

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No.290/00323/2015

Jodhpur this the 12th May, 2016.

CORAM

Hon'ble Ms Praveen Mahajan, Administrative Member

1. Income-tax Contingent Employees' Union, Income-tax Office, Jodhpur. (Association of Casual Labours of Income-Tax, Jodhpur Region).
2. Jagdish Solanki S/o Shri Lal Chand, aged about 39 years, R/o Babu Laxman Singh Colony, outside Third Pole, Mahamandir, Jodhpur – 342 001 (A member of the Income-tax Contingent Employees' Union).

.....Applicants

(By advocate : Mr T.C. Gupta)

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Govt. of India, New Delhi – 110001..
2. Chief Commissioner of Income Tax, Paota 'C' Road, Jodhpur – 342006.

.....Respondents

(By Advocate : Sunil Bhandari)

ORDER (Oral)

The present application has been filed u/s 19 of Administrative Tribunals Act, 1985, seeking following relief(s) :-

"(a) In view of the facts and grounds enumerated above, it is most respectfully prayed that the respondents may be directed to pay ad-hoc bonus for the years 2011-12 onwards with interest at market rate of 12% for delay in all due payments of bonus as per prayer made by representation dated 21.04.2015 (Annex. A/1)."

(b) Any other appropriate writ, order or direction, which may be considered just and proper in the facts and circumstances of the case, may be issued in favour of the applicants.

(C) Exemplary costs may be imposed on the respondents for the arbitrarily, malafide and adamant action of the respondents in not paying yearly bonus as per GOI instructions."

2. The present application has been filed by the Income-tax Contingent Employees' Union (referred to as Union) & Another. Brief facts of the case is that the respondents were paying Rs 1184/- bonus per year to the casual labour upto 2010-11 as per Govt. of India instructions issued every year. However, the respondents have not paid any bonus after year 2010-11 to the casual labour, without assigning any reason. The applicants filed representation dated 21.04.2015 before the Chief Commissioner of Income Tax, Jodhpur (respondent No. 2) for paying bonus for the year 2010-11 onwards but no action has been taken on representation dated 21.04.2015. Being aggrieved with the inaction of the respondents in not paying the bonus, the applicants have preferred the present OA seeking directions upon the respondents.

3. The respondents in their reply questioned the maintainability of the OA on the ground that the applicant No.1 i.e. Union is an unregistered association having no sanction/authority under the law. None of the members of the Union are identifiable nor the list of the casual labour who are alleged to be the members of the Union have been given. Further, alleging the violation of the provisions of Section 20 of the ATs Act, 1985 that the applicant No. 1 has not filed any representation nor

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their parawise reply have averred that the applicant No. 2 is not a full time or regular employee rather he is only a casual labour without temporary status. The OM dated 13.09.2011, 05.10.2012, 27.09.2013 & 16.09.2014 (Annex. A/3 to A/6) is the orders in furtherance to the DoPT OM dated 12.09.2008 which provides that only the casual labourers with temporary status shall continue to receive their wages as per the provisions of Casual Labourers (Grant of Temporary Status & Regularization) Scheme of Govt. of India (1993) worked out on the basis of the pay scales for Group 'D' employees as per 1S Pay Band and the corresponding Grade Pay recommended by the 6th CPC and approved by the Govt. Since, none of the applicants had been conferred with the temporary status as per the said Scheme, therefore, they are not entitled for Non-Productivity Linked Bonus in terms of aforesaid OMs. The respondents have further averred that earlier due to mistake and error some of the casual labourers without temporary status have been granted the Non-Productivity Linked Bonus (NPLB). Immediately on realizing the said mistake, the NPLB was withdrawn by different orders. Thus, the respondents have prayed to dismiss the OA.

4. Heard both the sides. Learned counsel for the applicant submits that as per the CIT-I Jodhpur letter dated 22.02.2013, the respondents paid bonus regularly upto the year 2010-11, but thereafter the respondents refused to pay the bonus without assigning any reasons.

arbitrary. It is further contended that as per para 2 (iii) of Government of India, Ministry of Finance, Department of Expenditure OM dated 13.09.2011, 05.10.2012, 27.09.2013 and 16.09.2014 etc., regarding grant of ad hoc bonus to Central Government Employees, the benefit will be admissible subject to the following terms and conditions - "The casual Labours who have worked for at least 206 days in each year for three years or more will be eligible for this Non-PLB (Ad-hoc Bonus) payment @ Rs.1184/-.

5. Per contra, counsel for the respondents raised some technical issues and referred to Rule 7 of Chapter III Preparation and Presentation of Pleadings and other Papers of the Central Administrative Tribunal Rules of Practice, 1993, which is reproduced as under:-

"7. Production of authorization for and on behalf of an Association-where an application/pleading or other proceeding purported to be filed is by an Association, the person or persons who sign(s)/verify(ies) the same shall produce along with such application etc., for verification by the Registry, a true copy of the resolution of the association empowering such person(s) to do so.

Provided the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorization."

But, in the present case, such resolution of so called Contingent Employee's Union is not on record and in absence of such resolution the OA is not maintainable. In support of his argument, he relied upon the judgment of Hon'ble Allahabad High Court in Umesh Chand Vinod Kumar & ors. v. Krish Utpadan Mandi Samiti, reported in AIR 1984 All

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46, wherein the Division has referred five question of law to a larger bench. The question No.1 and its answer is reproduced as under:-

"Q. 1 Whether an association of persons, registered or unregistered, can maintain a petition under Article 226 of the Constitution for the enforcement of the right of its members as distinguished from the enforcement of its own rights?

A.(1) The position appears to be that an association of persons, registered or unregistered, can file a petition under Article 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights(i) in case members of such an association are themselves unable to approach the court by reason of poverty, disability or socially or economically disadvantaged position.

(2) In case of a public injury leading to public interest litigation; provided the association has come concern deeper than that of a wayfarer or a busybody, i.e., it has a special interest in the subject matter.

(3) Where the rules or regulations of the association specifically authorise to take legal proceedings on behalf of its members, so that any order passed by the Court in such proceedings will be binding on the members.

In other cases an association, whether registered or unregistered, cannot maintain a petition under Article 226 for the enforcement or protection of the fights of its members, as distinguished from the enforcement at its own rights."

Counsel for the respondents further contended that the OA is not maintainable being filed in violation of the provisions of Section 20 of the Administrative Tribunals Act, 1985. Since, the list of the casual labourers (individual applicants) is not available with the respondent department, they are unable to verify whether the applicants have exhausted all the administrative remedy available to them. Further, the applicants may represent to the respondent department first for redressal of their grievances and thereafter they can approach this Tribunal. The applicants have directly approached this Tribunal. Therefore also the OA is premature and is liable to be dismissed.

Going on merits, he argued that payment regarding ad-hoc bonus

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consideration by the respondent department and the same is being paid as per the rules to the Casual Labourers, which has been employed by the department. However, the Casual Labourers, who have been employed through contractor, are not entitled for any ad-hoc bonus. This clarification/ directions have already been given by the Division Bench of this Tribunal in OA No.365/2014 decided on 07.04.2016, which is reproduced as under:-

"We heard the matter.

2. *It appears that the Hon'ble High Court in similar and connected matters in DB Civil Writ Petition No.5530/2013 vide order dated 19.03.2015 held that the employees who approached the court will only come within the ambit of the department employees. All others are external employees and between them and the department, there might be a contractor and in that case, they are not eligible for bonus. All other employees who come within these orders of the Hon'ble High Court and in-situ as on 19.03.2015 will be entitled to payment of bonus. OA and MA No.387/2014 are disposed of accordingly, No costs."*

6. Considered the rival contentions and perused the record. I tend to agree with the contention of the respondents that the stipulations in Rule 7 of the Central Administrative Tribunal Rules of Practice, 1993, have not been adhered to strictly by the applicants (in this case the Income-Tax Contingent Employee's Union). In the absence of specific particulars of the individuals, claiming to be aggrieved for not paying the ad-hoc bonus for the years 2011-12 onwards, the respondent department will not be able to calculate the correct ad-hoc bonus (if admissible), since the particulars i.e. date of joining, etc. will vary in each case. I am not inclined to enter into a debate regarding maintainability or otherwise of this OA on this ground alone, since this controversy already stand

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7. Accordingly, the OA is disposed of with a direction to the applicants to supply the names of the effected individuals to the respondent department. The respondent department thereafter may settle the issue in terms of the order dated 07.04.2016 passed in OA 365/2014.

No order as to costs.



[Praveen Mahajan]
Administrative Member

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