
(1959) 03 GAU CK 0003
In the Gauhati High Court
Case No : Civil Revision No. 9 of 1959

Manager, Shonaicherra Tea Estate

APPELLANT

Vs

Mahendra Kisur Purkayastha

RESPONDENT

Date of Decision : 09-03-1959

Acts Referred:

Constitution of India, 1950 — Article 227
Minimum Wages Act, 1948 — Section 2, 20, 20(2), 3(1)

Citation : (1959) 03 GAU CK 0003

Hon'ble Judges : H. Deka, J;G. Mehrotra, J

Bench : Division Bench

Advocate : S.C. Das, for the Appellant; G.S. Bhattacharjee and N.M. Lahiri, for the Respondent

Final Decision : Dismissed

Judgement

H. Deka, J.—This is an application under Article 227 of the Constitution by the aggrieved party against the order of the Additional Deputy Commissioner, Cachar dated 23rd of October, 1958, working as the Minimum Wages Officer.

2. The proceeding was started by the Petitioner Mohendra Kisore Purkayastha who worked as a Compounder in the Sonaicherra Tea Estate, in the district of Cachar. His case was that he was one of the members of the staff of the tea garden, and according to the Government Notification under the Minimum Wages Act dated 11th March, 1952, he was entitled to get his wages at the rate prescribed under that notice. According to the notification any member of the staff employed in a tea estate was entitled to get a basic wage of Rs. 60/- per month plus dearness allowance of 50 per cent with the minimum of Rs. 30/- per month. The learned Additional Deputy Commissioner gave effect to the contention and held that the Petitioner was entitled to the minimum wages of Rs. 90/- per month.

3. The contention on behalf of the tea garden authorities was that the Petitioner was only a part-time employee and he was not entitled to the minimum rate of

wages fixed under the Government notification dated the 11th March, 1952. They seriously contended that a Compounder was not a member of the staff of the tea garden and could not avail of the minimum wage fixed for the same. The learned Additional Deputy Commissioner overruled the objection and held that a Compounder was a member of the staff and was entitled to the minimum wages as prescribed by the Government notification. He considered also the fact that the Compounder used to work only on a part-time basis, but even then in the circumstances, that was not sufficient reason to exclude him from the category of the members of the staff, coming within the scope of the notification dated 11th March, 1952 under the Minimum Wages Act. The Petitioner was being paid at the rate of Rs. 50/- per month and the minimum wage admissible to the members of the staff was Rs. 90/- as I have already indicated. Section 20 of the Minimum Wage's Act provides that one can claim minimum wages only for six months prior to the date of the application. The Minimum Wages Officer took into consideration the claim for six months only and has debited the amount actually paid. Therefore, in case the finding be correct, that the Compounder was a member of the staff and an employee within the scope of the Minimum Wages Act, there was nothing wrong with the order the correctness of which is assailed.

4. Mr. Das for the Petitioner has contended before us that a Compounder per se is not an employee within the definition given in Section 2(i) of the Minimum Wages Act where it is said that "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed."

5. We have been referred to the schedule to ascertain what may be "scheduled employment". Item No. 4 of the Schedule, Part I, to the Act, indicates that "employment in any plantation that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee" comes within the meaning of scheduled employment. Here, therefore, the Compounder working in a tea plantation would be holding an employment within the meaning of the terms "scheduled employment".

6. Mr. Das for the Petitioner placed before us the decision of the Supreme Court in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, and laid much stress upon the fact that since a Doctor could not get the benefit of the Industrial Disputes Act he not being considered a workman u/s 2(k) of the said Act, -- a Compounder should similarly be considered not to be in the same category with other employees in a tea plantation. We do not think that the decision of the Supreme Court cited would give us any assistance in the matter of ascertaining whether a Compounder would be an employee or not, in a tea plantation under the Minimum Wages Act. That case was decided on the footing that the cause of a Doctor could not be supported by other labourers for the purpose of an industrial dispute coming within the scope of that Act, since the Doctor in that particular case belonged to

a different category of employees than the workers who supported his cause. The relevant passage in that judgment runs as follows:

In the case before us, Dr. K.P. Banerjee was not a "workman". He belonged to the medical or technical staff -- a different category altogether from workmen. The Appellants had no direct, nor substantial interest in his employment or non-employment, and even assuming that he was a member of the same Trade Union, it cannot be said, on the tests laid down by us, that the dispute regarding his termination of service was an industrial dispute within the meaning of Section 2(k) of the Act.

7. In this case Mr. Bhattacharjee appearing for the opposite party drew our attention to the Plantations Labour Act, 1951 (Act LXIX of 1951) where "worker" has been defined in the following form u/s 2(k):

2(k) "worker" means a person employed in a plantation for hire or reward, whether directly or through any agency to do any work, skilled, un skilled, manual or clerical, but does not include

(a) a medical officer at the plantation;

(b) any person whose monthly wages exceed three hundred rupees; or

(c) a person employed in a plantation primarily in a management capacity notwithstanding that his monthly wages do not exceed rupees three hundred." This definition has a relevant bearing on the purpose of the present case. The Compounder is not obviously left out from the category of workers, but a medical officer is. He could, therefore, claim to be an employee or worker in a plantation and ask for the benefits under the Minimum Wages Act.

8. Mr. Das has put much stress on the words "employees employed" in Tea Plantations in the different districts of Assam, occurring in the notification No. GLR. 352/51/56 of 11th March, 1952. He contends that a Compounder cannot be said to be an "employee employed" in a tea plantation since his employment is in a hospital and not in the tea plantation. We are very reluctant to accept this contention and narrow down the meaning of the word plantation.

It is very difficult to say that a Chowkidar who must be guarding the factory or an accountant concerned with the accounts only of the garden are not employees in a tea plantation, which must be the result if we accept Mr. Das's contention. We find nothing in the Act or in the Schedule to indicate that the employee concerned must be concerned in the matter of either growing tea, or plucking or manufacturing it. In our opinion, any employee carrying on some sort of duty in a tea plantation including a Compounder must be construed to be an employee within the definition given of the word "employee" in the Minimum Wages Act u/s 2(i). The learned Counsel has further argued that in that case, the word "employed" as an attribute to an "employee" was unnecessary in the Government notification.

It only meant that such class of employees alone will get benefits under the notification who are employed in the tea plantation, and not the rest. On a reference to Section 3(1)(a) of the Minimum Wages Act under which the notification was issued, we find that it lays down that -- "The appropriate Government shall in the manner hereafter provided -- (a) fix the rates of wages payable to employees employed". The words "employees employed" were clearly borrowed from Section 3 itself for the purpose of notification, which was given under this section.

9. Mr. Das further argued that since the application for minimum wages was made more than six months after the minimum wages became payable, as provided u/s 20(2), Proviso, the application should have been dismissed and the claim rejected in its entirety. Since the cause of action itself is a continuous one and the claim was allowed for a period of six months only, we find nothing wrong with the order.

10. In the result, none of the contentions of Mr. Das has any substance. Accordingly the rule is discharged and the application is dismissed with cost of Rs. 50/ -.

G. Mehrotra, J.

11. I agree.