

The Management Vs. R.Sitthayi and ors.

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Court : Chennai

Decided On : Mar-04-2011

Judge : K.Chandru, J.

Acts : Payment of Bonus Act - Section 32(v)

Appeal No. : W.P.No.25942 of 2007 & M.P.No.1 of 2007

Appellant : The Management

Respondent : R.Sitthayi and ors.

Advocate for Def. : Mr.Nazhurallah, Adv.

Advocate for Pet/Ap. : Mr.P.Sathish, Adv.

Judgement :

O R D E R

1. The petitioner is a Hospital. They have come forward to file the present Writ Petition seeking to challenge the order passed by the 2nd respondent Labour Court, Salem in C.P.No.386 of 2005. By the impugned order, the Labour Court entertaining the petition filed by the 1st respondent computed a sum of Rs.3,000/- towards the bonus for the year 2004-2005 and surrender leave salary of Rs.26,000/- together with cost of the Claim Petition.

2. The Writ Petition was admitted on 2.8.2007. Pending the Writ Petition, interim stay was granted.
3. Before the Labour Court, the 2nd respondent who was employed as an Ayah in the petitioner hospital claimed a sum of Rs.3,40,385/- under various heads including Gratuity, Provident Fund, Family Welfare Fund, Bonus and Surrender Leave Salary. The Labour Court took up the Claim Petition and ordered notice to the petitioner management. The petitioner management filed a counter statement dated 'nil' (August 2005) denying the liability to pay the amount.
4. Before the Labour Court, on behalf of the 1st respondent, she examined herself as M.W.1. On the side of the petitioner management, one Thresa Sebastian was examined as R.W.1 and on their side, 4 documents were filed and marked as Ex.R.1 to Ex.R.4. The stand of the petitioner was that even on the basis of the revised date of birth, the 1st respondent has attained the age of superannuation and all other accounts have been settled and there is no amount due and payable by the management. However, the Labour Court found that with reference to bonus for the year 2004-2005, there is no record produced to show that the said amount has been paid. Further, she has also not been paid surrender leave salary, which works out to Rs.26,000/- and computed the amount.
5. The question whether the Payment of Bonus Act will be applicable to the petitioner hospital in view of the exemption provided under Section 32(v) of the Payment of Bonus Act.
6. Mr.Nazurullah, learned counsel appearing for the 1st respondent produced a judgment of the Division Bench in Christian Medical College and Hospital, Vellore, represented by its Council Secretary vs. Presiding Officer, Industrial Tribunal, Madras and another reported in 2003 (4) LLN 834 to the effect that exemption will apply only to the hospitals which do not make profit and not for other hospitals.
7. In the present case, the petitioner has not pleaded regarding the non-maintainability of the claim on account of their entitlement to the very exemption. Since no records were produced and no such evidence was let in, the amount of Rs.3,000/- under the head of Bonus is payable to the 1st respondent. With

reference to the surrender leave salary, the petitioner management has not produced any records that the said amount has been already paid at the time of the termination. Therefore, this Court does not think that any case is made out to interfere with the impugned order of the Labour Court. Hence, the Writ Petition stands dismissed. No costs. The connected Miscellaneous Petition is closed.

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