
(2000) 01 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No's. 3383/90 and 123/91

Stanley Ward and Others

APPELLANT

Vs

Coal India Limited and Others

RESPONDENT

Date of Decision : 13-01-2000

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 14, 14(1)
Constitution of India, 1950 — Article 14, 16

Citation : (2001) ILR (MP) 15 : (2000) 3 MPHT 491 : (2000) 3 MPLJ 381 :
(2000) 3 MPLJ 380

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : S.K. Rao, for the Appellant; Rajendra Menon, for the Respondent

Judgement

Dipak Misra, J.

The factual matrix being same and the question of law involved being similar, both the writ petitions were heard together and are disposed of by this common order. For the sake of clarity and convenience the facts stated in W.P. No. 3383 of 1990 are adumbrated herein.

The petitioners were working in the Pench Valley Coal Company Limited, Amalgamated Coalfields Limited and Rewa Coalfields Limited which were initially owned by the private owners and were functioning under the managing agency of M/s. Shaw Wallace and Company Limited. While the petitioners were working under the M/s. Shaw Wallace and Company Limited they were governed by the service rules and standing orders framed by them. As per the Service Rules they were entitled to get pension, gratuity, and other benefits as admissible by them from time to time. The Parliament with an object to provide for acquisition and transfer of the right, title and interest of the owners in respect of the Coal Mines specified in the Schedule and with a view to reorganise and reconstruction of such coal mines so as to ensure rational co-ordination and scientific development utilisation of the coal resources concerning with the growing requirement of the

country so that the ownership and control of such resources are vested in the state and thereby, so distributed to sub-serve the common goal and matters connected therewith or incidentally thereto enacted the Coal Mines Nationalisation Act, 1973 (No. 26 of 1973) which came into force with effect from 1-5-1973. By the said enactment the coal mines including the mines of M/s. Shaw Wallace were nationalised and the management of all the Private Coal Mines vested in the Company called Coal India Limited. Thereafter, seven subsidiaries were formed such as Western Coalfields Limited, South Eastern Coalfields Limited, Eastern Coalfields Limited, Central Coalfields Limited, Northern Coalfields Limited, Bharat Coal Coking Limited and Central Mines Plan and Design Institution (CMPDI). It is to be noted here that later on certain other Coalfields were formed. By virtue of the aforesaid statute M/s. Shaw Wallace came under the Western Coalfields Limited. According to the writ petitioners they were entitled to get the pension and gratuity and other retiral benefits which were protected u/s 14 of the Act but the same has been denied to them in violation of the statute. It is also put forth that u/s 14(1) occurring in Chapter V of the Act there is a provision relating to employees of coal mines and their interest were protected. It is averred that in spite of such a protection the petitioners are deprived of the benefits in question.

A return has been filed contending, inter alia, that the petitioners are not entitled to the retiral benefits inasmuch as Section 14 has undergone an amendment and in the amended provision the interest of the petitioners which was earlier protected has been taken away, and therefore, they are not entitled to the benefits as claimed by them.

It is not disputed at the Bar that the Coalfields under the M/s. Shaw Wallace merged with Western Coalfields Limited and they were protected. Section 14(1) of the Act initially reads as under :

"14 (1). Employment of certain employees to continue.-- (1) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been, immediately before the appointed day, in the employment of a coal mine shall become, on and from the appointed day, an employee of the Central Government or, as the case may be, of the Government company in which the right, title and interest of such mine have vested under this Act, and shall hold office or service in the coal mine with the same rights to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such coal mine had not been transferred to, and vested in, the Central Government or the Government Company, as the case may be, and continue to do so unless and until his employment in such coal mine is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Central Government or the Government company."

As per said provision the employees of the M/s. Shaw Wallace Company were given the benefit. It is also not disputed that some of the petitioners who retired in the year 1982-83 and 1984-86 were given the benefit but later on they were

denied and some of the employees who retired on 7-10-86 have not been given the benefit. The aforesaid Section 14 was substituted by Act No. 57 of 1986 with effect from 1-5-1973. The amended provision reads as under :

"14. Liability of officer or other employee of a coal mine for transfer to any other coal mine.-- Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the services of any officer or other employee employed in a coal mine shall be liable to be transferred to any other coal mine and such transfer shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any Court, Tribunal or other authority."

Submission of Mr. Rao, learned counsel for the petitioner is that aforesaid provision cannot annihilate the terms and service conditions of the petitioners as an assurance was given to the petitioners and the likes that their interest would be protected. It is also his submission that even if there is amendment with retrospective effect it cannot nullify the accrued rights. In support of the same he has placed reliance on the decisions rendered in the cases of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , S.P. Dubey v. M.P.S.R.T.C. 1991 SCC. (1) 426 and Central Coalfields Ltd. Vs. Union of India (UOI) and Others, .

Mr. Menon, learned counsel for the Coalfields, has submitted that once the substituted provision has come into force persons retiring after 7-10-86 should not be entitled to the retiral benefits. However, he fairly states that rights which have already been accrued in favour of the employees that cannot be nullified. He has placed heavy reliance on the decision rendered in the cases of Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, , Government of Andhra Pradesh and others Vs. Syed Yousuddin Ahmed, In the case of C.R. Rangadhamaiah (supra) the Constitution Bench has held as under :

"A Rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution but a Rule which seeks to reverse from an anterior date, a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively."

Their Lordships further held as under :

"The expression "vested rights" or "accrued rights" are used in the context of a right flowing under the relevant Rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the Rule in force at that time. Such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing Rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution."

In this context I may profitably refer to the decision rendered in the case of B.S. Yadav and Others Vs. State of Haryana and Others, , wherein it has been held as under :

"..... The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history."

In view of the aforesaid enunciation of law, there remains no iota of doubt that the provision cannot be made applicable prior to 7-10-86 as that would destroy the accrued rights of the persons who had already retired and availed the benefit. It is to be remembered an employee's retiral benefits are to be governed by the Rules in vogue at the time of his superannuation from the service in question. The decision cited by Mr. Rao relates to the assurance and other aspects, which are really not at all of any relevance to the present case. In this factual backdrop, it can be irresistibly concluded that the employees who had retired before 7-10-86 would be entitled to get all the benefits which were available to them earlier. Accordingly, the petitioners who had retired before 7-10-86 were entitled to avail the benefit under the old provision. As far as employees who have retired after the amended provision came into force are not entitled to such benefits. Accordingly, it is directed that the petitioners who are entitled to such benefits, their retiral benefits shall be computed and paid to them within a period of three months from today.

In the result, the writ petitions are allowed in part. However, there shall be no Order as to costs.