IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24930 of 2007
To
SPECIAL CIVIL APPLICATION No. 24945 of 2007
With
SPECIAL CIVIL APPLICATION No. 24931 of 2007
To
SPECIAL CIVIL APPLICATION No. 24945 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD **Sd/-**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **YES**

2 To be referred to the Reporter or not ? **YES**

3 Whether their Lordships wish to see the fair copy of the judgment ? **YES**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **NO**

5 Whether it is to be circulated to the civil judge ? **NO**

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DIVISIONAL MANAGER LIC OF INDIA - Petitioner(s)
Versus
SHOBHANA MANISHKUMAR THESIA - Respondent(s)

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Appearance :
MR AK CLERK for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 28/09/2007

ORAL JUDGMENT

1. Heard learned advocate Mr. A.K. Clerk appearing

on behalf of petitioners.

2. In these petitions, petitioners have challenged the order passed by Central Government of Industrial Tribunal-cum-Labour Court, Ahmedabad in Recovery Application No.831 of 2004 to No.846 of 2004 (old Recovery Application No.5 of 1991 to No.20 of 1991) dated 11th October 2005.

3. The Labour Court partly allowed the applications with a direction to the petitioners to pay the bonus amount as claimed by the respondents in their applications within a period of 60 days of receipt of this order. The respondents are not entitled for the interest and cost of Rs.3,000/- has been awarded by the Labour Court.

4. Learned advocate Mr. A.K. Clerk appearing on behalf of petitioners submitted that, Recovery Applications filed by the respondents as per averments made in Para 1, the concerned applicants were not permanent on 31st March 1984 and one case of Smt. Shobhanaben Manishkumar Theshia who is appointed on 17th November 1983 for a period of three months i.e. 7th November 1983 to 6th February 1984 who remained as 'Trainee' and thereafter, she became permanent. The salary, which was paid during the probation and training, was the same. She was appointed on probation on 7th February 1984 to 6th May 1984 and from 7th May 1984, she was made permanent by the petitioner. For the claim of bonus for the year

1983-84, the application was filed by the respondents before the Labour Court, Rajkot under Section 33(C)(2) of the Industrial Disputes Act, 1947. Therefore, learned advocate Mr. Clerk submitted that Page 14 – Annexure 'C' eligibility requires that employee concerned must be permanent in service of the Corporation on 31st March 1984 and, those, who have completed at least six months service as on that date, shall be considered eligible for the payment in lieu of bonus. Therefore, he submitted that present respondents have not complied the aforesaid eligibility condition as per Annexure 'C' – Page 14, a circular from Central Office. Therefore, respondents have not proved their pre-existing right for claiming the amount of bonus and Labour Court has committed gross error in granting the same.

5. Learned advocate Mr. Clerk relied upon the decision of Apex Court in case of *Hamdard (Waqf) Laboratories v. Deputy Labour Commissioner and Others* reported in *2007(5) SCC 281*. He relied upon Para 35 to 37.

> "35. There is yet another aspect of the matter which cannot be lost sight of. A claim for bonus in the context of Section 22 of the Payment of Bonus Act can be raised only by raising an industrial dispute. It cannot be raised by way of an execution application. If a claim had been made under an award, the same attained finality when the amount

payable thereunder had been calculated. Bonus was a subject-matter of claim in the first application filed under Section 6-H(1) of the Act. The amount payable thereunder had been determined. Another application under Section 6-H(1) of the Act for the purpose of enforcement of award, therefore, was, in our opinion, not maintainable.

36. When the second application was filed, the same was dehors the award. It was an independent claim. Such an independent claim, thus, on a plain reading of Section 22 of the Payment of Bonus Act could have been raised as an industrial dispute in the light of the decision of this Court in Sanghvi Jeevraj Ghewar Chand. The decision of the Full Bench of the Bombay High Court in Kohinoor Tobacco Products (P) Ltd., in our opinion, to that extent is not correct. When the statute provides for a remedy in a particular manner, the same cannot be achieved by filing an application which subserves a different purport and object.

37. Such an application was, thus, not maintainable under Section 6-H(1) of the Act which corresponds to Section 33-C(1) of the Industrial Disputes Act. Even the jurisdiction of a Labour Court in terms of Section 33-C(2) of the Industrial Disputes Act would be limited.”

6. Relying upon the aforesaid paragraphs, he submitted that for any claim of bonus, industrial disputes must have to be raised under the machinery of Industrial Disputes Act, 1947 and for that, Recovery Application is not maintainable. He submitted that in absence of pre-existing right, Recovery Application is not maintainable and respondents have failed to establish existence of right and therefore, Labour Court has also committed gross error in granting such application in favour of respondents. Except as referred above, no further submission is made by learned advocate Mr. Clerk and no other decision is relied upon by him.

7. I have considered the submissions made by learned advocate Mr. Clerk. I have also considered the applications made by respondents before the Labour Court under Section 33(C)(2) of the Industrial Disputes Act, 1947.

8. According to respondents, in an identical case of other workmen of the petitioners', the benefit of bonus was granted by Labour Court, Rajkot and that decision is relied upon by respondents workmen before the Labour Court. According to respondents, as per the bonus Rules of the petitioner, respondents workmen are entitled to the benefit of bonus as employees of petitioner. Therefore, claim was filed before the Labour Court for 15% bonus i.e. Rs.562-50 ps., for the year 1983-84. These applications were opposed by petitioner and reply was filed before the

Labour Court. The entitlement of the respondents was disputed by the petitioner before the Labour Court, but, without prejudice to their submission, in the financial bonus year 1984-85, the eligibility conditions for receiving bonus in respect to Class-III and Class-IV employees are as under :

(A) Not payable during the training period.
(B) Bonus was payable to confirmed employee.
(C) They were on role on last day of financial year 31st March.
(D) They must have completed six months of service on the last day of financial year.
(E) The service will be counted from the date of probation.

9. This is the relevant reply of the petitioner before the Labour Court. Annexure 'C' – Page 14 is a circular regarding the payment in lieu of bonus to Class-III & Class-IV employees for the financial year of 1983-84.

10. Before the Labour Court, no oral evidence was given by respondent No.1. The purshis to that effect has been given by a representative of the respondent. The petitioner has also closed the evidence by giving purshis. The respondents have submitted the judgment of the Labour Court, Rajkot in Central Recovery Application No.7 of 1987 to No.39 of 1987 and No.45 of 1987 to No.55 of 1987 decided on 20th March 1990. The subject matter of the

applications being the same, these applications are disposed of by a common judgment by the Labour Court. Therefore, Labour Court has framed the issue that whether applicants are entitled for the amount of bonus as claimed in the applications or not and whether they are entitled to the interest as claimed in the applications by them or not. The Labour Court has considered the judgment in Central Recovery Application No.7 of 1987 to No.39 of 1987 and No.45 of 1987 to No.55 of 1987 dated 20th March 1990. After considering the aforesaid decision, the Labour Court has come to the conclusion that present applicants are also similarly situated like applicants of those applications. Considering the discussion in Para 5 of that judgment, they are entitled for the amount and looking to the bonus Rules, the condition of six months is not applicable in the present case and looking to the Life Insurance Corporation of India Class-III and Class-IV Employees' Bonus and Dearness Allowances Rules, 1981, it is clear that the Rule is applicable to the applicants after 1980. The Government will decide and salary to be taken into considerations as per Rules is Rs.750/- per month. Therefore, Labour Court has mainly relied upon the decision of Labour Court, Rajkot as referred above, wherein, identical question was examined by Labour Court, Rajkot and amount of bonus has been allowed in Recovery Applications against the petitioner. In the order of Labour Court, Rajkot also, present petitioner was a party and that order was not challenged by petitioner before the higher forum.

11. Therefore, considering the aforesaid facts which were on record before the Labour Court, petitioner has not disputed the fact that decision of Labour Court at Rajkot is not similarly situated employees' case and therefore, not applicable to the facts of this case. Before the Labour Court, petitioner has not raised any contention in respect to the order passed by Labour Court, Rajkot as referred above which has been relied upon by Labour Court while passing the order in present case.

12. Therefore, according to my opinion, Labour Court has rightly considered the claim of respondents based on earlier order passed by Labour Court, Rajkot and granted such benefit in favour of respondents.

13. Now, in respect to contention raised by learned advocate Mr. Clerk that respondents are not having the pre-existing right as they were not permanent on or before 31st March 1984 and in Recovery Application, such disputed claim cannot be examined by Labour Court, because, the recovery application proceedings are the execution proceedings, therefore, Labour Court should not decide a disputed question and for that, Labour Court has no jurisdiction relying upon the Hamdard's case (supra).

14. I have considered the contentions raised by learned advocate Mr. Clerk. Section 33(C)(2) is relevant for this case, which provides that, “*where*

any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government." Therefore, the contention raised by learned advocate Mr. Clerk that the claim of respondents disputed by the employer; that itself does not out set the jurisdiction of the Labour Court under Section 33(C)(2) of the Industrial Disputes Act, 1947. It amounts to misconception of law.

15. Recently, the Division Bench of Bombay High Court has decided the same question which has been raised before this Court in case of ***Mahalaxmi Co-operative Housing Society Limited v. Dilip Singh Parocha & Ors.*** reported in ***2007 I CLR 475***. The Division Bench of Bombay High Court has considered, while examining the scope of Section 33(C)(2), the number of decisions including the decision of ***Municipal Corporation of Delhi v. Ganesh Razak****'s case* reported in ***1995 I CLR 170***. The decisions of Apex Court which have been considered by the Division Bench of Bombay High Court in Para 7 are quoted as under :

"7. Mr.Paranjape contended that in Som

Vihar Apartment Owners Housing Maintenance Society Ltd. V. Workmen, (2001 1 LLJ 1413), the Supreme Court has held that Co-operative Society is not an Industry within the meaning of Section 2(J) of the Industrial Disputes Act, 1947 and, therefore, the said issue cannot be termed as an incidental issue which required determination. In support of his submissions Mr.Paranjape relied on Central Inland Water Transport Corporation V. The Workan & Anr., AIR 1974 SC 1604 (2) P.K.Singh & Ors. V. Presiding Officer & Ors., AIR 1988 SC 1618 (3) Municipal Corporation of Delhi V. Ganesh Razak, 1995 1 CLR 170 (4) Tara & Ors. V. Director Social Welfare & Ors., AIR 1999 SC 1508 (5) State of U.P. & Ors. V.Brijpal Singh, 2005 SCC L & S 1081 (6) RSR Mohta Spinning & Weaving Mills Pvt.Ltd. & Ors. V. Govindrao & Ors., 2001 LAB.I.C 2269 (Bom) (7) Central Group & Ors. V. Motiram Thakre, 2005 II LLJ 492 (Bom). He submitted that the impugned judgment and order deserves to be set aside."

16. After considering the decision of Constitution Bench of Apex Court in case of ***Central Bank of India Limited v. P.S. Rajagopalan etc.,*** reported in ***AIR 1964 SC 743*** and also in case of ***R.B. Bansilal Abirchand Mills Co. Pvt. Ltd., v. Labour Court, Nagpur and Others*** reported in ***AIR 1972 SC 451***, the Apex Court has formulated certain principles that

how to deal with such kind of claim if it is raised by workman concerned. Therefore, para 39 and 40 of case of ***Mahalaxmi Co-operative Housing Society Limited (supra)*** are relevant, therefore, same are quoted as under :

> ***"39. We must make a detailed reference to Ganesh Razak's case (supra) as heavy reliance is placed on it by the appellant. In our opinion, this judgment does not help the appellant. In that case, the respondents were daily rated workers of the appellant therein. They claimed that they were doing the same kind of work as the regular employees and, therefore, they were required to be paid by the appellant the same pay as the regular employees on the principle of equal pay for equal work. The appellant therein challenged the maintainability of the proceedings under Section 33(C)(2) of the said Act, on the ground that the claim of the workmen to be paid at the same rate being disputed, proceedings under Section 33(C)(2) were not maintainable. The Supreme Court held that there was no adjudication by any forum of the claim of the workmen of their entitlement to be paid wages at the same rate as regular workmen. There was no award for settlement and, therefore, there could be no occasion for computation of the benefit on that basis to attract Section 33(C)(2). It is***

pertinent to note that, no submission was made before the Supreme Court that there was any attempt by the employer to oust the jurisdiction of the Labour Court by raising a frivolous plea. It is against the backdrop of the facts before it and submissions advanced before it that though the Supreme Court accepted that incidental questions can be decided under Section 33(C)(2), it went on to hold that if entitlement of a workmen is adjudicated upon earlier and if any interpretation of the Award of Settlement is required, that would be an incidental question. In the circumstances we are of the opinion that in this judgment the Supreme Court has not departed from the view taken by the Constitution Bench in Central Bank of India's case (supra) after taking into consideration the legislative intent.

40. From the judgments of the Supreme Court and of this Court to which we have made a reference following propositions emerge :

a) The legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights and so it inserted Section 33C in the said Act in 1956. By resorting to Section 33C individual workmen can enforce their rights without having to take recourse to Section

10(1) of the said Act or without having to depend upon their union to espouse their cause.

b) There is no bar preventing a Labour Court dealing with an application under Section 33C(2) of the said Act from determining the workmen's right to receive benefit if it is disputed by the employer.

c) This view is consistent with the legislative intent and a contrary view would mean that it would be at the option of the employer to allow the workmen to avail himself of the remedy provided by Subsection (2) of the Section 33C because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court, to entertain the workman's application.

d) In some cases determination of the question about computing the benefit in terms of money may have to be preceded by an enquiry into the existence of the right, and such an enquiry must be held to be incidental.

e) Whether such inquiry is incidental or not will depend on the facts and circumstances of each case.

f) When Labour Court's jurisdiction is sought to be ousted by raising objection to it, the Labour Court will have to examine whether it has jurisdiction or not. In such a situation the question of status of the person applying under Section 33(C)(2) becomes an incidental matter and the Labour Court can enquire into that matter.

g) In a given case, it may be necessary to determine the identity of the person against whom the claim is made if there is challenge and such determination would be incidental.

h) Interpretation of an Award or a Settlement on which the workman's right exists is incidental to the Labour Court's power under Section 33C(2).

i) Under Section 33C(2) the Labour Court cannot be asked to disregard the dismissal o the workman as wrongful and on that basis compute his wages.

j) Under Section 33C(2) the workman cannot claim that his dismissal or demotion is unlawful and, therefore, he continues to be the workman of the employer and he is entitled to the benefits due to him under a pre-existing contract.

k) Under Section 33C(2), it would not be open to an employee, notwithstanding a settlement, to claim the benefit as though the said settlement has come to an end.

l) If the workman makes his claim on the basis of a lay off and the employer raises a plea that there was no lay off but closure, the Labour Court must decide as to whether there was really a lay off or a closure and if it takes the view that there was a lay off without any closure of the business, it would be acting within its jurisdiction if it awarded compensation in terms of the provisions of Chapter V-A. In such a situation the plea raised by the employer is a jurisdictional plea and the Labour Court has to decide whether it has jurisdiction to make the computation. Thus, jurisdiction pleas will have to be decided by the Labour Court.

m) If the workers claim that they had been actually promoted to a particular cadre and the management denies the promotion the Labour Court can decide whether there was such a promotion or not it being an incidental question, but under Section 33C(2) the Labour Court cannot reclassify the workers.

n) While dealing with an application under Section 33C(2) the Labour Court has to keep

the legislative intent in enacting this provision in mind. It must adopt a cautious approach and it must not allow an attempt to oust the jurisdiction of the Labour Court by raising frivolous plea succeed for that would mean driving the workman unnecessarily to another forum. In such cases it will have to conduct incidental inquiry to determine the identity of the person against whom the claim is made and the person who makes the claim. Nature of incidental inquiry will obviously depend on facts and circumstances of each case."

17. In view of aforesaid decision of Apex Court and considering the Section itself which gives power to Labour Court to decide such matter if it is raised, disputed by employer, then, power to decide by the Labour Court is not taken away by another statutory provisions and that cannot be considered to be an adjudication as referred in Section 10(1) of the Industrial Disputes Act. Both are different things; to decide if any question arises in recovery proceedings is one thing and to adjudicate the industrial dispute under Section 10(1) is second thing. Both cases cannot be considered to be similar, and therefore, merely objection or dispute raised by employer is not enough to decide the jurisdiction of Labour Court.

18. Learned advocate Mr. Clerk relied upon the

Apex Court decision in case of Hamdard(supra) and relied upon Paras 35 to 37. The Apex Court has considered that whether in back wages, amount includes the bonus or not. The Apex Court has come to the conclusion that in back wages amount, bonus does not include considering the definition of wages in the statute. On the basis of aforesaid facts, the Apex Court has considered the provisions of Section 22 of the Payment of Bonus Act, 1965 with Section 2(21). The right to bonus - source of – reiterated, by Apex Court that such a right was statutorily provided for the first time under the Payment of Bonus Act, 1965. Neither the Industrial Disputes Act, 1947 nor any of the other corresponding laws provides for a right to bonus. Therefore, schedule III – Item No.5 of Industrial Disputes Act, 1947 only deal with jurisdiction of Tribunal set up under Section 7A and under Section 7B of the Industrial Disputes Act, 1947, but, does not provide any right to bonus. Therefore, in light of the aforesaid background, Paras 35 to 37 are required to be read, because, Section 22 of the Payment of Bonus Act, 1965 has been referred by the Apex Court and observed that in context of Section 22 of the Payment of Bonus Act which can be raised only by raising industrial dispute, but, does not refer the case in which the bonus was decided by the employer to be paid to the concerned workman and on that basis, if the claim is made which will out set the jurisdiction of Labour Court under Section 33(C)(2) of Industrial Disputes Act, 1947. Therefore, the decision which has been

relied upon by learned advocate Mr. Clerk is in context of Section 22 of the Payment of Bonus Act which can be raised only by raising dispute, but, in case when dispute was already resolved and decided between employer and between parties and that concerned employee is entitled to the amount of bonus from the employer then industrial dispute is not necessary to be raised by the concerned employee. Therefore, in respect to decision of Apex Court (supra) is not applicable to the facts of this case.

19. The contentions raised by learned advocate Mr. Clerk are in detail considered to the effect that the provisions of the Payment of Bonus Act, 1965 which are relevant, therefore, the same are quoted as under :

> ***"Sec.2(13) :*** *"employee" means any person (other than an apprentice) employed on a salary or wage not exceeding [three thousand and five hundred rupees] per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;*
>
> ***Sec.8 – Eligibility for bonus****. - Every employer shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment*

for not less than thirty working days in that year.

***Sec.9 – Disqualification for bonus**, - Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for -*

(a) fraud; or

(b) riotous or violent behaviour while on the premises of the establishment; or

(c) theft, misappropriation or sabotage of any property of the establishment.

***Sec.22 – Reference of disputes under the Act** – Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly.“*

Looking to the aforesaid definitions and provisions of the Payment of Bonus Act, 1965, respondents are employees within the meaning of

Section 2(13) and satisfied eligibility required under Section 8 and not disqualified as per Section 9. The respondents were not apprentices in the year 1983-84. The trainee period is covered by Act. The statutory bonus is preexisting right of employee, 15% decided by petitioner being a part of statutory bonus under the LIC of India Class III and Class IV Employees' Bonus and Dearness Allowances Rules, 1981, which is applicable after the year 1989 to the respondents. Therefore, Circular – Annexure 'C' is not applicable and same was not produced before the Labour Court by petitioner. The Labour Court relied upon the Rules, 1981 which is not disputed by petitioner before the Labour Court. The Section 22 of the Payment of Bonus Act, 1965 is separate and independent industrial dispute which can be raised for getting bonus and claim of bonus under Section 22 direct Recovery Application under Section 33(C)(2) cannot be made as per Hamdard (supra) case, but, the question for statutory Bonus which is not decided by Apex Court, therefore, decision of Apex Court is not applicable.

20. The view is taken by Gujarat High Court (Coram : R.K. Abichandani and K.M. Mehta, JJ.) in identical case of recovery of Bonus held to be maintainable in case of ***Union of India v. Kishor Lakha*** reported in ***2004-II-LLJ 533***. The relevant Para 9 and 14 are quoted as under :

"9. It, therefore, follows that when bonus

is payable to an employee and is not paid, he is deprived of money which he is entitled to receive. The workman would, therefore, be entitled to prefer an application under Section 33(C)(2) of the Industrial Disputes Act, 1947, if he is deprived of the bonus amount by the employer, for recovering the same. A Division Bench of this Court in Union of India v. Dharamsi F.Zala, reported in 1992-I-L.L.J. 880, in the context of an application made under Section 33(C)(2) of the Industrial Disputes Act, 1947, on the basis of the orders of the Administrative Tribunal, held at p.881 :

".....The Supreme Court has, in a series of decisions, indicated that by way of execution, the authority under Section 33C(2) of the I.D. Act can quantify the benefits of service if such quantification is possible. It cannot be said that only because an application for contempt may be made before the Tribunal for violation of its order, a workman is precluded from making an application before the Labour Court. The decision of the Labour Court under Section 33C(2) is not per se illegal or without jurisdiction....".

Therefore, the contention raised on behalf of the appellants that the Labour

Court had no jurisdiction to entertain the applications under Section 33C(2) of the Industrial Disputes Act, 1947, cannot be accepted.

14. The question whether a workman, whose order of dismissal has been set-aside in a writ petition, can claim bonus for the period from the date of his dismissal till the date of reinstatement, in an application made under Section 33C(2) of the Industrial Disputes Act, 1947, came up for consideration before the Madras High Court in Superintending Engineer, Vellor Electricity System v. K.Palani and another, reported in 1972(I) L.L.J. 15 and in paragraph 5 of the judgment, the learned Single Judge, in the context of the provisions of Section 8 of the Payment of Bonus Act, 1947, held as under at p.18 :

> ***"5. Section 8 speaks of an employee working in the establishment for not less than thirty working days in that year to make him eligible for bonus. When an employee, for no fault of his and involuntarily, is prevented from working in the establishment for the prescribed number of days, does it axiomatically follow that he is ineligible for bonus? The***

contribution of physical labour or otherwise by an employee in the interests of the industry and for the benefit of the employer, which is reflected in the phrase "work in the establishment", postulates a normal atmosphere wherein there is no strife or misgiving between the employer and the employee during the year. In the absence of such normalcy, to wit, when an employee is illegally dismissed, it cannot be said that such an employee "did not work in the establishment" as is normally understood. "Worked" in Section 8 of the Act, having regard to the historic background already referred to, should mean "ready and willing to work". Such working should not be understood with reference to the dictionary meaning of the word and the eligibility understood in the abstract. "Bonus" itself being a payment made by an employer to an employee to maintain industrial harmony and to give a fillip to the employees to exert their utmost to keep up the industry active and aloft, such involuntary stepping down from work by an employee cannot be termed or equated to non-working of the employee in the establishment. the cause causens for

such a state of affair is the illegal dismissal order of the employer. But for the dismissal, he would have worked; but for the dismissal, normal circumstances would have prevailed. It is only in the wake of such a clear, undisturbed and normal atmosphere that the formula of eligibility prescribed in Section 8 has to be worked and understood. In this sense, if everything was normal, the worker, to sustain a case for bonus or to be eligible for it, should have worked in the establishment for not less than thirty working days in that year. Both in abnormal circumstances wherein he is prevented from working by an overt act on the part of the employer, which is ultimately branded as an illegal act by a competent court, then the reasonable inference is that the employee's statutory eligibility for bonus within the meaning of Section 8 cannot be said to have been lost. Nor can the employer refuse to accede to a demand for such bonus if it is otherwise payable under the provisions of the Act."

The aforesaid view has been confirmed by the Division Bench of the Madras

High Court in The North Arcot District Co-op. Supply and Marketing Society Ltd., Vellore Vs. The Presiding Officer, Labour Court, W.P. No.10310 of 1982 decided on 3-10-1989 (See Judgement of the Madras High Court in the case of Ahamed Hussain v. Management of Swadeshi Cotton Mills, reported in 1999 LLR 904, paragraphs 4 and 7). Identical view was taken by this Court in Project Manager, Ahmedabad Project, ONGC (supra), in which it has been held in paragraph 9 of the judgment, in the context of the provisions of Section 8 of the said Act, that when the workman was prevented from working by an overt act of the employer which is ultimately set-aside and the employee is reinstated in service, then the reasonable inference is that the employee's statutory eligibility for bonus within the meaning of Section 8 to the said Act cannot be said to have been lost."

[See : (1) Shahikant Janardan Pimpalpure v. Development Corporation of Vidarbha Ltd., - 1996 III LLJ Suppl. 570 Bom. (2) Pappy v. Raja Tile and Match Works – 1989 I LLJ 14 Kar. (3) LIC India v. State of UP – 1997 I LLJ 581 All. (4) Chennamangala Nair Samajm v. Sarada – 1993 II LLJ 150 Kar. (5) Swaminathan C.S. v. Simpsonand Comp. Ltd., - 2001 (1) LLJ 141 Mad. (6) HP SEB v. Presiding Officer –

2000 I LLJ 544. HP.]

21. In view of aforesaid observations made by this Court, considering Section 33(C)(2) itself and decision given by Labour Court, Rajkot as referred in the order by the Labour Court, not disputed by the petitioner before the Labour Court, not raised any objection against that order which order was similar to the claim of present respondents and which has been rightly relied upon by Labour Court and allowed the recovery applications and ultimately how much amount is entitled to respondent is also very relevant to note which comes to Rs.562-50 ps., to each respondent. The claim was filed by the workman in the year 1990. 17 years have been passed for receiving the amount of Rs.562-50 ps., from the petitioner Corporation and this being a second round yet to be started, but, fortunately, stopped it at this stage, so, it may not go ahead, because, reason behind it that if this Court will issue notice, just for presumption, to the respondents whether any possibility that respondent may come to give any response to the notice issued by this Court. How can the employees appear in this High Court in response to the notice to receive only Rs.562-50 ps., from the employer and how much amount they will pay while engaging the advocate of Gujarat High Court. These are the hard realities which I have considered while deciding this matter along with law point which has been raised by learned advocate Mr. Clerk. So, considering the meager amount, 17 years legal fight

means workmen have waited upto 17 years to get this amount of Rs.562-50 ps., from the Life Corporation of India. Therefore, considering the entire matter, according to my opinion, Labour Court is perfectly justified in allowing the recovery applications, for that, Labour Court has not committed any error. The contention raised by learned advocate Mr. Clerk cannot be accepted and therefore, same is rejected. This Court is having very limited jurisdiction under Article 227 of the Constitution of India. This Court cannot act as an Appellate Authority and even in case, when two views are possible, this Court cannot interfere with the orders passed by the Labour Court under Section 33(C)(2) of the Industrial Disputes Act, 1947.

22. Therefore, according to my opinion, Labour Court has not committed any error which requires interference by this Court while exercising the powers under Article 227 of the Constitution of India.

23. Hence, there is no substance in the present petitions. Accordingly, present petitions are dismissed in limine.

Sd/-

[H.K. RATHOD, J.]

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