
(1963) 02 PAT CK 0002

In the Patna High Court

Case No : Misc. Judicial Case No. 615 of 1960

Huririladih Coal Co. Ltd., Employers

APPELLANT

Vs

G. Palit and Others

RESPONDENT

Date of Decision : 02-02-1963

Acts Referred:

Coal Mines Provident Fund and Bonus Schemes Act, 1948 — Section 7
Industrial Disputes Act, 1947 — Section 10(1)

Citation : AIR 1964 Patna 450 : (1964) 1 LLJ 298

Hon'ble Judges : V. Ramaswami, C.J;R.K. Choudhary, J

Bench : Division Bench

Advocate : Ranen Roy and Tara Kumar Das, for the Appellant; Sankat Haran Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. In this case the petitioners have obtained a rule from the High Court calling upon the respondents to show cause why the award of the Central Government Industrial Tribunal, Dhanbad, dated the 28th June, 1960, in Reference No. 17 of 1960, should not be quashed by grant of a writ under Article 226 of the Constitution.

2. Cause has been shown by learned Counsel on behalf of the respondents to whom notice of the rule was ordered to be given.

3. On the 25th March, 1960, the Government of India referred the following industrial dispute by its order No. 1/24/60-II-LRII in exercise of the powers conferred by Section 10(1)(d) of the Industrial Disputes Act:

"Whether the management was justified in not including the wages earned by the workmen for the four paid festival holidays during the quarter ending December, 1959, for the purposes of calculating the bonus for the said quarters?

If not, to what relief are the workmen entitled?

The Industrial Tribunal has come to the conclusion that the management was not justified in excluding the wages earned by the workmen for the four paid festival holidays during the quarter ending December, 1959, for the purpose of calculating the bonus for the said quarter.

4. On behalf of the petitioners it was submitted that the Industrial Tribunal has committed an error of law in holding that the amount of bonus should be calculated on the basis of the wages earned during the four paid festival holidays during the quarter ending December, 1959. Reference was made by learned Counsel to paragraph 7 (2) of the Coal Mines Bonus Scheme, 1948, which reads as follows:

"7. (2) The amount of bonus payable to an employee in respect of any quarter after the 30th of June, 1948, in the case of coal mines in West Bengal and Bihar and in respect of any period or quarter in the case of coal mines in the Central Provinces and Berar and Orissa shall be one-third of the basic earnings of the employee for work done in the period or quarter in the coal mine wherein he qualifies for bonus."

The expression "basic earnings" is defined in paragraph 2 (aa) of the Scheme as "the total cash emoluments, whether earned while on duty or while on leave with pay, but excluding all payments for food concession, dearness, house rent and other similar allowances, overtime, commission, presents or donations."

The argument presented on behalf of the petitioners is that a workman cannot be treated to be on duty on the festival holidays and so the emoluments he earned for those holidays cannot be treated as "basic earnings" within the meaning of Paragraph 2 (aa) of the Coal Mines Bonus Scheme. We are unable to accept the argument put forward on behalf of the petitioners as correct. The expression "basic earnings" in paragraph 2 (aa) has been defined to mean

"the total cash emoluments, whether earned while on duty or while on leave with pay."

In our opinion "the total cash emoluments earned by the workmen on festival holidays must be treated as basic earnings for the purpose of computing the bonus under paragraph 7 (2) of the Coal Mines Bonus Scheme, because the emoluments have been earned by the workmen while they were on duty. The view that we have expressed is supported also by the language of paragraph 2 (aa) which excludes certain categories of emoluments from the computation of basic earnings. The items excluded are payments for food concession, dearness, house rent and other similar allowances, overtime, commission, presents or donations. It is significant that the items of payment which are excluded do not cover the emoluments earned by the workmen during the festival holidays. We are, therefore, of opinion that the view taken by the Industrial Tribunal that the wages earned by the workmen for the four paid festival holidays should be included by the management for the purpose of calculating the bonus for the

quarter in question is correct. We, therefore, reject the argument on behalf of the petitioners on this part of the case.

5. Learned Counsel also invited our attention to the amendment made to the Coal Mines Bonus Scheme by the Government of India by a Notification dated the 7th October, 1961. This notification is to the following effect.

"S.O. 2474/Amd. 3/61. In exercise of the powers conferred by Section 7 of the Coal Mines Provident Fund and Bonus Schemes Act, 1948 (46 of 1948), the Central Government hereby makes the following further amendments in the Coal Mines Bonus Scheme, published with the notification of the Government of India in the late Ministry of Labour No. PF.16(1)/48 dated the 3rd July, 1948, namely :-

1. This Scheme may be called the Coal Mines Bonus (Third Amendment) Scheme, 1961.

2. In the Coal Mines Bonus Scheme, hereinafter referred to as the said Scheme, for sub-para (3) of paragraph 6 the following sub-paragraph shall be "substituted, namely:--

"3. If in any period or quarter, any day, other than the weekly holiday, is observed as a paid holiday in any coal mine, the number of days for which the employees must put in attendance in such period or quarter to qualify for bonus under paragraphs 4 and 5 shall be reduced by the number of such paid holidays failing in such period or quarter. In the event of a dispute as to whether a day is a paid holiday or not, the decision of the Chief Labour Commissioner (Central), shall be final.

3. In the said Scheme, after sub-paragraph (2) of paragraph 7, the following proviso shall be inserted, namely:--

"Provided that the basic wage portion of the wage paid to an employee for paid holidays and leave with wages in such period or quarter shall also count towards basic earnings for the purpose of calculation of bonus".

It was argued on behalf of the petitioners that the law prior to the 7th October, 1961, must be interpreted to mean that the wage paid to an employee for the paid holidays cannot be taken into account in the calculation of the bonus. We are unable to accept this argument as correct. The amendment made by the Government of India on the 7th October, 1961, merely clarifies the legal position as it existed before the amendment was made. To put it in other words, the amendment of the 7th October, 1961, is tantamount to a legislative interpretation of paragraph 1(2) of the Coal Mines Bonus Scheme, 1948, before the amendment.

6. It was next submitted on behalf of the petitioners that the question referred for the decision of the Industrial Tribunal by the Government of India by its order dated the 25th March, 1960, was incompetent because the question referred was purely a legal question as to the interpretation of paragraph 7 (2) of the "Coal

Mines Bonus Scheme, and such a question cannot be treated as industrial dispute u/s 10(1)(d) of the Industrial Disputes Act. We do not think there is any substance in this contention. It is manifest that the question referred by the Government of India to the Industrial Tribunal is not a pure question of law with regard to the interpretation, of paragraph 7 (2) of the Coal Mines Bonus Scheme. The question referred to the Industrial Tribunal is a mixed question of fact and law, namely, whether the management was justified in not including the wages earned by the workmen for the four paid festival holidays, during the quarter ending December, 1959, for the purpose of calculating the bonus for the said quarter. In our opinion the Government of India was competent to refer this question for the decision of the Industrial Tribunal u/s 10(1)(d) of the Industrial Disputes Act. We, therefore, reject the argument addressed by learned Counsel for the petitioners on this point also.

7. For these reasons we hold that there is no case made out for grant of a writ under Art. 226 of the Constitution. We accordingly dismiss this application. There will be no order as to costs.