

2025 LiveLaw (SC) 386

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SUDHANSHU DHULIA; J., K. VINOD CHANDRAN; J.

APRIL 2, 2025.

CIVIL APPEAL NO. OF 2025 [@ SPECIAL LEAVE PETITION (CIVIL) NO. 20474 OF 2019]

**THE MANAGEMENT OF WORTH TRUST *versus* THE SECRETARY, WORTH TRUST
WORKERS UNION**

Payment of Bonus Act, 1965; Sections 1(3)(a), 10, 11, 32(v)(a) and (c) – Workers cannot be denied bonus saying factories are run by charitable trust. (Para 16 & 19)

[Arising out of impugned final judgment and order dated 20-03-2019 in WA No. 1732/2013 passed by the High Court of Judicature at Madras]

For Petitioner(s) Mr. R.Anand Padmanabhan, Sr.Adv. Arimardhan Sharma, Adv. Ruchi Arya, Adv. Mr. Shashi Bhushan Kumar, AOR

For Respondent(s) Mr. Gautam Narayan, Sr. Adv. Ms. Asmita Singh, AOR Mr. Abheet Mangleek, Adv. Mr. Tushar Nair, Adv. Mr. Anirudh Anand, Adv. Mr. Punishk Handa, Adv.

J U D G M E N T

SUDHANSHU DHULIA, J.

1. Leave granted.

2. The appellant before this Court is a trust presently known as ‘Workshop for Rehabilitation and Training of the Handicapped Trust’, or ‘WORTH’. Prior to the year 1985, the name of this trust was ‘Swedish Red Cross Rehabilitation Trust’ as it was initially established by the Swedish Red Cross Society. This trust has been doing charitable activities, including the rehabilitation of leprosy-cured patients and other specially abled persons.

3. For our purpose, it is an admitted fact that since 1985, the trust is also engaged in many industrial activities which are in the nature of commercial activities, such as the manufacture of automobile parts and parts for industrial machineries. This is purely a commercial venture, and it is again an admitted fact that from the manufacturing and sale of these parts, which is done in its factories, profits are being generated. These profits, for our purposes and for the purpose of the Payment of Bonus Act, 1965 (hereinafter ‘Bonus Act’), are known as ‘surplus’. Thus, though the factory may be under the control of a trust, but it is also governed under the Factories Act, 1948.

4. It is again an admitted fact that the workmen who are employed in the factories in various capacities largely comprise of such workers who have been cured of Leprosy or are otherwise differently abled. These workmen have a union known as “WORTH Trust Workers Union” (hereinafter referred to as ‘Union’). In the year 1998, this Union raised an industrial dispute demanding bonus and ex-gratia for the year 1996-97 and ultimately, the dispute was referred to the Industrial Disputes Tribunal, Chennai as per Section 10(2) of the Industrial Disputes Act, 1947 read with Section 22 of the Bonus Act. The claim of the workmen union was based on the fact that its members are workmen who are working in the factories governed by the provisions of the Factories Act, 1948 and Industrial Disputes Act, 1947 and thus, the Payment of Bonus Act¹ is applicable to them.

¹Section 1(3)(a) of the Payment of Bonus Act makes the Act applicable to every factory. It reads as follows:

Section 1: Short title, extent and application- (1)

5. Before the Tribunal, the Respondent-Union claimed a bonus at the rate of 20% and ex-gratia at the rate of 5% on the annual earning of a worker. The Tribunal partly allowed the claim of workmen and held that workmen's demand for bonus and exgratia is justified. Tribunal ordered that workmen are entitled to a bonus of 8.33 % on their annual earnings and further, the Tribunal also held that workmen are entitled to an ex-gratia amount, which they have already been receiving from the appellant. This award was challenged before the High Court by the appellant. The learned Single Judge bench upheld the award of the Tribunal but modified the relief to the extent that the bonus shall be awarded after deducting the amount already paid as ex-gratia. Thereafter, the Writ Appeal, filed by appellant challenging the findings of the Single Judge, was also dismissed vide the impugned order dated 20.03.2019. Aggrieved, the appellant is before us.

6. We have heard both sides and perused the material on record.

7. Let us first understand the scheme and applicability of the Bonus Act. The practice of paying bonus in India originated during the First World War when some textile mills started giving bonus to their workers under the Defence of India Rules. Later in 1960, at the meetings of the Eighteenth Session of the standing Labour Committee of the Government of India, it was agreed that a Commission be appointed to evolve norms for payment of bonus. Consequently, a Bonus Commission was appointed and thereafter, the Government of India promulgated an Ordinance accepting recommendations of the Bonus Commission with some modification. This ordinance was later replaced by the Payment of Bonus Act, 1965. In this regard, the Statement of Object and Reasons of the Bonus Act states as follows:

“Statement of Objects and Reasons.—A Tripartite Commission was set up by the Government of India by their Resolution No. WB-20(9)/61, dated 6th December, 1961, to consider in a comprehensive manner, the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government. The Commission's Report containing their recommendations was received by the Government on 24th January, 1964. In their Resolution No. WB~20(3)/64, dated the 2nd September, 1964, the Government announced acceptance of the Commission's recommendations subject to a few modifications as were, mentioned therein.

With a view to implement the recommendations of the Commission as accepted by the Government, the Payment of Bonus Ordinance, 1965, was promulgated on 29th May, 1965. The object of the Bill is to replace the said Ordinance.”

8. As already discussed above, Section 1(3)(a) of the Bonus Act makes the Bonus Act applicable to all the factories. The term ‘factory’ is defined under Section 2(17) of the Bonus Act as follows:

“(17) “factory” shall have the same meaning as in clause (m) of section 2 of the Factories Act, 1948;”

Clause (m) of Section 2 of the Factories Act, 1948 reads as follows:

“(m) “factory” means any premises including the precincts thereof—

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(2)

(3)it shall apply to- (a) every factory;...

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place;

Explanation [I]—For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account;]

Explanation II.—For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;

9. The payment of minimum and maximum bonuses is made as per Sections 10 and 11 of the Bonus Act. These provisions read as follows:

10. Payment of minimum bonus.—Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent. of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employees as if for the words “one hundred rupees”, the words “sixty rupees” were substituted.

11. Payment of maximum bonus- (1) Where in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.

(2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provisions of that section.

10. The workmen of the Respondent-Union argued that they are engaged in manufacturing activities and are working in factories run by the appellant, and thus, in terms of the above provisions of the Bonus Act, they are entitled to the payment of a bonus. The workmen had demanded a maximum bonus of 20% of their annual earnings as per section 11 of the Bonus Act.

11. Under Section 32, the Bonus Act is not made applicable to a certain class of employees. The appellant has consistently taken the defence that it is exempted under Section 32(v)(a) and (c) of the Bonus Act, and thus, not liable to pay any bonus. The relevant portion of Section 32 of the Bonus Act reads as follows:

“32. Act not to apply to certain classes of employees.—Nothing in this Act shall apply to— ...

...

(v) employees employed by—

(a) the Indian Red Cross Society or any other institution of a like nature (including its branches);

...

(c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit..

12. The argument of the appellant before the Tribunal and before all other Courts including this Court therefore is that the Bonus Act does not apply as its employees are to be treated as employees of 'the Indian Red Cross Society' and if not, then they have to be treated as the employees of an 'institution of a like nature', which is like Indian Red Cross Society, and thus, exempted from payment of bonus in terms of Section 32(v)(a) of the Bonus Act. In the alternative, the appellant also argued that it can be treated as an institution which has been 'established not for the purposes of profit' and thus, exempted as per Section 32(v)(c) of the Bonus Act.

13. After taking evidence from both sides, the Tribunal came to the conclusion that though trust was established in 1969 as 'Swedish Red Cross Rehabilitation Trust' with the charitable object of rehabilitation of former leprosy patients or other persons with disabilities, but since the year 1985 there has been a marked shift in the activities of the trust. Not only did the name of the trust change from 'Swedish Red Cross Rehabilitation Trust' to 'Workshop for Rehabilitation & Training of the Handicapped' ('WORTH'), but the very object of the trust also got diluted and its work was expanded since appellant started commercial activities at a greater scale. These commercial activities include the manufacturing and sale of certain automobile parts and other types of equipment. The factories make a profit, which is called surplus, though this profit is allegedly again invested in similar rehabilitation activities which the trust has been doing.

14. The workmen do not deny the fact that the appellant has been doing charitable work and they also admit that most of the workmen are the persons cured of leprosy who had been rehabilitated by the trust, but again it is a fact that these workmen are working in factories and fall within the definition of 'workmen' and 'employee' under the Factories Act, 1948 as well as the Bonus Act. Since, admittedly, they work in factories, the Bonus Act is applicable in their case, as are all other beneficial legislations such as the Factories Act, Employees' State Insurance Act, Employees Provident Fund Act etc.

15. The appellant's contention that it is exempted under Section 32(v) of the Bonus Act is without any merit, and the Tribunal rightly observed that there is no evidence to show that the appellant-trust is run by Indian Red Cross Society or that the appellant is an institution similar to Indian Red Cross Society. Nor can it be said that appellant is an institution exempted under section 32(v)(c) of the Bonus Act. The learned Single Judge of the High Court also noted that since the year 1985, appellant has been engaged in commercial activities, and it is not dependent upon the Red Cross Society.

16. The Division Bench of the High Court, in its well-reasoned order, has elaborated on this aspect. The Division Bench rightly observed that the appellant had severed all its links with the Swedish Red Cross Society by deleting all references to Swedish Red Cross Society from the trust deed via an amendment in 1989. Further, there is nothing on record to show that the appellant is akin to the Indian Red Cross Society, which was established by an Act of Parliament. Some objects and activities of the appellant might match with that of the Indian Red Cross Society but that would not be enough to hold that the appellant is an institution like the Indian Red Cross Society. Moreover, when it is established that the appellant is running factories, then there can be no doubt regarding the applicability of the Bonus Act. Just because such factories come under the broad umbrella of the appellant-trust, which is also involved in some charitable work, the workers cannot be deprived of the benefit of the Bonus Act. In our view, workmen of the respondent-Union, who are presently before us, are liable to receive their bonus under the Payment of Bonus Act.

17. The Appellant has submitted that it has already been paying some amount, which is called ex-gratia, as a measure of charity to the workmen and this fact has also been admitted by the respondent-union. However, by no stretch of argument can this be a ground to avoid paying a bonus, which is a statutory duty and right of the appellant and workmen respectively.

18. The Tribunal had awarded the minimum bonus to the workmen i.e., 8.33 % of the annual earnings and when this award was challenged by the appellant before the High Court, the learned Single Judge dismissed the challenge with a slight modification that bonus shall be paid after deducting the amount of ex-gratia already paid to workmen. This order of the Single Judge directing adjustment of the amount of ex gratia against the bonus was never challenged by the workmen.

19. We hold that the appellant is not exempted under section 32(v)(a) or (c) of the Bonus Act, and the workmen of the respondent-Union, who are engaged by the appellant in its factories, are entitled to get the bonus in accordance with law. Therefore, the appellant is directed to pay bonus to its workmen, as per provisions of the Bonus Act, from the year 1996-1997 till date. This must be done within a month of this order.

20. The appeal stands dismissed in the above terms.

21. Pending application(s), if any, stand(s) disposed of.

22. Interim order(s), if any, stand(s) vacated.

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