IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-11-2025

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THE HONOURABLE MRS.JUSTICE N. MALA

WP No. 1372 of 2024 & WMP.No.1404/2024

The Management of Kuwang Sung
Break India Private Limited rep.by its
Managing Director, No.49,
Sengattugramam
Sriperumbudur Taluk
Kanchipuram District Pin.602105.

Petitioner(s)

Vs

Workmen of Kuwang Sung Break
India Private Limited, through United
Labour Federation rep.by its Secretary
Reg.No.2657/CNI, No.149,
Thambuchetty Street, CJ Complex, 4th
Floor, Chennai 600 001.

Respondent(s)

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records in OP.No.31/2020 dated 10.10.2023 on the file of the Industrial Tribunal, at Chennai, and quash the same.

For Petitioner(s): G.Muthuraman

For Respondent(s): Mr.V.Prakash, Senior Advocate
for Ms.A.M.Radhaa Priya

ORDER

(1) This writ petition is filed challenging the order of the Industrial Tribunal, at Chennai, dated 10.10.2023 in OP.NO.31/2020.

(2)The respondent is referred to as 'the Union'.

Facts in brief:-

(3) The petitioner is a Factory engaged in the manufacture of automobiles spare parts such as bearings, welding equipments, etc. The petitioner in its Factory, has 650 workers, in various pay scales on its rolls. While so, the Union filed OP.No.31/2020, on the file of the Industrial Tribunal, at Chennai, claiming 20% bonus for all its workers for the period 2017-18 and for ex-gratia of Rs.15,000/- for each of the employee on the basis of the Profit and Loss Account of that year. The petitioner, in its counter statement, denied the claim for bonus and ex-gratia as unfair and unjustified. The petitioner submitted that the petitioner paid to its workers regularly the bonus at 14.5% in terms of the provisions of the Payment of Bonus Act, and that, it was not in a position to pay the maximum bonus of 20% and ex-gratia of Rs.15,000/- demanded by the workmen. The petitioner further submitted that the online Balance Sheet would establish that the petitioner regularly paid the bonus as per the Payment of Bonus Act. The petitioner/Management, therefore prayed for dismissal of the OP.No.31/2020.

(4) The Industrial Tribunal, on an appreciation of the entire evidence on record,

passed the impugned Award, holding that the demand for 20% bonus by the workmen, in respect of the Accounting Year 2017-18, was justified and further, directed the petitioner/Management to pay the remaining bonus of 5.5% after deducting the bonus of 14.5% already paid for the said year. The claim of the workmen for ex-gratia payment was rejected by the Industrial Tribunal as withdrawn by the Union. Aggrieved by the Award of the Industrial Tribunal, insofar as it relates to the payment of differential bonus of 5.5% for the Accounting Year 2017-18, the petitioner/Management has filed the above writ petition for the aforesaid relief.

(5) The learned counsel for the petitioner / Management vehemently contended that the Industrial Tribunal, failed to note that the petitioner paid customary bonus during the festivals like, Diwali, Pongal and Ayutha Pooja continuously irrespective of loss or profit. The learned counsel submitted that if the amount paid towards festival bonus is taken into consideration, then the bonus paid by the petitioner / Management would be much more than the 20% bonus demanded by the Union. The learned counsel, submitted that the failure of the Industrial Tribunal to take into consideration, the customary/festival bonus paid by the petitioner resulted in injustice to the petitioner and therefore, prayed that the writ petition be allowed.

(6) The learned counsel for the respondent/Union submitted that the Industrial Tribunal considered all the submissions, including the submission pertaining

to customary bonus and only thereafter, allowed the claim. The learned counsel further submitted that the order of the Industrial Tribunal is based on proper appreciation of the entire materials on record and therefore, in the absence of any perversity in the finding of the Industrial Tribunal, this Court should not interfere with the same.

(7)Heard both sides and perused the materials placed on record.

(8)The short point for consideration is whether the petitioner has established that the amounts paid by it towards festival bonus, can be construed as customary bonus for the purpose of adjustment against bonus payable under the Act.

(9) It is trite that in order to establish the plea of customary bonus for the purpose of claiming adjustment under Section 17 of the Payment of Bonus Act, the Management has to plead and establish four circumstances, as held by the Hon'ble Supreme Court in catena of cases. The four circumstances to be proved for establishing customary bonus, are as follows:-

[a]That the payment has been made over an unbroken series of years ;

[b]That it has been for a sufficiently long period ;

[c]The period has to be longer than in the case of employee in terms of employment ; that it has been paid even in the years of loss and did not depend on the earning of profits ; and

[d]the payment has been made at the uniform rate throughout.

(10)From the materials on records, it has to be seen if the aforesaid four circumstances have been established to support the plea of customary bonus set up by the Management. As regards pleading, the Industrial Tribunal found that there was no pleading on customary bonus in the counter statement filed by the petitioner/Management and despite lack of pleadings, the Tribunal considered the matter on merits and found that the plea of customary bonus was not established. The Industrial Tribunal, on the basis of the relevant records placed before it, found that there was no continuous payment of bonus for festivals like Diwali, Pongal and Ayutha Pooja etc., for over a long period of time. The Industrial Tribunal found that the relevant records for the periods 2015-16, 2016-17 and the subsequent periods were alone produced and since the records for the earlier periods were not produced the payment of customary bonus over long periods was not established. The Industrial Tribunal further found that even though the petitioner orally contended that customary bonus was paid since 2007, absolutely no evidence was placed to substantiate of the said contention. The Tribunal also referred to the oral evidence of MW2, wherein he admitted that the amounts were paid only from 2015-16 to conclude that the customary practice of paying bonus in terms of Section 17 of the Payment of Bonus Act, was not established. It is to be noted that when a plea of customary bonus is raised, the employer has to establish that irrespective of the loss incurred by it, the bonus was paid. In the present case, there is absolutely no evidence to show that the customary bonus was paid for all the years without reference to loss. In the absence of any evidence on the continuous payment of customary bonus for over a long period, the Tribunal cannot be faulted for rejecting the plea of customary bonus. This Court has perused the Award of the Tribunal and finds that there is absolutely no infirmity in the appreciation of evidence and also that the Tribunal has given cogent reasons for rejecting the plea of customary bonus.

(11)On the question of entitlement of the workers for the maximum bonus of 20% for Accounting Year 2017-18, the Industrial Tribunal, on the basis of Ex.C1 to Ex.C3, concluded that there was allocable surplus available with the petitioner for paying 20% bonus to its workers. Since the finding on entitlement is based on proper appreciation of the evidence, this Court is not inclined to interfere with the said finding. The Industrial Tribunal found that under Ex.C4, an amount of Rs.29,72,832/- [14.5%] was paid as bonus to the workers and that, as per Form-A submitted as Ex.C3, a sum of Rs.63,55,141/- was shown as available allocable surplus. The Industrial Tribunal finding a discrepancy between the amounts shown in Ex.C2 and Ex.C3, took the least amount of Rs.43,76,628/- as the available allocable surplus. The Tribunal found that under Ex.C4, 14.5% bonus was already paid to the workers and therefore, after giving credit to the said amounts, directed the Management to pay the balance of 5.5% from the allocable surplus of Rs.43,76,628/-.

(12)This Court finds no infirmity or illegality, least of perversity in the findings of the Industrial Tribunal and hence, this Court is of the view that the Award of the Industrial Tribunal requires no interference.

(13)In view of the above discussions, this Court finds no merit in the writ petition and hence, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19-11-2025

AP
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

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Kanchipuram District Pin.602105.

2.The Secretary ,
Workmen of Kuwang Sung Break India Private Limited, through United Labour Federation, Reg.No.2657/CNI, No.149, Thambuchetty Street, CJ Complex, 4th Floor, Chennai 600 001.

N.MALA J.

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