CASE NO.:
Appeal (civil) 2204 of 2007

PETITIONER:
M/s. Hamdard (Wakf) Laboratories

RESPONDENT:
Deputy Labour Commr. & Ors

DATE OF JUDGMENT: 27/04/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2204 OF 2007
[Arising out of SLP (Civil) No. 17526 of 2006]

S.B. SINHA, J :

Leave granted.

Relationship between the parties hereto is employer and workmen. As far back in the year 1983, the appellant terminated the services of 37 workmen allegedly on the ground that they had gone on an illegal strike. It gave rise to an industrial dispute. The management and its 19 workmen entered into compromise. One workman died during pendency of the said dispute. Claim of 17 workmen, therefore, survived for adjudication in the aforementioned industrial dispute. By an award dated 26.05.1993, the industrial court, to which reference of the dispute was made by the appropriate government, directed:

"\005Accordingly, the Employers are directed to reinstate these 17 workers on duty on the original post and payscale within one month after the date of publication of this Award. So far as the question of back-wages is concerned, these workmen are to be paid 50% of their wages/ allowances which they were getting on 2-6-83, for the period 1-8-87 till the date of their joining the duty, within 2 months of publication of this Award. As regards the deceased Komal Singh, his Provident Fund, Insurance money and wages/ allowances upto 30-9-91 to be calculated in the same manner as was paid on 2-6-83 and 50% of the same is to be paid by the Employer to his wife Smt. Shakuntala. This is my Award in this dispute."

The said award ultimately attained finality as the writ petition preferred thereagainst by the appellant was dismissed by an order dated 3.11.1995. A Special Leave Petition filed thereagainst has also been dismissed.

On or about 2.08.1994, an application purported to be under Section 6-H(1) of the U.P. Industrial Disputes Act, 1947 (for short "the Act") claiming backwages and bonus was filed wherein the total amount of claim was for a sum of Rs. 20,70,020.44.

The Additional Labour Commissioner, however, on an objection raised by the appellant to the effect that the amount of bonus could not be

included in the claim application issued a recovery certificate for a sum of Rs. 17,61,755.18. A review application, however, was filed inter alia on the premise that the workmen were not entitled to claim any bonus. By an order dated 9.11.1994, the said plea on the part of the appellant was accepted as a result whereof the claim was reduced to Rs. 5,31,030.90. The said direction admittedly has been complied with.

The workmen, however, filed another application before the Labour Commissioner, Ghaziabad claiming bonus for the period 1987 to 1996. In its objection filed thereto, the appellant contended:

"It is respectfully submitted that the present claim of Bonus for the period 1987 to 1996 have been filed on the last date of hearing on 04.7.96. The workmen have earlier also filed a claim u/s 6-H(1) vide their application dtd. 02.8.94 and also submitted list claiming Bonus, yearly increments, leave with wages, etc. The predecessor of the office Sh. Arjun Ram the then Addl. Labour Commissioner heard the parties at length and passed an order dtd. 26.9.94 amounting to Rs. 17,61,755.18. The employers/ management filed an application to review the said order on 15.10.94. The review application was heard in presence of the parties and the earlier order dtd. 26.9.94, was reviewed, order modified to the extent of Rs. 5,31,030.00. The then Addl. Labour Commissioner rejected the claim of Bonus, yearly increments etc. since the claim of Bonus yearly increments etc. have already been rejected by a competent authority the same can't be heard again.

That the claim of Bonus does not fall in the definition of 'wages' as defined in Section 2(y) of the U.P. I.D. Act, 1947 hence the said claim cannot be maintainable U/s 6-H(1) of the U.P. I.D. Act, 1947 and deserves to be dismissed outrightly.

That the Hon'ble Labour Court (I), Ghaziabad who passed the Award in Adj. Case No. 275/87 have not given any consequential relief. Hence the workmen are not entitled to any relief/ benefit such as Bonus, leave etc. for the period Sep. 87 to June 95.

That on perusal of the Award, dtd. 26.5.98 made by the Hon'ble Labour Court (I) Ghaziabad, it is specifically mentioned in the conclusion at page No. 12 that the workmen are only entitled to 50% back wages at the rate of wages which they were drawing on 2.6.83."

Rejecting the said contention, however, the Labour Commissioner, Ghaziabad, by an order dated 8.08.1996 held:

"After hearing the parties, I have come to the conclusion that after the publication of the Award, the employer has made the payment of wages to the workmen but did not attribute them the work. Therefore, these all workmen are completely entitled for the bonus, because bonus is deferred wage. All workmen are entitled for the bonus at the rate on which other workmen have been paid bonus in the organization. Therefore, the Management shall calculate the same for the

period from 6.11.93 till the year 94-95. The another issue is related to the grant of bonus for the period prior to the publication of Award. In the Award in question, the Hon'ble Labour Court has passed the order only for payment of the 50% of the wages to the Workmen on the issue of back wages. In this regard, the recovery order passed by the Previous Ld. Addl. Commissioner does not include the amount of bonus. The Hon'ble Court has not used the word "other benefits" alongwith the Pay and allowances. But, in my opinion, the bonus is deferred wages and the same is included in the Pay and salary. Therefore, I do not agree with this pleading of the employer that the matter shall be referred to the Labour Court for interpretation of the Payment/ Wage under Section 11(B) of the U.P. Industrial Disputes Act, 1947. Since in the Award the order for payment of 50 per cent amount of back wages has been passed, thus, accordingly the 50% of the bonus amount at the rate payable to other workmen of the organization shall be payable\005"

A review application filed thereagainst was dismissed. A writ petition was filed by the appellant before the Allahabad High Court aggrieved by and dissatisfied therewith. A learned Judge of the said Court by an order dated 9.04.2003 held:

"Coming to the facts of the Writ Petition No. 35708 of 1996, the facts being the same, claims being only for the payment of bonus for the disputed period. Once the employer themselves have paid the wages upto the month of June, 1996, and since this Court has also rejected the writ petition with regard to the payment of wages for the month of July, 1996, needless to say for the reasons and the ground stated in this judgment with regard to writ petition No. 41691 of 1996, this writ petition also deserves to be dismissed and is hereby dismissed."

An intra-Court appeal preferred thereagainst was dismissed by a Division Bench by reason of the impugned judgment holding:

"\005The accepted translation of these two Hindi words as amongst learned counsel appearing is "wages and allowances". A submission is made that the definition of the word "wages" in the U.P. Industrial Disputes Act, 1947 specifically excludes bonus. Therefore, it is argued, the mention of wages in the award cannot include bonus and the passing of the Labour Commissioner's order under Section 6-H(1) including bonus is without authority as the original award cannot be said to have included it.

In our opinion, this argument suffers from a fallacy. The definition of the word "wages" is meant for construing the U.P. Industrial Disputes Act. Such definition in the Act is not meant to govern or limit the use of the word "wages" made by any and every authority exercising jurisdiction under the Act or passing orders under the Act. The Labour Court's award mentioning the phrase "wages and allowance" has to be read in its proper

and normal context. The Labour Commissioner did not in any manner misconstrue the said two words in including bonus within the term wages and allowances. Simply put, whatever the other similarly situated workers got during the period the seventeen workmen were kept out of employment, and whatever the seventeen workmen would have got themselves had they not been put out of employment improperly, they were to get 50% of all that. That is the plain and simple reading of the Labour Court's award. The order of the Labour Commissioner has proceeded on this basis. As such the challenge by way of the second writ petition to payment of 50% bonus also fails."

Mr. Dinesh Dwivedi, learned senior counsel appearing on behalf of the appellant, would submit that in view of the definition of 'wages' contained in Section 2(y) of the Act and Section 2(21) of the Payment of Bonus Act, in terms whereof bonus is neither wages nor allowance; the Labour Commissioner committed a manifest error in directing payment thereof on the spacious plea that it is deferred wages. It was urged that in order to interpret a judgment, the terms used therein, in the event of any ambiguity, must be interpreted in the light of the statute operating in the field.

Mr. Bharat Sangal, learned counsel appearing on behalf of the respondents, on the other hand, would submit that bonus being a part of 'remuneration', a claim in relation thereto can also be made under the Payment of wages Act. It was submitted that the claim petition was not filed for enforcement of the award but as an independent claim in terms of the provisions of the Payment of Bonus Act in regard whereto an application under Section 6-H(1) of the Act before the Labour Commissioner was maintainable. Strong reliance in this behalf has been placed on Sanghi Jeevaraj Ghewar Chand & Ors. v. Secretary, Madras Chillies, Grains Kirana Merchants Workers' Union & Anr. [(1969) 1 SCR 366] and Kohinoor Tobacco Products Pvt. Ltd., Adyal v. Presiding Officer, Second Labour Court, Nagpur and Others [AIR 1986 Bom 340].

The term 'Wages' has been defined in Section 2(y) of the Act in the following terms:

"2(y) '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\027
(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 other articles;
(iii) any travelling concession;
but does not include \027
(a) any bonus;
(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;
(c) any gratuity payable on the termination of his service;"

[Emphasis supplied]

Section 2(rr) of the Industrial Disputes Act, 1947 defining the term 'Wages' is in pari materia with Section 2(y) of the Act, 1947.

The term "salary or wage" has been defined under Section 2(21) of the Payment of Bonus Act as under:

"(21) "salary or wage" 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, 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 or of any concessional supply of foodgrains 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 from part of the salary or wage of such employee;"

Section 2(vi) of the Payment of Wages Act, 1936 defines "wages" in the following terms:

"(vi) "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms 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-
(a) any remuneration payable under any award or settlement between the parties or order of a Court;
(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether

with or without deductions, but does not provide for the time within which the payment is to be made;
(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force,
but does not include-
(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
(4) any travelling allowance or the value of any travelling concession;
(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)."

Different statutes, enacted by the Parliament from time to time, although beneficial in character to the workmen, seek to achieve different purposes. Different authorities have been prescribed for enforcing the provisions of the respective statutes. The authority under the Payment of Wages Act is one of them.

In view of the fact that diverse authorities exercise jurisdiction which may be overlapping to some extent, the courts while interpreting the provisions of the statutes must interpret them in such a manner so as to give effect thereto.

Section 6-H(1) of the Act provides for a proceeding which is in the nature of an execution proceeding. The said provision can be invoked inter alia in the event any money is due to a workman under an award. They cannot be invoked in a case where ordinarily an industrial dispute can be raised and can be referred to for adjudication by the appropriate government to an industrial court. The authorities to determine a matter arising under Section 6-H(1) of the Act and an industrial dispute raised by the workmen are different. Section 6-H(1) of the Act, it will bear repetition to state, is in the nature of an execution provision. The authority vested with the power thereunder cannot determine any complicated question of law. It cannot determine a dispute in regard to existence of a legal right. It cannot usurp the jurisdiction of the State Government under Section 11-B of the Act.

A Labour Commissioner is not a judicial authority. In view of Section 11-B of the Act, it is for the State Government to construe an award, in the event any dispute arises in giving effect thereto.

The Labour Court in its award directed reinstatement of 17 workmen on the original post and payscale. No increment was granted; no continuity of service was directed. What was directed was payment of 50% of the backwages/ allowance while considering the question of backwages.

Definition of ’wages’ within the meaning of the Act does not include

"bonus". It, however, includes allowance. Payment of Bonus Act also excludes bonus for the purpose of calculating the amount of bonus to be determined in terms of Section 10 thereof.

Presiding Officer of the Labour Court is a judicial authority. He is supposed to know the definition of 'wages' as contained in the Act. The rights and obligations of the parties were being determined only under the Act and not in terms of any other law.

An award made in favour of one party and against the other must be clear and certain. A person keeping in view the limited relief granted in favour of one party to the dispute may not question the correctness or otherwise thereof. With a view to ascertain the certainty in regard to the meaning of the words used by a competent court of law and that too by an experienced judicial officer, they must be given the same meaning which are given in a statute.

A judgment, it is trite, must be reasonable. It must be construed in such a manner so as not to offend the provisions of any statute. It must not be held to be contrary to any statutory provisions.

In Gajraj Singh and Others v. State of U.P. and Others [(2001) 5 SCC 762], a 3-Judge Bench of this Court held:

"\005A doubt arising from reading a judgment of the Court can be resolved by assuming that the judgment was delivered consistently with the provisions of law and therefore a course or procedure in departure from or not in conformity with statutory provisions cannot be said to have been intended or laid down by the Court unless it has been so stated specifically."

Bonus either in its ordinary meaning or statutory ones would not include wages.

What is a 'bonus' within the meaning of a provision before the coming into force of Payment of Bonus Act, 1965 came up for consideration before this Court on various occasions. Although reference thereto may not be strictly necessary, as the learned counsel appearing for the parties have referred to the same, we may take notice thereof.

In Muir Mills Co. Ltd. v. Suti Mills Mazdoor Union, Kanpur [(1955) 1 SCR 991], this Court held:

"It is therefore clear that the claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss there is no basis nor justification for a demand for bonus. Bonus is not a deferred wage. Because if it were so it would necessarily rank for precedence before dividends. The dividends can only be paid out of profits and unless and until profits are made no occasion or question can also arise for distribution of any sum as bonus amongst the employees. If the industrial concern has resulted in a trading loss, there would be no profits of the particular year available for distribution of dividends, much less could the employees claim the distribution of bonus during that year\005"

Bonus may be a deferred wage but the same must be construed in a different context. When used in the context of 'backwages' and that too 50% of it, the same would not include backwages. It is expected that had the Labour Court intended to include the same, he would have explicitly said so. Even now, under the Payment of Wages Act, bonus does not come within the purview of wages. The decision was rendered when Payment of Bonus Act had not been enacted.

The question came up for consideration, yet again, in Bala Subrahmanya Rajaram v. B.C. Patil and Others [(1958) SCR 1504] wherein bonus was equated with remuneration but therein the question which arose for consideration was the quantum of bonus and in that context the court went into the question as to whether the same can be claimed under the provisions of the Payment of Wages Act. When the bonus was considered to be a part of remuneration, what was in the mind of this Court, was the definition of 'wages' under the Payment of Wages Act, as it existed at the relevant time. In the factual matrix obtaining therein, this Court held that 'bonus' would come within the purview of the term 'remuneration'. Evidently, 'bonus' would not come within the meaning of the said term as it stands now and in view of the controversy involved herein, particularly, in view of the fact that 'bonus' now stands explicitly excluded by reason of the Payment of Wages (Amendment) Act, 1957 which came into effect from 1.04.1958. This Court therein had no occasion to consider the question with which we are beset with.

In Sanghi Jeevaraj Ghewar Chand (supra), this Court took into consideration the history of the term "bonus" stating that a claim in regard to bonus can be raised under the provisions of the Industrial Disputes Act. Having regard to Sections 22 and 39 of the Payment of Bonus Act, it was stated:

"\005If a dispute, for instance, were to arise as regards the quantum of available surplus, such a dispute not being one falling under Section 22, Parliament had to make a provision for investigation and settlement thereof. Though such a dispute would not be an industrial dispute as defined by the Industrial Disputes Act or other corresponding Act in force in a State, Section 39 by providing that the provisions of this Act shall be in addition to and not in derogation of the Industrial Disputes Act or such corresponding law makes available the machinery in that Act or the corresponding Act available for investigation and settlement of industrial disputes thereunder for deciding the disputes arising under this Act. As already seen Section 22 artificially makes two kinds of disputes therein referred to industrial disputes and having done so applies the provisions of the Industrial Disputes Act and other corresponding law in force for their investigation and settlement. But what about the remaining disputes? As the Act does not provide any machinery for their investigation and settlement, Parliament by enacting Section 39 has sought to apply the provisions of those Acts for investigation and settlement of the remaining disputes, though such disputes are not industrial disputes as defined in those Acts. Though, the words "in force in a State" after the words "or any corresponding law relating to investigation and settlement of industrial disputes" appear to qualify the words "any corresponding law" and not t he Industrial Disputes Act, the Industrial Disputes Act is

primarily a law relating to investigation and settlement of industrial disputes and provides machinery therefor. Therefore the distinction there made between that Act and the other laws does not seem to be of much point. It is thus clear that by providing in Section 39 that the provisions of this Act shall be in addition to and not in derogation of those Acts, Parliament wanted to avail of those Acts for investigation and settlement of disputes which may arise under this Act. The distinction between Section 22 and Section 39, therefore, is that whereas Section 22 by fiction makes the disputes referred to therein industrial disputes and applies the provisions of the Industrial Disputes Act and other corresponding laws for the investigation and settlement thereof, Section 39 makes available for the rest of the disputes the machinery provided in that Act and other corresponding laws for adjudication of disputes arising under this Act. Therefore, there is no question of a right to bonus under the Industrial Disputes Act or other corresponding Acts having been retained or saved by Section 39. Neither the Industrial Disputes Act nor any of the other corresponding laws provides for a right to bonus. Item 5 in Schedule 3 to the Industrial Disputes Act deals with jurisdiction of tribunals set up under Sections 7, 7-A and 7-B of that Act, but does not provide for any right to bonus. Such a right is statutorily provided for the first time by this Act."

The Labour Court was not determining any right under the Payment of Bonus Act. It was while making its award determining the rights and liabilities under the Act.

It, therefore, must have in mind the provisions of the Act alone. The aforementioned decisions, therefore, have no application to the facts and circumstances of the present case.

When an interpretation clause uses the word "includes", it is prima facie extensive. When it uses the word "mean and include", it will afford an exhaustive explanation to the meaning which for the purposes of the Act must invariably be attached to the word or expression. [See G.P. Singh's Principles of Statutory Interpretation, 10th Edition, Pages 173 and 175]

Recently, in N.D.P. Namboodripad (Dead) by LRs. v. Union of India (UOI) and Ors. [2007 (4) SCALE 361], this Court held:

"17. If the words 'and includes' were intended to rope in certain items which would not be part of the meaning, but for the definition, then Rule 62 would have specified only 'dearness pay' as the item to be included but not 'pay'. If pay, dearness allowance and other allowances were already included in 'emolument' with reference to its general or normal meaning, as contended by appellant, there was no reason to specifically again include 'pay' in Rule 62. Inclusion of 'pay' and 'dearness pay' and non-inclusion of 'dearness allowance or other allowances' in the definition of 'emolument' is significant. The definition in Rule 62 is intended to clarify that only pay and dearness pay would be considered as 'emolument' for purposes of calculating pension. The words 'and includes' have been used in Rule 62, as meaning

'comprises' or 'consists of."

There is yet another aspect of the matter which cannot be lost sight of. A claim for bonus in the context of Section 22 of the Payment of Bonus Act can be raised only by raising an industrial dispute. It cannot be raised by way of an execution application. If a claim had been made under an award, the same attained finality when the amount payable thereunder had been calculated. Bonus was a subject matter of claim in the first application filed under Section 6-H(1) of the Act. The amount payable thereunder had been determined. Another application under Section 6-H(1) of the Act for the purpose of enforcement of award, therefore, was, in our opinion, not maintainable.

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

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

An application under Section 33C(1) of the Industrial Disputes Act, 1947 must be for enforcement of a right. If existence of right, thus, is disputed, the provisions may not be held to have any application.

The Labour Commissioner in view of the decision of this Court in Muir Mills Co. Ltd (supra) has evidently committed a manifest error in opining that bonus is deferred wages. Once it is excluded from the purview of the term 'wages' under the Act, such a view was impermissible in law, particularly, when the appellant denied and disputed the right of the workmen to claims. Both the learned Single Judge and the Division Bench of the High Court also fell to the same error. The learned Judges even did not address themselves the right questions. They, thus, misdirected themselves in law.

We, therefore, are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs.