
(1978) 04 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 347 of 1971

Manganese Ore (India) Ltd., Nagpur

APPELLANT

Vs

Bisen Rajaram and Others

RESPONDENT

Date of Decision : 19-04-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11(1), 33C(2), 4(1)(iii)
Minimum Wages Act, 1948 — Section 2(h), 20, 4
Payment of Wages Act, 1936 — Section 2(vi)

Citation : (1980) ILR (MP) 813 : (1978) JLJ 411 : (1978) MPLJ 595 : (1978) MPLJ 541

Hon'ble Judges : K.K. Dube, J;G.P. Singh, J

Bench : Division Bench

Advocate : S.V. Natu, for the Appellant; S.C. Chaturvedi for Respondents Nos. 1 to 8 and R.P. Sinha, for Respondents Nos. 10 and 11, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, J.

The Petitioner is a Government Company owning manganese mines in the States of Madhya Pradesh and Maharashtra. Respondents 1 to 8 in this petition are all workmen employed by the Petitioner at Bharweli Mine in Balaghat. All these Respondents are unskilled workers. By Government of India notification dated 19th May 1969, the minimum rate of wage per day fixed for unskilled workers is Rs. 2.40. This rate has been made effective from the date of the notification. The workmen filed identical applications on 17th September 1970, u/s 33C(2) of the Industrial Disputes Act, 1947, before the Industrial Tribunal-cum-Labour Court, Jabalpur, for payment of arrears of wages in accordance with the rate notified by the Government. The workmen complained that they have been paid less than the minimum wage. The Petitioner, in reply to these applications, submitted that the workmen were supplied foodgrains at concessional price and the proportionate cash value of this benefit should be added to the wages actually

paid to them. It was also submitted that the workmen were paid attendance bonus and this amount should also be added to the wages paid. According to the Petitioner if these amounts are added to the wages received by the workmen, it would be found that they had received wages in excess of the minimum wage notified by the Government. The Petitioner further submitted that the issue raised by the workmen would not be considered u/s 33C(2) of the Act. The Industrial Tribunal-cum-Labour Court disposed of the applications made by the workmen by a composite order passed on 12th December 1970. The Tribunal held in favour of the Petitioner that it was entitled to add the proportionate cash value of foodgrains supplied at concessional rates to the workmen for the purpose of minimum wage. It was, however, held that the Petitioner was not entitled to add attendance bonus to the amount of wages paid for the purpose of minimum wage. The Petitioner then filed this petition under Article 226 of the Constitution for quashing of the order of the Industrial Tribunal-cum-Labour Court.

The first question that arises for consideration is whether the amount paid as attendance bonus to the workmen should be taken into account for finding out that minimum wages as fixed by the Government were paid to the workmen. The Petitioner's case is that the attendance bonus is paid to the workmen under certain agreements entered into between the management and the representatives of the workmen. It is said that according to these agreements, the bonus is payable on the condition of there being minimum attendance during the quarter of a year. The agreements have not been filed before us and we do not know as to what are their exact terms. The Government of India in a memorandum issued on 25th March 1970 took the view that the notified minimum rates of wages would not include the quarterly attendance bonus paid to the workmen. As earlier stated, the Industrial Tribunal-cum-Labour Court has also taken the same view. It is the correctness of this view that has been challenged before us.

The definition of "wages" u/s 2(h) of the Minimum Wages Act is as under:

(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 (Sic) (Sic) of the appropriate Government;

(ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance;

- (iii) 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.

The above definition of wages is somewhat similar to the definition of wages in Section 2(vi) of the Payment of Wages Act, 1936, as it stood before its amendment in 1957. The Supreme Court considered this definition of wages in the Payment of Wages Act, in *Bala Subrahmanya Rajaram Vs. B.C. Patil and Others*. It was held in this case that to come within the definition of wages, the bonus must be a bonus which is payable if the terms of the contract of the employment, express or implied, were fulfilled. It was further pointed out that bonus to come within wages should be payable by reason of a term, express or implied, in the contract of employment itself; or by a separate or independent agreement by which the employer engages to pay a bonus should the terms of the contract of employment be fulfilled. It was also said that bonus may also fall within the definition of wages where a statute declares that whenever the terms of the contract of employment are fulfilled the bonus shall be payable. In the instant case, it is clear that bonus is not payable by reason of a term, express or implied, in the contract of employment itself. The payment of bonus to the workmen in the instant case is made under independent contracts. As earlier stated, those contracts are not before us and, therefore, it is not possible to find out the exact terms and conditions on which the bonus is payable. All that we can make out is that bonus is payable on the condition of there being minimum attendance during quarter of a year. It is, therefore, known as "attendance bonus". The requirement that the workmen should attend the work for a minimum number of days during a quarter, does not appear to us to be a part of the contract of employment. This requirement is created by the contract under which the bonus is paid and not by the contract of employment. It cannot, therefore, be said that bonus would be payable to a workman if the terms of the contract of employment, express or implied, were fulfilled within the definition of wages contained in the Minimum Wages Act. In our opinion, therefore, the attendance bonus paid to the workmen is not wages. Minimum rate of wages notified u/s 4(1)(iii) of the Act is an inclusive rate allowing for the basic rate of wages, the cost of living allowance and the cash value of the concessions, if any. The minimum rate fixed under this provision will not include the bonus of the type with which we are concerned in the instant case. We, therefore, agree with the opinion of the Industrial Tribunal-cum-Labour Court that the Petitioner is not entitled to add the bonus to the amount of wages paid to the workmen for the purpose of minimum wage. There was some discussion whether the cash value of the benefit of supply of foodgrains at concessional rate can be taken into account having regard to Section 11(1) of the Act for the purpose of minimum wage, but we need not give any opinion on this question, as this has been decided in favour of the Petitioner and the workmen have not come forward to challenge that part

of the decision.

The next question is whether the applications made by the workmen were (Sic)ertainable u/s 33C(2) of the Industrial Disputes Act, 1947. Learned Counsel for the Petitioner submitted before us that the issues raised on the applications filed by the workmen related to the determination of the workmen's right and the liability of the Petitioner and, therefore, the applications were not maintainable. Learned Counsel relied upon the case of Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, to support his argument that the nature of jurisdiction exercisable u/s 33C(2) is that of an executing Court. In our opinion, there is no merit in this contention. The right of the workmen to receive Rs. 2.40 as minimum wage per day and the corresponding liability of the Petitioner to pay it are fixed by the notification of the Government u/s 4 of the Minimum Wages Act. The grievance of the workmen is that the whole of the amount of wages, to which they are entitled by virtue of the notification of the Government, has not been paid to them. The issues raised on the applications of the workmen do not raise any question as to the determination of their right or the corresponding liability of the Petitioner. As earlier stated, the workmen's right and the Petitioner's liability are already fixed. The question is only of the extent of the Petitioner's liability, in the sense as to how much it has paid and how much it has not paid. This is a matter which squarely falls within Section 33C(2) of the Industrial Disputes Act. The broad issue that arose before the Industrial Tribunal-cum-Labour Court was, what amount or money was due to the workmen and, in our opinion, it had jurisdiction to decide that issue u/s 33C(2). The ruling of the Supreme Court relied upon by the learned Counsel itself makes as the distinction between the determination of the right or liability and the determination of the extent of the liability. The former may not fall within Section 33C(2), but the latter does fall within it.

It is also argued by the learned Counsel that in view of Section 20 of the Minimum Wages Act, which confers jurisdiction on the authority appointed under that section, jurisdiction could not be exercised u/s 33C(2) of the Industrial Disputes Act. This argument is also devoid of any merit. Section 20 of the Minimum Wages Act was construed by the Supreme Court in *Town Municipal Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, It was pointed out in that case that the language used in Section 20 showed that the authority appointed under that provision of law exercises jurisdiction for deciding claims which relate to rates of wages, rates for payment of work done on days of rest and over-time rates; and that in cases where there is no dispute as to rates of wages and the only question is whether a particular payment at the agreed rate in respect of minimum wages is due to a workman or not, the authority has no jurisdiction to decide it. In the instant case, the dispute does not relate to the rates of wages. The claim of the workmen is for the balance of the amount payable to them in accordance with the rate applicable which is not in dispute. Such a dispute is not cognizable by the Authority u/s 20 of the Minimum Wages Act. The jurisdiction u/s 33C(2) of the Industrial Disputes Act

for entertaining such a claim is, therefore, not taken away.

It was lastly submitted that the claim of the workmen was made beyond the period of limitation provided in Section 20 of the Minimum Wages Act, and, therefore, it was not entertainable u/s 33C(2) of the Industrial Disputes Act, As earlier pointed out by us, the claim made by the workmen falls outside Section 20 of the Minimum Wages Act. The period of limitation provided under that section is not applicable for a claim u/s 33C(2) of the Industrial Disputes Act. It is conceded that there is no period of limitation provided under this provision. The argument on the ground of limitation thus also fails.

The petition fails and is dismissed with costs in favour of the workmen. Counsel's fee Rs. 100. The outstanding amount of the security deposit, if any, shall be refunded to the Petitioner.