4 to 11 being employed by the petitioner.

4. By drawing attention of this Court to the order which is impugned in the present writ application, it is submitted that the determination made by the Second Labour Court with regard to the field expenses is in excess of jurisdiction. That field expenses are paid on actual basis upon furnishing proof of such expenses by the concerned workmen. In the facts as stated hereinabove, the learned Second Labour Court had exceeded its jurisdiction in embarking upon an inquiry and adjudicating upon a right which is beyond the scope of authority vested in the Second Labour Court. In support of the aforesaid contention, he placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Bombay Chemical Industries v. Deputy Labour Commissioner & Anr.*** reported in **(2022) 5 SCC 629**.
5. *Per contra*, Mr. Bhattacharjee, learned Advocate representing the respondent nos.4 to 11, submits that there is no dispute with regard to the respondent nos.4 to 11 being employed with the petitioner. According to Mr. Bhattacharjee, the petitioner had illegally withheld the salary of

the respondent nos.4 to 11 which prompted the respondent nos.4 to 11 along with other similarly placed workmen to seek computation of their entitlements before the Second Labour Court. By inviting attention of this Court to the order passed by the Second Labour Court, he submits that the salary slips of the respective applicants were exhibited in the proceedings. The petitioner had never disputed the engagement of the respondent nos.4 to 11, as such, the Second Labour Court was never called upon to adjudicate, at the first instance whether the respondent nos.4 to 11 were in employment with the petitioner. Once the factum of the respondent nos.4 to 11 being employed with the petitioner stood established, the right of the respondent nos.4 to 11 to claim their entitlements cannot be said to be outside the scope of Section 33C(2) of the said Act. He says that the Second Labour Court had merely computed the entitlement of the respondent nos.4 to 11. The direction for payment of bonus cannot be said to be an adjudication. As per the provisions of Payment of Bonus Act, 1965, the respondent nos.4 to 11 are entitled to statutory bonus @ 8.33% which had only been granted in favour of the said respondents. In any event the petitioner had also not disputed the entitlement of the respondent nos.4 to 11 to receive bonus @ 8.33%. He says that the judgment relied on by Mr. Paul does not assist the petitioner. He says that in the present case, the Labour Court has only determined the quantum of money that the respondent nos.4 to 11

are entitled to receive on the pre-existing right they already have. The Second Labour Court also did not exceed its jurisdiction while directing payment of field expenses. In the facts stated hereinabove, he prays dismissal of the writ application.

6. Heard learned Advocates appearing for the respective parties and considered the materials on record. I find that the petitioner is engaged in the business of pharmaceuticals. The respondent nos.4 to 11 are medical representatives who had been engaged by the petitioner. There is no dispute with regard to the factum of respondent nos.4 to 11 being engaged by the petitioner.
7. From the pleadings of the parties and the order impugned, it would appear that the respondent nos.4 to 11 had been able to establish from the salary sheet disclosed by the respective respondents, the quantum of salary each of such respondents were receiving from the petitioner. I find that by placing reliance on exhibit 3 series, the Second Labour Court has not only determined the quantum of salary and the bonus but also the field expenses that the respective applicants are otherwise entitled to. Although it has been strenuously argued by Mr. Paul, learned Advocate representing the petitioner that the Labour Court while deciding an application under Sections 33C(1) and 33C(2) of the said Act, is only called upon to compute the money payable to the workmen on the basis of their respective entitlements, I do not find that the learned Second

Labour Court had in any way exceeded its jurisdiction in adjudicating the quantum of salary payable to the respective respondents. In so far as bonus is concerned, the right to receive bonus by the respective respondents had also not been questioned by the petitioner before the learned Second Labour Court. In any event the right to receive bonus is a statutory right which is conferred by the Payment of Bonus Act, 1965. The learned Second Labour Court has only granted bonus at statutory rate. It is, however, seen in so far as respondent no.4 is concerned, his salary is above Rs.21,000/-. As such he does not come within the meaning of definition of employee under Section 2(13) of the Payment of Bonus Act, 1965, for him to be entitled to bonus.

8. In so far as the field expenses are concerned, I find that there is no basis for the learned Labour Court in determining the same. As rightly contended by Mr. Paul that the learned Labour Court ought not to have adjudicated upon the entitlement of the respondents to receive field expenses unless the right of the respondent nos.4 to 11 to receive field expenses is established, no order directing payment field expenses could have been passed. Although Mr. Paul, learned Advocate, relied on the case of ***Bombay Chemicals*** (supra) to drive home the point that the Labour Court while deciding an application is not called upon to adjudicate upon an entitlement of a workman, I, however, find that the aforesaid judgment does not assist the petitioner, since in the instant

case the learned Second Labour Court has not adjudicated upon the entitlement of the respective respondents to receive salary or bonus. The petitioner also could not demonstrate before this Court any impediment which could disentitle the respondents 4 to 11 to receive their salary. Since the right to receive salary of the respective respondents was never disputed, the learned Second Labour Court cannot be said to have exceeded its jurisdiction in determining the quantum of salary and bonus payable to the respective respondents.

9. Having regard to the aforesaid, I am of the view that the order passed by the Labour Court determining the field expenses and payment of bonus to the respondent no.4 cannot be sustained. The aforesaid order is, accordingly, modified.
10. I, however, find that when the writ application was admitted by an order dated 7th November, 2022 the petitioner was directed to deposit a sum of Rs.7,57,419/- with the Registrar, Original Side. Mr. Paul, learned Advocate representing the petitioner, has confirmed that the aforesaid deposit had already been made in terms of the direction dated 7th November, 2022. In view thereof, the Registrar, Original Side is directed to encash the fixed deposit prematurely, if necessary, and to refund the aforesaid amount of Rs.7,57,419/- along with accrued interest thereon to the petitioner after deducting commission, if any, for the petitioner to disburse the claim of the respective respondents to the extent permitted

by this order. The petitioner shall disburse the entitlements of the respondent no 4 to 11 in terms of the order passed by the learned Second Labour Court as modified herein, within a period of eight weeks from the date of communication of this Order.

11. The writ application WPO 2775 of 2022 accordingly stands disposed of.
12. There shall be no order as to costs.
13. Urgent photo state certified copy of this order if applied for we made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)

akg/