

A CHAIRMAN-CUM-MANAGING DIRECTOR FERTILIZER
CORPORATION OF INDIA LTD. AND ANR.

v.

RAJESH CHANDRA SRIVASTAVA AND ORS.

B (Civil Appeal No.2260 of 2022)

APRIL 7, 2022

[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

- Payment of Gratuity Act, 1972 – s.2(s) – Whether ad hoc payment made by Management to the workers pursuant to interim orders passed by Supreme Court in a previous round of litigation could form part of “wages” within the meaning of the expression u/s.2(s) of the Payment of Gratuity Act, for the purpose of calculating gratuity, especially in the light of the order passed by Supreme Court in the case of Shri Kashi Prasad Tripathi – Held: The order passed in the case of Shri Kashi Prasad Tripathi does not deal with this question – s.2(s) of the Act defines wages – Irrespective of whether what was earned has been paid or remained payable, the same is included in the definition, provided it is in accordance with the terms and conditions of his employment – In the instant case, the employees initiated the first round of litigation (writ petitions) before various High Courts, for grant of the benefit of revision of pay scales, on ground that the employees of other PSUs were granted revision on par with the Government servants – Thus, what was claimed in the first round of litigation was not what was payable in accordance with the terms and conditions of employment – Therefore, the Supreme Court (to which the writ petitions got transferred) was clear in its interim order as to how the ad hoc payment ordered thereunder should be treated – Even in the final order (vide which the writ petitions were eventually dismissed), the Supreme Court made it clear that what was paid was only ad hoc – In a recent Supreme Court decision, it was clarified that wages mean and include basic wages and Dearness Allowance and nothing else – Ad hoc payment made pursuant to the interim orders by Supreme Court will not form part of the wages – Labour Laws.*

Payment of Gratuity Act, 1972 – s.2(s) – Definition of “wages” – Held: The definition of the expression is in 3 parts, the first part

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indicating the meaning of the expression, the second part indicating what is included therein and the third part indicating what is not included therein – Labour Laws. A

Judgment /Order – Interim order – Party who secured it, failed in the final stage – Effect – Held: A party who is in enjoyment of an interim order, is bound to lose the benefit of such interim order B when the ultimate outcome of the case goes against him.

Practice and Procedure – Appeals before Supreme Court, of State or instrumentalities of State against individual litigants – Refusal of Supreme Court to go into question of law in such cases – Held: Cannot be treated as tantamounting to answering the question of law in a particular manner – Whenever the State or instrumentalities of State come up with appeals challenging small benefits granted to individual litigants, the Supreme Court applies the test of proportionality to see whether the quantum of benefits granted to the individual concerned, justifies the examination of the question of law, at the cost of that little man from a far off place – Doctrines/Principles – Test of proportionality. C D

Allowing the appeals, the Court

HELD : 1. The order passed by this Court on 05.05.2015 in C.A.No.4258 of 2015 in the case of Shri Kashi Prasad Tripathi does not deal with this question. The said order has gone on the basis that the computation of the quantum of gratuity is exclusively within the domain of the authorities under the statute and that the High Court is not competent to interfere with the same. Therefore, the order passed in the case of Kashi Prasad Tripathi cannot be taken to have laid down any law to the effect that the *ad hoc* payment will form part of wages. The respondents, therefore, cannot really take advantage of the order passed in the case of Kashi Prasad Tripathi, merely on the ground that the very same question of law was raised by the Management in the civil appeal and thereafter in the petition for review and curative petition. At times, this Court refuses to go into the questions of law, when a single individual armed with an order in his favour from the High Court is pitted against the State. *Whenever the State or instrumentalities of State come up with appeals challenging small benefits granted to individual litigants, this Court applies the* G H

- A *test of proportionality to see whether the quantum of benefits granted to the individual concerned, justifies the examination of the question of law, at the cost of that little man from a far off place. The refusal of this Court to go into the question of law in such cases, cannot be treated as tantamounting to answering the question of law in a particular manner.* [Para 15][92-C-G]
- B 2. Section 2(s) of the Act defines wages. The definition of the expression is in 3 parts, the first part indicating the meaning of the expression, the second part indicating what is included therein and the third part indicating what is not included therein.
- C In the first part of the definition, the emphasis is on what is earned by the employee "*in accordance with the terms and conditions of employment*". Irrespective of whether what was earned has been paid or remained payable, the same is included in the definition, *provided it is in accordance with the terms and conditions of his employment.* [Paras 16, 17 and 18][92-H; 93-C-D]
- D 3. In the instant case, the employees initiated the first round of litigation before various High Courts, for the grant of the benefit of revision of pay scales, way back in the year 1996, on the ground that the employees of other PSUs have been granted revision on par with the Government servants. Thus,
- E what was claimed in the first round of litigation was not what was payable *in accordance with the terms and conditions of employment.* Therefore, this Court was clear in its interim order dated 18.08.2000 as to how the *ad hoc* payment ordered there under should be treated. Even in the final order, this Court made it clear that what was paid was only *ad hoc.* [Para 19][93-E-F]
- F 4. It is a fundamental principle of law that a party who is in enjoyment of an interim order, is bound to lose the benefit of such interim order when the ultimate outcome of the case goes against him. Merely because of the fortuitous circumstance of the Voluntary Separation Scheme coming into effect before the transferred cases were finally dismissed by this Court by an order dated 25.04.2003, creating an illusion as though the last drawn pay included this *ad hoc* payment, it is not possible to go against the fundamental rule that the benefits of an interim order would
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automatically go when the party who secured it, failed in the final A stage. [Para 20][93-G-H; 94-A]

5. In *The Straw Board Manufacturing Co. Ltd.* case, this Court clarified the meaning of the expression “wages” under Section 2(s) of the very same enactment, as follows: “*We clarify that wages will mean and included basic wages and Dearness Allowance and nothing else*”. [Para 21][94-B] B

6. In view of the above, the Controlling Authority and the Appellate Authority under the Act, holding that the *ad hoc* payment made pursuant to the interim orders by this Court will form part of the wages, are set aside. However, in view of the efflux of time and taking into account the fact that few employees are now no more, the Management is directed not to effect any recovery, if payment has already been made to any of the respondents or their families. [Para 22][94-C] C

The Straw Board Manufacturing Co. Ltd. v. Its Workmen D
(1977) 2 SCC 329 : [1977] 3 SCR 91 – relied on.

Case Law Reference

[1977] 3 SCR 91	relied on	Para 21
CIVIL APPELLATE JURISDICTION : Civil Appeal No.2260 E of 2022.		

From the Judgment and Order dated 11.07.2016 of the High Court of Judicature at Allahabad in Writ-C No.29886 of 2016.

With

Civil Appeal Nos.2275, 2305, 2306, 2310, 2357, 2311, 2313, 2315, F 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2358-2359, 2317, 2262, 2269, 2268, 2264, 2263, 2267, 2265, 2261, 2266, 2270, 2271, 2272, 2273, 2274, 2276, 2285, 2286, 2287, G 2288, 2289, 2290, 2291, 2284, 2292, 2280, 2278, 2293, 2294, 2277, 2283, 2295, 2282, 2279, 2296, 2297, 2298, 2299, 2300, 2281, 2301, 2303, 2307, 2302, 2308, 2309, 2312, 2304, 2314 and 2316 of 2022.

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- A Neeraj Kishan Kaul, Sr. Adv., Ms. Pritha Suri, Chirag Joshi, Ghanshyam Joshi, Ms. Ira Mahajan, Advs. for the Appellants.
- B Bharat Sangal, Sr. Adv., Ms. Babita Kuswaha, Nagarkatti Kartik Uday, Advs. for the Respondents.
- C Ms. Vernika Tomar, Adv. for the Intervenor.
- D The Judgment of the Court was delivered by
V. RAMASUBRAMANIAN, J.
- E 1. The common question that arises for consideration in this batch of appeals, is as to whether an *ad hoc* payment made to the workers pursuant to the interim orders passed by this Court in a previous round of litigation could form part of “wages” within the meaning of the expression under Section 2(s) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the “*Act*”), for the purpose of calculating gratuity.
- F 2. We have heard learned counsel for the parties.
- G 3. The scales of pay of the employees of public sector undertakings were revised w.e.f. 01.01.1992. When the benefit of such revision was not made available to the employees of Fertiliser Corporation of India Limited and Hindustan Fertiliser Corporation Limited, their employees moved writ petitions in various High Courts, in the year 1996.
- H 4. At the instance of the Union of India, the writ petitions pending on the file of various High Courts were transferred to this Court. By an interim order dated 18.08.2000, this Court directed an *ad hoc monthly* payment of Rs.1500/-, Rs.1000/-, Rs.750/- and Rs.500/-, respectively to four different categories of employees, as an interim measure, subject to the final outcome of the writ petitions which stood transferred to this Court. The said interim order dated 18.08.2000 reads as follows:-
- I “Having heard learned Solicitor General for the applicant-Union of India and Learned Senior Counsel, Mr. Sanyal, for the contesting Respondents, purely as an adhoc measure and without prejudice to the rights and contentions of the parties in the main matter, we deem it fit in the interest of justice to modify our order dated 19.01.2000 to the following effect:
- J (i) The authorities shall pay as an adhoc measure and on account Rs. 1,500/- to Class-I employees; Rs. 1,000/- to

Class-II employees; Rs. 750/- to Class-III employees; A
Rs. 500/- to Class-IV employees consisting of various
categories in each of the Classes; per month with effect
from _____. This payment will be without prejudice to the rights
and contentions of the parties in the pending matters.

- (ii) We make it clear that this order will not affect whatever B
payment by way of HRA is being released or was released
by the authorities to the employees concerned.
- (iii) The direction about payments as earlier issued by us on C
19.04.2000 will stand modified by the present order.
- (iv) According to this order all arrears with effect from D
01.04.2000 to 31.07.2000 will be cleared within ten weeks
from today and the current payment he made with effect
from 01.08.2000 along with the salary payable for the month
of August, 2000.
- (v) Future payments shall accordingly be made from month to E
month regularly along with usual salaries payable to them.

This order is passed purely as an ad hoc measure and will not come in the way of the ultimate decision of this Court. This order will also not be treated as a precedent in any matter in view of the special facts of the present case. We express no opinion about the nature of the order passed by learned Single Judge of the High Court. That question will abide by the decision in the main matter. In view of the present order, I.A.S. are disposed off..."

5. In the year 2002, the Government of India ordered the closure F
of the fertiliser units of these public sector undertakings and introduced
a Voluntary Separation Scheme (for short "*the Scheme*"). According to
the Management of these companies, 5675 out of 5712 employees of
Fertiliser Corporation opted to go out under the Scheme. Due to this
development, the writ petitions which got transferred to this Court were
eventually dismissed by a final order dated 25.04.2003. In the said final
order, this Court recorded that economic viability or the financial capacity G
of the employer is an important factor which cannot be ignored while
fixing the wage structure and that the materials on record clearly revealed
that both these companies were suffering heavy losses for several years.
It was also recorded in the final order passed by this Court that the

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- A interim relief was purely an *ad hoc* measure. The relevant portion of the final order of this Court dated 25.04.2003 reads as follows:-
- “...The order passed by this Court on 19.04.2000 clearly recorded that a limited relief to all the employees of the two companies was being granted purely as ad hoc measure and without prejudice to the rights and contentions of all concerned. This was reiterated in the subsequent order dated 18.08.2000 when it was said that the order was being passed purely as ad hoc measure and will not come in the way of the ultimate decision of the Court. The principal relief claimed by the petitioners is against Union of India and Secretary, Department of Public Enterprises (respondent nos. 3 and 4) as it is they who have issued the impugned memorandum dated 19.07.1995 which places embargo upon the revision of pay scale of employees of sick PSUs registered with BIFR. Factually there being no compromise or settlement on behalf of respondent nos. 3 and 4 for payment of revised salary as they had never agreed to do so and the orders passed by this Court on 19.04.2000 and 18.08.2000 having clearly indicated that they were being passed by way of ad hoc measure and were not to come in any way in the ultimate decision of the case, it is not possible to hold that there was any compromise or settlement at any earlier stage which entitled the petitioners to get revised salary...”
- E 6. Once the curtain was finally drawn on their very employment, the employees started filing applications before the Controlling Authority under the Act. In their applications before the Controlling Authority, the employees included the *ad hoc* payment made pursuant to the interim orders of this Court, as part of the wages.
- F 7. The Controlling Authority started passing orders in the applications filed by the employees individually, treating the *ad hoc* payment as part of the wages.
- G 8. One of the orders so passed by the Controlling Authority was in respect of an employee by name Shri Kashi Prasad Tripathi.
- H 9. Since the orders of the Controlling Authority were contrary to the interim orders as well as the final orders passed by this Court, the Management of these companies moved an application before this Court for clarification/modification of the order. But by an order dated 01.05.2008, this Court disposed of the interim application by just observing

that when the final order is passed, the interim order automatically comes to an end. A

10. Understanding the said order differently, the Appellate authority under the Act dismissed the appeals filed by the Management. Therefore, the Management filed writ petitions on the file of the High Court.

11. In so far as the case of Shri Kashi Prasad Tripathi is concerned, the Management filed a writ petition in W.P.No.798 of 2009 which came to be allowed by a learned Single Judge of the Allahabad High Court, based upon a judgment of a Division Bench of the Patna High Court. Shri Kashi Prasad Tripathi, unsuccessfully challenged the orders of the learned Single Judge before a Division Bench. Therefore, Shri Kashi Prasad Tripathi filed a special leave petition in SLP(C) No.972 of 2014. This SLP was allowed by this Court by an order dated 05.05.2015 in C.A.No.4258 of 2015. The order of this Court in the case of Shri Kashi Prasad Tripathi in C.A.No.4258 of 2015 dated 05.05.2015 reads as follows:-

“Leave granted.

The appellant, aggrieved by the order of the High Court wherein the controlling authority and the appellate authority have calculated the payment of gratuity payable to the appellant herein, in exercise of its power under Article 227 of the Constitution, without considering the computation made which, in our considered opinion, is not under the jurisdiction of the High Court. Having regard to the facts and circumstances of the case, the material available on record and the rival legal submissions, we are of the view that the High Court should not have interfered with the calculation of payment of gratuity and ad hoc payment with interest. Hence, the appellant shall succeed 2 in this appeal. Accordingly, the appeal is allowed.

It is needless to mention that the question raised by respondent no. 2 is kept open.”

12. The Management filed a petition for review. It was dismissed on 13.08.2015. The curative petition was also dismissed on 03.03.2016.

13. Following the order passed by this Court in C.A.No.4258 of 2015 on 05.05.2015, in the case of Shri Kashi Prasad Tripathi, the High Court of Allahabad dismissed all the writ petitions filed in respect of the

- A other employees. Therefore, challenging such orders in the case of other employees, the Management of the Fertiliser Corporation has come up with a batch of 98 appeals. The Hindustan Fertiliser Corporation has come up with one appeal that arises out of similar judgment of the Calcutta High Court.
- B 14. Therefore, the short question that arises for consideration is as to whether the *ad hoc* monthly payment made by the Management pursuant to the interim orders passed by this Court on 18.08.2000, is liable to be treated as part of the wages within the sweep of the said expression under Section 2(s) of the Act, especially in the light of the order passed by this Court in the case of Shri Kashi Prasad Tripathi.
- C 15. We have already extracted the order passed by this Court on 05.05.2015 in C.A.No.4258 of 2015 in the case of Shri Kashi Prasad Tripathi. The said order does not deal with this question. The said order has gone on the basis that the computation of the quantum of gratuity is exclusively within the domain of the authorities under the statute and
- D that the High Court is not competent to interfere with the same. Therefore, the order passed in the case of Kashi Prasad Tripathi cannot be taken to have laid down any law to the effect that the *ad hoc* payment will form part of wages. The respondents, therefore, cannot really take advantage of the order passed in the case of Kashi Prasad Tripathi, merely on the
- E ground that the very same question of law was raised by the Management in the civil appeal and thereafter in the petition for review and curative petition. At times, this Court refuses to go into the questions of law, when a single individual armed with an order in his favour from the High Court is pitted against the State. *Whenever the State or instrumentalities of State come up with appeals challenging small benefits granted to individual litigants, this Court applies the test of proportionality to see whether the quantum of benefits granted to the individual concerned, justifies the examination of the question of law, at the cost of that little man from a far off place. The refusal of this Court to go into the question of law in such cases, cannot be treated as tantamounting to answering the question of law in a particular manner.* Therefore, *dehors* order of this Court in Kashi Prasad Tripathi, we are obliged to deal with the question of law that arises in this batch.

16. Section 2(s) of the Act defines wages, as follows:-

“2. Definitions.—In this Act, unless the context otherwise requires,— A

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(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."

17. The definition of the expression is in 3 parts, the first part indicating the meaning of the expression, the second part indicating what is included therein and the third part indicating what is not included therein. In the first part of the definition, the emphasis is on what is earned by the employee "*in accordance with the terms and conditions of employment*". C

18. Irrespective of whether what was earned has been paid or remained payable, the same is included in the definition, *provided it is in accordance with the terms and conditions of his employment.* D

19. Keeping in mind the above definition, if we go back to historical facts, it would be clear that the employees initiated the first round of litigation before various High Courts, for the grant of the benefit of revision of pay scales, way back in the year 1996, on the ground that the employees of other PSUs have been granted revision on par with the Government servants. It will thus be clear that what was claimed in the first round of litigation was not what was payable in accordance with the terms and conditions of employment. Therefore, this Court was clear in its interim order dated 18.08.2000 as to how the *ad hoc* payment ordered there under should be treated. Even in the final order, this Court made it clear that what was paid was only *ad hoc*. E F

20. It is a fundamental principle of law that a party who is in enjoyment of an interim order, is bound to lose the benefit of such interim order when the ultimate outcome of the case goes against him. Merely because of the fortuitous circumstance of the Voluntary Separation Scheme coming into effect before the transferred cases were finally dismissed by this Court by an order dated 25.04.2003, creating an illusion as though the last drawn pay included this *ad hoc* payment, it is not G

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- A possible to go against the fundamental rule that the benefits of an interim order would automatically go when the party who secured it, failed in the final stage.

21. In *The Straw Board Manufacturing Co. Ltd. vs. Its Workmen*¹ this Court clarified the meaning of the expression “wages” under Section 2(s) of the very same enactment, as follows: “**We clarify that wages will mean and included basic wages and Dearness Allowance and nothing else**”.

22. In view of the above, the appeals are allowed and the orders of the High Court, the Controlling Authority and the Appellate Authority under the Act, holding that the *ad hoc* payment made pursuant to the interim orders by this Court will form part of the wages, are set aside. However, in view of the efflux of time and taking into account the fact that few employees are now no more, we direct the Management not to effect any recovery, if payment has already been made to any of the respondents or their families. There will be no order as to costs.

Bibhuti Bhushan Bose

Appeals allowed.

¹(1977) 2 SCC 329