

Kodavoor Madhava Aithal

Vs

Union of India and Others

Writ Petition No. 3899 of 1978 and Civil Miscellaneous Petition No. 126 of 1982

(M. P. Thakkar, B. C. Ray JJ)

19.02.1987

### JUDGMENT

We are extremely happy to place on record that the parties and their learned counsel have responded in a positive manner to the suggestion made by the court and have placed on record an agreement for resolving the dispute giving rise to the present writ petition to the satisfaction of all concerned. We, therefore, pass an order by consent in the following terms :

1. In full and final settlement of all the claims which are the subject matter of the above writ petition, the second respondent shall pay a sum of Rs. 20 lakhs to the employees covered by the settlement dated August 26, 1975 (Annexure A) in three equal monthly instalments commencing from January 1988.
  2. The second respondent shall pay interest at 12 per cent per annum on the above sum of Rs. 20 lakhs computed with effect from March 1, 1987 till payment along with every instalment.
  3. The balance amount of Rs. 1,38,612.76 to be recovered by respondent 2 under settlement dated October 29, 1977 (Annexure B) shall be foregone and shall not be recovered from the employees by the second respondent.
  4. The above writ petition and all disputes raised therein shall stand withdrawn.
2. Under the circumstances we do not propose to examine the questions regarding the vires of the impugned provisions, namely, Section 2(13), Section 12 and proviso to Sections 34 and 34-A of the Payment of Bonus (Amendment) Act, 1977 as the challenge to these provisions does not now survive.
3. We also consider it necessary to pass an order on the same lines as was passed in *K. C. Joshi v. Union of India* ((1985) 3 SCC 153 : 1985 SCC (L&S) 656) (SCC pp. 161-62, para 17) viz. :

Now that the amount is being paid in one lump sum, it is likely that the employer may take recourse to Section 192 of the Income Tax Act, 1961 which provides that any person responsible for paying any income chargeable under the head 'Salaries' shall, at the time of payment, deduct income tax on the amount payable at the average rate of income tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. If therefore the employer proceeds to deduct the income tax as provided by Section 192, we would like to make it abundantly clear that each appellant employee (who

derives benefit under the present order) would be entitled to the relief under Section 89 of the Income Tax Act which provides that where, by reason of any portion of assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than 12 months or a payment which under the provisions of clause (3) of Section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that it would otherwise have been assessed, the Income Tax Officer shall on an application made to him in this behalf grant such relief as may be prescribed. The prescribed relief is set out in Rule 21-A of the Income Tax Rules. The concerned employees are entitled to relief under Section 89 of the Income Tax Act read with Rule 21-A of the Income Tax Rules. The concerned employees are indisputably entitled to the same. The concerned employees may submit the same to the competent authority and the Company shall assist the concerned employees in obtaining the relief.

4. In view of the fact that the main writ petition has been disposed of, we do not propose to pass any orders in the context of the intervenors. It will be open to them to pursue such remedy as is open to them in accordance with law. The application for intervention is disposed of accordingly.

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