

(1960) 06 PAT CK 0001

In the Patna High Court

Case No : Misc. Judicial Case No. 482 of 1958

Tata Iron and Steel Co. Ltd.

APPELLANT

Vs

Puran Singh and Others

RESPONDENT

Date of Decision : 30-06-1960

Acts Referred:

Coal Mines Provident Fund and Bonus Schemes Act, 1948 — Section 4, 7
Payment of Wages Act, 1936 — Section 15(3), 2

Citation : AIR 1960 Patna 523 : (1960) 1 FLR 226 : (1961) 1 LLJ 192

Hon'ble Judges : V. Ramaswami, C.J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh and Padmanand Jha, for the Appellant;
Ranen Ray and Tara Kumar Das, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner has obtained a rule from the High Court calling upon the respondents to show cause why the order of the Sub-divisional Magistrate, Dhanbad, dated 4-2-1958, made u/s 15(3) of the Payment of Wages Act should not be set aside by grant of a writ in the nature of certiorari under Article 326 of the Constitution. There is no appearance on behalf of respondent No. 8 in this case, but cause has been shown by the other respondents to whom notice of the rule was ordered to be given.

2. It appears that respondents 1 to 7 made an application, u/s 15(3) of the Payment of Wages Act to the Sub-divisional Magistrate of Dhanbad who was the appointed authority. The claim of respondents 1 to 7 was that bonus for four quarters commencing with the quarter ending 30-6-1956 was not paid to, the extent of Rs. 645-8-6 pies. It was pointed out by the respondents that by Notification No. S. R. O. 691, dated 22-2-1954 the Government of India had referred for adjudication certain disputes in the colliery of the petitioner to the All India Industrial Tribunal (Colliery Disputes) and In that reference wages of all categories of workers employed in the coal industry, their standardisation and

grading were referred to be adjudicated.

By its award dated 26-5-1956, the Tribunal placed heavy tindrals in category VI, which entitled them to get a daily basic wage of Rs. 1-4-0. This will appear from paragraph 520 at page 140 of the printed award. The tribunal also gave a direction that if the workers were getting higher emoluments than it awarded, the management should make the same available to the workers by adjusting the basic wage in such a way that the workers did not get less in any way by the award (see para 700 at page 184 of award). The complaint of the respondents was that the petitioner gave basic wage at the rate of Rs. 1-4-0 and in addition gave an ad hoc allowance in order to bring the total emoluments up to the level which the respondents had been getting before the date of the award.

The result of the action of the petitioner was that the respondents suffered loss of bonus at the rate of Rs. 13 per quarter. The contention of the respondents was that the whole amount paid by the petitioner should be treated as wages and no part of it should be treated as ad hoc allowance, and there should be a direction upon the petitioner to pay the amount of Rs. 645-8-6 pies which has been withheld and which the respondents claimed as part of their bonus. The application was resisted by the petitioner before the Sub-divisional Magistrate of Dhanbad.

The case of the petitioner was that the question raised by the respondents related to implementation of an award and not for delayed or deducted wages, and, therefore, the Sub-divisional Magistrate of Dhanbad had no jurisdiction to entertain and decide the application u/s 15(3) of the Payment of Wages Act. The objection of the petitioner was overruled by the Sub-divisional Magistrate, Dhanbad, who held that the ad hoc allowance given by the petitioner to the respondents should be treated as part of the basic wages. In the operative portion of the order the Sub-divisional Magistrate has stated as follows:

"I therefore allow the alternative prayer of the applicants and direct the management u/s 15(3) of the Payment of Wages Act to pay to the applicants the total emoluments, after deducting lie D. A. as wages and not to treat any part of the total allowance as ad-hoc allowance with effect from the date the Coal Tribunal Award came into force."

3. In support of this application learned counsel for the petitioner submitted that payment of bonus was no part of the "wages" within the ambit of Section 2(vi) of the Payment of Wages Act as it stood before the Amendment Act LXVIII of 1957. It is not disputed in this case that the parties are governed by Section 2(vi) of the Act as it stood before the amendment, which read as follows :

" "Wages" means all remuneration which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon 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".

in support of the argument learned counsel referred to the decision of the Supreme Court in *Bala Subrahmanya Rajaram Vs. B.C. Patil and Others*, , where it was observed that where bonus was payable not because of a contract but because of the award of an industrial tribunal, it was not wages within the meaning of the Payment of Wages Act as it stood before its amendment in 1957. Consequently, the authority under the Act has no jurisdiction to entertain petitions made to it u/s 15 of the Act in respect of such bonus. We are unable to accept the argument of learned Counsel for the petitioner as correct. In our opinion, the present case is not governed by the principle laid down by the Supreme Court in *Bala Subrahmanya Rajaram Vs. B.C. Patil and Others*, because the bonus payable is not payable under the award of an industrial Court.

The basic wage of category VI workers has been laid down in the award of the All India Industrial Tribunal (Colliery Disputes) in paragraph 520 at page 140 and there is clarification of the meaning of "basic wage" with regard to workers whose total emoluments were higher than those fixed in the award in para 700 at page 184 of the award. But the bonus in the present case is paid by the employer not because of the award of the All India Industrial Tribunal, but because of previous legislation, namely, the provisions of Coal Mines Provident Fund and Bonus Schemes Act, 1948 (Act XLVI of 1948). Section 4 of the Coal Mines Boftus Scheme states 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 mine during that period for not less than 121 days if a category I employee, or for not less than 169 days. if a category II employee;

(b) in respect of the quarter commencing on the first of January 1948, or any subsequent quarter, provided he puts in attendance in the coal mine during the quarter for not less than 54 days if a category I employee, or for not less than 66 days if a category II employee."

4. Section 7 of the Scheme deals with the amount of bonus, and is in the following terms:

"7. Amount of bonus. -- (1) The amount of bonus payable to an employee in a coal mine in West Bengal or Bihar in respect of the period from 12-5-1947 to 31-12-1947, the quarter commencing: on 1-1-1948 and the quarter commencing on 1-4-1948, shall be calculated in the manner specified in the Schedules annexed hereto.

(2) The amount of bonus payable to an employee in respect of any quarter after 30-6-1948 in the case of coal mines in West Bengal and Bihar and" in respect of any period or quarter in the case of coal mines in the Central Provinces and Berar and. Orissa shall be one-third of the basic earnings of the employee for work done in that period or quarter in the coal mine wherein he qualifies for bonus.

(3) Unless an employee entitled to a bonus is a member of a provident fund, recognised under the Indian Income Tax Act, 1922 (XI of 1922) or to which the Provident Funds Act, 1925 (XIX of 1925) applies the employer shall, before paying him the amount of bonus, deduct a sum equivalent to three annas in a rupee of the amount of bonus in respect of the periods or quarters from 12-5-1947 to 13-9-1948, in the case of coal mines in West Bengal and Bihar and from 10-1-1948 to 30-9-1948, in the case of coal mines in Central Provinces and Berar and Orissa, for credit to the account of the employee in the Coal Mines Provident Fund".

It is manifest, therefore, in the present case that the payment of bonus to respondents 1 to 7 is not based upon the terms of the award given by the All India Industrial Tribunal (Colliery Disputes), but bonus is payable because liability is imposed upon the employer under the terms of Sections 4 and 7 of the Coal Mines Bonus Scheme, 1948 framed under the Coal Mines Provident Fund and Bonus Schemes Act, 1948. In our opinion, bonus of this description was within the definition of wages given in Section 2(vi) of the Payment of Wages Act. This view is supported by the decision of the Supreme Court in Bala Subrahmanya Rajaram Vs. B.C. Patil and Others, to which we have already made a reference. In paragraph 24 of the Judgment at page 520 Vivian Bose, J, has stated as follows :

"Now we can understand a position where a statute declares that whenever the terms of the contract of employment are fulfilled the bonus shall be payable; equally, we can envisage a situation in which an employer engages to pay a bonus should the terms of the contract of employment be fulfilled, by a separate and independent agreement that is not part of the contract of employment. In either case, the matter could be said to fall within this part of the definition. But we can see no way in which a bonus can be said to be payable if and when the terms of the contract of employment are fulfilled outside these two cases (namely, legislation, or a separate contract that is not part of the contract of employment), except when it is payable by reason of a term, express or implied, in the contract of employment itself. In any event, if there are such cases, the present is not one of them, for the bonus here is payable under an award of an Industrial Court and has nothing to do with the fulfilment or otherwise of the terms of the contract of employment, except indirectly."

It was argued by learned Counsel on behalf of the petitioner in this case that the payment of bonus depends not merely on the provisions of the Coal Mines Provident Fund and Bonus Schemes Act, 1948, and the Coal Mines Bonus Scheme, 1948, but also upon -die interpretation of the award of the Industrial

Tribunal. The quantum of bonus to be paid to -the respondents depends in one sense upon the interpretation of paragraph 520 and paragraph 700 of the Award, but that is only in an indirect sense.

In our opinion, the bonus payable to the respondents is payable because of the liability thrown upon the petitioner under the terms of the Statute, namely, Act XLVI of 1948 and the Coal Mines Bonus Scheme framed under that Act. If that is the correct position, it follows that the bonus payable to the respondents in this case was within the definition of wages in Section 2(vi) of the Payment of Wages Act before its amendment and the principle of the decision of the Supreme Court in *Bala Subrahmanya Rajaram Vs. B.C. Patil and Others*, does not apply to the present case.

5. We, therefore, reject the argument of learned Counsel for the petitioner on this point. But we consider that this application should be allowed on other grounds and the case must go back on remand to the Sub-divisional Magistrate of Dhanbad For being dealt with in accordance with law. In the first place, the order of the Sub-divisional Magistrate in this case is not an order which could be passed by him u/s 15 of the Payment of Wages Act. There was a prayer on behalf of the respondents that there should be a direction that the employer should pay a sum of arrear bonus to the extent of Rs. 645-8-6 pies. Nowhere in the course of his order has the learned Sub-divisional Magistrate dealt with the merits of the case on this point; nor has he given any direction that the respondents are entitled to recover this amount of bonus from the petitioner,

In the second place, the Sub-divisional Magistrate does not appear to have applied his mind to the allegations of the respondents in their application and the relief which they sought; nor does he appear to have applied his mind to the objection of the petitioner filed in the case. It is also not clear whether the Sub-divisional Magistrate referred to the relevant provisions of the award given by the All India Industrial Tribunal (Colliery Disputes) as to whether the respondents are entitled to claim that all the allowances should be lumped up with the basic wages so as to enable the respondents to claim more bonus. For these reasons we hold that the learned Sub-divisional Magistrate, Dhanbad, has not applied his mind to the real question in controversy between the parties, and the order he has made in this case suffers from a defect of jurisdiction. Acting, there-fore, in exercise of our authority under Article 227 of the Constitution we allow this application, set aside the order of the Sub-divisional Magistrate of Dhanbad and order that the case should go back on remand to the Sub-divisional Magistrate, who will dispose it of in accordance with law.

6. We accordingly allow the application. There will be no order as to costs.