

(1990) 07 OHC CK 0042

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1309 of 1984

Taicher Coal Mines Employees' Union

APPELLANT

Vs

Taicher Colliery and Others

RESPONDENT

Date of Decision : 04-07-1990

Acts Referred:

Payment of Wages (Mines) Rules, 1956 — Rule 16(2)
Payment of Wages Act, 1936 — Section 15, 7(2), 9, 9(2)

Citation : (1994) 3 LLJ 747

Hon'ble Judges : B.L. Hansaria, C.J.; D.P. Mohapatra, J

Bench : Division Bench

Advocate : P. Palit, J. Patnaik and A.K. Bhagat, for the Appellant; B.B. Ratho, R.K. Bhuyan, Manoj Misra, R.P. Mohapatra, R.K. Bose and A. Satpathy, for the Respondent

Final Decision : Dismissed

Judgement

Hansaria, C.J.—Penal deduction of wages for a period of 8 days from certain category of employees of Talcher Colliery with the aid of the proviso to Section 9(2) of the Payment of Wages Act, 1936 (shortly stated, the Act), has been assailed in this application under Article 226 of the Constitution principally on two grounds, viz.:

- (i) the deduction was in violation of the principles of natural justice; and
- (ii) there being no prior determination as to whether the concerted absence was without reasonable cause, no deduction at all could be made.

2. To appreciate these submissions advanced by Shri Palit, the broad facts of the case may be noted. These are: The loaders of the Talcher Colliery were discharging their duties earlier from 7 A.M. to 3 P.M. which was called "day shift." Likewise, there were evening and night shifts from 3 P.M. to 11 P.M. and from 11 P.M. to 7 A.M. of the next day. These hours were shifted on and from 23 April 1984, to 8 A.M. to 4 P.M., 4 P.M. to 12 P.M. and 12 P.M. to 8 AM of the next day.

This change was not entertained by the loaders because of which they did not attend their duties on 23, 24 and 26 April 1984. The management, therefore, issued a general notice, vide Annexure 2, dated 29 April 1984, describing the absence from duty as illegal strike because of which it was stated that their emoluments for the month of April would be paid after deducting 8 days' wages. An industrial dispute in regard to the change in the condition of service was raised which came to be referred to the Industrial Tribunal by a Notification, dated 4 August 1984. In the mean time, this petition had been filed by the employees' union in which the deduction has been assailed on the grounds stated above.

3. To answer the two contentions advanced by Sri Palit, we may read Section 9 in its entirety:

"P. Deduction for absence from duty.-

(1) Deductions may be made under Clause(b) of Sub-section (2) of Section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wages period, during which by the terms of his employment, he was required to work;

Provided that, subject to any rules made in this behalf by the State Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such persons may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Explanation. For the purposes of this section, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work."

4. Let us now examine the merits of; the contentions. In so far as the first submission relating to violation of the principles of natural justice is concerned, reliance was placed on a Bench Decision of this Court in *Orient Paper Mills Sramik Congress v. Orient Paper Mills* (by Vice-President 1988 II L.L.N. 132, wherein the action of the management in deducting the wages u/s 9(2) of the Act had come up for examination. Though this Court was not directly concerned with the proviso to Section 9(2), yet it applied its mind to the said proviso and it observed

in Para 6 that though the principles of natural justice would not be attracted in the case of normal or ordinary deduction, as contemplated u/s 9(2), whereas in case of penal or further deduction under the proviso to Section 9(2) the said principles must be followed. This conclusion was arrived at by this Court referring, inter alia, to Section 26(3)(g) of the Act, which has provided that rules may be prescribing conditions subject to which deduction may be made under the proviso to Section 9(2). A reference to Rule 16(2)(c) of the Payment of Wages (Mines) Rules, 1956 (shortly stated, the rules) shows that no deduction under the aforesaid proviso can be made from the wages of any employed unless at least one week before such deduction is made a notice has been displayed outside the office of the mine and which must fulfill the other conditions mentioned in the rule. On the face of these statutory provisions, we are satisfied that a notice has to be issued before deduction can be made under the proviso to Section 9(2) of the Act.

5. Question has, however, been raised whether the notice has to be a special notice to each workman or, a general notice of the type visualised by Rule 16(2) (c) of the rules would do. According to Sri Ratho appearing for the management, a general notice is sufficient in this regard. In support of his contention, he has referred to:

(i) Managing Director, Mining and Allied Machinery Corporation Ltd. v. R.K. Bhattacharyya 1971 LIC 1339; and

(ii) Balaiah (D) v. Indian Detonators Ltd., Kukatpalli 1976 II L.L.N. 50.

6. From what has been stated in the aforesaid two decisions and the provisions finding place in the rules, we are satisfied that a general notice of the type given in the case at hand (Annexure 2) would meet the requirement of law; and as such, it cannot be held that the deduction in the present case was in violation of the principles of natural justice. In taking this view, we have also borne in mind the provision of Section 10(1A) of the Act which requires a notice on the employed person where deduction has been made under Clauses (c),(m),(n) or (o) of Sub-section (2) of Section 7 of the Act, whereas in the present case, the deduction is under Clause(b) of Section 7(2).

7. The second contention of Sri Palit is that there being no prior determination as to whether the concerted absence was without reasonable Cause, no deduction at all could have been made. According to the learned counsel, such a determination in the present case could have been made by the Industrial Tribunal before whom the reference in question is pending. As to this, the submission of Sri Ratho is that the reference, which is the subject-matter of adjudication by the Industrial Tribunal, has nothing to do with the concerted absence of the workmen which in other language can be said to be a strike of the workmen. To "decide this aspect of the matter, the reference is quoted below:

"Whether the action of the management of Talcher Colliery, P.O. Dere Colliery, District Dhonkanal, in not allowing the underground piece-rated loaders on duty

with effect from 7 A.M. of 23 April 1984, and to introduce change of service conditions u/s 9A of the Industrial Disputes Act, arbitrarily and unilaterally in respect of underground piece-rated loaders is justified? If not, to what relief the underground piece-rated loaders are entitled?"

According to Sri Palit, the reference takes within its fold the question of concerted absence of the loaders and as such, before any deduction can be made on this count, the management must await the adjudication by the Tribunal whether the absence was without reasonable cause. For disposing of the present case we have not thought it fit to express our views on this matter inasmuch as the reference is still pending before the Industrial Tribunal, and expression of any view by us may prejudice either of the parties in the adjudication by the Tribunal. We have taken this stand because, according to us, the adjudication in a case of the present nature has to be not by the Tribunal but by the authority under the Act. We have stated so because the authority under the Act has jurisdiction to hear and decide all claims "arising out of deductions from the wages" as stated in Section 15(1) of the Act. In the present case, there cannot be any dispute that the claim is related to deduction from wages and that too "for absence from duty" as would appear from the heading of Section 9 of the Act. That an adjudication of the dispute of the type at hand has to be not by the Industrial Tribunal but by the Authority under the Act was also the view expressed in *Jerry Sabastien Pereira Vs. Badshah (A.A.) and Others*, , to which our attention has been invited by Sri Ratho.

8. Sri Palit next contends that whichever authority might be required to adjudicate the dispute, unless there is a prior determination of the question whether the concerted absence was without reasonable cause, no deduction at all can be made with the aid of the proviso to Section 9(2) of the Act. To bring home this submission, reliance has been strenuously placed by the learned counsel on *Mechanical Superintendent, Visakhapatnam Port Trust and Others Vs. The Authority, Visakapatnam and Others*, . Our attention has been particularly invited to the observation made in Para 6 of this judgment wherein it was stated that the authority is bound to adjudicate upon the justification for the strike because it is only where the strike is without reasonable cause, that the further deduction can be made. From this observation it does not follow that the adjudication by the authority has to precede any action of deduction. In fact, from what has been stated in Para 4, it would be clear that it is only after deduction has been made that the authority gets jurisdiction to adjudicate the dispute. This would be apparent from the following appearing in this paragraph:

".....It is, therefore, clear that the foundation for the exercise of jurisdiction by the authority is a deduction from wages made in contravention of the provisions of the Act. The authority is competent to decide the question whether a particular deduction has been made contrary to the provisions of the Payment of Wages Act and all other questions incidental to such decision. .."

The aforesaid observation, therefore, does not substantiate the contention of Sri

Palit, Learned counsel also refers us in this context to what was stated by this Court in Para 8, at page 135 of Orient Paper Mills Sramik Congress 1988 11 L.L.N. 132 (vide supra), wherein the following observation finds place in this regard in:

".....and the authorities must adjudicate upon the justification of the so-called strike and the alleged concerted action without which the proviso will not operate."

The aforesaid statement of law also does not assist the Petitioner inasmuch as the same cannot be read to mean that without prior adjudication relating to the justifiability of the so-called strike no deduction can be made. The aforesaid observation only states that the authorities must adjudicate upon the justification without which the proviso cannot come into operation. It does not speak of prior adjudication. This apart, there is another difficulty in relying upon the aforesaid observation of this Court inasmuch as on the matter being taken to the Supreme Court, the order of this Court was substituted by passing another order to which our attention has been invited by Sri Palit. The effect of the aforesaid observation has, therefore, been nullified by the order of the Supreme Court passed in the connected appeal which was numbered as Civil Appeal No. 3295 (NL) of 1988. Reference to the order passed in the appeal further shows that the matter was leu for decision by the Payment of Wages Authority. On being satisfied that this authority has jurisdiction to entertain the present dispute also, we would ourselves leave it up to the Petitioner to agitate the matter before the authority who could be approached by the Petitioner within a period of four weeks from today and on this being done, the authority shall dispose of the application on merits without reference to the question of limitation which was also the direction of the Supreme Court in the aforesaid appeal.

9. In the result no fault can be found with the impugned notice as at Annexure 2 by this Court. But we leave the matter relating to justifiability of deduction of wages to be adjudicated by the Authority under the Act which could be approached by the Petitioner within a period of four weeks from today, and on this being done, the authority shall dispose of the matter on merits without reference to the question of limitation.

10. The Petition is disposed of accordingly. There would be no order as to costs.

11. D.P. Mohapatra, J:- I agree.