

(1983) 03 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 66 of 1978 (R)

Central Coalfields Ltd.

APPELLANT

Vs

Mrs. Prabhawati Rairkar and Others

RESPONDENT

Date of Decision : 10-03-1983

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 14, 7, 8
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10

Citation : (1983) 31 BLJR 498

Hon'ble Judges : Satyeshwar Roy, J; Anand Prasad Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satyeshwar Roy and Anand Prasad Sinha, JJ.—By this application under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing Annexure 3, order dated 13.10.1977 passed by respondent No. 2, the appellate authority, under the Payment of Gratuity Act, 1972 (the Gratuity Act).

2. S.R. Rairkar was an employee of the petitioner, He superannuated on 26.9.1975. Before his employment under the petitioner, he was an employee of different collieries under different owners. When he was working in Kainpura Mining Syndicate, there was a dispute between Rairkar and his erst-while owners as to whether the services rendered by Rairkar in other collieries would be considered for the purpose of continuity in service. By an award on reference u/s 10 of the Industrial Disputes Act, the Tribunal held that R.S. Rairkar was entitled for a declaration of continuity of service. The colliery in question was nationalised with effect from 1.5.1973. Rairkar, therefore, became the employee of the petitioner.

3. In this application, the only ground on which Annexure-3 has been challenged by the petitioner is that in view of Section 7 of the Coal Mines (Nationalisation) Act, 1973, the petitioner is liable to pay gratuity to Rairkar for the period

1.5.1973 to 26.9.1975 and the erst-while employer of Rairkar was liable to pay gratuity for period prior to May, 1973.

4. Rairkar died during the pendency of this application and his legal representatives were substituted as respondents. It was contended on their behalf that since in view of Section 14 of the Nationalisation Act Rairkar shall be deemed to be in service of the petitioner on the same terms and conditions as he was working under the owners of the collieries before nationalisation and the petitioner was liable to pay the gratuity payable to Rairkar. It was also urged that in view of the order passed in CWJC No. 471 of 1971 by this Court in which the earlier award was challenged, the petitioner is stopped from saying that it was not liable to pay gratuity prior to May, 1973.

5. Section 14 of the Nationalisation Act provides that every person who was a workman in any coal mine on the appointed date i.e. on 1.5.1973, shall become an employee from that date of the Central Government or the Government Company as the case may be, and shall hold office with the same rights of pension, gratuity etc. and continue to do so unless and until his employment was duly terminated or his service condition duly altered. It is not disputed by the petitioner that in view of Section 14 of the Nationalisation Act, Rairkar became the employee of the petitioner on the same terms and conditions, he was working under the erstwhile owners of the coal mines. The petitioner also admit that it is liable to pay gratuity of Rairkar for the period 1.5.1973 to 26.9.1975. The only dispute, therefore, in this case is as to whether the petitioner can be directed to pay gratuity to Rairkar for the period prior to 1.5.1973.

6. The relevant portion of Section 7 of the Nationalisation Act reads as follows:

7. (1) Every liability of the owner, agent, manager or managing contractor of a coal mine in respect of any period prior to the appointed day, shall be the liability of such owner, agent, manager or managing contractor, as the case may be, and shall be enforceable against him and not against the Central Government or the Government Company.

(2) For the removal of doubts, it is hereby declared that--

(a) save as otherwise provided also where in this Act, no claim for wages, bonus, royalty rate, rent, taxes, provident fund, pension, gratuity or any other dues in relation to a coal mine in respect of any period prior to the appointed day, shall be enforceable against the Central Government or Government Company;

* * * * *

This section, therefore, provides that the liability to pay gratuity prior to the appointed day to an employee, will not be the liability of the Central Government or the Government Company in this case, the petitioner. According to a plain reading of this section, it must be held that for the period prior to 1.5.1973, the erst-while owner of the coal mine was liable to pay gratuity to Rairkar. It was however, contended on behalf of the respondents that in view of the order

passed in C.W.J.C. No. 471 of 1971, the petitioner cannot be heard to say that it has no liability for that period. In CWJC 471 of 1971 the validity of the award passed by the Tribunal on reference u/s 10 of the Industrial Disputes Act was challenged. It was registered as Reference case No. 51 of 1969. The Tribunal held that Rairkar who was one of the employees in the reference, was entitled to continuity of service all throughout.

7. When the matter was pending in this Court, the coal mine was nationalised and it then vested in Bharat Coking Coal Limited (B.C.C.L.). An application was filed on behalf of B.C.C.L. to make it a party. That was allowed. The erst-while owner of the coal mine submitted before the Court that since after the vesting it had no Interest in the award it did not press its application. On behalf of BCCL it was submitted that it has no grievance against the award. In view of the submissions made in that case the writ application was dismissed. It appears from the order dated 29.10.1975 by which that writ application was dismissed, that the same was not decided on merit. However, the result of the dismissal of the writ application was that the award in Reference case No. 51 of 1969 became final. Rairkar therefore, could have claimed continuity of Service when the coal mine in question vested under the Nationalisation Act.

8. There is no dispute that for the period prior to 1.5.1973 Rairkar was entitled to gratuity. We do not find anything in the order passed in C.W.J.C. No. 471 of 1971 by which it can be held that the petitioner is stopped from contending that in view of Section 8 of the Nationalisation Act, it has no liability to pay gratuity to Rairkar for the period prior to 1.5.1973, That being the position and in view of the clear provision of Section 7 of the Nationalisation Act it must be held that the petitioner is not liable to pay gratuity to Rairkar and, in his absence to his legal representatives for the period prior to 1.5.1973.

9. In the result the application is allowed and the order of the appellate authority respondent No. 3 holding that the petitioner was liable to pay gratuity to Rairkar for the period prior to 1.5.1973, is set aside. However, the respondents may take recourse for realisation of the same from the erst-while owner of the coal mine u/s 8 of the Gratuity Act if so advised.