(2003) 06 OHC CK 0017

In the Orissa High Court

Case No : Writ Petition (C) No. 6863 of 2002

Management of Orissa Mining Corporation Ltd. APPELLANT

Vs

1st Workman RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 9A

Citation : (2004) 1 LLJ 1 : (2003) 2 OLR 288

Hon'ble Judges : R.K. Patra, J;M. Papanna, J

Bench : Division Bench

Advocate : S.B. Nanda, S. Mohanty, S.K. Mishra, D.P. Nanda, R.K. Mohapatra, M.K. Pati and M. Mishra, for the Appellant; S.S. Das, B.R. Das, K. Behera and D. Tripathy, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The Management in this writ petition seeks to assail the validity of the award dated July 29, 2002 of the Central Government Industrial Tribunal, Bhubaneswar in Industrial Dispute Case No. 421 of 2001 by which it has held that reduction of house rent with effect from April 1, 1998 to the workmen without complying the provision of Section 9-A of the Industrial Disputes Act, 1947 is not justified. The case of the petitioner is that it is a wholly owned Government of Orissa Undertaking whose administrative department is Steel and Mines. It carries on mining and other allied operations. By office order dated March 4, 1982 (Annexure-1) house rent allowance was revised with effect from January 1, 1982 at 25% of the basic pay for those head office employees at Bhubaneswar residing in the rented house and 20% of the basic pay for those remaining in their own houses. By subsequent order dated May 6, 1985 (Anncxure-2), the rate of house rent allowance for employees at the head office was revised and raised to 30% of basic pay with effect from April 1, 1985 while retaining the rate of house rent allowance same as before for those who are remaining in their own houses within Bhubaneswar N.A.C. area. By office order dated December 12, 1986 (Annexure-3) the pay scales, allowances and other service conditions of all employees of the petitioner working within the State and beyond were revised with effect from January 1, 1985 in a package. So far as house rent is concerned, the said order provided that employees at the head office, Delhi, Calcutta and Bangalore would get it at the rate of 30%, those working in regional office at the rate of 25% and those working in the Mines at the rate of 20% of their basic pay. The next revision of pay scales and other allowances was made by office order dated August 24, 1991 (Annexure-4). But so far as house rent allowance was concerned, it was indicated that the existing rates would continue. The next revision of pay scales, allowances and other service benefits was made by office order dated February 3, 1999 (Annexure-5) with effect from January 1, 1996. The revision of house rent allowance was, however, given effect from June 1, 1998. By the said revision, the concerned employees were given option as to whether they would accept the revised pay scales with all other conditions or would continue in the old pre-revised scales of pay. It was mentioned therein that if options were not offered within the time stipulated therein, it would be presumed that the said employees have elected to be governed by the revised scales of pay. It was also mentioned therein that the amount of house rent allowance shall not be less than the amount received by the employees in their old scales of pay, but the employees shall get the house rent allowance at the old rates in the pre-revised scales of pay from January 1, 1996 to May 31, 1998. After receiving the beneficial emoluments available under Annexure-5, the employees raised dispute which came to be referred to the Industrial Tribunal for adjudication. By the impugned award, the Tribunal has accepted the plea of the workmen holding that the reduction of house rent allowance (sic) without complying with Section 9-A of the Industrial Disputes Act, 1947 is not justified and the concerned workmen are entitled to get house rent as per the office orders dated March 4, 1982 and May 6, 1985.

2. Shri Nanda, learned counsel for the petitioner submitted that by office order dated February 3, 1999 (Annexure-5) the employees were offered the revision of scales of pay and other allowances as a package and they were given option either to accept the benefits available thereunder or to continue with their existing pay scales and allowances and after exercising option, they cannot go back from the choice and challenge the same on the ground of absence of notice u/s 9-A of the Industrial Disputes Act. In support of this, he placed reliance on a judgment of the Madras High Court in Tamilnad Electricity Workers Federation and Another Vs. Madras State Electricty Board,

3. In order to appreciate the contention of both parties it is relevant to know about the benefits flowing from the office order dated February 3, 1999 (Annexure-5) wherein it was declared that the scales of pay of employees of the Orissa Mining Corporation Limited are revised with effect from January 1, 1996. Paragraph-4 of the said office order reads as follows:

"4. Fixation of pay in the Revised Scales of Pay:

Unless directed otherwise, the pay of the employees shall be fixed in the manner laid down in the format as at Annexure-10.

Provided that an employee may elect to continue to draw pay in the existing pre-revised scale until the date on which he earns his next or subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

Provided further that an employee who, prior to the commencement of these rules, had elected to come over to the revised scale from a date after the First day of January, 1996 shall, unless he exercises fresh option to come over to the revised scales from any subsequent date, be deemed to have elected to be governed by the revised scale applicable to his/her post with effect from the First day of 1996 and in either case the pay of the employee shall notionally be computed in the existing scale in accordance with the appropriate rules on the First day of 1996 or any subsequent day as may be elected by him/her within the stipulated period and on the basis of the pay so computed the pay in the revised scale shall be fixed in accordance with the rules..."

In paragraph-16 of the said office order, mention has been made with regard to house rent allowance, which is quoted hereunder:

"16. House Rent Allowance:

Employees not provided with houses by the Corporation shall be entitled to house rent allowance as under with effect from June 1, 1998:

(a) Employees stationed at Head Office and Delhi shall be paid house rent allowance at 10% per month on the revised basic pay.

(b) Employees stationed at Regional Offices shall be paid house rent allowance at 71/2% on the revised basic pay.

(c) Employees stationed at the Mines/Camps shall be paid house rent allowance @ 5% per month on the revised basic pay.

The amount of house rent allowance shall not be less than the amount received by the employees in their old scale of pay, but the employees shall get the house rent allowance at the old rates in the pre-revised scales of pay from January 1, 1996 to May 31, 1998."

4. The limited question that arises for consideration is whether the employees having exercised their option required under the office order dated February 3, 1999 and enjoyed the benefits flowing from it, can make volta face to contend non- compliance of Section 9-A. Section 9-A requires an employer who proposes to make any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice in the prescribed manner of the nature of the change proposed to be effected to the workmen likely to be effected by such change. The object behind this requirement is to prevent a unilateral action on the part of the employer

changing the conditions of service to the prejudice of the workmen. In other words, in a case where a change in the conditions of service which is not likely to prejudicially affect the workmen, no notice is necessary to be given. The petitioner has enclosed a salary statement of five of the workmen by way of sample who had exercised option to come over to the revised scales of pay as Annexure-7. from it, it would appear that by the office order dated February 3, 1999 none of them was prejudicially affected. The gross emoluments of one J. K. Das in January, 1995 was Rs. 4,818/- including H.R. A. Rs. 555/-, whereas in June, 1998 his gross emolument was Rs. 7,434/- (inclusive of house rent allowance of Rs. 590/-). Similarly, in case of one Kapilendra Nayak in January , 1995 his gross emoluments was Rs. 3,619/- (inclusive of house rent allowance of Rs. 414/-), whereas in June, 1998 his gross emolument was Rs. 5,853/- (inclusive of house rent of Rs. 465/-). It has been held by the Division Bench of the Madras High Court in Tamil Nadu Electricity Workers Federation (supra) as follows:

"It appears to us to be very clear that Section 9-A was never designed to prevent the implementation of any change, which is not change imposed by the employer on the workmen, but which is based upon the consent of the workmen to the offer by the employer, upon the exercise of their judgment that the change was beneficial."

We are in respectful agreement with the above proposition. The office order dated February 3, 1999 (Annexure-5) revising scales of pay and other allowances was by way of a ''package deal'' requiring the concerned employees to exercise their option. The employees have exercised their option to come over to the revised scales of pay which is beneficial to them as evident from the salary chart at Annexure-7 to the writ petition (extract of which has been mentioned above). As the employees are not prejudicially affected by the aforesaid office order dated February 3, 1999, the Tribunal clearly fell in error in declaring it as unjustified.

5. For the reasons mentioned above, the award of the Industrial Tribunal at Annexure-10 cannot be sustained in law and is hereby quashed.

6. The writ petition is allowed. No costs.

M. Papanna, J.

7. I agree.

