2024:DHC:4057

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 14th February, 2024**
Pronounced on: 13th May, 2024

\+ W.P.(C) 567/2004 and CM APPL. No.62022/2023

GROUP 4 SECURITIES GUARDING LTD. ..... Petitioner
Through: Mr. Amitabh Chaturvedi with Mr. Ankit Monga, Advocates.

versus

SECY.LABOUR,GOVT.OF NCT OF DELHI ..... Respondent
Through: Mr.Krishna Chandra Dubey and Mr.Rishav Dubey, Advocates.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

FACTUAL MATRIX

1. The petitioner entity is engaged in the business of providing security services and has employed security guards for the said purpose. The respondent no.2 ('respondent Union' hereinafter) raised the issue regarding non-payment of bonus to the employees and filed a complaint before the Government Authorities regarding the same *vide* letter dated 22nd March, 1999.

2. Pursuant to the said complaint, an inspection was carried out by the Labour Officer, and a show cause notice dated 18th June, 1999 was issued

against the non-payment of the bonus to the workmen of the petitioner entity.

3. Thereafter, the respondent Union opted for conciliation and upon failure of the same, the dispute bearing no. 102/99 was referred to the Industrial Tribunal ('Court below' hereinafter) for adjudication.

4. Pursuant to completion of the proceedings, the learned Court below passed an award dated 1st October, 2003 and, directed the petitioner to take into account the minimum wages for computation of the bonus.

5. Aggrieved by the same, the petitioner entity has preferred the instant petition seeking quashing of the impugned award dated 1st October, 2003.

PLEADINGS

6. In the writ petition, the petitioner has taken the following grounds to substantiate its claim.

> *"A. Because the Ld. Industrial Tribunal illegally ignored the well- established legal position that the definition of "salary or wages" given in Section 2(21) of the Bonus Act was exhaustive and was both inclusive and exclusive and was to be accordingly construed strictly. The Tribunal ignored that the definition clearly provided that salary or wages means the basic salary plus dearness allowance and excluded all other allowances, which were specifically enumerated in clauses (i) to (vii) of the said definition itself. It is submitted that the Bonus Act was intended by the Legislature to be comprehensive and exhaustive law dealing with the entire subject of bonus. In this regard, reliance is placed upon the decision of the Hon'ble Supreme Court in Sanghi Jeevaraj Ghevar Chand Vs. Secretary, Madras Chillies, Grains, Kirana Merchants Workers Union (1969) 1 SCR 366, wherein, after considering the history of the legislation, the background and the circumstances in which the Bonus Act*

was enacted and the object of the Bonus Act and its scheme, the Hon'ble Supreme Court held that the Bonus Act is an exhaustive Act dealing comprehensively with the subject matter of bonus with all its aspects and the Parliament did not leave any issue open

B. Because the Ld. Industrial Tribunal illegally ignored that The provisions of the Bonus Act, which is a self-sufficient code, were fully complied with by the Petitioner. Bonus has to be computed as per Sections 4, 5, 6, 7 and 10 of the Bonus Act and for the purpose of computation of bonus, the definition under Section 2(21) of the Bonus Act is only to be taken into account. Section 34 of the Bonus Act provides that subject to the provisions of Section 31A, the provisions of that Act (Bonus Act) shall have effect notwithstanding anything inconsistent therewith contained in any other law (such as Minimum Wages Act, 1948) for the time being in force. This provision (Section 34) makes it clear that if there is any inconsistency between the Bonus Act and other laws, the provisions of Bonus Act shall be applicable and the Bonus Act, being a self-contained code in so far as the calculation of payment of bonus is concerned, shall always prevail over the provisions of other enactments and rules framed thereunder. On the other hand definition of 'wages" under the Minimum Wages Act, 1948 is altogether different and has been framed for a different purpose and the two definitions cannot be blended with each other by the Courts/Tribunals. Neither the Bonus Act nor the Minimum Wages Act provides that bonus has to be computed on the basis of the definition of 'wages' under the Minimum Wages Act.

C. Because the award of the Ld. Tribunal is in direct conflict with the statutory provision contained in Section 12 of the Bonus Act, which provides that-

> *"12. Calculation of bonus with respect to certain employees*
>
> *Where the salary or wage of an employee exceeds two thousand and five hundred rupees per mensem, the bonus payable to such employee under Section*

10 or, as the case may be under section 11, shall be calculated as if his salary or wage were two thousand and five hundred rupees per mensem."

It is submitted that if the impugned award is given effect to in a situation where the basis for the wages/salary for employment as a supervisor is

(a)	*Basic Pay*	-	*Rs. 2000.00 p.m.*
(b)	*House Rent Allowance*	-	*Rs. 1000.00 p.m*
(c)	*Other Allowances (conveyances & washing allowance)*	-	*Rs. 500.00p.m.*
	Total	-	*Rs. 3,500.00 p.m.,*

which means that 'wages' under Section 2(h) of the Minimum Wages Act, 1948 would be Rs. 3000/- (Basic Pay with merged DA + HRA) and 'salary or wage under Section 2(21) of the Bonus Act would be Rs. 2000/- (Basic Pay with merged DA), then an anomalous situation would arise where the Petitioner will have to pay bonus on the basis of the minimum wages of Rs. 3000/- p.m., which would be in direct conflict with and against the express statutory provision contained in Section 12 of the Bonus Act which prescribes a maximum limit of Rs. 2500/- p.m. It is a matter of common knowledge that presently, under the applicable notifications of the Govt. of NCT of Delhi under the Minimum Wages Act, 1948, the minimum wages payable in respect of non-matriculate employees are Rs. 2976.90 p.m. (daily wages of Rs. 114.50) and in respect of matriculate labour are Rs. 3231.90p.m. (daily wages of Rs. 124.30) and, therefore, by the impugned award, a direction has been given to the Petitioner to violate the statutory mandate of Section 12 of the Bonus Act, which is wholly impermissible and warrants interference by this Hon'ble Court.

D. Because the Ld. Tribunal also ignored that Section 34 of the Bonus Act provides that subject to the provisions of Section 31A, the provisions of that Act (Bonus Act) shall have effect notwithstanding anything inconsistent therewith contained in any other law (such as Minimum Wages Act, 1948) for the time being in force. It is humbly submitted that

this provision makes it clear that if there is any inconsistency between the Bonus Act and other laws, the provisions of Bonus Act shall be applicable. The Bonus Act, being a self-contained code in so far as the calculation of payment of bonus is concerned, shall always prevail over the provisions of other enactments and rules framed threreunder. It is submitted that inconsistent provision of any other law would not have any effect for the calculation of bonus under the Bonus Act. In this regard, reliance is placed upon the decision in "Management of Kota Central Co-operative Bank Vs. Judge Industrial Tribunal 1996 1 LLJ 361".

E. Because the Ld. Tribunal ignored that the Minimum Wages Act, 1948 was already on the statute book in 1965 when the Legislature enacted the Bonus Act. While enacting Section 2 (21) of the Bonus Act, the Legislature was fully aware of the analogous definition of the term 'wages' in Section 2(h) of the Minimum Wages Act, 1948 and it was open to the Legislature to legislate that the bonus payable under the Bonus Act shall be calculated on the basis of the definition of 'wages' appearing in the Minimum Wages Act, 1948. The Legislature, having legislated that minimum bonus under the Bonus Act shall be calculated only on the basis of the definition of the term 'salary of wages' in Section 2(21) of the Bonus Act, it was no longer open to the Ld. Tribunal to hold that the Petitioner should make payment of bonus on the basis of minimum wages under the Minimum Wages Act. In this regard, reliance is placed upon the decision in State Bank Staff's Union Vs. Union of India 2001 1 LLJ 848 (Madras HC).

F. Because the Ld. Tribunal ignored that there was no scope for importing into statute words or reference from another statute which are not there as inasmuch as such importation would amount to the amendment of the statute instead of its construction and it is well-settled that no such amendment is permissible under our constitutional scheme. In the instant case, the Indian Legislature has deliberately omitted the use, in Section 2(21) of the Bonus Act, words analogous to those in Section 2(h) of the Minimum Wages Act. When Section

2(21) of the Bonus Act was enacted in 1965, Parliament must have been aware of the provisions contained in Section 2(h) of the Minimum Wages Act, 1948. In spite of such awareness, Parliament has not thought it fit to borrow whole hog what is said in Section 2(h) of the Minimum Wages Act, 1948. Our Parliament imported only a restricted version and incorporated the same in Section 2(21) of the Bonus Act to the effect that only 'basic wages (i.e. the remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment) and dearness allowance (ie. all cash payments, by whatever name called, paid to an employee on account of rise in the cost of living)' shall be included in the definition of "salary or wages" under the Bonus Act. In this regard, reliance is placed upon the decision of the Hon'ble Supreme Court in Tarulata Shyam Vs. Commissioner of Income-Tax, AIR 1977 SC 1802.

It is further submitted that the Ld. Tribunal blissfully ignored the well settled law that if the Legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engraving on it or introducing in it, under the guise of the interpretation by analogy or implication, something what it thinks to be a general principle of justice of equality. To do so, would be entrenching upon the preserves of the Legislature, the primary function of a court of law being JUS DICARE and not JUS DARE In the humble submission of the Petitioner, the Ld. Tribunal was in error in importing whole hog the definition of wages under the Minimum Wages Act into the definition of "salary or wages" in the Bonus Act. In this regard, reliance la placed upon the decision of the Hon'ble Supreme Court in Sales Tax Commissioner, U.P. Vs. Parson Tools & Plants, AIR 1975 SC 1039 and also upon Jagan Nath Prasad & Another Vs. State of U.P. AIR 1963 SC 416 and Ujjam Bai Vs. State of

U.P. AIR 1962 SC 1621-(1963) 1 SCR 778.G. Because the Ld. Tribunal ignored that it is a cardinal principle of construction that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning unless that object of the statute suggests to the contrary. It has been often held by the Hon'ble Supreme Court that the intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said and as a consequence, a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. Reliance is also placed upon J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. State of U.P. (1961) 3 SCR 185 where the Hon'ble Supreme Court observed that "..... the Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect".

H. Because the Ld. Tribunal also ignored that the elementary principle of interpreting or construing a statute is to gather the mens or sentential legis of the Legislature. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. Statute being an edict of the Legislature, it is necessary that it is expressed in clear and unambiguous language. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In such situation the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed. This can be vouchsafed by 'an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so, What is to

be bome in mind is as to what has been said in the statute as also what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case here. In this regard, reliance is placed upon the decision of the Hon'ble Supreme Court in the Institute of Chartered Accountants of India Vs. Price Water House (1997) 6 SCC 312.

I. Because the Ld. Tribunal has proceeded on an erroneous presumption that bonus should atleast be payable on the minimum wages and has ignored the basic rule of interpretation declared way back by Tindal CJ in Sussex Peerage case (1844) 11 Cl. & Fin 85 (at page 143) that when the language of a statute is fairly and reasonably clear then inconvenience or hardships are no considerations for refusing to give effect to that meaning, as stated. If words of the statute are themselves precise and un-ambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law- giver". It is humbly submitted that by stating that "merely by giving some nomenclature or the other, the management cannot deprive the workmen from payment of bonus atleast on the minimum wages which he is entitled to as per the Minimum Wages Act as prescribed by the Government from time to time and it is the minimum wages which has to be taken into account for computation of bonus", the Learned Tribunal clearly ignored the law settled by the Privy Council way back in 1945 in Emperor Vs. Benoari Lal Sarma AIR 1945 PC 48 (at page 53) that in construing enacted words, courts are not concerned with the policy involved or with the results of otherwise, which may follow from giving effect to the language used. The Ld. Tribunal also ignored the law laid down by the Hon'ble Supreme Court in Kanai Lal Sur Vs. Paramanidhi Sudhir Khan 1958 SCR 360 (at page 367) that "if the words used are capable of one construction only then it would not be open to the courts to adopt any other

hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act". All the above three decisions in Sussex Peerage case (supra), Benoari Lal Sarma's case (supra) and Kanai Lal Sur's case (supra) were quoted with approval by the Hon'ble Supreme Court in State of Maharashtra Vs. Nanded- Parbhani ZLBMV Operator Sangh (2000) 2 SCC 69, at page 73, wherein the Hon'ble Supreme Court has held that the intention of the Legislature is required to be gathered from the language used and, therefore, a construction, which requires for its support an additional substitution of words or an addition of words, has to be avoided.

J. Because the Ld. Tribunal also ignored the law laid down by Hon'ble Supreme Court in A.H. & Co. Vs. Engineering Mazdoor Sangh AIR 1975 SC 946 wherein the Hon'ble Supreme Court, while interpreting certain provisions of the payment of Bonus Act and the Finance Act, held that the language of a provision which is manifestly clear and unequivocal has to be construed as it stands, according to its plain grammatical sense without addition or deletion of any words. The Hon'ble Supreme Court held-

"As a general principle of interpretation, where the words of a statute are plain, precise and unambiguous, the intention of the Legislature is to be gathered from the language of the statute itself and no external evidence such as Parliamentary Debates, Reports of the Committees of the Legislature or even the statement made by the Minister on the introduction of a measure or by the framers of the Act is admissible to construe those words. It is only where a statute is not exhaustive or where its language is ambiguous, uncertain, clouded or susceptible of more than one meaning or shades of meaning, that external evidence as to the evils, if any, which the statute was intended to remedy, or of the circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the Legislature had in view in using the words in question.

It is humbly submitted that in the instant case, the language of Section 2(21) is crystal clear and self-contained. It enacts in unmistakable terms that the term "salary or wages" means the basic remuneration and the dearness allowance and excludes all other allowances, more specifically described in clauses (i) to (vii) of the said section. It is once again submitted that under Section 2(21) of the Bonus Act, "salary or wages" mean:
(i) all remuneration (except over-time allowance);
(ii) capable of being expressed in terms of money;
(iii) payable for work done;
(iv) if terms of employment express or implied were fulfilled; and
(a) includes:
(i) dearness allowance;
(ii) free food allowance; or
(iii)food given in lieu of whole or part of salary or wages; but
(b) does not include:
(i)any other allowances;
(ii) value of house accommodation;
(iii)supply of light, water, medical attendants, concessional supply of foodgrains, etc.;
(iv)any traveling concession;
(v)bonus;
(vi)contribution to pension fund or provident fund;
(vii)retrenchment compensation or gratuity or retirement benefit; or
(viii)any commission payable to the employee.
In the humble submission of the Petitioner, nothing further can be read into the said definition of "salary or wages".

K. Because the Ld. Tribunal also ignored that although the Bonus Act is a piece of welfare legislation and as such its operative provisions should receive a beneficent construction from the Courts, the Hon'ble Supreme Court has repeatedly held that even while applying the above principle to the provisions of any statute, it must always be

borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only, then it would not be open to the courts to adopt any other hypothetical construction on the ground that it is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. In this regard, reliance is again placed upon Kanai Lal Sur Vs. Paramnidhi Sadhukhan, 1958 SCR 360. In this regard, it is again submitted that in the instant case, the language used in Section 2(21) of the Bonus Act is explicit and is not capable of any other interpretation.

It is respectfully submitted that applying all the above principles stated in Grounds A to K and applying all the basic principles of interpretation, including the guiding rules, the rule of mischief, the rule of harmonious construction, the rule of internal and external aid to construction, the rule of reading of the provisions together with all other principles relating to the interpretation of statutes, it cannot but be said that the provision contained in Section 2(21) of the Bonus Act is self-contained and the meaning, which has been assigned to the said provision by virtue of the impugned award, is wholly incorrect and against all principles of interpretation.

L. Because the award of the Ld. Tribunal proceeds on the wholly erroneous assumption that the Legislature has intended to provide bonus to the employees covered under the Bonus Act as a percentage of the minimum wages payable to them. However, the language of Section 10 read with Section 2(21) of the Bonus Act clearly shows that the intention of the Legislature was to confine the calculation of bonus as a percentage of "salary or wages" as defined in Section 2(21) of the Bonus Act.

M. Because the Ld. Tribunal has proceeded on the assumption that the Legislature has made a mistake, which assumption is clearly contrary to law. As a measure of abundant caution and without admitting that the Legislature has made a mistake or there is some defect in the phraseology used by the Legislature, it is respectfully submitted that the Court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature, the Court cannot aid the Legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is causus omissos, it is not for the Courts to remedy the defect. In this regard, reliance is placed upon the decision in Nalinakhya Vs. Shyam Sunder AIR 1953 SC 148 (at page 152).

N. Because, if the Petitioner may respectfully say so, what the Ld. Tribunal has done in this case is a clear and naked usurpation of the legislative power inasmuch as it has ignored that it is not the duty of the Court either to enlarge the scope of the legislation or the intention of the Legislature when the language of the provision is plain and unambiguous.

In the humble submission of the Petitioner, the Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the Legislature, the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. In support of this submission, reliance is placed upon the decision of the Hon'ble Supreme Court in Union of India Vs. Deoki Nandan

Aggarwal AIR 1992 SC 96 (at page 101) and also the decisions of the Hon'ble Supreme Court in P.K. Unni Vs. Nirmala Industries, (1990) 1 SCR 482 at page 488 (AIR 1990 SC 933 at p. 939), Mangilal Vs. Sugamchand Rathi (1965) 5 SCR 239: (AIR 1965 SC 101), Sri Ram Ram Narain Medhi Vs. The State of Bombay 1959 Supp. (1) SCR 489: (AIR 1959 SC 459). Smt. Hira Devi Vs. District Board, Shahjahanpur 1952 SCR 1122 at p. 1131: (AIR 1952 SC 362 at p. 365), Nalinakhya Bysack Vs. Shyam Sunder Haldar (1953 SCR 533 at p. 545): (AIR 1953 SC 148 at p. 152), Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha (1980) 2 SCR 146: (AIR 1980 SC 1896), S. Narayanaswami Vs. G. Paneerselvam (1973) 1 SCR 172 at p. 182: (AIR 1972 SC 2284 at p. 2289), N.S. Vardachari Vs. G. Vasantha Pai (1973) 1 SCR 886): (AIR 1973 SC 38), Union of India Vs. Sankal Chand Himatlal sheth (1978) 1 SCR 423: (AIR 1977 SC 2328) and Commr. of Sales Tax, U.P. Vs. Auriaya Chamber of Commerce, Allahabad (1986) 2 SCR 430 at p. 438: (AIR 1986 SC 1556 at pp. 1559-60. The law laid down in Deoki Nandan Aggarwal (supra) was again followed by the Hon'ble Supreme Court in State of Gujarat Vs. D.N. Patel JT 1998 (2) SC 253.

O. Because the Ld. Tribunal also ignored the decision of the Hon'ble Supreme Court in Straw Board Mfg. Co. Vs. Workmen (1977) 2 SCC 329 wherein the Hon'ble Supreme Court while Considering the definition of 'wages' under Section 2(s) of the Payment of Gratuity Act, which is more or less similar to the definition of 'salary or wages' under the Bonus Act, clarified that 'wages' under Section 2(s) of the Payment of Gratuity Act will mean and include the basic wages and dearness allowance and nothing else.

P. Because the Ld. Tribunal has erroneously held that "Reliance placed upon by the management on the case of Scindia Steam Navigation Co. Ltd. and Scindia Employees Union and others (1983) 2 LLJ 476 is of no avail to the management as that was a case in which the main consideration was whether for the purpose of enforcement of an agreement, writ jurisdiction could be invoked and

whether by an agreement the statutory provisions of an Act can be over ride", inasmuch as it has ignored that in para 47 of the said judgment, the Division Bench of the Hon'ble Bombay High Court, clearly considered whether the four allowances namely, the family allowance, the house rent allowance, the adhoc allowance and the tiffin allowance could be taken into account for the purpose of calculating "salary or wages" within the meaning of Section 2(21) of the Bonus Act and had rejected the contention that all these allowances must be treated as remuneration received by the employee and must be treated as a part of the salary. The Division Bench clearly held that the four allowances "the family allowance, the house rent allowance, the adhoc allowance and the tiffin allowance" could not be considered as dearness allowance within the meaning of "salary of wages" as defined in Section 2(21) of the Bonus Act. It is pertinent to point out that in the instant case, the agreement/contract of the Petitioner Company with its workmen clearly shows that a sum of Rs. 648.25 is payable as HRA and other allowances, which are in the nature of conveyance and washing allowance, amount to a further sum of Rs. 648.25 and in view of the clear decision of the Division Bench and also the plain meaning of the words appearing in Section 2(21) of the Bonus Act, these sums could not have been included in the definition of "salary or wages" under the Bonus Act. Inspite of the above legal as well as factual position, the Ld. Tribunal has fell into error in holding that payment of bonus is to be made at least on the minimum wages, which minimum wages are defined in Section 2(h) of the Minimum Wages Act to mean and include House Rent Allowance also.

Q. Because by holding that bonus should be paid at least on the minimum wages, the Ld. Tribunal has completely ignored the contract of employment between the Petitioner company and its employees, which is the sole repository of their terms of employment and which clearly divides the total emoluments into three components basic salary (in which dearness allowance is already merged), house rent

allowance and other allowances and as per the definition of "salary and wages given in the Bonus Act, the components of house rent allowance and other allowances and other allowances are to be excluded. While considering similar provisions under the PF Act, various High Courts (including this Court) has repeatedly held that the contract of employment between the management and workmen can not be given a go by and its terms are to be mandatorily considered and given effect to for calculating 'wages forming the basis of contribution. In this regard, reliance is placed upon the decisions reported in 1980 LIC 1129, 1984(1) LLN 527 (Mad) and 1992 LIC 2110.

R. Because by holding that bonus should be paid at least on the minimum wages, the Ld. Tribunal in effect held that bonus should be calculated after adding house rent allowance to the basic wages and the dearness allowance, inasmuch as house rent allowance forms a specific component of the definition of 'wage's under the Minimum Wages Act. In the humble submission of the Petitioner, the whole approach of the Ld. Tribunal was contrary to law. The Ld. Tribunal's reference to the minimum wages, which are determinable under the Minimum Wages Act was wholly irrelevant and it erred in applying the rule of thumb by stating that bonus should be paid on at least the minimum wages. In the instant case, the Ld. Tribunal without holding any inquiry as to whether the house rent allowance paid was subterfuge for basic wages, wrongly came to conclusion that by using the nomenclature house rent allowance, the Petitioner cannot evade the payment of bonus on minimum wages. The Ld. Tribunal ignored that the concept of wages under the Minimum Wages Act is different from the concept of "salary or wages" as defined by Section 2(21) of the Bonus Act. With due respect, what the Tribunal was supposed to do was to consider the terms of contracts of service of the employees and find out as to what part of the emoluments of the employees should constitute "salary or wages" within the meaning of Section 2(21) of the Bonus Act. In the humble submission of the Petitioner, it was not

permissible to go against the terms of contract of service unless fraud was established. In the instant case, there was not even a whisper about any fraud and, therefore, the question of it's being established does not arise at all. In this regard, reliance is placed upon Usha Sales Ltd. Vs. RPFC & Anr. 17 (1980) DLT 465 (Del. DB).

S. Because the Ld. Tribunal did not consider the cases such as

(a) British India General Vs. Captain Itbar Singh 1960 (1) SCR 168, where the Hon'ble Supreme Court, while considering Section 96(2) of the Motor Vehicles Act, which is an exhaustive provision similar to Section 2 (21) of the Bonus Act and which provides for and enumerates the grounds on which defenses are available to an insurer, held that "the language of sub-section 2 was perfectly plain and admitted no doubt or confusion. When the grounds of defence have been specified they cannot be added to. To do that would be adding words to the statute,"

(b) In Greysham & Co. Vs. RPFC 1978 LIC 131, this Hon'ble Court, while considering the definition of wages, as defined in Section 2(b) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter "PF Act") clearly held that the said term can only cover what is specifically included therein and does not include any of the items covered in clause (i) to (iii) of the said definition. This Court held that the intention of the Legislature is clear from the use of the words contained therein and nothing else can be added to the said definition. Similar view was taken by this Hon'ble Court in T&R Industries Vs. Central Board of Trustees 34 (1988) DLT 266.

It is humbly submitted that the ratio of the case cited above squarely applies to the instant case and the term "salary or wages" as defined by Section 2(21) of the Bonus Act can only cover what is specifically included therein and does not include any of the items covered in sub-clauses (i) to (vii) of the said definition. In the instant case, the Legislature has clearly enumerated the items which are to be included while calculating wages or salary and has also clearly enumerated

the items which are to be excluded and thereby, there is no room for any doubt or confusion and the act of the Ld. Tribunal of holding that payment of bonus is to be made on the basis of minimum wages, which includes House Rent Allowance (which item has not been specified in the definition of "salary or wages" under the Bonus Act) amounts to adding words to the statute, which is impermissible.

T. Because the view contained in the impugned award dated 01.10.2003 necessarily results in writing some words into or adding them to the relevant statutory provision contained in Section 2(21) of the Bonus Act to the effect that the House Rent Allowance, which is otherwise excluded from the definition of "salary or wages" in the Bonus Act but is included in the definition of 'wages' in the Minimum Wages Act is treated as a component of "salary or wages" under the Bonus Act. This clearly contravenes the rule of 'plain meaning' or 'literal construction', which must ordinarily prevail. A logical corollary of that rule is that a statute cannot be extended to provide for something for which provision has clearly and undoubtedly not been made. An application of the said rule necessarily involves that addition to or modification of words used in statutory provisions is not generally permissible. In this regard, reliance is placed upon S. Narayanaswami Vs. G. Panneerselvam AIR 1972 SC 2284 (pages 2289 to 2290), Sri Ram Narain Medhi Vs. State of Bombay, AIR 1959 SC 459, British India General Insurance Co. Ltd. Vs. Captain Itbar Singh 1960 (1) SCR 168 = AIR 1959 SC 1331 and R.G. Jacob Vs. Union of India (1963) 3 SCR 800-AIR 1963 SC 550. In this regard, reliance is further placed upon one passage from Crawford's "Construction of Statutes (1940 Edition)" wherein it has been held that "Where the statute's meaning is clear and explicit, words cannot be interpolated. In the first place, in such a case, they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent, as the thought intended to be conveyed, might be altered by the addition of new words.

They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute".

U. Because the Ld. Tribunal ignored that the Section 2(21) of the Bonus Act specifically provides that the value of the following items is not required to be computed or calculating "salary or wages", paid or payable

(i) any other allowance which the employee is for the time being entitled

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(ii) any traveling concession;

(iv) any bonus (including incentive, production and attendance bonus),

(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;

(vii) any commission payable to the employee;

It is respectfully submitted that House Rent Allowance clearly falls within Clause (1) hereinabove and, therefore, cannot form a part of the definition of 'salary or wages and consequently, cannot be considered while calculating minimum bonus. In this regard, reliance is placed upon the decision of the Hon'ble Supreme Court in Airfreight Ltd. Vs. State of Karnataka (1999) 6 SCC 567 wherein considering the items excluded under the definition of 'wages' under Section 2(h) of the Minimum Wages Act, the Hon'ble Supreme Court laid down that-

"Section 2(h) specifically provides that the value of the following items is not required to be computed for fining out whether the employer pays minimum wages as prescribed under the Act:
(i) the value of any house, accommodation, supply of light, water, medical care, or any other amenity or any service excluded by general or special order of the appropriate Government;
(ii) any pension fund or provident fund or under any scheme of social insurance;
(iii) any travelling allowance or the value of any travelling concession;
(iv) any sum paid to any person employed to defray special expenses curtailed on him by the nature of his employment; or
(v) any gratuities payable on discharge."

V. Because the Ld. Tribunal ignored that the Legislature was fully aware of the definition contained in 2 (h) of the Minimum Wages Act, 1948, which includes 'House Rent Allowance' as a component of "wages" but inspite of being so aware, the Legislature thought it fit and just to confine the term "salary or wages", as defined in Section 2(21) of the Bonus Act, to mean basic wages and dearness allowance only and deliberately omitted 'House Rent Allowance' (appearing in Section 2(h) of the Minimum Wages Act) from the definition in the Bonus Act. Thus, what the Legislature had deliberately omitted could not have been added back by the Ld. Tribunal.
W. Because the Ld. Tribunal erred in holding that bonus was payable at least on the minimum wages as it overlooked the decision of the Hon'ble Supreme Court in Sanghi Jeevaraj Ghevar Chand Vs. Secretary, Madras Chillies, Grains, Kirana Merchants Workers Union (1969) 1 SCR 366, wherein, after considering the history of the legislation, the background and the circumstances in which the Bonus Act was enacted and the object of the Bonus Act and its scheme, the Hon'ble Supreme Court held that the Bonus Act

is an exhaustive Act dealing comprehensively with the subject matter of bonus with all its aspects and the Parliament did not leave any issue open. The Hon'ble Supreme Court also repelled the arguments that if the Bonus Act were to be held as an exhaustive statute dealing with the subject of bonus, certain results would follow which could never have been expected, much less intended by the Parliament. In view of the above, even if it is contended that the Parliament could not have ever intended that bonus be not paid on the minimum wages payable, such contention is wholly unsustainable.

X. Because even if the legislative history (viz., the report of the Tripartite Commission set up by the Government of India vide Resolution No. WB- 20(9)/61 dated 06.12.1961 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, which recommendations were accepted by the Government of India vide Resolution No. WB-20(3)/64 dated 02.09.1964 and implementation of which recommendations led to the enactment of the Payment of Bonus Ordinance, 1965 which later on gave way to the Bonus Act) of the Bonus Act is considered, it would become clear that the intention of the Legislature was that bonus should be expressed in terms of wages constituting basic wages and dearness allowance and all other allowances should be excluded because the inclusion of such allowances would introduce anomalies with regard to bonus as between workmen not getting such allowances and workmen getting such allowances. The relevant portion of para 12.4 of the Bonus Commission's Report is extracted hereunder:

"Having considered the various views, we are of the opinion that the distinction between basic wages and dearness allowance for the purposes of expressing the bonus quantum should be done away with and that bonus should be related to wages and dearness allowance taken together……

…….There is also another aspect of the matter, which is of importance. In some industries and concerns, a portion of

the dearness allowance has been merged with the basic pay, and, therefore, to lay down a formula for bonus, with minimum and maximum, in terms of basic wages would lead to anomalies. Again it has to be borne in mind that the present system of expressing bonus in terms of basic wages operates against the lower paid workers, in whose case the dearness allowance forms a large percentage of the total emolument that in the case of the higher paid staff. For all these reasons, we recommend that bonus should be expressed in terms of the total wages: basic wages and dearness allowance. But all other allowances, such as overtime wages and incentive, production and attendance bonus including attendance bonus under statutory bonus schemes, should be excluded. The inclusion of such allowances would introduce anomalies in regard to bonus as between workmen not getting such allowance and workmen getting such allowance".

(This ground is taken without prejudice to the contention of the Petitioner that the language of the relevant provisions of the Bonus Act is plain and unambiguous and no external aids to construction are required.)

Y. Because it is well settled that in matters of economic policy, the State must have a larger area make its decisions without the intervention of the Court as the State is the better judge as to what the policy should be in relation to matters of economy. It is humbly submitted that the Parliament has power to legislate on the topic of bonus and having legislated that bonus to the employees covered under the Bonus Act shall be payable only in accordance with the provisions of the Bonus Act, namely Section 10 read with Section 2(21) thereof, it is no longer open to the employees to claim bonus on the basis of minimum wages de hors (in fact, contrary to) the provisions contained in the Bonus Act. In this regard, reliance is also placed upon the decision in UCO Bank Employees' Association Vs. Union of India 2003 I LLJ 20.

Z. It is further submitted that the L.d. Tribunal acted in complete violation of the principles of natural justice and in

utter disregard of the law laid down by the Hon'ble Supreme Court of India and various High Courts including the Hon'ble High Court of Delhi in a catena of decisions that reasonable opportunity of hearing must be given to both the parties and no proceedings (whether conducted by a judicial, quasi-judicial, administrative and/or executive authority) should be conducted in any manner whatsoever without sufficient notice to the parties inasmuch as the Ld. Tribunal, after reserving the orders on the proceedings pending before him, allowed the Respondent No. 2 to make available a copy of the order dated 20.06.2000 of Shri K.R. Sawhney, Authority under Minimum Wages Act on the basis of which liability has been fastened upon the Petitioner. It is submitted that a copy of the said order dated 20.06.2000 was produced and filed by the Respondent No. 2, without notice to and behind the back of the Petitioner, and the Ld. Tribunal, acting in complete disregard of all canons of equity and fairplay, even took the same on record (please vide para 20 of the impugned award). It is submitted that in such circumstances, no opportunity was provided to the Petitioner to rebut or raise any objection to the said order, which gravely prejudiced its defence. Therefore, the impugned award is liable to be struck down and set aside on this ground alone.

In this regard, reliance is placed upon the decision of the Hon'ble Supreme Court in -

Maneka Gandhi Vs. UOI, AIR 1978 SC 597 [1978] 2 S.C.R. 621, wherein it is held that -

Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure to be followed by all authorities - whether judicial, quasi-judicial, administrative and/or executive must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and

fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all.....

……..Equality is the antithesis of arbitrariness. It is thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

In this regard, reliance is also placed upon the decision of the Hon'ble Karnataka High Court in Blaze & Central (P.) Ltd. v. Union Of India, AIR 1980 Kar, 186, where the Tribunal had relied upon certain document without affording an opportunity to the tenant to know the contents of such document and such act of the Tribunal was held to be violative of a fair judicial process, In the said case, Justice K. Jagannatha Shetty (as his Lordship then was) held that-

"A Tribunal or a person to whom judicial or quasi-judicial functions are entrusted is presumed to have an obligation to observe principles of natural justice but, on the contrary, to observe a higher standard of behaviour than that required by natural justice The Estate Officer without furnishing him a copy, relied upon that evidence and it formed the basis of his order for eviction. To rely upon such evidence without affording an opportunity to tenant to know the contents strikes at the root of judicial process. The Estate Officer did not act fairly. The tenant had no real or effective opportunity to deal with or meet the case put forward by the opposite side".

AA. Because the reference, as made vide order dated 16.11.1999 made by the Ld. Tribunal also deserves to be quashed inasmuch as -

(a) the terms of the purported reference were contrary to the express provisions of the Bonus Act, which provide that the minimum bonus shall be 8.33% of the 'salary or wages (defined in section 2(21) of the Bonus Act) earned by the employee during the accounting year or Rs. 100/-, whichever is higher,

(b) the purported dispute, as referred to the Ld. Tribunal, had not been espoused as required under law inasmuch as

(1) the workmen employed with the Petitioner were neither the members of the said Group 4 Securitas Karamchari Sangh (respondent No. 2, herein) nor had they (workmen of the Petitioner Company) authorized the said Group 4 Securitas Karamchari Sangh (respondent No. 1, herein) to file or to put up any claim on their behalf or for that matter to raise the purported dispute on their behalf and, therefore, the purported dispute, as referred had not acquired the character of an 'industrial dispute'; and (ii) the said Group 4 Securitas Karamchari Sangh (respondent No. 2 herein) has not been recognized by the management of the Petitioner company, as it had/has only a microscopic representation in the testiment of the Petitioner and it does not fulfill the legal pre-conditions for such recognition and being an unrecognized union, it could not represent the interest of the workmen of the Petitioner company and it did not have the right to espouse the cause of the workmen of the Petitioner's establishment for the payment of bonus or for any other grievance pertaining to the employees of the Petitioner;

(c) the said Group 4 Securitas Karamchari Sangh has no locus standi or competence to raise any dispute or to file any statement of claim on behalf of the workmen employed with the Petitioner Company; and,

(d) the terms of the purported reference were wholly vague and the same were contrary to the express provisions of the Bonus Act.

BB. Because the purported dispute, as referred to the Ld. Tribunal, had not been espoused as required under law inasmuch as the workmen employed with the Petitioner were neither the members of the said Group 4 Securitas Karamchari Sangh (respondent No. 2 herein) nor had they (workmern of the Petitioner Company) authorized the said Group 4 Securitas Karamchari Sangh (respondent No. 2 herein) to file or to put up any claim on their behalf or for that matter to raise the purported dispute on their behalf and, therefore, the purported dispute, as referred had not acquired the character of an 'industrial dispute. Moreover, the said Group 4 Securitas Karamchari Sangh (respondent

No. 2 herein) has not been recognized by the management of the Petitioner company, as it does not fulfil the legal pre-conditions for such recognition and being an unrecognized union, it could not represent the interest of the workmen of the Petitioner company. The said Union had/has only a microscopic representation in the establishment of the Petitioner and, therefore, it did not have the right to espouse the cause of the workmen of the Petitioner's establishment for the payment of bonus or for any other grievance pertaining to the employees of the Petitioner

CC. Because the impugned reference order dated 16.11.1999 is liable to be quashed and set aside for the reason that in the facts and circumstances of this case, the discretion of the Ld. Tribunal must be held to have been exercised or irrelevant considerations not germane to the determination of the issues in question.

DD. Because the impugned award dated 31.10.2000 is liable to be quashed and set aside for the reason that in the facts and circumstances of this case, the discretion of the Ld. Tribunal must be held to have been exercised or irrelevant considerations not germane to the determination of the issues in question.

It is submitted that all the abovesaid grounds are in the alternative to each other and have been taken without prejudice to each other.

24. It is further submitted that in view of the submissions made hereinabove and the grounds taken in the petition, which may please be considered by this Hon'ble Court, the only conclusion that can be reached is that-

- the impugned award is illegal,

-the impugned award militates against the express provisions of the Bonus Act,

-the entire adjudication proceedings are without jurisdiction,

- the entire adjudication proceedings are vitiated due to violation of principles of natural justice inasmuch as the Ld. Tribunal Officer did not act in a just, fair and equitable manner and proceeded to pass the impugned order without affording reasonable opportunity to the Petitioner,

and, therefore, the impugned order is liable to be set aside.

25. The Petitioner has not filed any other writ petition or proceedings before the Hon'ble Supreme Court or before this Hon'ble Court or any other court with regard to this matter.

26. The Petitioner has no other alternative and equally efficacious remedy available to it and the acts and omissions on the part of the Respondents are violative of its fundamental and legal rights.

27. The Petitioner has prepared this petition in great hurry and under depressing strain and, therefore, craves leave of this Hon'ble Court to add, delete, alter, modify or amend any or all of the submissions made and grounds taken hereinabove and to file an additional affidavit at a later stage of the proceedings, if so advised and also to add such grounds as may be available to 1 the Petitioner in law at any time before the adjudication of the person as per legal advice available to it."

7. In response to the above said grounds, the respondent Union has filed a counter affidavit to rebut the said contentions. The contents of the counter affidavit read as under:

"1. That the respondent no.2 is a Trade Union duly registered under the Trade Union Act, 1926 and almost all the workmen of the petitioner are members of the respondent no.2. The respondent no.2 has right to raise the Industrial Dispute pertaining to the genuine and legal members/workmen. demands of the members/ workmen.

2. That the present petition is nothing but to prolong the matter with intent to deny the rightful and legal claim of the workmen.

3. That the legal fiction raised by the petitioner is to delay the bonus payable to the workmen.

4. That the present dispute is an Industrial Dispute as defined under section 2 (K) of the I.D.Act and all the legal proposition laid down in this regard by the Hon'ble High Courts and Hon'ble Supreme Court are applicable to it.

5. That the petitioner has sought to raise an alleged question of law as to whether the definition of 'salary and/or wages' as defined u/s 2(rr) of the I.D.Act, 1947 is applicable for the purpose of payment of bonus or not.

A bare perusal of the definitions assigned to the term 'wages' in the I.D.Act, the Payment of Bonus Act and/or the Minimum Wages Act do show that they are almost the same in the intent and purpose. The definition of wages given in I.D.Act is as follows:

"(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes-

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or articles. other

(iii) Any travelling concession;

(iv) Any commission payable on the promotion of sales or business or both;

but does not include-

(a) any bonus;

(b) any contributions paid or payable by the employer to any pension fund or provident fund or for the benefit of the workmen under any law for the time being enforce;

(c) any gratuity payable on the termination of his service;"

The Minimum Wages Act, 1948 defines the 'wages' as follows:

Section -2

(h) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment (and includes house rent allowance) but does not include-

(i) the value of
(a) any house accommodation, supply of light, water, medical attendance, or
(b) any other amenity or any service excluded by general or special order of the appropriate Government;
(ii) any contribution paid by the employer to any Pension Fund or Provident fund or under insurance; any scheme of social insurance;
(iii) any travelling allowance or the value of any travelling concession;
(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
(v) any gratuity payable no discharge
While the Payment of Bonus Act, 1965 defines the salary or wages in the following terms Section
"21. "salary or wages" means all remuneration(other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living) but does not include-
(i) any other allowance which the employee is for the time being entitled to;
(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service of any concessional supply of food-grains or other articles;
(iii) any travelling concession;
(iv)any bonus (including incentive, production and attendance bonus);
(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;
(vii) any commission payable to the employee.
Explanation: Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee;
These definitions make it crystal clear that wages payable to a workman includes the basis pay plus dearness allowance and other allowances which are provided to the workman in terms of cash payment. The workman are not given travelling allowances etc. which are excluded from the definition of wages.
6. That it is undisputed that the workmen were paid their bonus calculated on the basis of 'basic pay' only, which is 50% of the wages paid to them. Ld. Labour Court has examined the matter and concluded that the Management has given different names by categorizing the part of the wages so as to escape to make payment of the bonus. It has rightly held that…….. "merely by giving some nomenclature or the other, the Management cannot deprived the workmen from payment of bonus at least on the minimum wages which he is entitled as per the Minimum Wages Act as prescribed by the Govt. from time to time and it is the minimum wages which has to be taken into account bonus".
The petitioner fragmented the wages of the workmen into different heads with the intention to escape and avoid the legal dues incurring in terms of bonus.
7. That the wages paid to the workmen has been kept under different heads and they are conveniently added to equate with the wages fixed under the Minimum Wages Act. On the one hand by adding all the heads of the wages paid to them, it escapes from the charge of violation of Minimum Wages Act while on the other hand for the computation of bonus it accounts only 50% of the Minimum wages which has been

categorized as Basic Pay and very conveniently escapes the due payment of Bonus by paying a megre amount computed on the basis of 50% of the Wages paid to the workmen. This ill-design of the petitioner did not and does not sustain in law and Ld. Labour Court rightly understood the same and gave the said categorical finding.

8. That the action of the petitioner in computing House Rent Allowance (HRA) in the wages for the purpose to comply the provision of Minimum Wages Act is patently illegal. Wages liable to be paid to the workmen under Minimum Wages Act excludes HRA which has been wrongly included by the petitioner. At the same time HRA is payable to the workmen over and above the Minimum Wages as provided in the I.D.Act. The petitioner is guilty of not paying the Minimum Wages plus HRA and other allowances. Strangely, it is taking benefit of its own illegal action and unfair labour practice.

It may respectfully be submitted that petitioner is under obligation to pay minimum wages as provided under Minimum Wages Act, 1948. Other allowances including HRA is payable over and above minimum wages to the workmen. For the purpose of the computation of Bonus, the allowances which are included into the "wages" as defined in the I.D.Act but excluded from accounting. into the minimums wages are excluded from the "wages or salaries". The petitioner includes all the allowances paid by it to the "wages for the purpose to show the compliance of the Minimum Wages Act and very conveniently escapes from paying allowances payable to them over and above the minimum wages. On the other hand it computes and pays Bonus on after deducting all the allowances only an so called 'basic pay' which is 50% of the total wages paid to the workmen. In this manner it victimizes the workmen from both sides. The Ld.Labour Court has rightly understood the ill-design cleverly crafted by the petitioner.

PARAWISE REPLY TO THE PETITION:

1. That the contents of para no.1 of the petition are wrong, unjust, improper and illegal hence denied. The action of petitioner in filing the present petition is an example and part of its unwritten policy to prolong the matter to avoid and escape from paying legal dues; and harass and victimize the workmen. It is not only unfair labour practice also against the principle of fair play.

1-A The contents of para under reply are wrong, misconceived and with malafide intent to avoid and escape the legal dues of large number of workmen. It is just an attempt to knit a legal cob-web for avoiding the payment of bonus to the workmen. It may respectfully be submitted that Ld. Labour Court has relied on the Minimum Wages Act for ascertaining the quantum of wages paid to the workmen. The petitioner asserted that it follows the provision of Minimum Wages and pay the wages as fixed by the Act. For the payment of Bonus, Ld. Labour Court took into account the wages paid to the workmen. Ld. Labour Court rightly disagreed with the petitioner which used to pay bonus only on 50% of the wages paid to the workmen. In view of this clear position, the alleged questions framed by the petitioner do not sustain.

2-3. That the contents of paras no. 2 and 3 are facts about the company need no reply.

4. The content of para under reply need no reply.

5. The content of para under reply are facts of record and need no reply.

6-9. The contents of the paras under reply and the narration of laws related to industrial workmen and need no reply so long as the same is construed in its proper prospective. The respondent keeps its right to agitate the averment in these para, if the petitioner construes its meaning disadvantageous to the interest of the workmen.

10-12. The contents of the paras are facts of the case and need no reply at this stage. However the respondent reserves its right to agitate the same in case the facts are misconstrued to the disadvantage of the workmen.

13. In reply to para under reply it may respectfully be submitted that the dispute raised by the Union is an Industrial Dispute and falls under the ambit of the definition of the Industrial Dispute as provide in the I.D. Act. It is further submitted that the respondent no. 2 is a duly registered Union under the Trade Union Act, 1926. It is also duly recognized by the petitioner as it has organized several meeting with the respondent to discuss different issues related to the workmen. A copy of letter dated without prejudice to it, for the purpose of raising industrial dispute the precondition is only a duly registered Union. Whether the petitioner recognizes it in writing or not is not material.

14. That the contents of para under reply are wrong, misleading and misconceived and hence denied. The petitioner intends to raise facts of the case before this Hon'ble Court under writ jurisdiction and the same cannot be allowed. However it is vehemently denied that the workmen of the petitioner are not the members of the respondent no.2. This plea was neither taken by the petitioner nor adjudicated upon before Ld. Labour Court. The plea of locus-standi and competence of the respondent no.2 was not agitated by the petitioner earlier. The petitioner may be estopped to raise this plea before this Hon'ble court.

It may further respectfully be submitted that the petitioner may not be allowed to challenge the reference at this stage for the reasons as follows:

(a) The reference was issued for adjudication on 16.11.1999. After a long gap of about five years, the petitioner's challenge of the validity of reference is time barred and the same cannot be challenged at this belated stage.

(b) The petitioner accepted the reference, participated in the adjudication before Ld. Labour Court and submitted to its jurisdiction and when the award was passed against the petitioner, it challenged the same. This action of petitioner in raising such plea at this stage does not sustain in law.

(c) The petitioner may not be allow to challenge the authority of Ld. Labour Court at any stage at their own whim and fancy.

15-18. That the contents of para 15 to 18 are the facts of the record and the petitioner may be put to strict proof of the same.

19-21. That the contents of para 19 to 21 are wrong, malicious, misleading and illegal and hence denied. The contents of these paras are indicator as to what extent the petitioner can travel to save its purse from the legal obligations. It is, in fact, contumacious to allege that the Ld. Labour Court received the copy of the order dated 20.6.2000 of Shri K.R.Shawhne, Authority under Minimum Wages Act from the respondent no.2 and acted in complete disregard of all cannons of equity and fair-play. Such daring averments are rarely found in the pleadings before this Hon'ble Court.

It is respectfully submitted that the present counsel of the respondent no. 2 who was also engaged as A.R. of the respondent no.2 before Ld. Labour Court state herein that at the time of arguments itself the copy of the order dated 20.6.2000 was cited in support of submission that the petitioner was under obligation to pay the Minimum Wages to the workmen. During the course of argument Ld. Labour Court did put a quarry to the A.R of the petitioner as whether the order dated 20.6.2000 was challenged by the petitioner and he answered in negative and then the same was allowed to be relied on by the A.R. of the respondent no.2. A copy of the said award dated 20.6.2000 is annexed herein and marked as ***ANNEXURE-R-1.*** *Even otherwise, the petitioner has never disputed the applicability of Minimum Wages Act. In view of these facts the averments made in para 19 to 21 are not only wrong and malafide but also attracts appropriate proceedings against the petitioner.*

PARAWISE REPLY TO GROUNDS:

A-K. The contents of paras under reply deal with the jurisdiction of Ld. Labour Court for adjudicating the present dispute and has averred that the Ld. Labour Court has traveled beyond the scope of the Payment of Bonus Act. The respondent no.2 denies the contents of these paras. It may respectfully be submitted that the submissions made

hereinabove along with the preliminary objections, the contents of these para under reply do not sustain. The respondent reserves its right to distinguish the cited judgements in these paras.

L. The contents of the para under reply are misleading, wrong and illegal and hence denied. It was pleaded before Ld. Labour Court on behalf of the petitioner that the terms of reference' was vague and ambiguous. The Ld. Labour Court heard the arguments on this aspect on behalf of the parties and after being satisfied that it had jurisdiction and power to construct the meaning of 'the term of reference' in a right and purposeful prospective based on the pleadings which were completed by the parties on the basis of understanding right and correct meaning of the terms of reference, it proceeded to hear the matter on merits. It proceeded on the plea that the petitioner is undisputedly under obligation to pay as per Minimum wages Act and adjudicated upon as to on what basis the bonus is to be computed.

M-0. The contents of para under reply are wrong and misleading and hence denied. The submissions made hereinabove may be read part of the reply to these para also. The citation mentioned in these paras may be distinguished at the proper stage.

Q-Y. The contents of paras under reply are wrong and denied. The respondent reserve its right to make submissions at the time of arguments. However, it may respectfully be submitted that the Ld. Labour Court has rightly exercised its jurisdiction and adjudicated upon the facts for the purpose of computation of Bonus and has rightly gave its findings.

Z-DD. The contents of paras under reply appears to be mere repetition of the submissions made in earlier paras. The same are vehemently denied. The submissions made hereinabove may kindly be read as part of the reply to these paras also.

25-27. The contents of paras need no reply.

SUBMISSIONS

(On behalf of the petitioner)

8. Learned counsel appearing on behalf of the petitioner submitted that the definition of "salary or wages" given in Section 2(21) of the Payment of Bonus Act, 1965 ('Bonus Act' hereinafter) is inclusive, exhaustive and to be strictly interpreted. The definition clearly provides that "salary or wages" mean the basic salary plus dearness allowance and excludes all other allowances enumerated in the definition.

9. It is submitted that the learned Court below erred in appreciating that for the computation of bonus under the Bonus Act, only the definition under Section 2(21) has to be taken into consideration. Section 34 subject to section 31A of the Bonus Act establishes that the provisions of the Act shall prevail over the provisions of other legislations. Hence, the definition of 'wages' under the Minimum Wages Act, 1948 cannot be relied upon for computation of bonus under the Bonus Act.

10. It is submitted that at the time of the enactment of the Bonus Act, the legislature was aware of the provisions of the Minimum Wages Act, 1948, which implies that the legislature had a specific intention of not computing bonus on the basis of definition of 'wages' under the Minimum Wages Act, 1948. Hence, the definition under Section 2(21) of the Bonus Act has to be strictly construed for calculating bonus.

11. It is submitted that the learned Tribunal erred by interpreting the definition of 'wages' from Section 2(h) of Minimum Wages Act, 1948 ('Minimum Wages Act' hereinafter) when the term already stands comprehensively defined in the Bonus Act. Reliance was placed on

Provident Fund Commr. v. G4S Security Services (India) Ltd.[1] whereby, it was held that the definition of a term cannot be inspired from the other legislation.

12. It is submitted that a conjoint reading of Section 2(21) and Section 10 of the Bonus Act makes it abundantly clear that the legislative intent was to compute bonus as a percentage of 'salary and wages' as defined in the Bonus Act. Hence, the learned Tribunal erred in proceeding on the assumption that the bonus has to be paid on minimum wages.

13. It is submitted that the learned Tribunal ignored that Clause (i) of Section 2(21) excludes house rent allowance while definition under Section 2(h) of Minimum Wages Act, 1948 includes house rent allowance.

14. It is submitted that the learned Tribunal violated the principles of natural justice when it allowed respondent no. 2 to adduce a copy of an order dated 20th June, 2006 as evidence without proper notice to the petitioner, after reserving the judgment as no opportunity was provided to the petitioner to oppose or rebut the said order.

15. Therefore, in light of the foregoing submissions, the learned counsel for the petitioner submitted that the present petition be allowed and reliefs be granted as prayed.

(on behalf of the respondent)

16. Learned counsel appearing on behalf of the respondent Union submitted that a conjoint perusal of definition of 'wages' under Section 2(rr) of Industrial Disputes Act, 1947, Section 2(h) Minimum Wages Act,

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1948 and Section 2(21) of the Bonus Act makes it clear that wages include basic pay, dearness allowance and other allowances.

17. It is submitted that the petitioner was attempting to evade payment of bonus by making basic pay, a half of the minimum wages to which the workmen are statutorily entitled for. Hence, the petitioner is bound to pay bonus on minimum wages as the workmen cannot be deprived of minimum wages mandated by Minimum Wages Act, 1948.

18. It is further submitted that the petitioner deliberately segregated the wages under different heads with the intention to escape statutory obligations under various social benefit legislations. Wages under the Minimum Wages Act, 1948 includes house rent allowance, which is payable over and above the minimum wages.

19. It is submitted that the petitioner deceitfully includes all allowances in 'wages' to show compliance with the Minimum Wages Act, 1948 and conveniently calculates bonus after deducting these allowances. Hence, the learned tribunal did not err in concluding that workmen were entitled to bonus on minimum wages.

20. Therefore, in view of the foregoing submissions, the learned counsel for the respondent Union submitted that the present petition being devoid of any merit may be dismissed.

ANALYSIS AND FINDINGS

21. Heard the learned counsel for the parties and perused the record.

22. It is the case of the petitioner entity that the learned Court below wrongly held that the bonus to be paid to the employees of the petitioner entity needs to be calculated on the basis of the wages as defined under the Minimum Wages Act, 1948 and therefore, the learned counsel for the

petitioner contended that the said interpretation is untenable in the eyes of law which makes the impugned award liable to be set aside.

23. In rival submissions, the above said contentions were rebutted by stating that the petitioner entity has merely given nomenclature to the wages and therefore, paid the bonus only on the basic pay, which is in contravention to the intent behind the payment of the Bonus Act.

24. In view of the same, the limited question for adjudication before this Court is whether the impugned award is liable to be set aside or not. The relevant extracts of the impugned award read as under:

> *"9. I have heard the ARs for both the parties and has perused the record and my findings are as under:*
>
> *10. On behalf of the workmen 12 witnesses have been examined and in their affidavits filed by way of evidence which are similar in all respects had stated that they have authorised the Group 4 Securitas Karamchari Sangh to raise the dispute on their behalf and the workmen are demanding bonus at the rate of 10% minimum wages instead of 10% on the existing wages which is nearly 15% of the minimum wages of wages fixed by Delhi Government and have proved letter dated 06.07.1999 written by the Inspecting Officer of the Labour Commissioner to the union informing that the management has not produced the desired record regarding payment of bonus despite being called upon and rather gave a clarification in letter that they have paid the bonus @10% on the basic wage + DA and as such the workmen have raised the dispute that the bonus be paid on the basic pay plus other allowances have also proved another letter dated 06.01.1999 Ex. WWI/M1 as per which the management intended to deduct the amount paid towards Diwali bonus from the bonus and that the bonus should be paid on a minimum amount of Rs. 1937/- which is the minimum wages. In the cross-examination also the workmen had clarified that*

they are demanding the bonus to be paid on the minimum wages fixed by the Delhi Govt. and has stated that at present they are paid the basic pay of Rs. 1210/- and D.A. is paid as fixed from time to time and H.R.A, amounting to Rs. 605/- and other allowances to the tune of Rs. 605/- per month are being paid to them and they are getting Rs. 2420/- as full wages. They have also stated that bonus was paid at present on basic pay plus D.A., in October 2000 the amount paid was Rs. 1026/- and the total salary Rs. 2410/- is per month, the basic pay was Rs. 1210/-. He has further admitted that bonus was paid on basic pay of Rs. 1210/- and not on remaining components. Similarly, other have admitted that bonus have paid only on the basic pay and not on other components.

11. On behalf of the management one witness was examined who has stated that the wages paid to the workers comprises of basic wage, H.R.A and conveyance allowance and washing allowance, and conveyance and washing allowance in the register are shown as one general heading of other allowances, and the bonus is paid only on the basic wage. He has further stated that workmen employed are not member of the Group 4 Securitas Karamchari Sangh who has no locus standi to raise the dispute and that minimum wages Act is not applicable to the management.

12. So far as Issue No. 1 is concerned undoubtedly the reference has been sent by the appropriate Government and where any dispute arises between an employer an his employees with respect to bonus under this Act or with respect to the application of this Act than such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Dispute Act. As such the objection of the management that the union has no locus-standi or that the dispute is not espoused will be of no avail to the management as any dispute raised is an industrial dispute.

13. The second objection raised by the management is that the terms of the reference are of no avail and it is pointed out in the same do not convey any meaning as bonus cannot paid at the rate of minimum scale of wages as the rate as

prescribed under the payment of Bonus Act is 8.33% on the minimum side as per section 10 of the Act and 20% on the maximum side as per section 11 of the said Act.

14. It has been further pointed that no meaning can be conveyed to the wording minimum scale of wages as no scale are being paid and as such it is argued that the reference is incapable of being answered.

15. No doubt, the reference order is not happily worded but the fact remains that the workmen have demanded in their statement of claim bonus on the entire wages and at least bonus calculated the minimum wages prescribed by the Delhi authority from time to time which case the management has understood and has stated that the workmen are entitled to bonus not on the entire wages but only on the basic pay component to excluding the components of H.R.A, conveyance and washing allowances and have elaborated that in any case the basic pay with other components exceeds the minimum wages as such despite the fact that the reference is not happily worded, but both the disputes have understood their respective cases and have load evidence accordingly. It is not the case where the terms of the reference cannot be construed in terms of the meaning or claim of the respective parties The Tribunal is not make a reference redundant and should always endeavour to assign a meaning to the terms of reference so as to do complete justice between the parties taking care of the fact that no relief beyond the terms of reference should be given. The claim raised by the workmen cannot be said to beyond the terms of the reference. Reliance in this regard is placed upon the lay/laid down in the case of Shri Moolchand Hospital & Ayurvedic Research Institute Vs. Secretary (Labour). Govt. of NCT of Delhi, 2001 vii Ad (Delhi) 942 in which it was held that there should be a meaningful and conscious effort to expeditiously dissolving industrial disputes so that industrial peace is fostered and that a semantic and hyper technical reading of the terms of reference must be eschewed and rather a positive and

holistic approach should be adopted. As such the issue no. 1 is decided against the Management.

16. The case of management is that it is liable to pay bonus only on the basic pay of Rs. 1210/- and not on the total salary and that the components of H.R.A, Conveyance allowance and washing allowance are to be excluded. Though as per the documents placed and proved by the management on record the same re paid on fixed basis and not on actual basis.

17. Section 2(21) of the Payment of Bonus Act defines salary or wages means all of remuneration (other than remuneration in respect of over time work) capable to being expressed in terms of money, which world if the terms of employment expressed or implied were fulfilled be payable to an employee in respect of his employment or of work done in such employment and includes D.A.(that is to say, all cash payment, by whatever name called, paid to an employee on account of a rise I the cost of living but does not include I: any other allowance which the employee is for the time being entitled to, II: the value of any house accommodation or of supply of light, water, medical attendance or other amenities or of any service or of concessional supply of food grains or other articles, III: any travelling allowance and AR for the management had argued that except D.A. all other allowances are excluded from the definition of salary or wages and has further argued that it is admitted that D.A. is not paid to the workmen and is not a component of the salary.

18. AR for the management has placed reliance upon the case of BENNETT COLEMAN & CO. (PVT.), LTD. Vs. PONYA PRIAYA DA GUPTA (1969) 2 LW 554 SC and has argued that as per the payment of Bonus Act only D.A. is to be considered as wages in terms of definition of wages given in the Bonus Act and other allowances which in the present case are H.R.A and other fixed allowances should not be considered as part of the wages for purposes of payment of bonus.

19. In the ruling relied upon by the management it is held that the definition of wages given in the Industrial & Dispute Act is wider than what is given in the Bonus Act and since there was no evidence that the Car allowance was fixed after taking into consideration the expenses which he would have ordinarily to incur in connection with his employment, and similarly it was not shown that the bills for the Telephone and the Newspapers were used in connection with the employment, they will not from part of remuneration payable in respect of employment or work done in such employment and these items were relevant in fixation of fair wages, so though it was held that the allowances mentioned will fall under the term of wages as per the definition of wages given in the Industrial Dispute Act, but the fact remains that in the definition of wages given in the Payment of Bonus Act such allowances have been excluded and they will not form part of the remuneration.

20. However, the fact remains that Hon'ble Supreme Court had further held that all these allowances are paid to make the wages as fair wage. In the present case if the basic salary is taken on which no D.A. is being given by the management than it will be seem that the same is less than the minimum wages which a person is entitled to as per the Minimun Wages Act and in terms of order passed by Shri. K.R. Sawhney. Commissioner under the workmen compensation Act and authority under the Minimum Wages Act, 1948 wherein it has been held vide order dated 20.06.2000, that the establishment of the management is covered under the provisions of Minimum Wages Act as scheduled employment, and the employees are legally entitled to get not less than minimum wages fixed/revised from time to time for their category of employment. So as to say that the management is bond to give or pay its workmen the minimum wages as prescribed by the appropriate Govt. from time to time and the minimum wages is the remuneration which the workmen is entitled to in respect of his employment of work done.

21. Reliance placed upon by the management on the case of Scindia Steam Navigation Co. Ltd. and Scindia Employees Union and others (1983) 2 LLJ 476 is of no avail to the management as that was a case in which the main consideration was whether for the purpose of enforcement of an agreement, writ jurisdiction could be invoked and whether by an agreement the statutory provisions of an Act can be over ride.

22. The management had adopted a clever device by saying that the total wages including the allowances of the workmen will be equivalent to the minimum wages to which a person is entitled to as per the Minimum wages to which a person is entitled to as per the Minimum Wages Act and simultaneously do not consider the same, for the purposes of payment of bonus on the plea that except the basic salary the other are allowances. The clever act on the part of the management is evident from the fact that in case the workmen raises a plea of providing H.R.A. or the other allowances mentioned in their wages the management will take a plea that the same are already being paid, though in fact they have to be paid over and above the minimum wages.

23. In view of the above discussion merely by giving some nomenclature or the other, the management can not deprive the workmen from payment of bonus at least on the minimum wages which he is entitled to as per the Minimum Wages Act as prescribed by the Govt. from time to time and it is the minimum wages which has to be taken into account for computation of bonus.

Reference is answered accordingly. Award is passed accordingly."

25. Upon perusal of the above extracts of the impugned award, it is made out that the learned Court below held that for the computation of bonus, the petitioner herein must consider the minimum wages prescribed

by the Delhi Government from time to time, rather than just the basic pay component.

26. The learned Court below rejected the petitioner entity's argument that bonus is only be paid on the basic wage and not on other allowances. It emphasized that the minimum wages, which include various allowances, should be taken into account for the purpose of bonus calculation.

27. While holding the above, the learned Court below relied upon the evidence adduced through affidavits and witness testimonies stating to the effect that the workmen demanded the bonus based on minimum wages prescribed by the Delhi Government, which included various allowances (basic pay, HRA, conveyance, and washing allowances) and therefore, the learned Tribunal interpreted the term wages as per the definition provided for in the Minimum Wages Act.

28. Furthermore, the learned Court below observed that the intention of the Bonus Act is to ensure that employees receive a fair share of the profits of the establishment. Therefore, the learned Court below ruled that the workmen are entitled to bonus based on the minimum wages, including all the components of the salary, rather than only the basic pay.

29. Before delving into the submissions made by the parties before this Court, it is apposite to briefly touch upon settled position of law regarding the issuance of writ.

30. The jurisdiction of the High Courts in matters where Article 226 has been invoked is limited. It is a well settled proposition of law that it is not for the High Courts to constitute itself into an Appellate Court over the decisions passed by the Tribunals/Courts/Authorities below, since the

concerned authority is constituted under special legislations to resolve the disputes of a particular kind.

31. A writ is issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and such errors would mean where orders are passed by inferior Courts or Tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to the principles of natural justice.

32. Tersely stated, f*irstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, the Constitutional Court shall not exercise its writ jurisdiction to interfere when *prima facie*; the Court can conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene only in cases where there is a gross violation of the rights of the petitioner and the conclusion of the authority concerned is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the Court to intervene. *Lastly*, if the Court observes that there has been a gross violation of the principles of natural justice.

33. Now coming to the adjudication of the instant dispute, the primary contention of the petitioner is that the learned Court below wrongly considered the interpretation of 'wages' from the Minimum Wages Act, 1947 for the interpretation of the term wages under the Bonus Act.

34. In order to supplement the said claim, learned counsel for the petitioner vehemently relied upon the judgment passed by the Hon'ble Supreme Court in ***Provident Fund Commr. v. G4S Security Services (India) Ltd.***[2] whereby, the Hon'ble Court categorically held that the Courts cannot travel to another Act for interpretation of a term already defined in the parent legislation. The relevant paragraphs of the case read as under:

> *"**1.** The appellant-Assistant Provident Fund Commissioner is aggrieved by the judgment dated 20th July, 2011, passed by the High Court of Punjab and Haryana at Chandigarh, in an intra-Court Appeal1, which was directed against the order dated 01st February, 2011, passed by the learned Single Judge, dismissing the Writ Petition2 filed by the appellant.*
>
> ***2.** Before the learned Single Judge, the appellant had impugned the order dated 15th June, 2009, passed by the Appellate Tribunal under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 19523, while determining the issue raised by the respondents regarding the liability of the Management under the provisions of Section 7A of the EPF Act. The stand of the appellant is that for the purposes of determining its contribution towards provident fund, the respondent no. 1 was wrongly splitting the wage structure of the employees and treating the reduced wage as the basic wage to the detriment of the employees, thereby evading its liability to contribute the correct amount towards provident fund. The*

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aforesaid stand taken by the appellant has been turned down by the Appellate Tribunal as also by the learned Single Judge and the Division Bench of the High Court.

3. *Mr. Vikramjeet Banerjee, learned Additional Solicitor General submits that for the purposes of determining the basic wage under the EPF Act, reference must be made to the definition of the expression 'minimum rate of wages' under Section 4 of the Minimum Wages Act, 1948. This aspect has been considered in paragraph 6 of the impugned judgment and turned down holding that there was no compulsion to hold the definition of 'basic wage' to be equated with the definition of 'minimum wage' under the Minimum Wages Act, 1948.*

4. *In our opinion, once the EPF Act contains a specific provision defining the words 'basic wage' (under Section 2b), then there was no occasion for the appellant to expect the Court to have travelled to the Minimum Wages Act, 1948, to give it a different connotation or an expansive one, as sought to be urged. Clearly, that was not the intention of the legislature.*

5. *It is also pertinent to note that a similar issue had come up for consideration in the order dated 23rd May, 2002, passed by the APFC under Section 7A of the EPF Act, that was duly accepted by the appellant department as the said order was not taken in appeal."*

35. The perusal of the above cited case makes it clear that the Courts are not expected to travel to other legislations if the interpretation of a particular term has been provided in the parent legislation.

36. In the above paragraphs, it is also made out that the similar findings as arrived at by the learned Tribunal in other case was not challenged, therefore, the issue has attained finality.

37. In the instant case as well, even though the term wages has been defined under the Bonus Act, the learned Court below interpreted the

same in accordance with the explanation provided for in the Minimum Wages Act, 1948.

38. Section 2(21) of the Bonus Act provides for definition of the term wages, where the interpretation of the same would exclude the HRA, conveyance, bonus and other allowances, whereas, the definition of the term wages as provided for in the Minimum Wages Act, 1948 includes the above said allowances.

39. Therefore, both the terms have independent meanings and cannot be used interchangeably. In wake of the same, in the above cited case, the Hon'ble Supreme Court held that the Courts need not travel to the other legislation for giving a different meaning to the said term, therefore, putting a bar on such interpretation as the said practice would lead to different findings.

40. While doing so, the Hon'ble Supreme Court justified the above said finding by stating that the inspiration from the other legislation would defeat the purpose of providing definition of a particular term in the same legislation and therefore, the term, even though same, cannot be interpreted interchangeably.

41. In light of the same, this Court is of the considered view that the learned Court below erred in taking inspiration from the Minimum Wages Act, 1948 when the definition of the term wages has been duly provided in the Bonus Act itself.

42. As per the settled position of law, even though certain legislations can be labeled into the broader category of social welfare legislation, the same would not amount to assuming that all such legislations aim to achieve a common purpose.

43. Therefore, for the purpose of payment of bonus to the employees, the definition of 'wages' as provided in the Minimum Wages Act, 1948, cannot be taken by the learned Court below as the same would defeat the purpose of the said legislation.

44. The application of the principle laid down in the ***Provident Fund Commr. v. G4S Security Services (India) Ltd (Supra)*** makes it clear that the learned Court below erroneously traveled to the other legislation, i.e. the Minimum Wages Act, 1948 to determine the meaning of term 'wages', whereas, the same term has been defined under Section 2(21) of the Bonus Act.

45. As per the discussion in the foregoing paragraphs, it is clear that the definition of the said term is different in both the Statutes and therefore, the same are not interchangeable.

46. In the instant case, the learned Court below erred in adjudicating the issue of payment of bonus by deriving the interpretation of the term 'wages' from the Minimum Wages Act, 1948 which led to allowing the claim filed by the workmen.

CONCLUSION

47. As per the ratio of the judgment passed by the Hon'ble Supreme Court in ***Provident Fund Commr. v. G4S Security Services (India) Ltd (Supra)***, it is clear that the term 'wages' needs to be defined as per the mandate of the Bonus Act, therefore, the definition of the said term as taken from the other legislation is not in accordance with law.

48. In view of the foregoing discussions on facts and law, this Court is of the view that the petitioner has made substantial arguments before this Court in order to seek interference with the impugned award and it is held

that the learned Court below erroneously relied upon the definition of the term ‘wages’ as provided under the Minimum Wages Act, 1948.

49. In view of the above, the present petition is allowed and the impugned award dated 1st October, 2003 passed by the learned Industrial Tribunal, Karkardooma, New Delhi in case bearing I.D. No. 102/99 is set aside.

50. The instant dispute is remanded back to the learned Labour Court for fresh adjudication and the learned Court below is directed to adjudicate upon the same expeditiously without giving unnecessary adjournments to either of the parties.

51. Accordingly, the instant petition stands disposed of along with pending applications, if any.

52. Judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

May 13, 2024
Rk/av/ryp