

(1956) 12 PAT CK 0012
In the Patna High Court
Case No : Misc. Judl. Case No. 683 of 1955

Superintendent of Collieries

APPELLANT

Vs

Deputy Commr. and Others

RESPONDENT

Date of Decision : 10-12-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 4
Coal Mines Provident Fund and Bonus Schemes Act, 1948 — Section 6, 6
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 367
Payment of Wages Act, 1936 — Section 10, 11, 12, 13, 15

Citation : AIR 1957 Patna 647

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Ray Paras Nath, for the Appellant; Umeshchandra Prasad and Lakshman Saran Sinha, for the Respondent

Judgement

Raj Kishore Prasad, J.—The petitioner is the Superintendent of Collieries, Giridih. He has presented an application to this Court under Articles 226 and 227 of the Constitution, and asked for a writ, in the nature of mandamus commanding opposite party No. 1 who is the Deputy Commissioner of Hazaribagh, not to give effect to his order dated the 7th September, 1955, passed u/s 15(3) of the Payment of Wages Act, 1936 (Act IV of 1936), and, not to direct the petitioner to refund to opposite party 2 to 5, who are some of the workmen employed in Karbarbaree colliery in Giridih, the amount of bonus realised from them because it was illegally paid to them, in ignorance, and, in contravention of the provisions of the Coal Mines Bonus Scheme, 1948, framed u/s 6 of the Coal Mines Provident Fund and Bonus Schemes Act, 1948 (Act XLVI of 1948); He has also asked for a writ in the nature of certiorari to quash the aforesaid order of the opposite party No. 1.

2. The petitioner is the person who is responsible for the payment of wages, u/s 3 of the Payment of Wages Act to the workmen in the Collieries in Giridih,

including Karoarbaree Colliery, in which opposite party 2 to 5 were also working.

3. The petitioner's case is that the workmen of the said Colliery are entitled to the payment of bonus in terms of, and, on compliance with the conditions laid down in the Coal Mines Bonus Scheme, 1948. Through oversight and by sheer mistake, bonus was paid to many workmen, including opposite party 2 to 5, although they were not legally entitled to receive the same in accordance with the coal mines "bonus Scheme. When the mistake was pointed out by the auditor, steps were taken, to realise it from such workmen, including opposite party 2 to 5, by deduction from their wages.

4. Opposite party 2 to 5, therefore, along with others, filed an application, u/s 15(2) of the Payment of Wages Act, before opposite party No. 1, who is the authority appointed by the State Government, u/s 15(1) of the Act, to hear and decide all claims arising out of also deductions from the wages of persons employed, or paid, in the district of Hazaribagh.

5. Their grievance was that Rs. 3/- per head had been deducted from their wages for the wage-periods, contemplated by Section 4 of the Payment of Wages Act, in respect of which wages were paid to them on 21-4-1955, 28-4-1955 and 5-5-1955, at Re. 1/- per head per week, and, they therefore, prayed for directions under Sub-section (3) of Section 15 of the Act, directing the petitioner to refund the amount illegally deducted from their wages, and to pay compensation amounting to Rs. 100/- to the opposite party 2 to 5.

6. On this application, opposite party 1 issued a notice to the petitioners, who showed cause before him. Opposite party 1, thereafter, after hearing the parties and considering the report of the enquiry, submitted by the Inspector, which is Annexure A to the application, passed orders on the 7th September, 1955, directing the petitioner under Sub-section (3) of Section 15 of the Act, to refund the amount, deducted from the wages of the opposite party 2 to 5 to them, and, he further directed that in the event of the employer's failure to make the aforesaid payment to opposite party 2 to 5 as directed, further legal action for realisation of the amount" in question will be taken.

7. Mr. Ray Parasnath, Government pleader, in support of the rule, has argued that the directions given by opposite party No. 1 under Sub-section (3) of the Section 15 of the Payment of Wages Act, are illegal and ultra vires, and, therefore, they should be quashed.

8. Paragraphs 4(a) and 6(1) of the Coal Mines Bonus Scheme are the relevant provisions for the present case, and, they read as follows :

"4, Qualification for bonus in coal mines in West Bengal and Bihar--An employee in a coal mine in West Bengal or Bihar shall qualify for a bonus from his employer-

(a) in respect of the period from the twelfth of May, 1947 to the thirty first of December, 1947, provided he has put in attendance in the coal mines during that

period for not less than 121 days if a Category I employee, or for not less than 121 days if a category I employee, or for not less than 169 days if a Category II employee:

: * * * *

6. Allowance for leave etc.--(1) For the purposes of paragraphs 4 and 5 of this Scheme, leave (including sick leave) granted by the employer to an aggregate of 21 days in a calendar year and days if idleness caused by any temporary breakdown of machinery or any other technical reason shall count as days of attendance.

* * * *

9. Paragraph 4(a) clearly provides that a category II employee in a coal mine in Bihar shall qualify for a bonus from his employer in respect of the period from the 12th of May, 1947, to the 31st of December, 1947, provided he has put in attendance in the coal mine during that period for not less than 169 days. "Category II employee" has been defined in paragraph 2 (b) of the Scheme as meaning an employee in a coal mine other than a "Category I employee" who under paragraph 2(a) means underground miner or any other underground piece worker.

10. It is admitted that opposite party 2 to & were category II employees. Paragraph 3 of the Scheme provides that, except in the cases mentioned in the exceptions (a) to (d), appended to it, every employee in a coal mine, to which this-scheme applies, shall be eligible to qualify for a bonus. On the language of paragraph 4(a), therefore, it is plain that Category II employee, in order to be entitled to earn a bonus from his employer, must have put in attendance for not less than 169-days during the period 12th of May, 1947, and the 31st December, 1947, otherwise he cannot take the benefit of paragraph 4(a).

11. In the instant case, opposite party 1 has mentioned in his order that the attendance of opposite party 2 to 5 fell short of 10 days, or less. It is, therefore, undisputed that the opposite party 2 to 5 had not put in an attendance of 169 days as required by paragraph 4(a), and, therefore, they did not satisfy the condition precedent laid down in paragraph 4(a) and, as such, prima facie, they were not entitled to a bonus under it.

12. Paragraph 6(1) of the Scheme, however, provides that for the purpose of paragraph 4, above mentioned, "leave (including sick leave) granted by the employer, to an aggregate of 21 days in a calendar year, shall count as days of attendance." Under paragraph 6(1), therefore, only if the employer has granted leave, including sick leave to his employee, and not otherwise to an aggregate of 21 days in a calendar year, such period of leave shall count as days of attendance, and, such period of leave to an aggregate of 21 days can be added to make up the shortage, if any, in the attendance, of 169 days, contemplated by paragraph 4 (a) in order to enable the employee to take advantage of the benefit

of bonus conferred by paragraph 4(a) of the Scheme, upon him.

13. In the present case the petitioner has filed a supplementary affidavit stating that opposite party 2 to 4 were appointed on the 1st December, 1946, and, opposite party 5 was appointed on the 10th September, 1948. He has further stated that during the year 1947, opposite party 2 to 4 were not granted a single day's leave and no such question arose in case of opposite party 5, because he was appointed in 1948, after the relevant period, which is 12th May, 1947, to the 31st December, 1947, as mentioned in paragraph 4(a) of the Scheme. The petitioner has further stated in his supplementary affidavit that the service registers of opposite party 2 to 5 were produced before opposite party 1 at the hearing in support of the fact that no leave was granted to the opposite party 2 to 5 as contemplated by paragraph 6 (1) of the Scheme.

14. Opposite party 1 proceeded to pass Orders on the basis that because opposite party 2 to 5 were granted bonus under the Scheme, it could not have been allowed to quote his own words, "except by the grant of leave even though the orders might not have been reduced to writing or even though while allowing the leave to the petitioners (that is, opposite party 2 to 5, and others) he might not have described the period of leave."

15. From a perusal of the impugned order of opposite party 1, therefore, it is plain that he has gone on purely speculation and, has drawn Inference, not from facts, or materials, or evidence before him, but from mere imagination. It is, not open to a Court or anybody, or officer, or authority, who is entrusted with quasi-judicial functions, to base his decision on mere conjecture and speculation, and to draw upon his own imagination for coming to a certain finding and to imagine such a fact or state of affairs must have existed, or happened. He is not entitled to make a pure guess, and make an order without reference to any evidence or any material at all.

16. Opposite party 2 to 5 have also shown cause through Mr. Umesh Chandra Prasad Sinha. But they have neither filed any counter-affidavit, nor, produced any evidence or material in support of their case that leave had actually been granted by the employer to them.

17. In my Judgment, therefore, the order of opposite party 1 being based on mere guess, and on no evidence or material, is illegal and without Jurisdiction.

18. On the true construction of paragraphs 4(a) and 6(1) of the Coal Mines Bonus Scheme, 1948, it is manifest that an employee shall qualify for a bonus from his employer only when he has put in an attendance of 169 days, if he is a Category II employee, during the relevant period from the 12th May, 1947, to the 31st December, 1947, and, further that any shortage, in the attendance for the requisite period, can be made up, only up to the extent of 21 days, by adding the same to the period, which is short, to make up the requisite attendance, but only if leave to an aggregate of 21 days has been granted by the employer to such, employee, and not otherwise.

If leave has not been granted by the employer to the employee, the absence of the employee for any period whatsoever and for whatever cause it may be, cannot be added to the short attendance in order to make up the statutory attendance, in order to qualify for the bonus, which is mandatory for such an employee to put in. The words "leave granted by the employer occurring in paragraph 6 (1) leave no room for doubt that the leave must have been granted by the employer, and, if it is not granted, the absence of the employee cannot be counted as days of attendance, and, taken into consideration to make up the period of attendance of 169 days, in the case of a category II employee, as required by paragraph 4(a).

19. Opposite party 2 to 5 were, as such, not entitled to the bonus under paragraph 4 (a) read with paragraph 6(1) of the Scheme, and, therefore, they got the bonus illegally obviously by mistake, and as such, the petitioner was entitled to deduct the amount of bonus paid illegally to opposite party 2 to 5.

Such deductions from the wages of opposite party 2 to 5 were not illegal as to attract the provisions of Section 15(3) of the Payment of Wages Act.

20. The word "wages" has been defined in Section 2(vi) of this Act as below :

" "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, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include-

* * * *

From the above definition, it will appear that "wages" include "bonus" also, which would be payable, to the person employed, in terms of his employment, as provided by Section 5 of the Act. Deductions, which may be made from the employees' wages, are mentioned in Sections 7 and 9 to 13 of the Act. If however, deductions are made from the wages, otherwise than as period, then u/s 15 of the Act the employee concerned can claim a refund of such deductions made, and then alone the authority appointed u/s 15(1) of the Act will have jurisdiction to order refund of such deductions u/s 15(3) of the Act.

21. In the case in hand, opposite party 2 to 5 were not entitled to the bonus under paragraphs. 4(a) read with 6(1) of the scheme, as, such bonuses, paid to them did not come within the meaning of the word "wages" mentioned in Section 2(vi) of the Act. The petitioner, therefore, was entitled to deduct such amount of bonus from the wages of the opposite party 1 to entertain a claim arising out of such deductions from the wages of opposite party 2 to 5 was not attracted u/s 15(1) of the Act. "

22. In this view of the matter, opposite party 1 had no jurisdiction, acting u/s 15(3) of the Act, to give any direction either to refund the amount of bonus, which had been illegally taken by opposite party 2 to 5, and which, therefore, was being realised from them by the petitioner, or to direct the petitioner to pay any compensation to them.

23. For the reasons given above, I would make the rule absolute and, allow the application. A writ in the nature of mandamus must, therefore, go commanding opposite party 1 not to give effect to his order dated the 7th September, 1955, and, further ejecting him not to ask for refund from the petitioner of the amount of bonus realised from opposite party 2 to 5, who were paid that amount in contravention of paragraph 4(a) read with paragraph 6(1) of the Coal Mines Bonus Scheme, 1948. A writ in the nature of certiorari must also go quashing the impugned order dated the 7th September, 1955, of the opposite party 1. In the circumstances of the case, there will be no order for costs.

Ramaswami, C.J.

24. I agree.