
(2002) 08 JH CK 0071
In the Jharkhand High Court
Case No : LPA No. 359 of 2000

Bihar Mica Exporters Association

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Minimum Wages Act, 1948 — Section 3, 5

Citation : (2002) 0 LIC 494 : (2002) 3 LLJ 1107 : (2002) JCR 3 235

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : R.N. Sahay, M.K. Roy, J.P. Sinha and R. Lala, for the Appellant; P. Modi, G.P. 1 and K. Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The appellant-Bihar Mica Exporters Association being not satisfied with the order dated 1st September, 2000 passed by the learned single Judge in CWJC No. 2837 of 2000 (R), have preferred this appeal.

2. The aforesaid writ petition was preferred by the appellant against notification dated 12th June, 2000 issued under the orders of the Governor of Bihar alleging, inter alia, that the minimum wages fixed by the said notification is against the provisions of Minimum Wages Act, 1948, particularly, Sections 3 and 5 thereof and should not have been issued from retrospective effect.

3. The learned single Judge taking into consideration the meagre revision of wages of workman from Rs. 39.70 to 53.80, as it having due regard to the average of All India Consumer Price Index Number, dismissed the writ petition, the Minimum Wages Act being a benevolent Act.

4. In this appeal, the counsel for the appellant made the following submissions :

(i) The wages cannot be revised from retrospective date;

(ii) Before fixation of wages, the appellant should have been heard; and

(iii) The notification dated 12th June, 2000 being against the provisions of Sections 3 and 5 of Minimum Wages Act, 1948 is illegal.

5. With regard to the first submission, the counsel placed reliance on sub-section (2) to Section 5 of the Act, 1948, wherein while prescribing the procedure for revision of minimum wages, it is stipulated that the appropriate Government shall revise the minimum wages by notification in official Gazette which shall come into force on the expiry of three months from the date of its issue unless otherwise provided in such notification.

6. Reliance was placed on a single Bench decision of this Court in Mahipal Dadha v. State of Bihar, reported in 1993 (1) PLJR 564, wherein the Court held that appropriate Government may fix and revise the minimum rates of wages, for the first time, which is to be done in accordance with law, by a notification in official Gazette showing its proposal for information to persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposal will be taken into consideration. The Court further held that the aforesaid procedure cannot be waived and there cannot be a composite notification as different periods of notification for the purposes have been specifically provided therein.

7. The case of Chhotanagpur Chambers of Commerce & Ind. v. State of Bihar 1990 PLJR 177, was also relied upon, wherein the Division Bench held that u/s 5 of the Act, 1948, the only important thing is that no draft proposal is to be considered and finalised before two months and after considering the suggestions and objections received during the period of two months. Since the Government is not required to hear the public, in general, no specific date in draft proposal is necessary on which objections are to be heard or considered.

8. In respect to second submission, the counsel for the appellant relied upon an earlier order passed by this Court on 6th May, 1999 in CWJC No. 2000 of 1998 (RJ), in the case of this very appellant. That was a case, wherein the appellant challenged the validity of notification dated 25th May, 1998, whereby the Bihar Government re-introduced the formula of Variable Dearness Allowance (VDA) and revised the VDA of large category of workmen including those engaged in Mica Industries except Mines. The validity of notification was challenged, inter alia, on the ground that the computation of the Variable Dearness Allowance (VDA) retrospectively w.e.f. 1.4.1998 is on the very face of notification was erroneous. The Court remitted the case of appellant for determination of question of payment of VDA to the unskilled Mica Workers w.e.f. 1.4.1998 to the Advisory Board constituted under the Minimum Wages Act with liberty to appellant to raise their objection relating to miscalculation as well as other objection as may be available to them, in law, which was to be dealt with by the Advisory Board.

The counsel for the appellant submitted that the impugned notification dated 12th June, 2000 was issued without giving hearing by the Advisory Board as per

the earlier order of the Court.

9. In respect to third submissions, reference was made to Sections 3 and 5 of the Act, 1948 to suggest that the provision and procedure have not been followed. Vague submission was made, though reliance was placed on one or other decisions of Patna High Court and Supreme Court.

10. The case of Airfreight Ltd. Vs. State of Karnataka and Others, was relied upon. That was a case related to fixation of Variable Dearness Allowance (VDA). It is not made clear, how it supports the contention raised by the appellant. In fact, the finding of the Court seems to be in favour of the respondents which fixed VDA for one or other period which appears to be in accordance with the decision of the Supreme Court.

11. The case of Chakradhar Bidi & Tobacco Merchants Association v. State of Bihar, reported in 1997 (2) PLJR 179, is also of no avail to the appellant, wherein the Court held that the State Government is not bound by the recommendation, as shown in the draft approval and the functioning of the Advisory Committee is not quasi-judicial, in nature.

12. Reliance was also made in the case of H.B. Verma Vs. Union of India and others, wherein while discussing the provisions of Section 5, the Supreme Court held the decision of Advisory Board improper it having not performed its statutory function in the manner which would appear to be fair, reasonable and just.

He also placed reliance on the decision of Patna High Court in the case of Nageshwar Prasad v. R.B. Kashinath, reported in 1958 BLJR 820, wherein the Court held that if a thing is ordered by the Legislature to be done in a manner, that thing must be done in that particular manner. If it is not done in the manner laid down by the law, it is invalid and of no effect.

Similarly, the decision of Calcutta High Court in the case of Gairkhatta Tea Co. Ltd. and Another Vs. State of West Bengal, , was also relied upon by the counsel for the appellant, wherein the Court held that the wages cannot be revised from retrospective effect.

13. But in the present case, I feel that the aforesaid decisions are not applicable for the discussions and reasons as given hereunder.

14. Now, it is a settled law that the provisions under the Minimum Wages Act, 1948 are social welfare legislation. It is a beneficial legislation so far as the employees employed in a schedule employment is concerned. In case such beneficial notification is challenged, generally, the Court do not interfere, till it is shown that the fixation of wages or VDA is arbitrary, against the mandatory provisions of the Act and affects the right of employer.

15. In the present case, no detail has been given by the appellant relating to similar notification issued earlier or later with a view to find out whether the

notification dated 12th June, 2000 is prejudicial to appellant. I have gone through various notifications issued from time to time since 1998-99, as appended to Bihar Minimum Wages Manual, published by Malhotra Books (Third Edition 2001) and the relevant provisions of Minimum Wages Act, 1948.

Section 2 of Act, 1948 deals with interpretation; Sub-section (d) to Section 2 defines "Cost of Living Index Number" in relation to employees in any scheduled employment in respect of which minimum rate of wages has been fixed means the index number, ascertained and declared by the competent authority in the Official Gazette to be the cost of living index number, applicable to employees in such employment.

Under Section 3 of Act, 1948, provisions have been made for fixing of minimum rates of wages payable to employees employed in an employment specified in Part I and II of the Schedule which can be reviewed at such intervals, the appropriate Government may think fit not exceeding five years.

Under Section 5 of Act, 1948, the procedure for fixing and revising minimum wages has been laid down.

16. From the aforesaid provisions, particularly, Section 3, it is clear that while the appropriate Government is to fix the minimum rates of wages payable to employees, it is to be reviewed under Subsection (1)(b) of Section 3 at intervals as the appropriate Government may think not exceeding five years.

17. The VDA is based on "Cost of Living Index Number" [Section 2(d)]. The appropriate Government generally fix the VDA on the basis of the average of All India Consumer Price Index and is revised from time to time. As the cost of living index varies from time to time, the appropriate Government generally revised the VDA periodically, every six months taking into considerations the increase or decrease based on the average of All India Consumer Price Index Number (Cost of Living Index Number).

Though the VDA is distinct from minimum wages, but as it is added with minimum wages periodically, the appropriate Government issued notification in exercise of powers conferred by Section 3 of Act, 1948 read with clause (d) of Section 2.

18. From bare perusal of notification dated 12th June, 2000, it is clear that the notification relates to periodical fixation of VDA, which is the reason, I have gone through the periodical notifications issued since 1998 relating to VDA

One of the Notification No. 7/MW-1012/98-L&E 1808, dated 25th May, 1998 issued relating to VDA (w.e.f. 1.4.1998).

Against the aforesaid notification, the appellant moved before this Court in CWJC No. 2000 of 1998 (R), disposed of on 6th May, 1999. Therein, the Court referred the matter for determination of VDA (w.e.f. 1.4.1998) to the Advisory Board constituted under the Minimum Wages Act.

It appears that another order was passed by this Court in respect to aforesaid notification dated 25th May, 1998 in CWJC No. 2698 of 1998 (R), disposed of on 10th February, 1998. In compliance of this Court's order in CWJC No. 2698 of 1998 (R), on the recommendation of the Advisory Board, the appropriate Government issued revised notification No. S.O. 7/MW-101/99 L&E 5007, dated 22nd October, 1999 u/s 3 read with clause (d) of Section 2 of the Act determining VDA w.e.f. 1.4.1998. A meagre amount was fixed towards VDA w.e.f. 1.4.1998 was Rs. 10.58 ps. to Rs. 15.99 ps.

It was made clear that the payment of VDA on the basis of average index is payable at the rate aforesaid from 1st April 1998 with clear stipulation that the increase or decrease in the amount of VDA will be based on the average of the All India Consumer Price Index Number for every six months and will be applicable after the expiry of three months, after the said period of six months.

(Emphasis given by me).

The notification dated 22nd October, 1999 is not under challenge either in the connected writ petition or in this appeal. The 22nd October, 1999 notification followed by impugned notification No. 7/MW-1055/ 99 L&E 232G, dated 12th June, 2000, whereby the VDA payable is fixed for the period w.e.f. 1.10.1998. Therein, it is also stipulated that the VDA will be payable at the rate from October, 1998 and thereafter increase or decrease in the amount of VDA will be based on average of All India Consumer Price Index Number for every six months and will be applicable after the expiry of three months, after the said period of six months.

Similarly, VDA for the period from 1.4.1999 was fixed in pursuance of notification No. 7/MW-1055/99-L&E-2250, dated 8th June, 2000 with similar terms of applicability after the expiry of three months.

19. From the aforesaid notifications, it will be evident that all the notifications, including the impugned notification dated 12th June, 2000 related to VDA which is revised on the basis of All India Consumer Price Index Number six monthly. It is payable after expiry of three months. Initially, the VDA was fixed w.e.f. 1.10.1998, which followed by the subsequent notification fixing VDA w.e.f. 1.4.1999. Thus, the dates aforesaid, which are six months interval have a nexus.

Under Section 3 of the Act, 1948, the wages are reviewed at intervals not exceeding five years. The VDA to be included in the wages. It is revised six monthly as per All India Consumer Price Index Number. It is for the said reason, it is not necessary to follow the strict procedure, as prescribed for fixing and revising minimum wages u/s 5, but can be fixed by the competent authority without following the elaborate procedure of Section 5.

20. In view of the aforesaid facts, as merely, the VDA has been fixed by the impugned notification, I am not inclined to interfere with the same on the ground that the Advisory Committee had not heard the appellant, as required to be

heard at the time of fixing the minimum wages.

21. There being no merit, this appeal is dismissed. However, there shall be no order, as to costs.