

(7) For the reasons recorded above, this appeal is allowed, the order of the Court below, dated 19th February, 1979 is hereby set aside and the application filed by Inder Dev Gupta under section 34 of the Act is hereby dismissed. Since it would be an old suit, the trial Court is directed to revive it and to proceed with it with expedition by giving preference to it over the newly instituted suits. The parties, through their counsel, are directed to appear before the trial Court on 16th October, 1984. However, there will be no order as to costs.

H. S. B.

Before P. C. Jain, A.C.J. & J. M. Tandon, J.

MUNICIPAL CORPORATION, AMRITSAR

—Appellant.

versus

SHRI DES RAJ PAUR AND OTHERS

—Respondents.

Letters Patent Appeal No. 1 of 1983

October, 1984

Payment of Bonus Act (XXI of 1965)—Sections 32 and 34—Punjab Municipal Act (III of 1911)—Sections 39, 236 and 240—Municipal Account Code 1930—Rule XVII.17(1)(b)(5) Paragraph 9—Municipal Committee entering into a settlement with its employees for payment of bonus—Subsequent resolution by the Committee approving the settlement—Resolution annulled by the Government under section 236 on the ground that Bonus Act was not applicable to municipal employees—Non-applicability of the Bonus Act to a municipal committee—Whether debars it from paying bonus to its employees—Grant of bonus to the employees—Whether violates the Municipal Account Code.

Held, that in view of the provisions contained in section 32 of the Payment of Bonus Act, the employees of the Municipal Committees are not covered by this Act. In other words, no provision contained in the Bonus Act including section 34 can be made applicable to the employees of the Municipal Committee. It is also clear that the State Government is competent to annul or modify any

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proceeding of a municipal committee which it may consider not in conformity with law or the rules in force under any enactment and this can be done under section 236 of the Punjab Municipal Act, 1911. The Bonus Act may not be applicable to the employees of the Municipal Committees but there is no provision made in any law which prohibits the payment of bonus by a Municipal Committee to its employees. The local authorities are not debarred from granting bonus to their employees merely because they are not governed by the provisions of the Bonus Act. The Government was, therefore, not justified in annulling the resolution of the Municipal Committee on the ground that the Bonus Act was not applicable to it.

(Paras 6, 8, 11 and 12).

Held, that the State Government is competent to frame rules under Section 240 of the Punjab Municipal Act, 1911 and the Municipal Account Code has been framed in terms of clause (t) of sub-section (1) thereof. The Municipal Account Code is essentially restricted to the maintenance of accounts, including audit, etc. Paragraph (9) of sub-clause (5) of clause (b) of sub-rule (1) of Rule XVII.17 of the Code cannot be interpreted to limit the power of the Municipal Committee to fix the remuneration of its employees under section 39 of the Punjab Municipal Act. Even otherwise, it is anomalous to restrict the power of the Municipal Committee to fix the remuneration of its employees not exceeding the remuneration payable to the employees of the adjoining local bodies. Bonus is a gratuitous gift paid by an employer to the employees by way of an incentive. An allowance is perennial and a part of emoluments of an employee whereas bonus is not. The Bonus being in the nature of a gift cannot be claimed by an employee as of right like an allowance. Bonus, thus, cannot be treated an allowance or scale of pay. The provision contained in paragraph 9 of sub-clause (5) of clause (b) of sub-rule (1) of Rule XVII.17 of the Code cannot be made applicable, on this ground as well. The Government could not, therefore, annul the resolution of the Municipal Committee under section 236 of the Punjab Municipal Act as being violative thereof.

(Paras 18, 19 and 20).

Letters Patent Appeal against the judgment, dated 30th November, 1982, of the learned Single Judge (Hon'ble Mr. Justice Surinder Singh) under Clause X of the Letters Patent.

Kuldip Singh, Senior Advocate, with Harinder Singh, Advocate and J. P. Kundra, Advocate, for the Appellant.

A. S. Sandhu, Additional A.G. Punjab for the State.

A. C. Jain, Advocate, for private respondents.

JUDGMENT

J. M. Tandon, J.:

(1) This order will dispose of Letters Patent Appeals Nos. 1 (*Municipal Corporation, etc., v. Des Raj etc.*) and 111 of 1983 (*State of Punjab v. Des Raj etc.*) which are directed against the same order of the learned Single Judge, dated November 30, 1982, in Civil Writ Petition No. 6650 of 1974.

(2) The private respondents are Town Hall employees of the Municipal Committee, Amritsar, working in the departments other than Electricity Department. In February, 1973, certain industrial disputes having arisen between the Municipal Committee, Amritsar, and its employees, a demand notice, including the claim of bonus for the years 1970-71 and 1971-72 was given by workmen Union. The Conciliation Officer held conciliation proceedings. In the meantime, the Union had given a call for strike. During the pendency of the strike, the President of the Municipal Committee entered into a settlement, dated July 14, 1973, (P. 1) with the employees conceding the demand for the payment of bonus. The settlement P.1 was approved by the Municipal Committee,—*vide* resolution No. 374, dated July, 1973. The employees having not been paid bonus, some of them filed applications for computation thereof under section 33-C(2) of the Industrial Disputes Act (hereinafter the Act). The Government annulled resolution No. 374, dated July 30, 1973,—*vide* order, dated June 7, 1974, (P.2) passed under section 236 of the Punjab Municipal Act. The Labour Court,—*vide* order, dated August 20, 1974, (P.3) dismissed the applications filed under section 33-C(2) of the Act on the ground that the resolution No. 374, dated July 30, 1973, providing for payment of bonus to the employees had since been annulled. The private respondents assailed the order of the Government P.2 as also that of the Labour Court P.3 in Civil Writ Petition No. 6650 of 1974 which was allowed by the learned Single Judge on November 30, 1982. The impugned orders P.2 and P.3 have been quashed. It is against this order that L.P.A. No. 1 of 1983 has been filed by the Municipal Corporation, Amritsar and L.P.A. No. 111 of 1983 by the State of Punjab.

(3) The learned Single Judge has allowed the writ petition filed by the private respondents on twin grounds, namely, (1) the

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Municipal Committee was competent to enter into an agreement with the employees agreeing to pay bonus under section 34 of the Payment of Bonus Act, 1965, and in this context the fact that the Municipal employees are excluded from the purview of the Payment of Bonus Act is irrelevant, and (2) the Municipal Committee having resolved to pay bonus, there was hardly any occasion for the annulment of the resolution on the ground that it is not tenable under law.

4. The learned counsel for the appellant has argued that the Payment of Bonus Act is not applicable to the Municipal Committee employees under section 32(iv) thereof and as such the question of the application of section 34 does not arise. Even otherwise, the provision contained in section 34 is attracted when the agreement entered into between the employer and the employees envisages for grant of bonus under a formula which is different from that under the Bonus Act. The argument proceeds that the Government is competent to annul the resolution of a Municipal Committee under section 236 of the Punjab Municipal Act if it is not in conformity with law. The Government having found that resolution No. 374, dated July 30, 1973, of Municipal Committee, Amritsar, was not in conformity with law rightly annulled the same.

5. Section 32 renders certain classes of employees not covered by the Bonus Act. The relevant part of this section reads:

“32. Act not to apply to certain classes of employees.—

Nothing in this Act shall apply to—

(i) * * * *

(ii) * * * *

(iii) * * * *

(iv) employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority;

* * * *

6. It is obvious that in view of the provision contained in section 32 reproduced above, the employees of the Municipal Committees are not covered by the Bonus Act. In other words, no

provision contained in the Bonus Act including section 34 can be made applicable to the employees of the Municipal Committees. This apart, the provision of section 34 can only be made applicable when an agreement between the employer and the employees envisages for the grant of bonus under a formula which is different from that under the Bonus Act. It is not disputed that the quantum of bonus granted to the employees of the Municipal Committee, Amritsar,—vide resolution No. 374, dated July, 30, 1973, is not different from that of the formula under the Bonus Act.

7. Section 236 of the Punjab Municipal Act reads:

“236. Power of State Government and its officers over committee.—

- (1) The State Government and Deputy Commissioners, acting under the orders of the State Government, shall be bound to require that the proceedings of committees shall be in conformity with law and with the rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the committee have authority.
- (2) The State Government may exercise all powers necessary for the performance of this duty and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons, which would in its opinion justify an order by the Deputy Commissioner under section 232.
- (3) The Deputy Commissioner may, within his jurisdiction for the same purpose, exercise such powers as may be conferred upon him by rule made in this behalf by the State Government.”

8. It is clear that the State Government is competent to annul or modify any proceeding (including resolution) which it may consider not in conformity with law or the rules in force under any enactment. The legality of the impugned order P.2 is to be decided in the light of this provision.

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9. The impugned order P.2, dated June 7, 1974, reads:

“No. 6740-4CII-74/15036.—In exercise of the powers conferred by section 236 of the Punjab Municipal Act, 1911, the Governor of Punjab is pleased to annul clauses 1 and 2 of the resolution No. 374, dated July 30, 1973, of the Municipal Committee, Amritsar with regard to the payment of bonus to its employees with effect from 1st April, 1971 at the rate of 8.33 per cent as the Bonus Act, 1965, is not applicable to the Municipal Committee and the aforesaid resolution is against para (9) of sub-clause (5) of clause (b) of sub-rule (1) of rule XVII. 17 of the Municipal Account Code, 1930, framed under section 240 of the Punjab Municipal Act, 1911.”

10. The relevant Clauses of the settlement, dated July 14, 1973 (P.1) which was approved and made part of resolution No. 374, dated July 30, 1973, read:

“1. That the Municipal Committee of Amritsar shall pay Bonus to its employees at the rate of 8.33 per cent as per Committee Resolution Nos. 225(2) and 369, dated 14th June, 1973 and 11th July, 1973, respectively, for the year 1971-72 and 1972-73, and to be continued thereafter.

2. That in the first instance Bonus for one year shall be paid to first five Municipal employees of Division No. 1 provisionally today. * * * *

* * * *

11. The Bonus Act is not applicable to the employees of the Municipal Committees. There is no provision made in any law which prohibits the payment of bonus by the Municipal Committee to its employees. The learned counsel for the appellant has argued that as Bonus Act is not applicable to the employees of the Municipal Committee, the latter is debarred from granting the bonus. Reliance has been placed in *Union of India and others v. R. C. Jain and others* (1). The contention is without merit. It has not been held in *R. C. Jain's case* (supra) that the local authorities are debarred from

granting bonus to their employees. In this connection, a reference may be made to the following observations of their Lordships made therein:

“On a consideration of all the aspects of the matter placed before us we are of the opinion that the Delhi Development Authority is a Local Authority and, therefore, the provisions of the Payment of Bonus Act are not attracted. The result, therefore, is that the appeal is allowed and the writ petition filed in the High Court is dismissed. However, we do wish to observe that the Delhi Development Authority may not only be a model for development activities but may strive to be a model employer too. Bonus was paid to the employees for over ten years and we were not told of any reason for withdrawing this benefit from the employees. Merely because the Law Department advised that they were not bound to pay bonus, they were not obliged to withdraw the benefit. The question which ought to have been considered was not whether they were legally bound to pay bonus but whether in the context of sound management—labour relations, bonus should continue to be paid. It is a matter which we earnestly desire the Delhi Development Authority may reconsider.”

12. In view of the observations of their Lordships reproduced above, it is obvious that the ratio of *R. C. Jain's case* (supra) cannot be pressed in support of the proposition that the Municipal Committee, Amritsar, was debarred from payment of bonus to its employees as Bonus Act is not applicable to the employees of the Municipal Committees.

13. Resolution No. 374, dated July 30, 1973, has been annulled on the following two grounds that :

- (1) the Bonus Act is not applicable to the Municipal Committee; and
- (2) the resolution contravenes paragraph (9) of sub-clause (5) of clause (b) of sub-rule (1) of rule XVII.17 of the Municipal Account Code, 1930.

14. In view of discussion above, the first ground is bad in law and cannot be sustained. ...

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15. Paragraph (9) of sub-clause (5) of clause (b) of sub-rule (1) of rule XVII.17 of the Municipal Account Code reads:

“Without prejudice to the other audit functions, a list of the more important matters that may be taken up in higher audit is given below :

* * * *

(9) Scrutiny of bills for pay and allowances with a view to see that the allowances or scale of pay are not excessive in comparison with that of similar posts under Government or in adjoining local bodies (except conveyance allowance specifically sanctioned by the Government)”

16. The contention of the learned counsel for the appellant is that the Municipal Account Code having been framed under section 240 of the Punjab Municipal Act has the force of law. The effect of the relevant provision of this Code, reproduced above, is that the Municipal Committee cannot allow pay and allowances to its employees which are excessive in comparison with that of similar posts under Government or in adjoining local bodies. The bonus allowed by the Municipal Committee, Amritsar, to its employees is an allowance. The bonus is not paid by the Government to its employees or by any other local body. Resolution No. 374, dated July 30, 1973, being violative of the relevant provision of the Municipal Account Code has been rightly annulled. This contention is also without force.

17. Section 39 of the Punjab Municipal Act provides for the appointment of officers and servants by the Municipal Committee and fixation of their remuneration. Section 39(1) reads:

“39. Employment of other officers and servants.

(1) Subject to the provisions of this Act and the rules and bye-laws made thereunder, a committee may, and if so required by the State Government shall, employ other officers and servants, and may assign to such officers and servants such remuneration as it may think fit, and may suspend, remove, dismiss, or otherwise punish any officer or servant so appointed.”

18. The State Government is competent to frame rules under section 240 of the Municipal Act and the Municipal Account Code has obviously been framed in terms of clause (t) of sub-section (1) thereof which reads:

“240. Power of State Government to frame forms and make rules.—

(1) The State Government may frame forms for any proceeding of a committee and may make any rules consistent with this Act to carry out the purposes, thereof and in particular and without prejudice to the generality of the foregoing power may make rules—

* * * *

(t) as to the account to be kept by committees, as to the conditions on which such accounts are to be open to inspection by inhabitants paying any tax under this Act, as to the manner in which such accounts are to be audited and published, and as to the power of the auditors in respect of disallowance and surcharge;

19. The Municipal Account Code is essentially restricted to the maintenance of accounts, including audit, etc. Paragraph (9) of sub-clause (5) of clause (b) of sub-rule (1) of rule XVII.17 of Municipal Account Code reproduced above cannot be interpreted to limit the power of the Municipal Committee to fix remuneration of its employees under section 39 of the Punjab Municipal Act. Even otherwise, it is anomolous to restrict the power of the Municipal Committee to fix the remuneration of its employees not exceeding the remuneration payable to the employees of the adjoining local bodies.

20. The bonus is a gratuitous gift paid by an employer to the employees by way of incentive. An allowance is perennial and a part of emolument of an employee whereas the bonus is not. The bonus being in the nature of a gift cannot be claimed by an employee as of right like an allowance. The bonus thus cannot be treated an allowance or scale of pay. The provision contained in paragraph (9) of sub-clause (5) of clause (b) of sub-rule (1) of rule XVII.17 of the **Municipal Account Code** reproduced above cannot be made applicable

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in the instant case on this ground as well. Resolution No. 374, dated July 30, 1973, cannot be held liable to be annulled under section 236 of the Punjab Municipal Act being violative thereof. The second ground for passing the impugned order P.2 is also *non est* and cannot be sustained.

21. In view of discussion above, the impugned order of the learned Single Judge is upheld though on somewhat different grounds.

22. Both the Letters Patent Appeals fail and are dismissed with no order as to costs.

N. K. S.

Before M. M. Punchhi, J.

RAJESH GARG

—Petitioner.

versus

THE MANAGEMENT OF THE PUNJAB STATE TUBE WELL CORPORATION LTD., AND ANOTHER

—Respondents.

Civil Writ Petition No. 1754 of 1977

September 12, 1984.

Industrial Disputes Act (XIV of 1947)—Section 2(s)—Person employed in an industry as a Legal Assistant—No administrative or managerial duties entrusted to said official—Such Assistant—Whether a ‘workman’ as defined in section 2(s).

Held, that the comprehensive definition of the word ‘workman’ as given in Section 2(s) of the Industrial Disputes Act, 1947 means any person employed in any industry to do any skilled or unskilled manual, technical, operational, clerical or supervisory work for hire or reward. The words ‘any skilled or unskilled manual, supervisory, technical or clerical work’ are not intended to limit