

(2010) 10 JH CK 0024

In the Jharkhand High Court

Case No : Writ Petition (L) No. 5604 of 2006

South Eastern Railway, Adra Division

APPELLANT

Vs

Regional Labour Commissioner, Central, Dhanbad-Cum-Authority Under the Minimum Wages Act and Another

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 16
Minimum Wages Act, 1948 — Section 20(2)

Citation : (2011) 128 FLR 862 : (2011) 3 LLJ 524

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pradeep Kumar, J.—Heard the learned Counsel for Petitioner and learned Counsel for the Respondents. The instant writ application has been filed for quashing the order dated 8.8.2006 passed by the Respondent No. 1, Regional Labour Commissioner, Central, Dhanbad cum Authority under the Minimum Wages Act, u/s 20(2) of the Minimum Wages Act.

2. It is submitted by learned Counsel for Petitioner that an application was made by the Respondent No. 2, President of the Railway Station Porter Union, Bokaro Railway Station with regard to the 58 porters of Bokaro Steel City, Railway Station demanding payment of minimum wages for the porters of Bokaro Railway Station doing parcel handling work from the period dated 1.4.1997 to 31.3.2005 under minimum wages on the rate fixed by the Government of India, Ministry of Labour vide notification under the Minimum Wages Act, Published in Gazette of India No. S.O. 512(E) dated 12.7.1994 and directed the Petitioner. South Eastern Railway to pay the difference of wages amounting to Rs. 66,56,912.72. It is further submitted that the aforesaid notification No. S.O.-512(E) dated 12.7.1994 does not cover the Railway Platform Potters and as such the impugned order is bad in law and only fit to be quashed. He has also stated that as per the

judgment of this Hon"ble Court as reported in CWJC No. 946 of 1997, Respondent No. 1; Regional Labour Commissioner, Central-cum-Authority under Minimum Wages Act cannot decide the matter and the matter can only be decided by CAT and not by any Labour Court. He has further submitted that as per the license issued to the 58 porters for working in the Bokaro Steel City Railway Station platform, as per the agreement in the licence they do part time work of parcel loading and unloading on the railway platform and they made money for the said work for as many hours as they work and they are not covered by the notification nor they are covered by any of the judgments of the Andhra Pradesh High Court Cases which has been referred in the judgment which were for the regular parcel loading porters working for 8 hours and as such the impugned order is fit to be quashed.

3. On the other hand, learned Counsel for Respondents has opposed the same and submitted that those porters are fully covered by the Gazette Notification No. SO-512(E) and it has been held in different judgments of the Andhra Pradesh High Court and other High Courts that they are entitled to get minimum wages as fixed under the notification and as such, no interference of this Court is required.

4. After hearing both the parties and going through the records and documents relied upon by the parties, I find that Respondent No. 1, Regional Labour Commissioner, Central, Dhanbad has relied upon the Notification No. SO-512(E) dated 12.7.1994 for granting minimum wages to the aforesaid 58 porters who worked at the railway platform of Bokaro Railway Station, the aforesaid notification read as under:

Revision of minimum rates of wages for employees employed in loading and unloading operations in Railways Goods Sheds and Ash-pit Cleaning in Railways.

5. Mere reading of the aforesaid notification shows that the minimum wages has been fixed with regard to the employees including loading and unloading operations in Railways Goods Sheds and Ash-pit Cleaning in Railways, and it does not cover the railway platform porters, who are generally given licence for loading and unloading the luggages of railway passengers.

6. It appears from the licence given to the aforesaid 58 workers, the sample of which has been annexed with the notification as Annexure-1 in page 29 of the writ petition which reads as under:

Terms and Conditions of Working of Licensed porters directly licensed by the Railways.

Clause 1: The licensed porter will work under the overall supervision of Asst. Station Master/Station Master/Station Supdt. and carry out instruction given either by him or by the Platform Inspector/Mukadam/Mate/Supervisor in connection with the work of handling (i) Passengers luggage; and (ii) parcel and luggage in the custody of Railway.

Clause 7: The Licensed porter may be required to work for the railway administration in handling parcels and luggage in the custody of the railway at rates of remuneration as may be fixed by the administration. The cost of any package broken or damaged by a porter due to his careless handling may be recovered from his dues in this connection;

7. From the aforesaid conditions of license, it is clear that the licensed railway porters working in the platform of the railway station are mainly engaged in handling the luggage of the passengers and it is clearly stated in the Clause 7 of the said condition that they may be required to work for railway sometime in handling parcels and luggage in the custody of the railway at rates of remuneration as may be fixed by at the administration. So far as handling of railway parcel is concerned they are working under the agreement on agreed rates which will be fixed by the administration and they are not working any fixed hours every day as such they are not regular employee of the railway, while the notification as quoted above clearly says that it covers the railway employees employed in loading and unloading operations in railway goods sheds and not railway platform porters who are working under an agreement of license. Moreover, it is also abundantly clear from the judgment delivered by this Court in the case of *Sr. Divisional Signal-cum-Telecommunication Engineer, SER v. P.O., Labour Court, Ranchi* wherein by order dated 18.7.2007, wherein the order passed by the Labour Court, Ranchi directing the railway employees to pay national holidays, allowances of Rs. 413.55p/- and compensation amount of Rs. 4135,50/- was challenged and it was held that as per Section 16 of the Central Administrative Tribunal Act, Petitioner being the employee of railways under the Union of India, all Courts including the Labour Courts except the Supreme Court seize to have jurisdiction with respect to the conditions service of such employees of Union of India. The Central Administrative Tribunal Act, 1985 came into effect in the State of Bihar and Jharkhand from November, 1985 and it was found that it is well settled that the Presiding Officer of the Labour Court has no jurisdiction to decide any matter of conditions of service of any railway employee. In this case also I find that if the aforesaid 58 railway porters of Bokaro Railway Station claiming to be employees of South Eastern Railways and claiming minimum wages, that matter also cannot be decided by the Regional Labour Commissioner, Central, Dhanbad-cum-Authority, Minimum Wages. Moreover, it also appears, that the matter as to whether the railway porters working on the railway platform and doing the work of railway sometimes as per the direction of the Station Superintendent of loading and unloading railway parcel was considered by the Hon"ble Supreme Court in the case of *Union of India and Ors. v. Nand Kumar and Ors.* in Civil Appeal Nos. 9378-79 of 1995 wherein the licensed porters of railway station of Muri in this very South eastern railway discharging the work of loading and unloading of parcel at the parcel office of railway station of Muri and they were being paid @ Rs. 15/- per 8 hours, they filed a Civil Appeal before the Central Administrative Tribunal-Calcutta Bench claiming regularization of their service as railway employees, it was held

by the Tribunal that the said porters were being utilized on the strength of an agreement as per the terms of the licenses issued to these as porters and that any service rendered by these during continuance of such agreement, could not give the right or status of independent casual labourers serving in the Railway Administration and that they could not be treated at par with independent casual labourers engaged by the Railway Administration. They challenged the said order of the Tribunal in Civil Appeal No. 9380 of 1995 of the Hon''ble Supreme Court after considering the previous judgments relied by the employees referred to in this judgment of Kerela and other States came to a finding that the Tribunal was in error in giving direction regarding payment of remuneration and wages to the Respondent at the rate which is admissible to the casual labourers, having temporary status and allowed the appeal. Since, the porter at Muri Railway Station were not railway employees and they have been handling parcel on the basis of the agreement in terms of license that have been issued to them by the railways to work as licensed porter at the railway station and it was held that the porter of the railway platform cannot stand at par with casual labour employed on temporary basis of railway administration.

8. In the instant case also the same analogy accepted by the Hon''ble Supreme Court applied in the licensed railway porter working at Bokaro Steel City Railway platform station cannot claim wages, as such they are not casual employees or temporary employees of railway administration and they are doing the Job of loading and unloading of parcel on the basis of the agreement as per the terms of license.

9. Accordingly, the impugned order, Annexure-2 passed by the Regional Labour Commissioner, Central, Dhanbad-cum-Authority, Minimum Wages in Application No. MW Claim (133)/2005 dated 8.8.2006 is quashed.

10. The writ application is allowed.