

CASE NO.:
Writ Petition (civil) 82 of 2001

PETITIONER:
RAJENDRA DEVA

Vs.

RESPONDENT:
HARI FERTILIZERS SAHUPURI VARANASI

DATE OF JUDGMENT: 18/10/2001

BENCH:
S.V.Patil, D.P.Mohapatro

JUDGMENT:

D.P.MOHAPATRA, J.

We have heard Shri Rajendra Deva the petitioner-in-person and Shri Dinesh Dwivedi, learned senior counsel for the respondent.

In this writ petition the petitioner has prayed for sympathetic consideration of the question of law which was left open by this Court in the order dated 18.1.1996 in the Civil Appeals arising out of SLP(C)Nos.14565-66/1995; for consideration of closure compensation under the definition of Payment of Wages Act, 1936 (for short the Act) ; for order of payment of ten times compensation under section 15(3) of the Act; for compensation against cost of the case Rs.40,000/- for unnecessary delay and harassment in payment of gratuity.

From the papers available on record it appears that the industrial unit in which the petitioner was employed was closed on 4.1.1989. His service was terminated on 16.5.1989. The petitioner made a grievance of non-payment of his dues under different heads by the employer in the proceedings under section 33C(2) of the Industrial Disputes Act, under the Payment of Bonus Act, and Payment of Wages Act. The authorities under these statutes ordered payment of the amounts which were determined to be payable to the petitioner. It was not disputed before us that all the amounts as ordered by the statutory authorities have been received by the petitioner. In the order dated 18.1.1996 in the Civil Appeal arising out of S.L.P.(Civil) Nos. 14565-66/1995 this Court considered the claim of the petitioner for Rs.3860/- as bonus for the years, 1984, 1987 and 1988. The question raised before this Court was whether minimum bonus payable under section 10 of the Payment of Bonus Act, 1965 falls within the ambit of the expression wages as defined in section 2(vi) of the Payment of Wages Act, 1936. This Court took note of the fact that in the impugned judgment the Allahabad High Court had taken the view that minimum bonus was not covered by the definition in the said Act. This Court disposed of the appeals with the following observations :

Having regard to the facts and circumstances of this case, we direct the respondent to pay the said amount of bonus with interest at the rate of 12 per cent per annum. The said interest will be counted from the date of the expiry of the period of eight months prescribed under section 19 for the payment of such bonus under the Payment of Bonus Act. The amount payable shall be paid within a period of one month. In the circumstances, we do not consider it necessary to go into the question of law which has been raised in the appeals and the said question is left open. The appeals are disposed of accordingly. No costs.
(Emphasis supplied)

The petitioner has submitted before us that the sum of Rs.3,860/- along with interest as directed by this Court has been received by him. In the present writ petition his prayer is to decide the question of law which was left open in the aforementioned order.

At the outset, to our query as to how he will be benefited if it is held that the minimum bonus payable under section 10 of the Payment of Bonus Act comes within the ambit of the expression wages as defined in section 2(vi) of the Payment of Wages Act, his reply was that then he will be entitled to receive ten times the amount of the bonus as compensation under section 15(3) of the Payment of Wages Act.

Shri Dwivedi on the other hand contended that from the order of this Court dated 18.1.1996 it is clear that this Court finally disposed of the claim of the petitioner on this count by directing payment of the sum of Rs.3860/- with interest and left open the question of law which was formulated in the order to be decided in an appropriate case in future. In the circumstances, Shri Dwivedi submitted that inter partes the order passed by this Court is final and the petitioner is not entitled to claim any further amount on that count.

On perusal of the order dated 18.1.1996 and the consideration of the matter in the context of the facts and circumstances of the case emerging from the records, we are of the view that the contention raised by Shri Dwivedi has substance. By making the observation in the order that the question of law is left open, this Court did not lay down that the petitioner should be given another opportunity to lay further claim under the same head after receiving the amount as directed in the order. In all probability, taking into consideration the fact that the petitioner was a person who had lost service due to closure of the industrial unit and the bonus claimed by him was a small amount of Rs.3,860/- this Court was not inclined to consider the question of law whether the minimum bonus provided under section 10 of the Payment of Bonus Act comes within the purview of the definition of the term wages under section 2(vi) of the Payment of Wages Act and directed payment of the amount to the petitioner leaving the question of law open for decision in an appropriate case. The petitioner appears to be under a misconception that under the observations made

by this Court another opportunity has been granted to him to file a fresh case for the same purpose. Further, the contention of the petitioner that if the question of law is answered in his favour he will be entitled to ten times the amount as compensation under section 15(3) of the Act is devoid of any substance. On a plain reading of section 15 (3) of the Act it is clear that the said provision merely vests a discretion in the authority seized of the proceeding initiated on an application under sub-section (2) of the section to direct refund to the employee of the amount deducted or payment of the delayed wages, together with payment of such compensation as the authority may think fit, not exceeding ten times of the amount deducted in the former case and not exceeding twenty-five rupees in the later case. The proviso to sub-section (3) lays down the circumstances in which a direction for payment of compensation in a case of delayed wages shall not be made by the authority. Therefore, the contention of the petitioner that in case the question of law is decided in his favour he will be automatically entitled to ten times the amount is misconceived.

On the discussions made in the foregoing paragraphs, the writ petition is devoid of merit. It is accordingly dismissed. No costs.