

given by the Tribunal in almost all the cases during the period between April 30, 1982 to September 24, 1984. The application for rectification appears to have been moved in the year 1986. A copy of the order attached with the written statement of respondent No. 21 shows that the application was moved on August 16, 1986. If instead of moving the application before the Tribunal, a writ petition had been filed in this Court on that date, the claim could not have been declined on the ground of delay. Equally, it could not have been declined even by the Tribunal. Furthermore, it is clear that delay is a question of fact, No such objection appears to have been raised before the Tribunal. It cannot be allowed to be raised now.

(14) In view of the above, it is not necessary to examine the contention relating to the *locus standi* of the petitioner to file the present petition.

(15) Taking the totality of circumstances into consideration, there is no merit in this petition; It is consequently dismissed. In the circumstances of the case, the parties are left to bear their own costs.

J.S.T.

Before : J. L. Gupta, J.

VARINDER KUMAR & OTHERS,—Petitioners.

*versus*

PUNJAB MANDI BOARD,—Respondent.

Civil Writ Petition No. 17953 of 1991

September 8, 1992

*Constitution of India 1950—Article 226—Punjab Agricultural Produce Markets Act 1961—Bonus—Work charged employees claiming bonus—Entitled to parity of treatment with others holding similar post on regular/adhoc basis also entitled to payment of monetary benefits like bonus etc.*

*Held.* that the petitioners who are working on work-charge basis, are entitled to parity of treatment with others holding similar post on regular/adhoc basis. They are entitled to the payment of monetary benefits like *ex-gratia* payment, bonus etc. as claimed by them in this petition.

(Para 12)

*Civil Writ Petition under Articles 226/227 of the Constitution of India praying that the complete record of the case may kindly be ordered to be summoned and on its perusal this Hon'ble Court may be pleased to issue :—*

- (a) *a writ in the nature of Mandamus directing the respondent to pay the petitioners Bonus for the years 1988-89, 1989-90 and 1990-91 as is being paid to the regular/adhoc employees working in the respondent Board ;*
- (b) *a writ in the nature of Certiorari quashing the circular dated 30th October, 1991, Annexure P/4 in so far as according to the same Bonus is to be paid only to the regular employees ;*
- (c) *in the peculiar circumstances of this case this Hon'ble Court may be pleased to issue any other appropriate writ, order or direction that it deems fit ;*
- (d) *issuance of advance notice to the respondents under the High Court Rules and orders may kindly be dispensed with ;*
- (e) *filing of certified copies of Annexures may kindly be dispensed with ;*
- (f) *costs of the petition may kindly be awarded to the petitioner.*

P. S. Patwalia, Advocate, for the Petitioner.

J. S. Mann, Advocate, for the Respondent.

#### JUDGMENT

*Jawahar Lal Gupta, J.*

(1) The 186 petitioners in this case are working on work-charge basis in the Punjab Mandi Board. They pray for the issue of a writ of *mandamus* to the respondents for the payment of bonus for the years 1988-89, 1989-90 and 1990-91.

(2) A written statement has been filed on behalf of the Board in which it has been *inter-alia* averred that the State Government is a necessary party and that the petitioners have an effective alternative remedy by way of a revision petition under Section 42 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred

to as 'the Act') before the State Government. It has been further averred that the Board has paid *ex-gratia* grant and not bonus to the various employees including those appointed on *ad hoc* basis. It has been also averred that the State Government had,—*vide* its letter dated January 9, 1991 (Annexure P. 3) according approval under Section 3(13) of the Act for the payment of *Ex-gratia* grant at the rate of 8.33 per cent to the employees of the Board and Market Committees covered under Bonus Act for the year 1989-90. It has been further averred that the State Government is the competent authority to sanction budget of the Board and it cannot incur any expenditure without the approval of the Government and the sanction in the budget. It has also been stated that the case for payment of *ex-gratia* grant to the workcharged employees was referred to the State Government,—*vide* letter dated March 12, 1991 and various reminders have been issued. The matter is stated to be still under the consideration of the State Government. On these premises, it is claimed that the writ petition deserves to be dismissed.

(3) I have heard Mr. Paramjit Singh Patwalia, learned counsel for the petitioners and Mr. Jatinder Singh Mann, learned counsel for the respondent-Board.

(4) Employees working under the State Government or with the instrumentalities of the State are entitled to not only 'equal pay for equal work' but also to parity of treatment as guaranteed under Articles 14 & 16 of the Constitution. Unless it is shown by reasonable and cogent evidence that there is a reasonable basis for classification and differential treatment between the employees working on regular basis and those working on workcharge basis, all the employees are entitled to the equality of opportunity and parity of treatment in the matter of pay, allowances and various other monetary benefits, like bonus or *ex-gratia* grant. There is no rule or law authorising the Board to pay bonus or give some *ex-gratia* payment to the regular employees and to deny it to those working on workcharge basis. Neither in the written statement nor during the hearing any provision has been pointed out whereunder the respondent-board may be entitled to treat the persons working on workcharge basis differently from those employees working on regular basis in so far as the grant of various monetary benefits is concerned.

(5) Mr. Mann, however, contends that under the provision of Section 3(13) of the Act, the Board has to submit the budget for the approval of the Government and unless the budget is duly approved, the Board cannot incur any expenditure.

(6) It is apt to notice the provision of Section 3(13) of the Act as under :—

“3 (13). Subject to rules made under this Act, an estimate of the annual income and expenditure of the Board for the ensuing year shall be prepared and passed by the Board and submitted every year for the sanction of the State Government not later than the prescribed date. The State Government shall sanction and return the budget within two months from the date of the receipt thereof. If it is not received within two months it shall be presumed to have been sanctioned.”

(7) A perusal of the above provision shows that the Board has to submit an estimate of the annual income and expenditure to the State Government which in turn is bound to sanction and return it within two months from the date of its receipt. If it is not received within two months, proposal of the Board is presumed to have been sanctioned by the Government. The provision appears to have been made to provide a limited financial control to the State Government over the Board. Under this provision, the Board has to prepare an estimate of its income and expenditure. It has to be sanctioned by the Government within two months. If it fails to do the needful, by fiction of law, the proposal of the Board is deemed to have been sanctioned by the State Government.

(8) The duty to submit the proposal is that of the Board. In the present case, the Board was bound to have submitted the estimate of expenditure by taking into account these payments etc. which were required to be made to the persons working on workcharge basis. It has not been shown that the Board has factually not included this expenditure in its annual budget or in the proposal submitted to the Government for the purpose of sanction. If it did not, the petitioners are not to blame. The duty to pay bonus or the *ex-gratia* payment is that of the Board.

(9) Mr. Mann contends that a perusal of the letter dated March 12, 1991 sent by the Board to the Government shows that the Board was seeking clarification “whether the said *ex-gratia* grant is also admissible to the work-charge employees or not ?” Seeking a clarification by the Board does not show that no provision had been made in the estimate of expenditure by the Board.

(10) A perusal of the letter dated July 26, 1989 (Annexure P. 2) shows that the State Government had conveyed a sanction "to the payment of *Ex-gratia* grant at the rate of 8.33 per cent to the employees of the Punjab Mandi Board and Market Committees in State, including the deputationists and officers drawing salary upto and above Rs. 2,500 for the period from 1st April, 1988 onwards."

(11) A perusal of this decision clearly entitles the petitioners to the relief claimed by them. Mr. Mann, however, contends that in view of the letter dated December 26, 1989, issued by the Local Audit Department, only an employees "who has worked in the establishment, for not less than thirty working days and employed on a salary no exceeding rupees 2,500 per month is eligible for bonus under Section 2(13) read with Section 8 of the Payment of Bonus Act, 1965.". Mr. Mann submits that the petitioners are not working in the establishment. Establishment has reference to the Mandi Board. Expression 'establishment' has been duly defined in the Payment of Bonus Act, 1965. The establishment can either be in the private sector or in the public sector. All those establishments which are not covered by the definition of an establishment in the public sector are establishments in private sector. All employees working in those establishments are entitled to the payment of bonus in accordance with the provisions of the Act. It has not been shown as to how the petitioners are ineligible for the grant of payment of bonus or the *ex-gratia* payment even in accordance with the letter dated December 26, 1989 (Annexure P.8) which is only an inter-departmental communication. The opinion expressed by the Examiner-cum-Additional Director, Local Audit Department, cannot override the sanction accorded by the Government,—*vide* its letter dated July 26, 1989.

(12) Accordingly, it is held that the petitioners, who are working on work-charge basis, are entitled to parity of treatment with others holding similar post on regular/*ad hoc* basis. They are entitled to the payment of monetary benefits like *ex-gratia* payment, bonus etc. as claimed by them in this petition.

(13) Accordingly, the writ petition is allowed. In the circumstances of the case, the parties are left to bear their own costs.

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J S.T.