

(1990) 11 SC CK 0064

In the Supreme Court Of India

Case No : Civil Appeal No's. 15 (L) and 16 (L) of 1979 with Civil Appeal No. 1835 of 1978

Manganese Ore (India) Ltd.

APPELLANT

Vs

Chandi Lal Saha and others

RESPONDENT

Date of Decision : 01-11-1990

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 227
Industrial Disputes Act, 1947 — Section 33
Minimum Wages Act, 1948 — Section 11, 2, 20, 3(1), 4
Payment of Wages Act, 1936 — Section 15(1)

Citation : AIR 1991 SC 520 : (1991) 62 FLR 75 : (1991) 1 JT 47 : (1991) LabIC 524 : (1990) 2 SCALE 902 : (1991) 2 SCC 465 Supp : (1990) 2 SCR 533 Supp : (1991) 1 UJ 1

Hon'ble Judges : T. K. Thommen, J;Kuldip Singh, J

Bench : Division Bench

Advocate : B.B. Ahuja and A. Subhashini, for the Appellant; M.S. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Kuldip Singh, J.—The Government of India by a notification dated May 19, 1969 issued under the Minimum Wages Act, 1948 (hereinafter called 'The Act') fixed the minimum rates of wages payable to different categories of employees employed in Manganese Mines. The minimum rate of wage in respect of the unskilled workers was fixed at Rs. 2.40 per day. The management, under an agreement, was paying to the employees attendance bonus and was supplying grain to them at concessional rates.

2. The question for our consideration is whether the monetary value of the grain supplied at concessional rates and the amount paid as attendance bonus can be included and counted into the minimum wages payable to the employees under the abovesaid notification.

3. Nathu Purnia and 25 other workmen employed with Manganese Ore (India) Ltd., Nagpur filed two applications u/s 33-C(2) of the Industrial Disputes Act, 1947 before the Central Government labour court at Nagpur for recovery of the deficit amount of wages due to them from the management. According to them, unskilled and semi-skilled workers were entitled to Rs. 2.40 and Rs. 3.20 per day as minimum wages, but the management was illegally deducting out of their wages the cash value of various benefits and amenities such as attendance-bonus and concessional supply of food grains to them. The management opposed the applications before the labour court on the ground that the minimum wage was an all inclusive wage which included the cash value of all benefits such as food grains supplied at concessional rates, bonus and various other amenities extended to the workmen. According to the management, the workmen were being paid wages in cash as well as in kind and the money value of those benefits was to be taken into consideration while computing the minimum wage. The labour court rejected the contention of the management and allowed the applications of the workmen. The labour court came to the conclusion that the monetary value of the grain supplied at concessional rate or the amount paid as attendance bonus could not be counted towards the minimum rates of wages payable to the workmen under the notification.

4. Chandi Lal, a Sweeper working with the Manganese Ore (India) Ltd., Nagpur also filed an application u/s 33-C(2) before the Central Government labour court at Nagpur claiming the same relief as was being asked by Nathu Purnia and others. The management resisted the claim on similar grounds and also raised an additional ground to the effect that he was a domestic servant working in the bungalow of Mechanical Engineer and as such was not an employee of the management. The labour court rejected all the contentions raised by the management and allowed the application of Chandi Lal.

5. The management challenged the abovesaid orders of the labour court by way of two writ petitions under Articles 226/227 of the Constitution of India before the Nagpur bench of the Bombay High Court. The High Court by its judgment dated April 24, 1978 dismissed the Writ Petitions. Civil Appeals Nos. 15(1) and 16(1) of 1979 by the management, via special leave, are against the High Court judgment.

6. Madho and 9 other workmen of the appellant management, who were working at Balaghat in Madhya Pradesh filed 10 applications u/s 33-C(2) of the Industrial Disputes Act, 1947 before the Labour Court at Jabalpur seeking the same relief as was sought by Nathu Purnia and others from Labour Court at Nagpur. The labour court, Jabalpur, while partly allowing the applications decided the issue regarding the supply of grain at concessional rates, against the workmen. It was held that the management was entitled to add the cash value of the grain supplied to the workmen at concessional rates for computing the minimum wage. The workmen did not challenge the order of the labour court on the issue before the High Court or any other authority. The management, however, filed writ

petition under Articles 226/227 of the Constitution of India before the Madhya Pradesh High Court challenging the order of the labour court, Jabalpur, to the extent the said order went against the management. The High Court by its order dated April 19, 1978 dismissed the writ petition. Civil Appeal No. 1835 of 1978 by the management is against the above said judgment of the High Court.

7. It is thus obvious that the workmen employed with the appellant at Nagpur (Maharashtra) won from the labour court, Nagpur on all the points whereas the workmen employed with the appellant in the State of Madhya Pradesh lost before the labour court, Jabalpur on one issue as indicated above. The adverse order of the labour court, Jabalpur, was not challenged before any authority and as such the same has become final. The net result is that the workmen employed with the management in Maharashtra are getting the minimum wages without any deductions whereas the workmen employed with the same management in the State of Madhya Pradesh are being paid the minimum wages after deducting the money value of the concessional supply of grain to them.

8. Mr. G.L. Sanghi, learned senior advocate appearing for the appellant has raised the following points for consideration:

(1) The notification fixing the minimum wage specifically mentions that the minimum rates of wages are all inclusive rates. According to Mr. Sanghi, the wages so fixed would include the amount paid by the management towards the attendance-bonus as well as the monetary benefit of the grain concession.

(2) The grain concession and the attendance-bonus are the benefits which can be computed in money and as such are part of the minimum wage under the Act.

(3) The procedure to recover wages fixed under the Act has been provided under the said Act. Since Section 20 of the Act provides for elaborate machinery to get the grievances redressed under the Act, the labour court has no jurisdiction u/s 33-C(2) of the Industrial Disputes Act to entertain the application.

9. Before we deal with the points, we may reproduce Section 2(h), 3(1)(a), 4 and 11 of the Act which are relevant.

2(h): "wages" means all remuneration, capable of being expressed in terms of money which would if the terms of the contract of employment express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment (and includes house rent allowance) but does not include,-(i) the value of-(a) any house-accommodation, supply of light, water, medical attendance; or (b) any other amenity or any service excluded by general or special order of the appropriate government; (ii) any contribution paid by the employer to any Pension Fund or Provident Fund or any scheme of social insurance; (iii) any travelling allowance or the value of any travelling allowance or the value of any travelling concession; (iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (v) any gratuity payable on discharge.

3. Fixing of minimum rates of wages-(1) The appropriate Government, shall, in the manner hereinafter provided- (a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either part by notification u/s 27;

Section 4: Minimum rate of wages-(1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of Scheduled employments u/s 3 may consist of-

(i) a basic rate of wages and a special allowance at a rate to be adjusted at such intervals and in such manner as the appropriate Government may direct, accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or

(ii) a basic rate of wages with or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concession rates, where as authorised; or (iii) an inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate government.

Section. 11: Wages in kind.-(1) Minimum wages payable under the Act shall be paid in cash.

(2) Where it has been the custom to pay wages wholly or partly in kind, the appropriate Government being of the opinion that it is necessary in the circumstances of the case may, by notification in the Official Gazette authorise the payment of minimum wages either wholly or partly in kind;

(3) If the appropriate Government is of the opinion that provisions should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in the Official Gazette authorise the provision of such supplies at concession rates.

(4) The cash value of wages in kind and of concession in respect of supplies of essential commodities at concession rates authorised under Sub-sections (2) and (3) shall be estimated in the prescribed manner.

10. We may now consider the first argument of Mr. Sanghi. Section 11(1) reproduced above lays down that the minimum wages payable under the Act shall be paid in cash. Sub-section 2 and 3 of Section 11 are exceptions to the mandate contained in Section 11(1). It is clear from the scheme of the section that the minimum wages payable under the Act are to be paid in cash unless there is a notification in the Official Gazette to the contrary u/s 11(2) or 11(3) of

the Act. Admittedly, no such notification has been issued by the appropriate Government in the present case. The supply of essential commodities at concessional rates can only form part of the minimum wage, if it is authorised by the appropriate Government by a notification in the Official Gazette u/s 11(3) of the Act.

11. Mr. Sanghi, however, contended that in view of para 2 of the notification issued under the Act the compliance of Sub-section 3 and 4 of Section 11 was not required. The said para is as under:

The minimum rates of wages are all-inclusive rates, and include also the wages for weekly day of rest.

12. According to Mr. Sanghi, reading para 2 of the notification alongwith Section 4(1)(iii) of the Act, the minimum rates of wages being all inclusive, the management was entitled to deduct from the minimum wages the cash value of the grain concession. We do not agree with Mr. Sanghi. Section 4(1)(iii) and Section 4(2) have to be read with Section 11 of the Act. There cannot be a wage in kind under the scheme of the Act unless there is a notification by the appropriate Government u/s 11(3) of the Act. Section 4(1)(iii) mentions only such "cash value of the concession" as has been authorised "wage in kind" under Sub-section 3 of Section 11 of the Act. It is only the appropriate Government which can authorise the payment of minimum wages partly in kind. In the absence of any notification by the appropriate Government for the supply of essential commodities at concessional rates the cash value of such concessions cannot be treated as wage in kind and cannot be deducted from the minimum wages which have to be paid in cash u/s 11(1) of the Act. There being no notification by the appropriate Government u/s 11(3) of the Act, the appellant cannot take any advantage from para 2 of the notification or from the provisions of Section 4(1)(iii) of the Act. We, therefore, reject the contention raised by Mr. Sanghi.

13. The second argument of Mr. Sanghi is based on the definition of "Wages" u/s 2(h) of the Act. According to him the attendance bonus and the supply of grain at a concessional rate are the concessions which are capable of being expressed in terms of money and as such are remunerations within the definition of "Wages" u/s 2(h) of the Act.

14. The scheme of the Act recognises "Wages" as defined u/s 2(h) and also "wages in kind" u/s 11 of the Act. Reading both the provisions together "wages in kind" can only become part of the "Wages" if the conditions provided under Sub-sections (2), (3) and (4) of Section 11 of the Act are complied with. Admittedly, there was no notification by the Central Government u/s 11(3) of the Act and as such the supply of grain at a concessional rate cannot be considered "Wages" u/s 2(h) of the Act. We may examine the question from another angle. The supply of grain at concessional rate to the workers is in the nature of an amenity or an additional facility/service. The management specially of public undertakings, are

bound by the Directive Principles of the State policy enshrined under Part IV of the Constitution of India. The workers must be ensured a living wage, just and human conditions of work and a decent standard of life. The management must endeavour to secure for the workmen apart from "Wages" other amenities like supply of essential commodities at concessional rates, medical aid, housing facility, education for children, old age benefits and opportunities for social, cultural and sports activities. All these amenities may be capable of being expressed in terms of money but it is clear from the scheme of the Act that these concessions do not come within the definition of "Wages" as given u/s 2(h) of the Act. We have thus no hesitation in holding that the supply of grain at a concessional rate to the workmen is an amenity and cannot be included in the rates of wages prescribed by the notification.

15. As regards the attendance-bonus it was an additional payment made to the workmen as a means of procuring their regular attendance with the ultimate object of increasing production. The bonus was in the nature of extra remuneration for regular attendance. The said bonus was not payable to all the workmen at the time of joining the employment. It was payable to a workman who had put in continuous service for a specified period and who was loyal to the management. The attendance bonus was only an incentive and it was not a wage. There is a basic difference between the incentive bonus and the minimum wage. Every workman is entitled to the minimum wage from the very first day of his joining the employment whereas the bonus has to be earned and it becomes payable "after the event". In the present case the attendance bonus was payable after regular attendance for a specified period and remaining loyal to the management. The scheme of payment of attendance bonus was thus an incentive to secure regular attendance of the workmen. It was an additional payment made to the workmen as a means of increasing production. In *Titaghur Paper Mills Co. Ltd. v. Its Workmen* [1959] Su. 2 S.C.R. 1012 this Court held that the payment of production bonus is in the nature of an incentive and is in addition to the wages. We are, therefore, of the view that the attendance bonus is in the nature of an incentive and it cannot be treated as part of the minimum wages fixed under the Act.

16. The Third argument of Mr. Sanghi based on the interpretation of Section 20 of the Act is again devoid of any force. This precise argument was considered by this Court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, and decided in the following terms:

The Minimum wages Act is concerned with the fixing of rates-rates of minimum wages, overtime rates, rate for payment of work on a day of rest and is not intended for enforcement of payment of wages. u/s 20(1) of the Minimum wages Act, in which provision is made for seeking remedy in respect of claims arising out of payment of less than minimum rates, or in respect of remuneration for days of rest, or for work on such days, or of wages at the overtime rates, the Authority is to exercise jurisdiction for deciding claims which relates to rates of

wages, rates for payment for work done on days of rest and overtime rates. The power u/s 20(3) of the Minimum Wages Act given to the Authority dealing with an application u/s 20(1) to direct payment of the actual amount found due, is only an incidental power for working out effectively the directions u/s 20(1) fixing various rates under the Act. That is, if there is no dispute as to rates between the employer and the employee and the only question is whether a particular payment at the agreed rate is due or not, then Section 20(1) of the Minimum Wages Act would not be attracted at all, and the appropriate remedy would only be either u/s 15(1) of the Payment of Wages Act, 1936, or u/s 33-C(2) of the Industrial Disputes Act.

17. In the present case there was no dispute regarding the rates of wages and it is admitted by the parties that the minimum rates of wages were fixed by the Government of India under the Act. The workmen demanded the minimum wages so fixed and the appellant denied the same to the workmen on extraneous considerations. Under the circumstances the remedy u/s 20 of the Act was not available to the workmen and the Labour Court rightly exercised its jurisdiction u/s 33-C(2) of the Industrial Disputes Act, 1947.

18. We do not agree with the contentions raised by Mr. Sanghi and as such find no merit in these appeals. The amount of wages due to the respondents workmen and to all other workmen similarly situated shall be paid within three months from today with 12% interest.

19. The view which we have taken in these appeals, renders the order of labour court, Jabalpur, on the issue of concessional supply of grain, inoperative and non-est. It would be travesty of justice if we do not extend the benefit of this judgment to the workmen employed with the appellant in the State of Madhya Pradesh. Notwithstanding the order of the labour court which has become final, we invoke our powers under Article 142 of the Constitution of India and direct that the benefit of this judgment be extended to the workmen of the appellant in the State of Madhya Pradesh. We direct the appellant to refund the amount deducted from the wages of the workmen who were before the Labour Court, Jabalpur, and to all other workmen similarly situated within three months from today with 12% interest.

20. The appeals are dismissed with costs. We quantify the costs as Rs. 10,000.