

A. Sambanthan Vs. the Presiding Officer, Iii Additional Labour Court, High Court Campus and anr.

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Court : Chennai

Decided On : Jan-05-1998

Reported in : (1998)2MLJ695

Appellant : A. Sambanthan

Respondent : The Presiding Officer, Iii Additional Labour Court, High Court Campus and anr.

Advocate for Pet/Ap. : Mr. Prasad

Judgement :

ORDER

N.V. Balasubramanian, J.

1. The writ petition is filed to quash the common award passed by the III Additional Labour Court, Chennai in I.D. No. 305 of 1981 and in the Claim Petition No. 59 of 1981, both dated 12.7.1985 by issuing a writ of certiorari.

2. The petitioner was an employee of the second respondent concern. The petitioner was a Deputy Superintendent of Police in the police department and after his retirement he joined the service of the second respondent firm on 1.8.1972. It is stated in the affidavit filed in support of the writ petition that the

founder Director of the second respondent establishment one late J.W. Devasahayam and the petitioner were colleagues in the Police Department, and since the petitioner was the skilled person he was employed to do technical, manual and clerical works. The case of the petitioner is that he was assisting the Director in all aspects of the working of the establishment of the second respondent concern, though he was designated only as a Security Officer in that establishment. According to the petitioner he did not discharge any duties or functions which are administrative, managerial or supervisory in nature and he was employed to do only the matters relating to the security. The pay of the petitioner was Rs. 1,000 per month. The petitioner submits that after the death of J.W. Devasahayam, his wife became the Director and his son Prabhakar became the Manager. After some time, Prabhakar became the Director and his wife became the Manager. After Prabhakar became the Manager, some disputes and misunderstandings arose between the petitioner and the Director and when the petitioner tried to advise the Director that the establishment should implement all the labour laws, the Director, became rude towards the petitioner and asked the petitioner to quit the establishment. The petitioner being the man of dignity and self-esteem quit the establishment on and from 17.7.1979. According to the petitioner, his services were terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and hence approached the Government for a reference of the dispute and the Government also referred the dispute, and that is, I.D.No. 305 of 1981.

3. The petitioner also filed a claim petition under Section 33(c) of the Act claiming minimum bonus at the rate of 8.33% for the period from 1.8.1972 to 17.7.1979 amounting to Rs. 7,000. The claim petition for bonus was numbered as C.P.No. 59 of 1981. The second respondent filed a counter statement in I.D.No. 305 of 1981 denying the averments made by the petitioner and submitted that the petitioner was Chief Executive of the respondent company and he was engaged in security and detective services. The second respondent has stated that the petitioner was administering and managing the day-to-day affairs of the respondent company. It was denied that the petitioner was doing the clerical work, and therefore, it was stated that he is not a workman within the meaning of the Act. Further it is stated that the petitioner has resigned from services without any coercion or duress by

the second respondent and there is no question of termination of service. It is also stated since the petitioner has voluntarily retired from service!, it would not amount to retrenchment within the meaning of Section 2(oo) of the Act.

4. As far as the claim petition is concerned, the second respondent has filed a counter statement reiterating the petitioner was engaged only as a Chief Executive to carry out the supervisory and administrative works and he is not a workman within the meaning of the Act. Hence, it is stated the claim petition under Section 33-C(2) of the Act did not lie. Further, it is also stated the Labour Court has no jurisdiction to decide the question of payment of bonus as it involves disputed questions of fact. It is also stated that the second respondent was only incurring loss and hence the petition filed under Section 33-C(2) of the Act to claim bonus should also be rejected. It is not necessary to refer to the reply statement filed by the petitioner, but it is necessary to notice the additional counter statement filed on behalf of the second respondent. The second respondent has stated in the additional counter statement that in terms of Section 16 of the Payment of Bonus Act, the petitioner is not entitled to the payment of bonus and further the Payment of Bonus Act has no application for the period between September, 1972 and September, 1977 as during those period no profits were made by the respondent.

5. The Labour Court, as already stated, passed a common order in I.D.No. 305 of 1981 as well as Claim Petition No. 59 of 1981. The Labour Court relied upon the statement made in the Claim Petition No. 59 of 1981 that the petitioner had resigned his post of the Security Officer and it was not the contention of the petitioner that he was forced to resign the job. According to the Labour Court Section 2(oo) of the Act deals only with the case of voluntary retirement and does not deal with the voluntary resignation. According to the Labour Court, it is not the case of the petitioner the second respondent has terminated his services and hence the question whether the resignation was voluntary or not did not arise for consideration. The Labour Court placed reliance on the letter dated 6.10.1977, wherein the petitioner has informed the management that he was not in a position to carry out his duties, which would show that the contention of the petitioner that he was forced to resign his job was without any basis. The Labour Court, no doubt, referred to the documents, but has not recorded its finding on the

documents filed before it. It also refers to the application given under the Provident Fund Scheme wherein the petitioner claimed that his services were terminated from 18.7.1979. But the Labour Court has not recorded its finding on that document. In the claim petition the Labour Court has rejected the case of the second respondent that the petitioner cannot be regarded as a workman. However, the Labour Court held that the petitioner has resigned from his post and the resignation of the petitioner would not amount to retrenchment under Section 2(oo) of the Act. Therefore, the Labour Court came to the conclusion that the petitioner is not entitled to claim benefit under Section 25-F of the Act.

6. As regards bonus for the period from 1972 to 1979, the Labour Court has recorded a finding that the second respondent has not paid bonus to any workmen and there is no satisfactory evidence about the wages given by the petitioner during 1972 to 1979. In the absence of any explanation for the long delay in claiming the bonus, the Labour Court came to the conclusion that the petitioner was not entitled to claim bonus. It rejected the accounts produced by the petitioner on the ground that the petitioner has not produced the balance sheet or the auditor's report and has not given the particulars of the income earned during each year and the amount to which the petitioner would be entitled to under the Payment of Bonus Act for each year. In this view of the matter the Labour Court held that the petitioner was not entitled to claim any relief in I.D.No. 305 of 1981 and dismissed the Claim Petition No. 59 of 1981. It is against this common order the writ petition has been filed.

7. Mr. K.S.V. Prasad, learned Counsel appearing for the petitioner submitted that the Labour Court was wrong in holding that the petitioner is not entitled to claim any relief in I.D.No. 305 of 1981. learned Counsel for the petitioner submitted that the petitioner was asked by the second respondent to quit and leave the establishment and hence the non-employment of the petitioner would amount to retrenchment within the meaning of Section 25-F of the Act. He also submitted that the Labour Court erred in placing reliance in the statement in Claim Petition No. 59 of 1981 and it is not the case of the petitioner that he resigned from the post, but he was asked to quit the office. He therefore submitted that the services of the petitioner were terminated when the second respondent has ordered the petitioner

to quit and leave the establishment. He therefore submitted that the petitioner would be entitled to relief under Section 25-F of the Act. As far as the claim for payment of bonus is concerned, the petitioner would be entitled to recover minimum bonus under Section 33-C(2) of the Act and placed reliance on the decision of this Court in the case of Sivanganam v. Presiding Officer, Labour Court : (1980)1MLJ441 and contended that when the petitioner claims bonus, an application under Section 33-C(2) of the Act is maintainable in law and the Labour Court has jurisdiction to entertain the same and grant necessary relief to the petitioner. He also criticised the finding of the Labour Court saying that the non-payment of bonus to other workers is not a relevant consideration; so also he submitted that the rejection of the documentary evidence let in by the petitioner on the ground that the petitioner has not produced the balance sheet or the auditor's report is not warranted in law. He, therefore, submitted that the Labour Court has gone on erroneous basis in rejecting the claim, I.D.No. 305 of 1981 as well as dismissing the Claim Petition No. 59 of 1981. learned Counsel for the petitioner fairly submitted that he will be satisfied if he is given a notice pay and retrenchment compensation under Section 25-F of the Act.

8. Mr. Sanjay Ramaswami, learned Counsel appearing for the respondents vehemently argued that a single writ petition challenging the common order passed by the Labour Court in I.D.No. 305 of 1981 as well as Claim Petition No. 59 of 1981 is not maintainable in law. According to the learned Counsel for the respondents, the petitioner cannot maintain a single writ petition against two orders passed by the Labour Court and hence the writ petition is liable to be dismissed on the short ground. He stressed that the orders passed by the Labour Court by any stretch of imagination cannot be regarded as a common order, as the Labour Court dealt with two separate claims under two separate enactments and the relief prayed for in one petition is unconnected with the other, and therefore, when there are two orders of the Labour Court, a single writ petition challenging two separate orders passed by the Labour Court is not maintainable. learned Counsel for the respondents also submitted that the petitioner has resigned from the job and hence he is not entitled to relief under Section 25-F of the Act. In so far as the claim for bonus is concerned, learned Counsel for the second respondent submitted that the petition under Section 33-C(2) of the Act is not entertainable by

the Labour Court as it involves disputed questions of fact, and therefore, he submitted the writ petition is liable to be dismissed on the ground that it is not open to the petitioner to file a single writ petition against two orders of the Labour Court.

9. Before considering the rival contention it is necessary to state that the sole petitioner died on 17.11.1995 and W.M.RNo. 13358 of 1996 has been filed by the legal representatives to substitute the legal representatives in the place of the petitioner. There is no serious objection raised by the learned Counsel for the second respondent to the said petition. Accordingly, W.M.P.No. 13358 of 1996 is ordered.

10. Let us, now examine the contentions raised by the learned Counsel for the petitioner as well as by the learned Counsel for the respondents. The order of the Labour Court bristles with some inaccurate statements and proceeds on certain assumptions. The Labour Court has ruled that there was no reference regarding the question whether retrenchment was valid or not and therefore, the petitioner is not entitled to claim any relief. The order of the reference by the Government reads as under:

Whether the non-employment of Thiru A. Sambanthan is justified, if not, to what relief, he is entitled. To compute the relief if any, award in terms of money, if it can be so computed.

The Labour Court had held that the reference was defective, however, proceeded to decide the question whether the petitioner was entitled to claim any relief. The approach of the Labour Court is erroneous. It has been repeatedly held that the Labour Court should not attempt to consider the order under reference in technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner. The Supreme Court in *Express Newspaper (P) Ltd v. The Workers* : (1962) IILLJ227SC , has held that where industrial disputes are referred for industrial adjudication, the Tribunal has jurisdiction to consider all incidental matters also, and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of the dispute between the parties, and with that object in view, it should consider the order of reference in a fair and reasonable manner,

though the order of reference was not happily framed, nor was it framed to the high expectation of the Labour Court. Therefore, the Labour Court was not correct in holding that the question whether the retrenchment was valid or not, was not referred before the Labour Court.

11. The order of the Labour Court holding that the petitioner has admitted in the Claim Petition No. 59 of 1981 that he had resigned his post as Security Officer, and therefore, it is the case of voluntary resignation, is also not sustainable on the facts of the case. It is relevant to notice the statement of the petitioner in the Claim Petition No. 59 of 1981. The petitioner, in paragraph 6, has stated as under:

After resigning, he sent a letter dated 14.11.1979 to the Director asking for payment of bonus, but it was not paid to the petitioner.

It is seen from the above statement, the petitioner has not admitted anywhere that he voluntarily resigned from service. It is not clear from the order of the Labour Court how it came to the conclusion that the petitioner had voluntarily resigned from service. On the other hand, the reply statement filed by the petitioner in I.D.No. 305 of 1981 makes it very clear that the Director of the second respondent told the petitioner to quit and leave the establishment, and therefore, when he was told to quit and leave the establishment, the petitioner being a man of dignity and self-esteem did not enter the establishment and if he enters he would be forcibly rejected. He therefore contended his services were terminated and it was forced on the petitioner by the employer to claim payment of compensation. When that is the pleading of the petitioner before the Labour Court in I.D.No. 305 of 1981, the Labour Court should have considered the question whether there was a termination of the employment of the petitioner on the basis of the pleading contended in I.D.No. 305 of 1981 and it is not open to it to pick up a solitary sentence made by the petitioner to a different proceeding to come to a conclusion that the petitioner had voluntarily resigned from service. The Labour Court has mixed up the pleading in I.D.No. 305 of 1981 with the petition filed in C.P.No. 59 of 1981 to draw a conclusion that the petitioner had voluntarily resigned from service. It is relevant to notice the petitioner filed the petition in C.P.No. 59 of 1981 for claiming bonus and the pleadings made therein are for the different purpose and it

is not open to the Labour Court to pick or rely upon some statement made in C.P.No. 59 of 1981 for a different purpose and to rely upon the same to decide the question whether there was a termination of the service of the petitioner or not. That apart, there is no evidence or material to show that the petitioner had voluntarily resigned from service. On the other hand, the entire pleading would show that the case of the petitioner was that his services were terminated. The petitioner has produced the form filed by the petitioner for withdrawal of the accumulated fund standing to the credit of the petitioner in the Employees' Provident Fund Scheme, 1952 and in column No. 5 it has been clearly stated that the petitioner's services were terminated from 18.7.1979. It is relevant to notice that the second respondent, as an employer, has forwarded the said form to the Provident Fund authorities and when it forwarded the form, it has not raised any objection to the statement made by the petitioner that his services were terminated from 18.7.1979. Though the Labour Court called for the documents relating to the application given under the Employees' Provident Fund Scheme and marked the documents as court documents as Exs.Z-1 and Z-2, the Labour Court has not recorded any finding on the said documents. Ex. W-5 is another document on which the Labour Court placed reliance to show that the petitioner has resigned the job from 17.7.1979. It is relevant to notice that there was no letter of resignation sent by the petitioner and there was also no acceptance for the letter of resignation by the second respondent. If the case of the second respondent before the Labour Court was that the petitioner has resigned from service, the second respondent should have produced the letter of resignation of the petitioner and acceptance for the resignation letter. The case of the petitioner before the Labour Court was that the Director of the second respondent told the petitioner to quit and leave the establishment. When the management has directed the employee to leave the establishment, it cannot be characterised as a case of voluntary retirement. The expression 'voluntary resignation.' postulates that it must be an act of an employee to resign from the post. When an employer directs an employee to leave the job and quit the place, it is not an act done by an employee to leave the job, but it is an act done by an employer to terminate the relationship of employer and employee. Therefore, the act of an employer in terminating the employment would only amount to termination of service and it cannot be

regarded as a voluntary resignation of service. This Court, in the case of Desikachary v. The Mail : AIR1962 Mad327 , noticed the distinction between retirement and retrenchment of service. Learned Judge S. Ramachandra Ayyar, Officiating Chief Justice, as his Lordship then was, speaking for the Bench held as under:

The word 'retire' has been defined in the Concise Oxford Dictionary as 'cease from or give up office or profession or employment.' The meaning of the word, therefore, postulates a voluntary act on the part of the employee. In its use in the reflexive, the word 'to retire' would mean 'to remove from service.' That would be a case of removal and not retirement. Section 2(oo) of the Industrial Disputes Act used the words 'voluntary retirement.' It follows that, unless the termination of the service is the result of a voluntary move on the part of the employee, he cannot be said to have 'voluntarily retired.' A mere submission of the employee to the termination of service by the employer cannot be said to be a voluntary act of the former. This is particularly as in a case where the employer has the power under the terms of the employment to terminate the service, although such power has to be exercised after notice or on giving pay in lieu of notice. A voluntary retirement is the act of the employee, just as dismissal or removal from service is the act of the employer. Neither apathy nor submission on their employees' part would alter the essential character of the termination of service of an employee.

Respectfully following the views of Sri Ramachandra Ayyar, Officiating Chief Justice, as his Lordship then was, I hold the Labour Court has completely mixed up the concept of resignation and retrenchment of service. There is no evidence in the file of the Labour Court to hold that the petitioner had voluntarily resigned from service. Ex.W-1 is dated 6.10.1977 and the management in Ex.W-2 dated 6.10.1977 has replied to the petitioner that the petitioner has chosen to quit over a small incidence and expressed his sorrow and required him to reconsider his decision. On the basis of the letter of the management, the petitioner continued in service and how the letter dated 6.10.1977 would throw any light on the subsequent conduct of the management in terminating the service in July, 1979. It is also significant to notice that no evidence was let in on behalf of the second respondent to show that the petitioner had voluntarily resigned from service and it

is only on the basis of the plea of the second respondent the Labour Court has come to an erroneous conclusion that the petitioner had voluntarily resigned from service. Though the learned Counsel appearing for the second respondent very strenuously argued, the Labour Court was not correct in holding that the petitioner is a workman, I am not able to accept the contention of the learned Counsel for the second respondent. The Labour Court after analysing the evidence came to the conclusion that the petitioner was a workman as per Section 2(s) of the Act. The Labour Court also records a finding that there was no evidence let in on behalf of the second respondent that the petitioner was having only managerial and supervisory duties and in the absence of any evidence let in by the second respondent, the Labour Court has come to a correct conclusion in holding that the petitioner was a workman within the meaning of the Act. I am of the view that the finding of the Labour Court that the petitioner has resigned from service is arrived at without any evidence. The finding of the Labour Court is perverse in nature as the finding has been arrived at without material and as a matter of fact against the evidence on record and without appreciating documents filed by the petitioner. Therefore, the finding of the Labour Court that the petitioner had voluntarily resigned is not sustainable in law, and therefore, the petitioner would be entitled to one month's wages and retrenchment compensation as prayed for in I.D.No. 305 of 1981.

12. Insofar as the claim for bonus is concerned, the Labour Court has rejected the claim of the petitioner on the ground that the second respondent has not paid bonus to any workman and the petitioner has not given any explanation why he did not claim bonus when he was working under the second respondent. The Labour Court has rejected the documents filed on behalf of the petitioner on the ground that the petitioner has not chosen to produce either the balance sheet or the auditor's report. But, curiously the Labour Court has not recorded any finding on the question of profit on the second respondent. Though such account books were produced on behalf of the management as Exs.M-1 to M-4, there as no discussion in the order about the account books produced by the management. As a matter of fact, the documents produced by the petitioner in Exs. W-10 to W-17, W-58, though noticed the Labour Court has not recorded a finding as to the contents of the documents. It is highly unfortunate that the Labour Court has not

applied its mind to the documents filed by either of the parties. But it is not necessary to dilate upon this topic because the claim of the petitioner is whether the second respondent has made a profit or not and whether the second respondent has paid the bonus or not to the other workmen, as the petitioner is entitled to maintain the petition under Section 33-C(2) of the Act for the minimum bonus. learned Counsel for the second respondent would join issue on this aspect and contended the petitioner was a Chief Accounts Officer and because of the close relationship between the petitioner with a founder of the establishment, some honorarium was made and it cannot be construed that the petitioner was paid a salary but certain sums were paid to the petitioner as a friend of the founder of the concern. He, therefore, submitted that the petition filed under Section 33-C(2) of the Act is not sustainable-in law.

13. I have carefully considered the contentions of the learned Counsel for the rival parties. The Labour Court has rejected the claim of the petitioner for bonus on the ground that the petitioner has not furnished any satisfactory explanation to prove that he is entitled to recover bonus. The Labour Court also held that the second respondent did not pay bonus to any of its workers. The documents relied upon by the learned Counsel for the petitioner were rejected on the ground that the petitioner did not give particulars regarding the income earned by the second respondent. Therefore, in view of the particulars furnished by the petitioner, the Labour Court held that the petitioner was not entitled to claim bonus from the second respondent. This order of the Labour Court is not legally justifiable in law. This Court in the case of *Sivanganam v. Presiding Officer, Labour Court* (1980)¹ M.L.J. 141, has held that it is always open to an employee to claim minimum statutory bonus payable under Section 10 of the Payment of Bonus Act and an application under Section 33-C(2) of the Act for claiming minimum bonus is valid in the eye of law and the Labour Court will have to entertain the claim and dispose of the same after considering the contention of the management and the petitioner is not the workman under Section 2(s) of the Act. On the facts of the case Labour Court found that the petitioner is a workman under Section 2(s) of the Act. The second respondent has also not proved any disqualification on the part of the petitioner to receive bonus under the Act. Hence, under Section 10 of the Payment of Bonus Act, the petitioner will be entitled to claim minimum bonus provided under

the Payment of Bonus Act. learned Counsel for the second respondent relied upon the provisions of Section 22 of the Payment of Bonus Act and contended that where any dispute arises between the employer and the employee with reference to the bonus payable, such dispute shall be deemed to be an industrial dispute and Section 10 of the Payment of Bonus Act begins with the expression 'subject to the provisions of the Act', and therefore, Section 10 subject to the provisions of Section 22 of the Act. He therefore, submitted since there is a dispute between the employer and the employee regarding the amount of bonus payable, the Labour Court has no jurisdiction under Section 33-C(2) of the Act. He, therefore, submitted that notwithstanding the provisions of Section 10 of the Payment of Bonus Act providing for payment of minimum bonus, every dispute with reference to the bonus is an industrial dispute, and therefore, the petition under Section 33-C(2) of the Act is not maintainable in law. I am not able to accept the contention of the learned Counsel for the second respondent. When Section 10 of the Payment of Bonus Act refers to the expression 'subject to the other provisions of the Act, it does not mean that even the payment of minimum wages would become an industrial dispute. The expression 'subject to the provisions of the Act' under Section 10 has to be read in the context of Sections 3, 4, 6, 8 and 9 of the Payment of Bonus Act and it does not confer a dispute with reference to payment of minimum wages as an industrial dispute. Further, even if it is regarded as an industrial dispute, Section 10 provides for payment of minimum amount of bonus at a certain percentage of the salary or wages earned by the 'employee during the relevant accounting period, whether or not the employer has allocable surplus in the accounting year or not. Therefore, the jurisdiction of the Labour Court under Section 33-C(2) of the Act to entertain an application for the payment of minimum bonus and to decide that amount of minimum bonus payable is not ousted by virtue of the provisions of Section 22 of the Payment of Bonus Act. The Supreme Court in *Jalan Trading Co. v. D.M. Aney* : (1979)ILLJ162SC , has held the Payment of Bonus Act compels the employer to pay the statutory minimum bonus even in the year where there has been a loss sustained by the management. Therefore, the petitioner is entitled to receive from the second respondent the monetary benefit of minimum bonus and that amount is computed interim of money, and therefore, the Labour Court has the necessary jurisdiction to decide

the question whether the petitioner is entitled to receive minimum bonus or not. This Court, as already seen, in *Sivdgnanam's case* : (1980)1MLJ441 , has held that it is open to an employee to file an application claiming minimum statutory bonus and the Labour Court has jurisdiction to entertain the claim and dispose of the same on merits. This Court has taken the above view relying upon the decision of Andhra Pradesh High Court in *M/s. Anand Oil Industries v. Labour Court* : AIR 1979 AP182 . Therefore, I hold that the contention of the learned Counsel for the second respondent that the petitioner is not entitled to maintain the application for minimum bonus is without any merits. However, this would not dispose of the entire matter. As already seen, the petitioner has claimed the bonus for the period from 1972 to 1979. By the Payment of Bonus (Amendment) Ordinance, 1975 promulgated on 25.9.1975, later enacted by the Parliament as the Payment of Bonus (Amendment) Act, 1976, Act 23 of 1976, the payment of even minimum bonus was made subject to the availability of the 'allocable' surplus in any accounting year commencing any date in the calendar year 1975. The quantum of minimum bonus was also subject to the condition at 4% of the salary or Rs. 100 whichever is high. No doubt, Payment of Bonus (Amendment) Act, 1977 provided for payment of minimum bonus for the accounting year commencing from the calendar year 1976, a minimum bonus paid at the rate of 8.33% of the salary, irrespective of the fact whether the employer had any allocable surplus or not. Therefore, for the accounting year 1975 the petitioner is not entitled to claim minimum bonus unless it is established before the Labour Court that there was an allocable surplus. But to arrive at a minimum bonus, the court has to find out whether there is allocable surplus or not. Therefore, the claim of the petitioner involves investigation into factual details by the Labour Court, unless the necessary facts were adduced and decided by the Labour Court, the petitioner's statutory right does not arise. Therefore, at least for the year 1975, the petitioner would not be entitled to claim the minimum bonus, but for the other years, the minimum bonus payable under the Payment of Bonus Act is a statutory right vested in the petitioner. Since the petitioner is enforcing the statutory right, the petitioner can file an application under Section 33-C(2) of the Act to enforce the statutory right. Therefore, the claim of the petitioner for the year 1975 is liable to be rejected, but the petitioner would be entitled to claim minimum bonus for the

rest of the years.

14. It is now necessary to consider the other objection raised by the learned Counsel for the second respondent that a single writ petition is not maintainable as against two orders passed by the Labour Court. It is submitted that the proceedings in I.D.No. 305 of 1981 arose under the provisions of the Industrial Disputes Act and the claim petition in C.P.No. 59 of 1981 relates to the claim of bonus for the period from 1972 to 1979 and therefore, C.P.No. 59 of 1919 would come only under the provisions of the Payment of Bonus Act and hence, when there are two different proceedings, a single writ petition is not maintainable. Mr. Prasad, learned Counsel for the petitioner submitted that a common order has been passed by the Labour Court and as against the common order, a single writ petition is maintainable. He relied upon the decisions of this Court in (i) Sampath, M. v. State of Tamil Nadu, etc. (1997)1 L.W. 283 and (ii) Somasundara, Kounder v. Krishna Kounder : (1980)1MLJ41 and the decisions of the Supreme Court in (i) Manohar Lal v. N.B.M. Supply, Gurugaon : [1970]1SCR22 , (ii) Owners & Parties Interested in M. V. 'Vali Pero' v. Fernando Lopez : AIR 1989 SC2206 , (iii) B.R. Ramabhadriah v. Secretary, F. & A. Department, A.P. : (1981)1ILLJ263SC , (iv) A.N. Pathak v. Secretary to the Government, Ministry of Defence : (1987)1ILLJ140SC and (v) K.C.P. Employees Association v. Management, K.C.P. Ltd. (1978) 2 M.L.J. 11.

15. In K.C.P. Employees Association v. Management, K.C.P. Ltd. (1978) 2 M.L.J. 11, the Supreme Court held that in Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour.

16. In Somasundara Kounder v. Krishna Kounder : (1980)1MLJ41 , this Court held as under:

In these days when social justice is the order of the day, courts also have to align themselves with such environment which would generate harmony not only between the court and community at large.

17. In *A. N. Pathak v. Secretary to the Government, Ministry of Defence* : (1987)ILLJ140SC , the Supreme Court observed as under:

But nothing prevents this Court from modulating the relief and giving directions to the respondents to reconsider the offending lists with reference to each of the petitioners in the light of what follows.

The above decisions make it clear that this Court has power to modulate the relief and give suitable directions for the grant of the relief, to secure justice.

18. The following observation made by the Supreme Court in the case of *B.R. Ramabhadriah v. Secretary, F. & A., Department, A.P.* : (1981)ILLJ263SC , is pertinent to the facts of the case:

In an action where a party has prayed for a larger relief it is always open to the court to grant him any smaller relief that he may be found to be entitled in law and thereby render substantial justice. The court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to mete out justice in the case. As far as possible the anxiety and endeavour of the court should be to remedy an injustice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds.

19. The Supreme Court in *Owners & Parties Interested in M. V. 'Vali Pero' v. Fernandeo Lopez* : AIR 1989 SC2206 , stressed that the rules of procedure should be construed in a manner which promotes justice and prevents the miscarriage of justice and a pragmatic approach should be adopted construing a procedural provision. The following observations of the Supreme Court are germane to the facts of the case:

Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the

limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the role attributed to it in our legal system.

20. More or less the same view has been taken by the Supreme Court in *Manohar Lal v. N.B.M. Supply, Gurgaon* : [1970]1SCR22 and the observation made by the Supreme Court is as under:

Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

21. In *Sampath, M v. State of Tamil Nadu, etc.* (1997)1 L.W. 283, this Court held that the prayer column need not be specified in the affidavit of the writ petition and where the affidavit specifying ground on which the relief was sought did not contain the prayer or relief, this Court held, the affidavit filed by the parties is valid and in conformity with the rules. Learned Judge who heard the writ petition made the following observations which are relevant to the facts of the case:

Thus, it is seen that an affidavit is intended only to contain the facts to be used in support of the prayer. There is no Rule requiring the inclusion of the prayer in the

affidavit. The long-standing practice in this Court probably arose because the affidavits, are signed by the parties and the petitions are signed by counsel. I am only hazarding a guess that it was thought in those days that the party should make the prayer and it could be done only by including the prayer in the affidavit. Whatever may be the reason for this practice, so long as it is riot authenticated by any Rule, it is not necessary for any party to adhere to the practice. It is certainly open to a particular party to say that his affidavit would only be in conformity with Rules and he shall not be compelled to do anything which is not required by the Rules.

Though I am of the view that the appropriate course for the writ petitioner to challenge the common order passed by the Labour Court arising out of two different enactment is to file two different writ petitions, the above decision make it clear that the rules of procedure cannot stand in the way of getting the relief sought for by the writ petitioner. The courts have emphasised that the technical rules of practice cannot stand in the way of getting the relief and it is the duty of the court to grant the relief according to the facts and circumstances of the case. The decision of this Court in Sampath's case, establishes the position that the prayer column need not be included as a part of the affidavit.

22. That apart, the writ petition was filed and admitted in the year 1986. The Labour Court has passed a common order and this Court entertained the writ petition and directed to issue Rule nisi in the year 1986 and at this distance of time, if I hold that a single writ petition is not maintainable, it Would result in an anomalous position. This Court has already taken view that the order of the Labour Court is not sustainable in both the proceedings and if only a part of the common order is set aside, it would result in anomalous position. Even assuming that a single writ petition is not maintainable, when upholding a part of the common order, this Court is bound to set aside the other part of the common order. Therefore, on the facts and in the circumstances of the case, I am not able to accept the contention of the learned Counsel for the second respondent that a single writ petition is not maintainable as against the common order passed by the Labour Court.

23. In the result, the common order passed by the Labour Court in I.D.No. 305 of 1981 and in Claim Petition No. 59 of 1981 is quashed and the petitioner will be entitled to one month wages and retrenchment compensation in I.D.No. 305 of 1981 and minimum bonus for the years 1972 to 1979 except the year 1975 in C.P.No. 59 of 1981. The writ petition is allowed to the above extent. There will be no order as to costs.

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