

(1964) 01 PAT CK 0003
In the Patna High Court
Case No : Civil Revision No. 147 of 1963

Bhalgora Coal Co. Ltd. and Others	Vs	APPELLANT
Indrajit Singh and Others		RESPONDENT

Date of Decision : 06-01-1964

Acts Referred:

Payment of Wages Act, 1936 — Section 15(2), 15(3), 3

Citation : AIR 1964 Patna 292 : (1964) 9 FLR 213

Hon'ble Judges : R.K. Choudhary, J

Bench : Single Bench

Advocate : Sushil Kumar Mazumdar, for the Appellant;

Final Decision : Partly Allowed

Judgement

R.K. Choudhary, J.—Opposite party No. 1, the Labour inspector (Central) Jharia East filed an application on the 9th of April, 1958, against the Directors and the Manager of the Bhalgora Coal Company Limited, for a direction for payment of delayed wages of 110 workers, together with compensation, on the ground that the wages of these workers for January, February and March, 1958, had not been paid. The claim of the delayed wages amounted to about Rs. 28,000/- and the claim for compensation amounted to Rs. 3,190/-.

The pleas taken by the petitioners were—

- (1) that the Directors of the Colliery were not liable for payment of any wages; and the liability to pay such wages was on their agent and manager, who were responsible for the supervision of the Colliery;
- (2) that the pay for March had not become due on the 9th of April, 1958, the date on which the application was made; and
- (3) that the delay in payment of wages was due to financial difficulties, accumulation of stock and non-payment of coal bills.

2. The Subdivisional Magistrate agreed with the contention of the petitioners that

the wages for March were not due on the date of the application. They were, therefore, not taken into consideration in this application, He also found that, during the pendency of the proceedings, all the wages, even up to March, 1958, had been paid and, therefore, there was no question of any direction for payment of the same to the workmen concerned, he however, found that the Directors were liable to pay the wages and he ordered payment of compensation at the rate of Rs. 10/- per worker per month for January and February, 1958, amounting to Rs. 2,200/-.

On appeal by the petitioners before the District Judge, the finding of the Subdivisional Magistrate that the Directors were liable for the wages was affirmed, and he held, notwithstanding the payment of the wages during the pendency of the proceedings, that compensation could be awarded u/s 15(3) of the Payment of wages Act, 1936 (hereinafter to be referred to as "the Act"), he, however, reduced the amount of compensation from Rs. 10/- to Rs. 8 per worker per month for January and February, 1958. The petitioners, being thus aggrieved, have filed this revision application.

3. Mr. Sushil Kumar Mazumdar, appearing for the petitioners, has, firstly, contended that the Directors are not liable for the payment of the wages as they are not at all responsible for the supervision of the Colliery. Section 3, Clause (b) of the Act provides that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this ACT, provided that, in the case of persons employed (otherwise than by a contractor), in industrial establishments, if there is a person responsible to the employer for the supervision and control of the industrial establishment, the person so responsible to the employer shall be responsible for such payment.

"Employer" has not been defined in the Act, and under its ordinary connotation, it must be held that in a private limited company the Directors are the employers. They are, therefore, liable to pay wages, unless the case comes under the proviso referred to above. Both the Courts below have found that the petitioners have failed to adduce any evidence to show or to establish that they had employed or appointed any person as their agent being responsible to them for the supervision and control of the industrial establishment. On that finding it is not, and could not be, challenged in a civil revision application that the decision of the Courts below that the Directors are responsible for the payment of the wages is in any way wrong. I, accordingly, hold that the Directors in this case are liable for the payment of the wages within the meaning of Section 3 of the Act.

4. Mr. Mazumdar has then contended that, though u/s 15(3) of the Act, a compensation upto a maximum amount of Rs. 10/- per worker may be allowed, there is no provision for making this compensation payable for every month of default. In other words, his contention is that the workers were entitled to a lump sum of compensation up to Rs. 10/- per worker, notwithstanding the fact that there had been default in payment of wages for several months.

The contention seems to be well founded and must prevail. Sub-section (2) of Section 15 of the Act lays down that where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official or a registered trade Union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under Sub-section (1), may apply to such authority for a direction under Sub-section (3). There are two provisos to this sub-section, but I am not concerned with them in this case.

Sub-section (3) of that section says that when any application under Sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages u/s 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter.

Thus, in the present case, the application having been made under Sub-section (2) of Section 15, the workers were entitled to a compensation not exceeding ten rupees per worker in case of delayed payment of wages, mere is nothing in the section to hold that this amount of ten rupees may be paid for every month of default; rather, reading the section as it stands, a single worker is entitled to the maximum amount of Rs. 10/- by way of compensation, and nothing more than that. The order of the courts below to pay the amount of compensation per month or default is, therefore, not legal.

As already observed, the learned District Judge awarded the compansation of Rs. 8/- per worker. But instead of that award being for each month of default, the same should have been awarded in the shape of a lump sum for the entire period of default. In other words, the workers, according to this section, in the present case are entitled to a sum of Rs. 8/- per worker as compensation both lor January and February 1958 in one lump, and not for each month separately. The leaned District Judge has also found that the number of workers who have not been paid is only 109 as against 110 mentioned in the application OT the Inspector. The petitioners are, therefore, liable to pay compensation for 109 workers at the rate Rs. 8/- per worker, the total amount being Rs. 872/- only.

5. The result, therefore, is that the application is allowed in part and the amount is directed to be paid as indicated above. As there is no appearance on benalt of the other side, there will be no order as to costs.