

S. Krishnamurthy vs The Presiding Officer, Central Govt. ... on 13 August, 1985

Equivalent citations: AIR ONLINE 1985 SC 14, (1986) 1 LAB LN 710

Bench: O. Chinnappa Reddy, V. Khalid

ORDER

1. The question in this appeal is whether the appellant is entitled to have the City Compensatory Allowance paid to him taken into account for the purpose of the calculation of the bonus payable to him. That the amount of City Compensatory Allowance paid to the employees is salary or wage, within the meaning of Section 2(21) of the Payment of Bonus Act cannot be doubted.

2. The Tribunal took the view that the City Compensatory Allowance was an allowance which was payable only for the 'time being' and therefore it was not salary or wage. The allowance was one attached to the post and there was therefore no question of the allowance being payable for the time being only. The main ground on which the Tribunal decided against the appellant was that there was an agreement between the workmen and the management that the City Compensatory Allowance paid to employees should not be taken into account for the purpose of calculating the Bonus. In fact there is no such express clause in the agreement. It is sought to be implied from paragraph 1 of the agreement arrived at between the workmen and the management which provides that the City Compensatory Allowance paid to the workmen who joined service between 1st January, 1970 and 31st July, 1970 shall be taken into account 100 per cent for calculation of the bonus. It is said that the clause implied that in the case of other employees it was not to be taken into account.

3. In the first place we are not inclined to read any such implication into the agreement and in the second place such an agreement will be contrary to the provisions of the Payment of Bonus Act. Section 34(3) of the Act does not preclude the employer from entering into an agreement with the employees for granting them bonus under a formula different from the one under the Act.

4. In the present case there is no agreement between the employees and the employer relating to any formula for the payment of bonus. In fact the agreement between the parties contains no stipulation regarding the payment of bonus. The only reference to it is in paragraph 8 but it cannot by any stretch of imagination be said to be a formula for payment of bonus. Payment of bonus has, therefore, to be made and calculated in accordance with the provisions of the Act and that means that the City Compensatory Allowance paid to the employees must be taken into account.

5. The appeal is, therefore allowed with costs and the order of the Central Government Labour Court is set aside. The employees will be paid the bonus to which they are entitled after taking into account the City Compensatory Allowance, Costs of this appeal are quantified at Rs. 2,000/-.