

(1986) 08 OHC CK 0023
In the Orissa High Court
Case No : OJC No. 2676 of 1985

Ambika Saw Mill

APPELLANT

Vs

Asst. Labour Commissioner and Others

RESPONDENT

Date of Decision : 12-08-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Payment of Gratuity Act, 1972 — Section 2, 4

Citation : (1986) 62 CLT 470 : (1986) 2 OLR 253

Hon'ble Judges : Agarwal, C.J.;K.P. Mohapatra, J

Bench : Division Bench

Advocate : A.S. Naidu, P. Mohanty, P. Satpathy and P.K. Nanda, for the Appellant; Addl. Standing Counsel (for O. Ps. 1 to 4), P. Palit, R. Mohapatra, A.K. Bhagat, B. Mohanty and S.K. Satpathy (for O.P. No. 5), for the Respondent

Final Decision : Allowed

Judgement

Agarwal, C.J.—A short but interesting question that arises for decision in this writ application is as to whether the money value equivalent to the free meals supplied by the petitioner to opp. party No. 5, its employee, could be added to his salary for working the amount of gratuity payable to him.

2. According to the findings recorded by opp. party No. 1 in Annexure-2, opp. party No. 5 was working as a Supervisor under the petitioner from 10-10-1971 to 29-10-1981. This finding has not been assailed before us.

3. Some dispute had arisen between the petitioner and opp. party No. 5 earlier also, but on the intervention of the District Labour Officer, Mayurbhanj, a settlement was arrived at under which opp. party No. 5 accepted a lump sum of Rs. 1500/- in final settlement of all his claims from the petitioner.

Subsequently, on 28-7-1982, O. P. No. 5 filed an application before the controlling authority under the provisions of the Payment of Gratuity Act, 1972 (for short, the "Act") claiming Rs. 2,200/- towards gratuity. A case was

accordingly registered on that basis and the petitioner was noticed

The stand of the petitioner in the said proceeding was that opp. party No 5 was only a temporary employee for a brief period and had left his service after full settlement of his claims long back on 24-4-1978 and thereafter he had joined another firm.

In the said proceeding, the following findings of fact have been recorded which were rightly not assailed before us :

(1) Opp. party No. 1 was drawing a cash salary of Rs 230/- per month besides free food while working as a Supervisor in the petitioner's establishment, and

(2) He worked in that capacity from 10-10-1971 to 29-10-1981.

On the basis of the above findings, opp. party No. 1 computed the sum of Rs. 2,596.15 as gratuity payable by the petitioner taking the salary as Rs. 230/- per month and adding thereto a sum of Rs. 220/- as the money equivalent of the free food supplied to opp. party No. 5, an amount even larger than that which was claimed.

4. It is in this way that the question mentioned above arises, vis, as to whether Rs. 220/- could be added to the salary of opp. party No. 5 as the money equivalent of the free food for computing the gratuity. Our attention was also invited to a mistake committed by opp. party No. 1 in the impugned order (Annexure-2) with reference to Notification No. 9138 dated 28-1-1982 issued by the Department of Labour & Employment of the Government of Orissa. According to this Notification, the minimum wages of a Supervisor working in a scheduled establishment (saw mill) was Rs. 450/- per month. This Notification came into force only since 3-2-1982. It is observed by opp. party No. 1 in Annexure-2 that:

"Since the applicant was employed in a similar scheduled establishment, wages payable to him definitely come to Rs. 250/."

Opp. party No. 1 perhaps lost sight of his own finding that opp. party No. 5 had worked in the petitioner's establishment only till 29-10-1981. Obviously, therefore, the rate of wages fixed under the Notification was not admissible to opp. party No. 5. Annexure-2 is impugned by the petitioner firstly on this ground. But this would, not help him as I find that opp. party No. 1 has also taken into consideration the fact of supply of free food and has calculated Rs. 220/- as the money equivalent for that benefit and added that amount to the salary of opp. party No. 5 thus making a total of Rs. 450/- per month.

6 It was vehemently contended on behalf of the petitioner that opp. party No. 1 has committed a serious error of law in adding Rs. 220/- to the wages for working out the amount of gratuity. This contention at once necessitates reference to the definition of "wages given in the Act which is as follows :

"Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and

which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."

On the basis of this definition, it was submitted that since the free food supplied to opp. party No. 5 was not a cash receipt, the same could not be treated as a part of the wages.

6. The term "wages" has been defined in some other labour legislations also. The definitions in some of the important Acts are extracted here.

"Wages" is defined in the Industrial Disputes Act, 1947 as follows :

"Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and....."

Besides the above, it also includes dearness allowance, the value of any house accommodation and other amenities or of any service or of any concessional supply of food grains or other articles.

In the Payment of Wages Act, 1938, the definition of "wages" is as follows :

"Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and....."

In this Act, unlike the Industrial Disputes Act, the value of house accommodation or other amenities or of any service is excluded from computation.

In the Employees' State Insurance Act, 1948, "wages" has been defined in these words :

"Wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, and.....".

7. All the above Acts besides generally defining "Wages" have also given various other items which are included in the term "wages". Thus, all the definitions can be broadly divided into three parts, namely,

- 1) The defining part,
- 2) The inclusive parts ; and
- 3) The exclusive part.

I have deliberately avoided to refer to the long list of items mentioned in the inclusive part or the exclusive part and have picked up from them only some relevant items which may have a little bearing on the investigation of the

question in issue.

The chief feature of the definition of "wages" in the Payment of Gratuity Act is that it refers the payments and in cash, paid or payable to an employee, that is, "all emoluments earned while on duty or on leave". The emoluments must be earned in accordance with the terms and conditions of employment and be paid or payable in cash.

According to the Webster's Dictionary, "emoluments" means:

"The profit arising from office or employment usually in the form of compensation or perquisite ; (Something necessary to the carrying out of a function)"

The computation of the value of the food supplied by the employer to the employee in terms of money for the purpose of adding it to the monthly salary apparently seems to be outside the purview of the above definitions and the legislative intent particularly when nothing has been brought on record to show that food was supplied by the petitioner to Opp. party No. 5 in accordance with any term or condition of the employment. It may well be that if the food was, not supplied by the petitioner to opp. party No. 5 his rate of wages (salary) would have been higher. But, yet the supply of free food cannot be anything other than an amenity.

Bonus, commission, house rent allowance, overtime wages and other allowances though are paid in cash have been deliberately excluded by the legislature to form part of the emoluments although with respect to these items also it can be very safely contended that the provision of bonus, commission, house rent, overtime wages etc are sufficient allurements for an employee to accept the employment for lesser wages I find full support for this view from a decision of the Rajasthan High Court in the case of General Manager Northern Rly., New Delhi Vs. Sajjan Raj and Another, cited on behalf of the petitioner. This was a case of a railway employee to whom foodgrains were supplied at concessional rates, and a similar argument was repelled by the Court which took the view that the facility of purchasing grains enjoyed by the railway employee from the railway grain shop at concessional; rate was only an amenity although capable of being expressed in terms of money since it could be valued. The scheme of the Act (Payment of Wages Act) showed that this sort of concession was excluded from the purview of the term "wages" as it was a mere amenity and therefore could not be called "wages" under the Act.

The Rajasthan decision has taken support from the case of The Divisional Engineer, G.I.P. Railway Vs. Mahadeo Raghoo and Another, where the question for consideration was as to whether house rent allowance could come within the purview of the term "wages", and on a reference to the definition of the term "wages" again under the Payment of Wages Act held that under the definition of "wages" under the Act, the house rent allowance could not include the value of any house accommodation supplied by the petitioner to the employee.

Yet in another decision in the case of Indian Tea Association v. Workman of the tea estate In Assam and others 1956 2 L L J 291 where the management of the tea estates in Assam had to supply rice to their workmen at concessional rates the claim of inclusion of the value of the rice so supplied was disallowed on the ground that it was merely an amenity or concession.

8. It appears that opposite party No 1 has been greatly obsessed by the Notification where wages of Rs 450/- was fixed for a Supervisor.

9. For the reasons discussed above, I come to the conclusion that supply of free food by the petitioner-Company to opp. party No. 5 was merely an amenity and as such, its money equivalent could not form part of and be added to the cash salary paid to him to form his total wages for computing the amount of gratuity payable to him.

10. This writ application must therefore succeed and the impugned orders set aside,

I would accordingly quash Annexures 2 and 3, The matter would now go back to opp. party No. 1 for a fresh computation of the gratuity payable to opp. party No. 5 on the basis of the wages received in cash by him.

Let a writ issue accordingly. No costs,