(2000) 07 PAT CK 0069

In the Patna High Court

Case No : L.P.A. No''s. 409 and 410 of 1998 (R) and 144 of 1999 (R)

Bihar State Industrial Development Corporation Ltd. and Others — APPELLANT

Vs

Dharmaraj Pandey and Others — RESPONDENT

Date of Decision : 20-07-2000

Acts Referred:
Companies Act, 1956 — Section 617

Citation : (2001) 49 BLJR 101 : (2001) 88 FLR 897 : (2002) 4 LLJ 388 : (2000) 4 PLJR 795

Hon'ble Judges : Ravi S. Dhavan, C.J;M.Y. Eqbal, J

Bench : Division Bench

Judgement

1. The Court has three cases before it. The issues are more or less similar. In each of the cases, the employees have retired and they claim their retirement benefits, whatever the amount may be, including their arrears of salary. At the outset, it was stated that there is no issue on the aspect that they were employees of a Government company; that they had retired and that their claims have to be paid.

2. The Government company, the Bihar State Industrial Development Corporation Limited, by its nomenclature is accepted as a Government company within the meaning of Section 617 of the Companies Act, 1956.

3. The Bihar State Industrial Development Corporation Limited, in the facts of cases before the Court has two units. One is Bihar State Super Phosphate Factory at Sindri, district Dhanbad. These are the cases of Baijnath Singh and Jitu Mandal. The other unit is the Electric Equipment Factory, Tatisilway, Ranchi. This case relates to an employee, Dharmraj Pandey. In the facts and circumstances of these cases, the employees claim retirement benefits but allege that they have not been delivered their retirement benefits. All of them have retired. For instance, Mr. Dharmraj Pandey claims salary for the period 1993 to January 1998. He retired on January 31, 1998. He filed a writ petition C.W.J.C.

No. 1115/1998 (R): Dharmraj Pandey v. State of Bihar and Ors. In the writ petition, an order was passed on February 8, 1999, which in effect, gave a direction to the respondents that the claims of Dharmaraj Pandey will be decided on his representation and his admitted dues will be paid. He was entitled to interest in respect of post retirement benefits. He was also entitled to receive penal'' interest on account of inordinate delay in payment. But, the latter aspect is not relevant at present. On the writ petition of Baijnath Singh, an order was passed on July 13, 1998 directing the General Manager, Bihar State Super Phosphate Factory, Sindri to pay all the admitted dues to which this petitioner was legally entitled to. It was held that he was entitled to receive interest at the rate of 10% per annum from the date of his retirement, which was November 30, 1996. Costs were awarded against the respondents at Rs. 1,000/-. The aspect of interest or cost is not relevant, at present. Then, there is the matter of Jitu Mandal. He retired on November 30, 1994 as a boiler attendant. On his writ petition, an order was passed on July 13, 1998. It was directed that he may be paid all the admitted dues as legally payable to him. It was held that he was entitled to interest at the rate of 10% per annum from the date of retirement as also costs. Again, the latter aspect is not relevant at present.

4. First contention on behalf of the units of the Bihar State Industrial Development Corporation, in each of cases i.e. on behalf of the General Manager, Bihar State Super Phosphate Factory at Sindri, in the case of Baijnath Singh and Jitu Mandal and on behalf of the General Manager, Electric Equipment Factory, Tatisilway, Ranchi is that they (the General Managers) had not been heard on the writ petition. This aspect is not relevant, as any lack of opportunity, has been sufficiently provided by this Court on the Letters Patent Appeal. The issue is simple. Whether the employees are entitled to receive their post-retirement benefits? The issue that they were not employees of the unit where they were working has been answered by an affidavit which has been filed on behalf of State of Bihar and the Industrial Development Commissioner, Government of Bihar. Such affidavits have been filed in the case of Baijnath Singh and in the case of Dharmraj Pandey. On behalf of the State of Bihar, it is admitted that petitioners are employees of the Bihar State Industrial Development Corporation. It is admitted that the employees have retired. It is also admitted that they are entitled to their retirement dues. It is asserted on behalf of the State of Bihar that the employees concerned are the employees of Bihar State Industrial Development Corporation, which is a Government company and as such, he is not an employee of the State of Bihar. It is asserted on behalf of State of Bihar that the State Government is not liable to pay salary and advance etc. It is also clarified on behalf of State of Bihar that the concerned employees in their respective cases, are not the workers of the units but they are employees of the Bihar State Industrial Development Corporation. The liability to pay is of the Government company. The fact of retirement and entitlement to the dues is not disputed.

5. No positive approach has come before the High Court either on behalf of Bihar

State Industrial Development Corporation or the State of Bihar as to who exactly, will pay these workers their arrears and the post retirement benefits. The contention on behalf of the appellants is of legal pleas evading responsibility. In Jitu Mandal''s case, the appellant is the General Manager, Bihar State Super Phosphate Factory at Sindri. In the case of Dharmraj Pandey, the Bihar State Industrial Development Corporation is the appellant. On behalf of the two units, it is contended on behalf of the General Manager, Bihar State Super Phosphate Factory that the General Manager has no funds to pay. On behalf of Bihar State Industrial Development Corporation Limited, the State Government filed an affidavit that there is no money to pay the employee Dharmraj Pandey. In the totality of the circumstances the argument advanced on behalf of the Bihar State Super Phosphate Factory at Sindri and the Bihar State Industrial Development Corporation Limited are: (1) Your Lordship may give an order to pay employees, (2) Your Lordship may permit withdrawal of the Letters Patent Appeal, (3) Your Lordship may direct the Bihar State Industrial Development Corporation to discharge the liability of the Corporation and (4) the final argument was that the State is shirking its responsibility to make payment to the workers in the present case.

6. The Bihar State Industrial Development Corporation is a Government company u/s 617 of the Companies Act, 1956. Whether it is Bihar State Super Phosphate Factory at Sindri or the Electric Equipment Factory, Tatisilway, Ranchi, they are only the units of the Corporation which is, a Government company. The State of Bihar declares the liability as of the Bihar State Industrial Development Corporation Limited. On behalf of the units of the Bihar State Industrial Development Corporation, their General Manager, it is contended by their counsel that there is no money to pay. In so far as Bihar State Super Phosphate Factory at Sindri is concerned, it is contended that it is closed. Learned counsel on behalf of the General Manager is at issues that he is not at Sindri but at the head office at Patna. Learned counsel for the State of Bihar points out to a letter, the facts of which are best reproduced:

(Vernacular matter omitted)

The contention on behalf of the unit concerned is that this letter is only being used for the purpose of record of the Bihar State Industrial Development Corporation and has not been received at the office of the Unit.

7. Such are the disputes which are coming to the High Court on behalf of the workers and the employees. So far as the workers of Bihar State Super Phosphate are concerned, the General Manager is acting independent of the Government company and contended that it is not his obligation to make payment to the employees. The State of Bihar declares that the employees are not State Government employees but the employees are of Bihar State Industrial Development Corporation Limited. The manufacturing units are acting independent of the incorporated Corporation. It is reflecting very badly on the State Corporation and the State run industries and it does not exhibit a picture of

confidence on the public sector undertakings which are running under the Bihar State Industrial Corporation Limited.

8. On behalf of the workers, it has been contended that the workers are not paid their dues and are being made to run by the General Managers between the Corporation which is the legal entity and its unit acting independent of the Corporation. The Officers, it is contended receive and are paid their salaries by the Corporation. There is no issue whether the writ petitioners are the employees of the Bihar State Super Phosphate Factory at Sindri or Electric Equipment Factory, Tatisilway, Ranchi or are not the employees of the Corporation. The dues of the workers, whether they are employees of Bihar State Industrial Development Corporation or workers of a separate unit, is not an issue nor are their claims. The claims of the workers cannot remain pending. This state of affairs reflects badly on the aforesaid State Corporation not to acknowledge its working staff and the service put in by them.

9. Admitted dues of the workers cannot be retained by the management. No responsible management in private industry can get away with an answer that the manufacturing unit has no responsibility to the workers and they should seek their remedies from the Company. This is an unusual stand in a public sector undertaking. The manufacturing unit has no legal entity distinct from the Corporation, which appears to be an incorporated Company. Both are liable to clear the workers'' dues on which there is no issue. These dues are retirement dues. Perhaps, the General Managers who have taken such an independent stand away from the Corporation whose employees they themselves are, seemed to have forgotten that if they are General Managers to a manufacturing unit, and have had control over the affairs of the unit, then their obligation continues under the Factories Act, 1948. And these General Managers are otherwise subordinate and subservient to the Government Company, incorporated as the Bihar State Industrial Corporation Limited. The Court has not appreciated the stand taken by the General Managers of the two manufacturing units; this will spell anarchy in the management of the public sector corporations.

10. Learned senior counsel appearing on behalf of the managers submitted that he cannot answer whether the managers are getting salaries from their units or the Bihar State Industrial Corporation Limited. A faint hint was being dropped that the units are closed. A proposition not accepted by counsel for the workers and, otherwise, irrelevant for the issues at hand .... the payment of admitted retirement benefits to the workers. An argument was also made on behalf of the General Managers that the units need to be wound-up. This again is an argument which the Court cannot appreciate as what will be subjected to winding up is the company of which the units are only part of the corpus and assets. Then, in a winding up proceeding on a pan passau ranking, workers'' dues have priority of ranking. But, this is not the stage and the General Managers have no authority to make such submissions. Even in equity, Courts reserve the passing of a winding up order as a measure of last resort. Unemployment of workers is one important

factor.

11. Before the Court considers issuing any writ partaking the nature of distress, on a liability which is admitted but is not being responded to on misplaced legal pleas like ''go find the employer who can pay your dues'', the Court considers it appropriate to bring this matter to the notice of the Chief Secretary, Bihar.

12. These cases are adjourned for six weeks to enable the Chief Secretary to look into the stand being offered by public officials; officers of Government Companies or such officials.

13. As this matter is a part heard, it will be listed before this Bench or a Bench of which one of us is a member.

