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SUPREME COURT ON AMENDMENT TO BONUS ACT

A. Introduction

The Supreme Court (SC), in the case of *United Planters Association of Southern India*¹ heard the Union of India (UoI) praying for transfer of writ petitions pending before various High Courts (HCs). These petitions the constitutional validity of the Payment of Bonus (Amendment) Act, 2015 (the “Amendment Act”) The SC directed the cases to the respective HCs for final judgements on the issues.

B. Brief Facts

1. The Amendment Act introduced two changes to the Payment of Bonus Act, 1965 (PBA):
 - a. The definition defining ‘employee’ and prescribes wage ceiling for statutory bonus.²
 - b. Raised this salary limit from Rs. 10,000 to Rs. 21,000 per month.³
2. The wage ceiling for onus was increased from Rs. 3,500 to Rs. 7,000 per month or minimum wages for the ‘scheduled employment’⁴ as fixed by the appropriate Government,⁵ whichever is higher.
3. The Amendment Act was published in the *Official Gazette*⁶ of January 1, 2016. However, it was made retrospectively effective from April 1, 2014.
4. The constitutional validity of the Amendment Act was questioned in the writ petitions before various HCs on two counts:
 - a. The retrospective implementation for from the year 2014-15; and
 - b. The linkage to minimum wages for calculation of bonus.
5. The HCs entertained the writ petitions and passed interim orders. Some HCs directed that the amendment shall be effective only from the financial year of 2015-16. One HC ordered implementing the same from 2016-17.⁷ The Karnataka HC stayed the retrospective effect of

¹ *Union of India (UOI) and Ors. vs. The United Planters Association of Southern India and Ors.* (11.07.2022 - SC) : MANU/SC/0834/2022.

² Section 2(13) of the PBA.

³ Section 12 of the PBA.

⁴ As per Explanation to Section 12, the term shall have the same meaning as Section 2(g) of the Minimum Wages Act, 1948.

⁵ Section 2(5) of the PBA.

⁶ *Gazette of India.*

⁷ *Tech Mahindra Limited vs. Union of India and Ors.* MANU/MH/1169/2016.

the Amendment Act directing that it would take effect from the financial year of 2015-16.⁸ The Kerala HC, in the case of *United Breweries Ltd.*⁹ stayed the retrospective application and additionally, stayed payment of bonus based on minimum wages. It directed employers to maintain a separate account and deposit the differential bonus amount in the account without disbursing it to employees.

6. On account of the challenge to the Amendment Act in different HCs, and varying interim orders passed, the UoI sought the SC to transfer of all the writ petitions to itself.

C. Order and Reasoning

The SC:

1. Held:

*“...[E]ven when we agree with the submissions that the writ petitions related with this batch of matters might carry substantially the same questions of law concerning the constitutional validity of the Payment of Bonus (Amendment) Act, 2015 but, for a variety of other relevant reasons, we are disinclined to transfer these matters in this Court or even to one High Court.”*¹⁰

2. Noted the following reasons for deference of the petitions to their respective HCs:
 - a. The innate role of the appropriate Government (State Government in this context) in calculation of bonus was taken into account. The authority of State Governments to exempt certain establishments under PBA¹¹ was also recognised. The questions must be decided with reference to the position of the relevant appropriate Government in each case.¹²
 - b. It would be beneficial to have the views of the jurisdictional HCs given the subject-matter and the variety of questions raised.¹³
 - c. The right to seek judicial review would be protected.¹⁴

3. Held:

*“Accordingly, the prayer for transfer of the subject petitions is declined and all the interim stay orders are vacated while providing that it shall be permissible for the parties to request the respective High Courts for expeditious hearing and disposal of the pending writ petitions. For that matter, we would also request the respective High Courts to proceed with the matters expeditiously, while assigning them reasonable priority.”*¹⁵

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⁸ Order dated February 5, 2016, in *Karnataka Employees Association & Anr. vs. Union of India & Anr.* W.P. Nos. 5172 of 2016 & 5311 of 2016.

⁹ *United Breweries Limited vs. Union of India & Ors.* W.P. No. 28351 of 2016.

¹⁰ Para 11 of the Judgement.

¹¹ Section 36 of the PBA.

¹² Para 12 of the Judgement.

¹³ Para 13 of the Judgement.

¹⁴ Para 13 of the Judgement.

¹⁵ Para 17 of the Judgement.