

(1966) 10 MP CK 0005
In the Madhya Pradesh High Court

Burhar and Amlai Collierles (Shaw Wallace and Co. Ltd.)	APPELLANT
Vs	
Central Industrial Tribunal and Others	RESPONDENT

Date of Decision : 27-10-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11

Citation : (1967) 2 LLJ 528

Hon'ble Judges : P.V. Dixit, C.J;R.J. Bhawe, J

Bench : Division Bench

Judgement

R.J. Bhawe, J.—By this petition under Article 226 of the Constitution the petitioner seeks a writ of certiorari for quashing an order, dated 6 May 1965, passed by the Central Government Industrial Tribunal, Dhanbad, in Bonus Appeal No. 10 of 1964, The petition has been filed by the management of Burhar and Amlai Collieries (Shaw Wallace & Co., Ltd.), Rewa Coalfields, Ltd., Dhanpuri, Shahdol. It is alleged that C.R.O. miner-loaders, working at the Amlai Colliery. Burhar No. 1 and Burhar No. 3 mines, struck work In the third shift on 8 May 1964 and all the three shifts on 9 May 1964. The management treated the strike as illegal, as It was resorted to without giving any notice. It was also alleged that the strike was resorted to when the All India Industrial Tribunal (Colliery Disputes) award was In operation. The management, therefore, applied under Para. 8 (1) of the Goal-mines Bonus Scheme, 1948, framed under the Coal-mines Provident Fund and Bonus Schemes Ordinance, 1948 (7 of 1948). The Ordinance was subsequently substituted by the Coal-mines Provident Fund and Bonus Schemes Act, 1948 (46 of 1948).

2. The Regional Labour Commissioner (Central), Jabalpur, on 12 June 1964, Issued notices to Sri Laxmichand Gupta and Sri Klrpal Singh, the general secretary and president respectively of the Burhar Colliery Mazdoor Sabha, asking them to attend the hearing of 22 June 1964, as the mazdoor sabha claimed to represent the workers and It was alleged that the strike was resorted to at the Instigation of the office-bearers of the sabha. The general secretary

filed a written statement. The oral statements of the representative of the management as also that of the general secretary were also recorded by the Regional Labour Commissioner. During the hearing, the general secretary made a prayer that certain persons named by him should be summoned by the Regional Labour Commissioner, as their evidence was essential to prove the stand of the workers that the strike was not Illegal. It was urged that the persons named by the general secretary were either Government officers or the employees of the management and It was not possible for the opponents to produce them before the Regional Labour Commissioner. The Regional Labour Commissioner was, however, of the view that he had no authority to compel the presence of witnesses before him by Issuing any process and that It was the duty of the parties to produce their witnesses, on the date of the hearing. The Regional Labour Commissioner, therefore, proceeded to decide the case on the evidence produced before him and came to the conclusion that the strike was an Illegal strike and gave the declaration accordingly.

3. The mazdoor sabha thereupon preferred an appeal before respondent 1, the Central Government Industrial Tribunal, Dhanbad. It was urged in that appeal that the Regional Labour Commissioner was in error In refusing to Issue summons to the witnesses named by the general secretary of the sabha. It was urged that this resulted In denial of opportunity to establish their case. On behalf of the management, on the other hand, It was urged that the Regional Labour Commissioner acted according to law. It was also urged that the appeal was not properly presented and that It was barred by limitation. The appellate authority came to the conclusion that the appeal was properly presented. It was further held that even though the appeal was presented out of time, there was sufficient cause for the late presentation and that the delay was, therefore, condoned.

4. In our view, this part of the decisions of the appellate authority Is not open to any challenge. Clause (4) of Para. 8 of the Bonus Scheme, 1948, provides that an appeal shall lie to the Industrial tribunal at Dhanbad from the decision of the Regional Labour Commissioner. That clause does not provide for any procedure as to how the appeal Is to be presented. It cannot, therefore, be said that the sending of the appeal through post Is not a proper presentation. Under Clause (6) of Para. 8, the provisions of Clause (5) and (12) of the Indian Limitation Act, 1908, have been made applicable to the appeals filed under Clause (4). The condonation of delay is a matter of discretion which cannot be Interfered with In proceedings under Article 226 of the Constitution.

5. The appellate authority having held that the appeal was tenable proceeded to consider It on merits. The appellate authority came to the conclusion that though there was no specific provision In the Bonus Scheme, 1948, authorizing the Regional Labour Commissioner to Issue summons for compelling the witnesses to give evidence before him, there was also no provision debarring the Regional Labour Commissioner from exercising that authority. It pointed out that under Clause (7) of Para. 8 of the scheme the Regional Labour Commissioner or the

officer specified by the Central Government in this behalf or the tribunal is required to decide the application or the appeal, as the case may be, after giving reasonable notice to the parties concerned and after affording them an opportunity of being heard. Clause (7) of Para. 8 was Interpreted by the appellate authority to mean that It conferred power on the tribunal also to decide an application under Para. 8 (1) of the scheme. On this reading of Clause (7) of Para. 8, It was further held that If the tribunal was conferred with power u/s 11(3) of the Industrial Disputes Act, 1947. of enforcing attendance before It by Issuing summons, there is no reason why that power should be deemed to have been denied to the Regional Labour Commissioner. Respondent 1 baa misread 01. (7) of Para. 8 of the Bonus Scheme. Clause (1) of Para. 8 prescribes the Regional Labour Commissioner (Central) or any other officer specified by the Central Government to be the authority before whom the application can be filed and Clause (4) of Para. 8 prescribes that the appeal shall lie to the Industrial tribunal at Dhanbad. Clause (7) of Para. 8 then prescribes the procedure to be followed by both the original and the appellate authorities while disposing of the matters before them. Clause (7) of Para. 8 does not confer any powers. The reasoning Of respondent 1 is thus based on misapprehension of the provision of the Bonus Scheme, 1948, and cannot be sustained. Even if it Is assumed that the industrial tribunal, Dhanbad, Is under certain circumstances, entitled to entertain an application under Para. 8 of the scheme, that cannot authorize that authority to exercise powers conferred u/s 11(3) of the Industrial Disputes Act. The power must be sought In the provisions of the scheme and not elsewhere.

6. Respondent 1 has also relied on the fact that the Regional Labour Commissioner is required to act as a quasi-Judicial authority and that this quasi-judicial function can be adequately discharged only if the authority has the necessary powers of Issuing the process for compelling the attendance of witnesses and that this authority must be held to be implicitly conferred on the Regional Labour Commissioner. This reasoning we find it difficult to accept. Under Para. 8 of the scheme the Regional Labour Commissioner is required to give his decision within 21 days of the receipt of the application. In the nature of things, the enquiry is, therefore, of a summary nature. The mere fact that he Is required to act as a quasi-judicial authority and dispose of the matter pending before him after giving reasonable notice to the parties concerned and after affording them an opportunity of belong heard cannot be interpreted to mean that all the powers of a civil Court are conferred on the Regional Labour Commissioner. Wherever it is deemed necessary, a statute invariably provide for the application of the appropriate provisions of the CPC or the Criminal Procedure Code, as the case may be conferred on the tribunals or the authorities constituted under it the necessary power of enforcing the attendance of witnesses, administering oath and compelling the production of documents, etc. In the absence of suoh a provision, the conferral of that power or authority cannot be inferred merely on the ground that the tribunal is required to act as a quasi-judicial authority, The requirement of affording the parties an opportunity of being heard Is satisfied as

soon as a notice is issued to the parties and the evidence produced by them is taken into consideration. That requirement cannot be stretched to confer the powers of coercion which can only be conferred under the statute. In *Martin Burn Ltd. Vs. R.N. Banerjee*, at 251 their lordships of the Supreme Court observed:

Whether one or more of these provisions of the CPC could be availed of by the respondent depends upon what are the powers which are vested in the Labour Appellate Tribunal when hearing the matters which come before it. The Labour Appellate Tribunal is the creature of the statute and all its power must be found within the four corners of the statute.

7. From this decision it is clear that the powers under the CPC are not to be exercised by the tribunal unless they are specifically conferred on the tribunals and that the tribunals have to act within the four corners of the statute which create them or enables them to exercise any function under the statute. We are, therefore, satisfied that respondent 1 was in error in holding that the Regional Labour Commissioner had the necessary authority of issuing the summons and compelling the attendance of witnesses before him. The Regional Labour Commissioner had issued the necessary notice and given sufficient time to the parties to produce the evidence that they desired. That the management wanted to introduce unwarranted change in the payment of the wages also in the designation of the workers could have been proved by examining other witnesses. The insistence of the general secretary that those facts could only be proved by examining the officers of the management and the officers of the Government is difficult to appreciate. We are satisfied that the opportunity envisaged under the provisions of the Bonus Scheme was given to the opposite party. Respondent 1 was in error in setting aside the order of the Regional Labour Commissioner and remanding the case to him for a fresh decision after summoning the witnesses and recording the evidence afresh and that order is liable to be quashed.

8. For the reasons stated above, the petition is allowed. The order, dated 6 May 1966, passed by the Central Government Industrial Tribunal, Dhanbad (respondent 1), is quashed and the case is remitted to respondent 1 for decision according to law. There will be no order as to costs. The outstanding amount of the security deposit shall be refunded to the petitioner.