(2016) 06 KL CK 0103

High Court Of Kerala

Case No: Writ Petition (C). No. 12827 of 2009 (S).(Against The Judgment In OA 475 of 2007 of Central Administrative Tribunal, Ernakulam Bench Dated 6.2.2009).

Union of India, Represented By Secretary, Ministry Of Defence, New Delhi - Petitioners/Respondents @HASH Defence Canteen Civil Employees Association, Parinayam Chambers, Vanchiyoor, Thiruvananthapuram-35, Represented By Its General Secretary C.V. Haridas — APPELLANT

Vs

RESPONDENT

Date of Decision: June 30, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Payment of Bonus Act, 1965 - Section 1 (3)(b), Section 1(5)

Citation: (2016) 4 KLT 10

Hon'ble Judges: Mr P.R. Ramachandra Menon and Anil K. Narendran, JJ.

Bench: Division Bench

Advocate: Sri. N. Nagaresh, Assistant Solicitor General of India, for the Petitioner

Final Decision: Allowed

Judgement

P.R. Ramachandra Menon, J. - Correctness and sustainability of the verdict passed by the Central Administrative Tribunal, Ernakulam Bench in O.A. No. 475/2007, declaring that members of the 1st applicant/Association and the 2nd applicant, who were working as Civilian employees in the Unit Run Canteen of the ''INS Dronacharya'' are liable to get ''Bonus'' in terms of the provisions of the Payment of Bonus Act is under challenge in this Writ Petition. The main ground is that the

reliance placed by the Tribunal on Section 1(5) of the Payment of Bonus Act to arrive at a finding, that even though the actual number of Civilian employees were only ''8'', there was a total of 23 employees at some point of time or the other and as such, mere reduction or falling in number of the employees will not take the establishment outside the provisions of the Bonus Act.

2. Heard Smt. Krishna, the learned counsel from the Office of the ASGI, representing the petitioners at length. Despite the completion of service of notice, there is no representation for the respondents.

3. There is a ''Unit Run Canteen'' attached to the ''INS Dronacharya'', which was being run through a Contractor. So as to run the canteen, persons were deployed from three different sources, namely, the employees engaged by the Contractor, the Civilian employees and the Defence Personnel, who were serving the Navy. At no point of time, had the number of employees eligible for coverage under the Bonus Act exceeded 20 and there was no liability to have satisfied Bonus in terms of the provisions of the Bonus Act.

4. While so, a claim was put forth by the 1st respondent-Association and the workers represented by the said Association, that they should be paid Onam festival allowance. As the claim was not acceded to, they approached the Tribunal by filing O.A. No. 15/2007, which was disposed of, directing the competent authority to consider the grievance. Pursuant to the said direction, the matter was considered and the claim was rejected as unsustainable, which was never sought to be challenged by the Association or anybody else and the matter has become final.

5. Later, two representations were submitted for granting ''Bonus'' to the employees concerned. These requests were considered and rejected as per Annexures A10 and A12 respectively, which were challenged by filing O.A.No. 475/2007. The eligibility was disputed, raising specific contentions as incorporated in the reply statement filed from the part of the Department. However, the Tribunal, after referring to the nature of engagement and the number of employees deployed from different sources, sought to rely on Section 1(5) of the Act and held that, merely for the reason that the number of workers had fallen down below the level of 20, the same would not take it outside the purview of the Act. It was accordingly, that a direction was given to pay ''Bonus'' to the workers concerned, in the manner as specified therein. Reliance was also placed on an earlier instance of granting ''Bonus'' to the workers in the year 2004. The version put forth by the Department that it was only a ''mistake'', was not accepted. This, in turn, is under challenge in this Writ Petition.

6. The learned counsel submits that the Tribunal has proceeded on a wrong tangent, without properly considering the actual set of facts and circumstances and the relevant provisions of law. The learned counsel also points out that the employees of the ''Unit Run Canteen'' are not Government servants. It is true that a contrary declaration was made by the Apex Court as per the verdict passed in **Union**

of India and others v. M. Aslam and others (2001(1) SCC 720) to the effect that, employees of the Unit Run Canteen are employees of the Central Government and it was accordingly, that Government/ Department was directed to formulate relevant rules to govern the conditions of their service. But, subsequently, the matter came to be referred to a larger Bench and after considering the matter in detail, a Bench consisting of three Judges, as per the decision reported in **R.R. Pillai (dead) through LRs v. Commanding Officer HQ S.A.C (U) and others (2009 (13) SCC 311)** held that the verdict passed in Aslam''s case (cited supra) was not correct. It was categorically held that, employees of ''Unit Run Canteen'' were not Government employees. We find that there cannot be any further dispute on this aspect.

7. Coming to the instant case, it is pointed out that the Department has formulated the relevant Rules (i.e., Rules Regulating the Terms and Conditions of Service of Civilian Employees of Unit Run Canteen Paid out of Non-Public Fund") to regulate the conditions of service of employees engaged in the ''Unit Run Canteen''. A copy of the same has been produced as Annexure A2. Rules 2(g) and 2(h) define the terms ''Unit Run Canteen'' and ''Unit Run Canteen Employees'' in the following terms:

"2(g) "Unit Run Canteen" shall mean a canteen funded and run by non governmental fund affiliated to one or more Unit, Firm or other defence establishment and engaged in sale of articles received through the Canteen Store Department to persons entitled to use such Canteens.

2(h) "Unit Run Canteen Employees" means a person who is appointed as employee of such canteens under these Rules."

8. Rule 3 of the above rules stipulates the extent and applicability of the Rules, which is also extracted below:

"3. Application:

(a) These Rules shall apply to all civilian employees of Unit Run Canteens paid out of Non Public Fund Account but shall not apply to any person engaged on daily wages or on casual employment or to those hired on a contractual basis whose conditions of service will be regulated by their appointment letters. These Rules shall also not apply to serving defence personnel who may for the time being be detailed to work therein in any capacity whatsoever in addition to their own duties.

(b)These Rules will govern the terms and conditions of Unit Run Canteen Employees serving in various Unit Run Canteens as on 04 Jan.2001 and on subsequent days and will bring forth uniformity on matters governing the terms and conditions of such employees."

9. From the above, it is clear that the Rules do not govern the ''Contractual employees'', nor are they applicable to the Defence Service Personnel. With regard to the factual particulars as to the employees engaged, there is no dispute that 6 persons were Defence Personnel belonging to the Navy, who are governed by

Central Government Service Rules and are paid from the consolidated fund. As such, the said 6 persons are not coming within the purview of Annexure A2 Rules. Similarly, out of the total of 23 persons engaged to run the canteen, ''9'' employees are ''Contractual employees'', who also do not come within the purview of the aforesaid Rule. After excluding the aforesaid 15 (i.e, 6+9), only ''8'' employees are remaining as ''Civilian employees'', who are governed by Annexures A2 Rules. The Civilian employees are being paid from non-public funds and by virtue of the law declared by the Apex Court as above, they have no status to be counted as employees of the Central Government. By virtue of the exclusion of the ''Contractual employees'' and the ''Defence personnel'', the number of eligible employees to be reckoned for the purpose of coverage under the Act is that of the ''Civilian employees'', which is nothing but ''8''.

10. The eligibility to get ''Bonus'' has been dealt with in Paragraph 6 of Annexure A1, which reads as follows:

"6. Other Service Benefits such as Payment of Gratuity, Bonus and Applicability of EPF Scheme - These will be admissible if all conditions as mentioned in the Payment of Gratuity Act, 1972, payment of Bonus Act, 1965 and EPF Scheme, 1952 are met."

From the above, it is quite clear that, unless the relevant requirements as envisaged under the Payment of Bonus Act, 1972 are fulfilled, no ''Bonus'' is liable to be paid under any circumstances. The question to be considered is, whether the Tribunal was justified in applying Section 1(3) of the Payment of Bonus Act. As per Section 1(3) of the Act, (wrongly quoted as ''Rule'' 1(3) in Para.11 of Ext.P7 order passed by the Tribunal), the ''Act'' at the 1st instance would apply to:

(a) every factory and

(b) every other establishment in which 20 or more persons are employed on any day during an accounting year.

After referring to the said Act, the Tribunal, so as to extend the benefit to the applicants, have placed reliance on Section 1(5) (wrongly quoted as ''Rule'' 1(5) instead of ''Section'') of the Act, which reads as follows:

"1(5). An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty [or, as the case may be, the number specified in the notification issued under the proviso to sub- section (3)]."

11. It was after making reference to the said Section, that the Tribunal immediately jumped to the conclusion that the ''Unit Run Canteen'' deploying only 8 civilian employees as on that date was not eligible to be excluded from the purview of the Bonus Act and hence that, ''Bonus'' had to be paid in terms of the Statute, also by virtue of similar exercise pursued in the year 2004. It was accordingly, that Annexures A10 and A12 were set aside and the eligibility was declared, thus

allowing the Original Application. Even though the Tribunal has referred to Sections 1(3)(b) and 1(5) of the Payment of Bonus Act, no detailed discussion is there, as to the circumstance for invoking the provision under Section 1(5), to have mulcted the liability. There is discussion with regard to the total number of persons deployed, which is ''23'' and as to the employees coming from different segments; ''9'' as contract workers, ''6'' as belonging to the Defence Personnel and the remaining ''8'' as permanent Civilian employees. But the scope of Annexure A2 Rules, specifically excluding the Defence Service Personnel and the Contract employees from the purview of the Act was never discussed by the Tribunal. As a matter of fact, the Defence Service Personnel are governed by separate Service Rules, they being Government Employees and being paid from the consolidated fund, as mentioned already. Rule 1(5) will be having application, only if the establishment was otherwise covered already and if by virtue of some or other circumstances, the total number of employees in the establishment comes down or falls below the level of ''20'', on which event as well, the establishment would stand continue to be governed by the provisions of the Act. The question to be considered is whether the ''INS Dronacharya'' was employing ''20'' or more Civilian employees at any point of time, to have attracted coverage under the Statute. The answer can only be an emphatic ''No'', as no contrary position on fact is referred to anywhere in the pleadings raised by the applicants or in the verdict passed by the Tribunal (Ext.P7). In so far as there is no dispute with regard to the actual number of Naval Service Personnel deployed (6) and the ''Contractual employees'' (9), out of the total of 23, the Civilian employees engaged were only ''8''. In other words, among the total 23 persons engaged, 15 were outside the purview of reckonable extent, in terms of Annexure A2 Rules.

12. In view of the above discussion, we find that at no point of time, had there been any instance of deployment of ''20'' or more ''Civilian employees'' who were entitled to be covered by the relevant Rules or the provisions of the Act, to have extended the benefit of ''Bonus''. As such, sub-section (5) of Section 1 of the Payment of Bonus Act is having no application to the present case. The finding and reasoning given by the Tribunal cannot but be intercepted. We declare the same and hold that Ext.P7 order is not correct or sustainable and accordingly, the said order dated 6.2.2009 in O.A.No.475/2007 stands set aside. The Writ Petition is allowed. No cost.