

(2000) 08 SC CK 0147

In the Supreme Court Of India

Case No : Interim Application; Writ Petition; Civil Appeal; Interim Application; Civil Appeal; Interim Application; Writ Petition; Interim Applicati????
Case No: 1217, 1221, 1232, 1233, 1168, 1169, 1166, 1167, 641, 1146, 1147, 1148, 1153, 1154, 1155, 1156, 1157, 115

M.C. Mehta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Payment of Wages Act, 1936 Sec 2(h)(VI)

Citation : (2002) 10 SCC 568

Hon'ble Judges : Ruma Pal, J;B. N. Kirpal, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

B.N. Kirpal, J.—The grievance in this application is that in M.C. Mehta v. Union of India it was, inter alia, directed that when the industry was shifted, certain payments had to be made to the workmen. One of the payments which was directed was termed as "shifting bonus" which was to be one year's wages and was meant to help the workmen to settle at the new location. The grievance of the applicant is that while the workmen were employed in Delhi, in addition to the basic salary and DA, etc., they were also entitled to get house rent allowance, production incentive, leave travel allowance, group superannuation, attendance and momento. In computing one year's wages for the purpose of shifting bonus, the respondent Company has not taken into consideration these allowances and it is in respect of that the present application has been filed.

2. Learned counsel for the applicant admits that shifting bonus has been paid by calculating one year's wages on the basis of the definition of the word "wages" occurring in Section 2(h)(vi) of the Payment of Wages Act, 1936. He contends that the wages should be computed by applying the definition contained in Section 1(rr) of the Industrial Disputes Act, 1947 and if this is so done, wages

would include the aforesaid allowances as well.

3. It is admitted that as per the orders of this Court, the workmen have already received more amount than what they would have been entitled to under the provisions of the Industrial Disputes Act in the case of a closure simpliciter, but that is not determinative of the question as to what was the entitlement of the workmen in terms of the orders passed by this Court.

4. While ordering payment of shifting bonus, the Court did not indicate therein as to how the wages were to be calculated. The Payment of Wages Act was promulgated with a view, as stated in the Preamble of the Act, "to regulate the payment of wages to certain classes of persons employed in industry". This Act applies to industrial establishment and normally, therefore, when the question arises as to what would be the wages payable, it would not be wrong to determine the wages in terms of the provisions of the Payment of Wages Act, 1936. When this Court directed one year's wages to be paid as shifting bonus, the said calculation will have to be done in terms of the Payment of Wages Act, 1936 and not in terms of the Industrial Disputes Act, 1947.

5. As this amount has already been paid, no further relief can be granted in this application. The IA stands disposed of accordingly. Indian Administrative Service Nos. 1232-33

6. Ia No. 1233 for exemption from filing O/T is allowed.

7. Mr V.A. Mohta, learned Senior Counsel for the applicant states on instructions that the applicant accepts the settlement arrived at between the Morcha and the respondent Company which was the subject-matter of IA No. 43 in IA No. 22 in WP (C) No. 4677 of 1985 and in respect whereof the order dated 16-11-1999 was passed by this Court.

8. After hearing the counsel for the parties, it is agreed that if the members of the applicant Union apply within six weeks from today to the Labour Commissioner, Delhi for payment of the amounts in terms of this Court's order dated 16-11-1999 passed in IA No. 43 in IA No. 22 in WP (C) No. 4677 of 1985 whereby the terms of settlement which had been arrived at between the Company and the workmen were recorded and the IA disposed of in terms thereof, the respondent Company shall pay to these workmen the amounts due to them. The amounts will be disbursed by the Labour Commissioner on his being satisfied with regard to the identity of the claimant.

9. Ia No. 1232 is disposed of in the aforesaid terms. IA No. 482

10. In this Court's order dated 26-11-1996 in IA No. 22 of 1996, 21 Arc/ Induction Furnaces mentioned in the said order were regarded as Category H industries and therefore were required to be closed down. At Sl. No. 20 the industry mentioned is "C. Bhai Lal & Co., B-II/87, Mohan Cooperative Industrial Estate, New Delhi 14". It is a common ground that the correct address is "B-II/97" and not "B-II/87" as indicated in the order. This order further directed that

in the event of the closure of the unit, compensation was payable to the workmen employed in the said Furnaces.

11. According to the applicant, in 1986, M/s C. Bhai Lal and Co. Ltd. had merged with SKS Limited. Thereafter persons who were working in the Furnaces at the aforesaid premises (B-II/97, Mohan Cooperative Industrial Estate) were employees of the SKS Limited.

12. It is the case of the respondents that this unit namely the Furnace was closed on 30-3-1997 and compliance thereof was reported by way of an affidavit, photocopy of which is at p. 84 of the compilation. There are some documents on record and in particular a notice of closure dated 14-9-1998 issued by M/s SKS.

13. The question which arises is whether the applicants are entitled to compensation as directed to be paid by virtue of this Court's order dated 26-11-19962.

14. After hearing the counsel for the parties, it is clear that the Furnace which was at B-II/97, Mohan Cooperative Industrial Estate was closed down pursuant to the aforesaid order of 26-11-19962. Whether the same was closed in 1997 or in the following year is of no consequence at all. What is important is as to who were the employees of the Furnaces which were closed down pursuant to the orders of this Court. This is a question which involves investigation into facts because the respondent denies that the applicants were its employees working in the said Furnaces. According to the respondent, the persons working in the Furnaces were engaged through a contractor and were not the employees of M/s SKS Ltd. and therefore were not entitled to the compensation. The applicants on the other hand contend that they were the employees of SKS working in the Furnaces and hence were entitled to claim compensation. The position in law being that the workmen of SKS who were working in the Furnaces being entitled to compensation is in terms of this Court's order, what has to be determined is as to who were those persons, if any, who were entitled to the benefit of this Court's order. This is a question of fact which should be decided by the Labour Court. The claimants including the applicants are at liberty to file their applications before the Labour Commissioner claiming compensation in terms of this Court's order. The application should be filed within six weeks and the Labour Commissioner will deal with the same after giving an opportunity to the Company to put forth its contention and after taking any such evidence as may be necessary. If possible, the matter should be disposed of within six months.

15. Ia is disposed of.

16. Ia No. 1145 : The IA is dismissed as withdrawn with liberty to file a suit or take such other proceedings as may be available in accordance with law.

17. Ia No. 1148 for exemption from appointment of an Official English Translator is allowed.

18. Indian Administrative Service Nos. 1146-47 Applicant 1 in this application is the widow of one Bharat who was a workman of the respondent Company. As per the orders of this Court passed in 1996, he was entitled to employment at the factory after the unit had shifted from Delhi. It appears that the said employment was not provided and on 18-12-1998 vide order reported in M.C. Mehta v. Union of India, it was directed that the workmen who reported for duty on or before 15-1-1999 at a Baddi in Himachal Pradesh will be given employment.

19. Bharat was one of the numerous workers who reported at Baddi prior to 15-1-1999. It appears that no arrangements had been made for providing accommodation to the workmen. They stayed in tents which had been pitched and despite the order of 18-12-1998 they were not given employment. The Company took the stand that it had chosen to file a petition under Article 32 of the Constitution challenging the earlier orders of this Court whereby compensation had been directed to be paid to such workmen.

20. When the orders passed on 18-12-1998 were not complied with, a contempt petition was filed. That was disposed of vide this Court's order reported as Workmen of M/s. Birla Textiles v. K.K. Birla. It is only thereafter that the respondent Company gave employment to the workers who reported there.

21. In this application which has been filed; one prayer made is that arrears of wages, etc. and the shifting bonus along with interest should be paid to the heirs of deceased Bharat. Another prayer is for providing compassionate employment and in addition thereto the respondents should be directed to compensate for the death of Bharat.

22. As far as compassionate employment is concerned, counsel for the respondent states that though the Company has taken back all the workmen as per the orders of this Court but a large number of them are not gainfully employed because of lack of work. Under the circumstances, it will not be appropriate to saddle the Company with yet one more workman with no work.

23. Despite the fact that initially this Court chose to issue notice in this application limited to the question relating to arrears of wages and shifting bonus, after hearing the counsel for the parties we are of the opinion that the claim with regard to compensation on account of the death of Bharat should also be looked into.

24. As far as arrears of wages and shifting bonus are concerned, it is admitted by the applicant that the same have been paid. In fact, the payment was made even before notice was issued in this application. As far as compensation is concerned, learned counsel for the applicant has drawn our attention to a somewhat similar case where on the death of a worker, this Court in M.C. Mehta v. Union of India had directed ex gratia payment of Rs 5,50,000 to the widow of the deceased workman. In addition thereto, the Company in that case agreed to provide employment to the eldest son.

25. Coming to the facts of the present case, we find that if the order dated 18-12-19983 had been complied with by the respondent Company in the manner it was intended to be complied with, the workers including Bharat would not have been left stranded in the cold climate of Himachal Pradesh in January 1999 without adequate shelter. Bharat survived the cold of January 1999 for about four days before he succumbed on or about 19-1-1999. On the facts of this case, the respondent Company must be held liable to pay compensation on this account.

26. Coming to the quantum, we find that Bharat had at least six more years of employment. Keeping in mind the last pay which was drawn by him and the number of years which he could have served if he had survived and also to provide for the mental anguish and hardship suffered by him, we direct a sum of Rs 2,00,000 to be paid as compensation to the widow of Bharat. The said compensation will be kept in a nationalised bank in the name of the widow by way of fixed deposit and the interest thereon will be paid to her. Initially this fixed deposit should be for a period of five years and after maturity the same may be paid to her and in her absence to her three sons. The payment of Rs 2,00,000 be made within four weeks by the respondent Company.

27. The IA is disposed of.

28. Issue notice to the respondents. Mr B.K. Khurana accepts notice on behalf of SBM Silk Mills. Reply be filed within four weeks and rejoinder within two weeks thereafter. List after six weeks.

29. Reply be filed within four weeks and rejoinder within two weeks thereafter. List after six weeks.

30. The question as to whether any arrears are to be paid to the workers in the mater shall be gone into by the authority under the Payment of Wages Act. This application is disposed of in the aforesaid terms.

31. Rejoinder be filed. Remaining Indian Administrative Service and CPs

32. Not reached.

33. Detailed reply be filed to the application within two weeks. It is stated by the learned counsel for the applicant that a representation has been filed which is pending consideration before the Chairman, DPCC. The said representation should also be decided within a fortnight on merits. List thereafter.