

(2007) 03 PAT CK 0164
In the Patna High Court
Case No : LPA No. 149 of 1998

M/s. Pradeep Lamp Workers Union

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-03-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 24

Citation : (2007) 3 PLJR 615

Hon'ble Judges : Navaniti Pd. Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Shivajee Pandey, for the Appellant; K.N. Gupta, S.P. Tewari, Hira Sharma, Ashok Kumar and Ms. Archana Prasad, for the State, for the Respondent

Judgement

Barin Ghosh and Navaniti Pd. Singh, JJ.—Disputes inter se the workmen and the management of Pradeep Lamp Works Limited came to be decided by the industrial Tribunal, Patna on two questions, as particularised below:-- (i) What wages, allowance and other facilities, the workmen of M/s. Pradeep Lamp Works, Patna City are entitled to and from since when?

(ii) What relief those workmen who have not been taken in work during the lockout from 8.9.1981 to 9.11.1981 and even after that are entitled to ?

The first dispute that was referred to the Tribunal arose inasmuch as the workmen and the Management of the said Industry could not enter into an agreement fixing the wages and remunerations payable to the workmen of the said Industry subsequent to the coming to an end of the 1974 by partied agreement in 1979. The fact remains that since 1959 until 1974, five yearly bilateral agreements were made inter se the workmen and the Management fixing the wages and remunerations payable to the workmen of the said Industry. After coming to an end the last of the said five yearly bilateral agreements inter se the workmen and the Management of the said Industry made in 1974, the Management and the Workmen of the said Industry could not agree to the pay structure of the workmen of the said Industry and, hence, the matter was

referred to the decision of the Tribunal.

2. The Tribunal as a fact found that subsequent to 1979 wages payable to the workmen by the Management has increased. After having had noted the said finding, the Tribunal did not make any endeavour to ascertain whether the same was adequate or not. The issue that was to be decided was what wages, allowances and other facilities the workmen were entitled to. No endeavour was made by the Tribunal to resolve the said issue.

3. The workmen urged before the Tribunal that the settlement of wages, in Engineering Industries made pursuant to the memorandum of settlement with regard to wage revision in Engineering Industries (hereinafter referred to as the Wage Board Settlement) was applicable to the employer Industry also and, accordingly, the wages, allowances and other facilities of the workmen of the Industry concerned should be fixed in the light thereof.

4. The Wage Board Settlement was in force for a period of five years with effect from 14th March, 1970 and was agreed to continue until terminated in writing by either side by serving two months' notice. Before the Tribunal, it was not contended that after the 1974 settlement between the Management and workmen of the Industry came to an end, the Wage Board Settlement was terminated. However, it appears that on 7th of January 1976, the original Wage Board Settlement of 14th March, 1970 was revised. This fact was brought to the notice of the writ Court by the Management.

5. It was urged before the Tribunal as well as before the writ Court by the Management that the Wage Board Settlement is not attracted to the Industry of which disputes were to be resolved by the Tribunal. The Tribunal as well as the writ Court read a part of the definition of Engineering Industry as given in the Wage Board Settlement and concluded that such an Industry must be engaged in the production and/or shaping of ferrous and non-ferrous metals by turning, fabrication, processing, moulding, joining etc. The Tribunal as well as the writ Court did not take notice of the full definition of Engineering Industry as was given in the Wage Board Settlement, which we set out below:--

3.3. One of the earliest questions which had to be considered by this Wage Board was as to what constituted Engineering Industry. The Board took the view that the units engaged in the production and/or shaping of ferrous and non-ferrous metals by turning, fabrication, processing, moulding, joining, etc, are the units in the Engineering Industry with which the Board is concerned. The character of the Engineering Industries being heterogeneous, lacking homogeneity of other industries, and the engineering goods produced being the result of manufacturing activity of various types, various classes and types of units come within the fold of Engineering Industries. The units have, therefore, been classified into various major groups and sub-groups according to National Standard Industrial and occupational Classification. The major groups under this classification are as mentioned below. Accordingly, these groups constitute

different branches of the engineering industries and, therefore, come within the scope of this Wage Board. This explains the use of the term "Engineering Industries" in plural in the Government Resolution, dated the 12th December 1964 under which the Board has been constituted:

A. Basic Metal Industries.

B. Manufacture of Metal Products (except Machinery and Transport equipment).

C. Manufacture of Machinery (except Electrical Machinery).

D. Manufacture of Electrical Machinery, Apparatus, Appliances and Supplies.

E. Manufacture of Transport Equipment.

F. Miscellaneous Manufacturing Industries like?

(i) Manufacture of professional, scientific, measuring and controlling instruments.

(ii) Manufacture and repair of watches and clocks.

(iii) Manufacturing _not elsewhere classified like zip fasteners, etc.

6. While the Tribunal and the writ Court stopped at those Industries engaged in the production and/or shaping ferrous and non-ferrous metals, they did not take note of the fact that the character of Engineering Industries, being heterogeneous, lacking homogeneity of other industries and engineering goods produce, being the result of activities of various types, various classes and types of units come within the fold of Engineering Industry, of whose fate too the said settlement had decided. It was specifically mentioned that such Industry which is engaged in manufacture of electrical machinery, apparatus, appliances and supplies shall also be governed by the said settlement. The Industry with which we are concerned, admittedly, manufactures bulb by assembling various parts thereof. The raw materials purchased by it from the market, on assembly, gets the shape of a bulb which, no doubt, is an electrical appliance. In the circumstances, the Wage Board Settlement, as stood revised did apply to the Industry in question after coming to an end the by partied settlement of 1974 inter se the workmen and the Management.

7. We are, therefore, of the view that the Tribunal erred while answering the first dispute as was referred to it. On a challenge thrown to the same, the writ Court also did not consider the issue in appropriate perspective and, accordingly, also erred in holding that the first question was correctly decided by the Tribunal when in fact the same was not at all decided and while considering the said question, incorrectly held that the Wage Board Settlement is not applicable to the Industry. In those circumstances, the award of the Tribunal dated 12th May, 1986 insofar as the same dealt with the first question as was referred to it is quashed and the judgment and order of the writ Court impugned in this appeal in that regard is also set aside.

8. It was not contended before the Tribunal that the lockout as was declared by

the Management is illegal in terms of Section 24 of the Industrial Disputes Act, 1947. On the other hand, it was contended that the same was inappropriate. By Exhibit-D, the lockout was declared. That suggested that the Management was compelled to declare lockout in view of irresponsible attitude on the part of a handful of workmen of the Industry, who had not only resorted to violence, but were also taking steps to destroy the assets of the Industry. The evidence on record did suggest that the Management witnesses corroborated the statements made in Exhibit-D. The evidence on record do not suggest that the workmen could demolish such evidence. As a result the conclusion would be that a handful of the workmen of the Industry made it impossible for the Management of the Industry and other workers of the Industry to continue to run the Industry during the period the Industry remained under lockout.

9. There is no dispute that the lockout was lifted on 9th of November, 1981. There is also no dispute that after 9th of November, 1981 many of the workmen rejoined the Industry. There is also no dispute that those, who rejoined the Industry after the lockout was lifted, have been paid their dues, in accordance with their entitlement. However, many workmen did not or were not permitted to join the Industry after the lockout was lifted. It was urged before the Tribunal that the Industry sought the workmen to give assurance in the format as contained in Exhibit-E. It was contended that no workman could be compelled to give assurance either in the format of Exhibit-E or otherwise as a condition for permitting him to join the service. Therefore, before the Tribunal, an issue was raised as to whether the Management could insist the workman to give such an assurance before permitting him to join his duty. This issue having not been referred to the Tribunal, the Tribunal could not touch the same.

10. However, the Tribunal found as a fact that when workmen approached and asked the Management to alter the terms of the assurance, as was provided in Exhibit-E, the same were altered. The Tribunal found that clause (i) of the said exhibit was substantially altered and clause (vii) of the same was altogether deleted. The workmen, who approached the Tribunal, did not say that they had any grievance in relation to any particular clause and such grievance having been disclosed to the Management," the Management refused to withdraw the same. Furthermore, a look at Exhibit-E would amply show that thereby only promises were made, without any consequence. Be that as it may, having regard to the fact that the dispute as to whether as a condition to permit a workman to rejoin after the lockout was lifted, the Management could obtain such assurance having not been referred to the Tribunal, it would not be appropriate on our part to express our opinion in relation thereto. Therefore, from the materials on record, it is clear to us that the disputes pertaining to question No. (ii), as referred to the Tribunal, stands concluded and there is no necessity to reconsider the same. In the circumstances, the decision of the Tribunal pertaining to question No. (ii) as well as the observations of the writ Court as made in the judgment and order under appeal, insofar as the same relates to the said issue, are upheld. The appeal, accordingly, stands disposed of.