



W.P.No.5715 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.5715 of 2012

The Management of
The Purasawakum Permanent Fund Limited,
No.173, Vellala Street,
Purasawalkam, Chennai – 600 084,
Rep. by its President.

... Petitioner

Vs.

1.The Presiding Officer,
First Additional Labour Court,
Chennai.

2.Employees of Purasawalkam Permanent Fund Ltd.,
rep. by the United Labour Union,
Regd. MDS/119 dated 6.10.67,
3/282 - 26th Street, 'N' Block,
East Anna Nagar, Chennai – 600 102.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the first respondent in I.D.No.93 of 2009 and quash its award dated 8.9.2011.

For Petitioner : Mr.Aadarsh Lewin
for T.S.Gopalan & Co.

For Respondents : Labour Court [R1]
Mr.K.M.Ramesh
Senior Counsel



WEB COPY



W.P.No.5715 of 2012

for M/s.S.Apunu [R2]

ORDER

This Writ Petition has been filed by the petitioner seeking quashment of the Award passed by the first respondent in I.D.No.93 of 2009 dated 08.09.2011.

2. Shorn of unnecessary details, the facts necessary for the disposal of this writ petition are as follows:

The petitioner is a non-banking financial company registered u/s 620A of the Companies Act in the year 1922. It has been in the habit of giving customary bonus to its employees every year. There has been periods when the employees were paid seven months salary as bonus and the bonus varies between seven months and two months. Whiles, the petitioner company was not making profits and therefore, there were not in a position to pay customary bonus from 2001 onwards. Irked by the payment of bonus, the union, on behalf of the employees raised an industrial dispute before the 1st respondent. Both sides let in oral and documentary evidence. On a consideration of the same, the 1st respondent passed the impugned award, directing the petitioner company to give the bonus as sought for. Challenging the same, the petitioner company has



W.P.No.5715 of 2012

filed the present writ petition.

WEB COPY

3. Learned counsel for the petitioner submitted that, the 1st respondent has failed to appreciate that when bonus was paid either based on profits or on agreement, there was no scope to countenance the claim for customary bonus or bonus as an implied condition of service. Further, he contended that bonus cannot be claimed as a matter of right. He further submitted that the 1st respondent has failed to consider that there may be ups and downs in the business and it is not that every year, an establishment would make profit. When the profit is huge, bonus will be proportionately higher; when the profit is minimal, profit will be proportionately less. There may be year when an establishment may not make any profit at all and it may face loss. Hence, he submitted that the 1st respondent has failed to take into consideration all these factual aspects and mechanically passed the impugned order, which is wholly unsustainable. Accordingly, he prays for allowing this writ petition.

4. Learned Senior Counsel appearing for the 2nd respondent submitted that, by taking into consideration, all the oral and documentary evidence let in by the parties, the 1st respondent has passed the impugned award, which does not warrant any interference. Accordingly, he prays for dismissal of this writ



W.P.No.5715 of 2012

petition.

WEB COPY

5. Heard the learned counsel for the petitioner and the learned Senior Counsel appearing for the 2nd respondent and also perused the materials available on record.

6. Bonus is paid out of goodwill by the management. Salary is a matter of right; whereas customary bonus is not. Salary is mandatory; whereas customary bonus is optional. Salary is paid for the services rendered by an employee for a particular month; whereas customary bonus is distribution of profit earned for a particular year by the management. Bonus is paid in addition to salary. The very idea of customary bonus is to encourage the workers to work more and help the organisation earn more profits, which in turn would be shared with the workers in the form of customary bonus. Market fluctuations should also be taken into consideration. It cannot be said that an establishment would always earn profits year after year. There may be lean period also. These factual aspects have been missed by the 1st respondent.

7. The 1st respondent has placed reliance on Ex.W.4/housing loan document dated 28.10.1998. In the housing loan document, the petitioner company has stated that the loan will be recovered from the bonus paid to the



W.P.No.5715 of 2012

employees. This document has also been taken as a major factor to direct the

petitioner company to pay the customary bonus. This Court does not approve the way in which the 1st respondent has dealt with Ex.W.4. The bonus sought for starts from 2001 onwards. As noted earlier, the market fluctuations will always be there and the company need not make profit continuously. During the year 1998, probably the petitioner was making profit, however, later it has lost its steam. Therefore, based on a stray document, the prayer cannot be generalised.

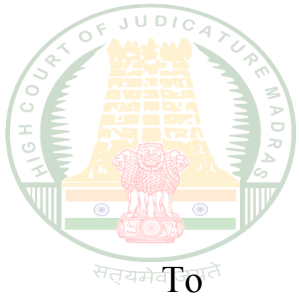
8. This Court is in complete agreement with the contentions raised by the learned counsel for the petitioner. In the result, this Writ Petition is allowed and the impugned award passed by the 1st respondent in I.D.No.93 of 2009 dated 08.09.2011 is set aside. No costs.

14.02.2025

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

M.DHANDAPANI, J.

sp



W.P.No.5715 of 2012

To
WEB COPY

The Presiding Officer,
First Additional Labour Court,
Chennai.

W.P.No.5715 of 2012

14.02.2025