

Mr. Singhvi, learned senior counsel, has submitted that the said decision related to a different reference and the present one is a reference relating to grant of bonus for the year 1998-99.

Mr. C.U. Singh Singh, learned senior counsel, per contra, would contend that the concept of "community of interest" has been put to rest by the earlier judgment in respect of certain disputes and the same cannot be reopened. In this regard, we may refer to paragraph 62 of the earlier decision. It reads as follows :

"The non-workmen cannot be given the status and protection available to the workmen under the Act.
62. The above submission of learned counsel for the appellant is well founded under the Act. Disputes can be raised only by the workmen with the employer. The workmen, however, can in appropriate cases espouse the cause of non-workmen if there is community of interest between the workmen and the non-workmen. In the instant case, it is an admitted fact that the community of interest or estoppel has never been pleaded and the findings rendered by the High Court on this issue is in the absence of pleadings. If the non-workmen are given the status and protection available to the workmen, it would mean that the entire machinery and procedure of the Act would apply to the non-workmen with regard to their employment/non-employment, the terms of employment, the conditions of labour etc. This would cast on the appellant-Company the onerous burden of compliance with the provisions of the Act in respect of the non-workmen. In our view, the situation is not envisaged by the Act which is solely designed to protect the interests of the workmen as defined in Section 2(s) of the Act."

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That apart, paragraphs 95 to 97, being relevant, are reproduced below :

"95. The Industrial Tribunal did not have jurisdiction to adjudicate the present dispute inasmuch as it pertains to the conditions of service of non-workmen. The learned single Judge and the Division Bench of the High Court failed to appreciate that parties cannot by their conduct create or confer jurisdiction on an adjudicating authority when no such jurisdiction exists. We have already noticed that the Division Bench has erred in holding that there is community of interest between the workmen and the non-workmen and holding further that the workmen could raise a dispute regarding the service

conditions of non-workmen.

96. The High Court further failed to appreciate that in order to secure revision of their own grades or other items of emoluments, it was not necessary for employees who are 'workmen' under the Act to agitate also for the revision of the emoluments of those who are not 'workmen', and that as such the 'workmen' in the present, have no direct or substantial interest in the revision of emoluments of employees who are not 'workmen', nor could the workmen be held to be vitally interested in the terms of employment of the non-workmen.

97. The High Court also failed to appreciate that 'workmen' as well as non-workmen being in the same grade did not imply that the distinction between the two categories ceased to exist, or that they belonged to the same class."

Mr. Singhvi, learned senior counsel, would submit that the conclusions recorded in the said judgment run counter to the larger Bench decision in *The Standard Vacuum Refining Co. Of India Ltd. vs. Its Workmen & Ors.* [(1960 (3) SCR 466)].

Ordinarily, we would have adverted to the submission
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canvassed by Mr. Singhvi, learned senior counsel, but we refrain ourselves from doing so, regard being had to the nature of the reference. The reference made by the Commissioner of Labour, Maharashtra State, Mumbai by order dated 25.09.2001 under the Industrial Disputes Act, 1947 (for brevity, 'the Act'), reads as follows :

"That for the year 1998-99 all the members of the Association be paid bonus at the rate of 20% in accordance with the Payment of Bonus Act and as per the custom of payment of bonus to all the employees including those drawing salary of more than Rs.3,500/- per month."

In our considered opinion, in a reference of this nature, the concept of 'community of interest' does not arise. However, the appellant-Association, which has challenged the award, as there was no stay order passed by this Court in a writ petition pending before the High Court, can raise all the issues pertaining to the entitlement in terms of the reference except raising the plea of 'community of interest'.

With the aforesaid observations, the appeal stands disposed

of. There shall be no order as to costs.

.....,J.
(Dipak Misra)

.....,J.
(R. Banumathi)

New Delhi;
August 26, 2015.

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ITEM NO.101

COURT NO.4

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4725/2009

MUKAND STAFF & OFFICERS ASSN.

Appellant(s)

VERSUS

M/S MUKAND LTD.

Respondent(s)

(with office report)

Date : 26/08/2015 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s) Mr. Sanjay Singhvi, Sr. Adv.
Mr. Nitin S. Tambwekar, Adv.
Mr. B.S. Sai, Adv.
Mr. K. Rajeev, AOR

For Respondent(s) Mr. C.U. Singh, Sr. Adv.
Mr. Vikram Mehta, Adv.
Mr. Rahul Arya, Adv.
Mr. Gaurav Choudhary, Adv.
Mr. Vikas Mehta, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal stands disposed of in terms of the signed order.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)