

Chief Justice's Court

Case :- WRIT - C No. - 6098 of 2016

Petitioner :- Benara Udyog Ltd.

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Vinod Kumar Agarwal, Anshul Kumar Singhal

Counsel for Respondent :- C.S.C., A.S.G.I.

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice

Hon'ble Yashwant Varma, J.

Notice shall issue to the Attorney General of India. The Additional Solicitor General of India has been instructed to accept notice.

The petitioner has sought to challenge the constitutional validity of the Payment of Bonus (Amendment) Act, 2015 (Act No.6 of 2016) which received the assent of the President on 31 December 2015 and was published in the Gazette of India on 1 January 2016. The ambit of the challenge is restricted to the provisions of Section 1(2) which provides that the amending Act shall be deemed to have come into force on 1 April 2014. By and as a result of the amendment, two changes have been made in the Payment of Bonus Act, 1965. The first is that in Section 2(13), which defines the expression 'employee', the ceiling on salary or wages has been enhanced from Rs. 10,000/- to Rs. 21,000/-. The second amendment is in Section 12. Section 12, as it stood prior to the amendment, provided as follows :

***"12. Calculation of bonus with respect to certain employees. -
Where the salary or wage of an employee exceeds three thousand***

and five hundred rupees per mensem, the bonus payable to such employee under Section 10 or, as the case may be, under Section 11, shall be calculated as if his salary or wage were three thousand and five hundred rupees per mensem."

As a result of the amendment, the amount of Rs.3500/- has been substituted by an amount of Rs.7000/- or the minimum wage for the scheduled employment, as fixed by the Government, whichever is higher. The submission of the petitioner is that by virtue of the provisions of Section 19(b), the time limit for payment of bonus is eight months from the closing of the accounting year. Hence, it has been submitted that the time limit for the payment of bonus for the accounting year which ended on 31 March 2015 is eight months from the closing of the accounting year which would be 30 November 2015. The expression 'accounting year', it may be noted, is defined in Section 2. Section 2(1)(iii)(a) defines the expression 'in any other case' not falling in clause (i) and (ii) as the year commencing on the first day of April. The submission is that as a result of the retrospective amendment, the financial liability of the employer would have to be recomputed and would be enhanced in respect of a period where a deposit has already been made in compliance of the provisions of Section 19(b) even before the assent of the President was received on 31 December 2015. Hence, it has been urged that the

retrospective amendment is arbitrary and violative of Article 14 for the reason that it casts an unforeseen liability on the employer.

In our view, the submission does warrant consideration. The attention of the Court has been drawn to the fact that a learned Single Judge of the High Court of Karnataka has entertained a writ petition [**Karnataka Employees Association vs. Union of India (Writ Petition No.5272/2016 (L-MW) & 5311/2016)**] and has issued an interim order to the effect that the amendment would take effect only from the financial year 2015-16.

In our view, the ends of justice would be met if a direction is issued to the effect that no coercive steps shall be taken against the petitioner in respect of any period prior to 31 March 2015.

The counter affidavit, if any, shall be filed within a period of four weeks from today.

List on 15 March 2016.

Order Date :- 12.2.2016
VMA

(Dr. D.Y. Chandrachud, C.J.)

(Yashwant Varma, J.)