
(2004) 01 PAT CK 0092
In the Patna High Court
Case No : L.P.A. No. 307 of 1996

The Bihar State Electricity Board and Others

APPELLANT

Vs

Balo Rai and Others

RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Citation : (2004) 01 PAT CK 0092

Final Decision : Allowed

Judgement

Shashank Kr. Singh, J.—Both the appeals arise out of a common judgment dated 15.2.1996 in C.W.J.C. No. 7180 of 1992 Balo Rai and 121 Ors. v. the Bihar State Electricity Board and Ors. and C.W.J.C. No. 8839 of 1992 Balo Rai and 121 Ors. Vs. The State of Bihar and Others and as identical question has been raised in both the appeals and have been heard together with the consent of the parties, they are being disposed of by a common judgment.

2. 122 coal unloading workers of the Bihar State Electricity Board (hereinafter to be referred to as "the Board") have moved this Court in, C.W.J.C. No. 7180 of 1992 and similarly situated another batch of 124 coal unloading workers have moved this Court in C.W.J.C. No. 8839 of 1992.

3. The. Petitioners-Respondents who were working as coal unloading workers have moved this Court for a direction to the Board for grant of regular pay scale applicable to the semi-skilled "B" workmen with effect from the date of regularisation of their services as coal unloaders. All the Petitioners-Respondents are working as coal unloader in the Barauni Thermal Power Station.

4. Contention on behalf of writ Petitioners-Respondents in both the writ petitions was to the effect that as their services have already been regularised, they in view of several judgments of the Supreme Court and in view of recommendation of the Pay Revision Committee, were at least entitled for payment of lowest pay scale being paid to the workmen discharging similar works in the category of semiskilled "B" workmen. Learned writ Court taking into consideration the

submissions of the writ Petitioners and also after taking into consideration the judgment in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, whereby the Supreme Court had decided and laid down certain principles where the Court should interfere in the matter relating to industrial dispute, came to the conclusion that in view of recommendation of the pay revision committee by its letter dated 5th June, 1981 which has recommended granting of scale of the unskilled Khalasi to the coal unloading mazdoor and as the order of the Board dated 26th October, 1991 also accepts in principles that a regular pay scale should be granted to the Petitioners, as such, the entitlement of the writ Petitioners for grant of regular pay scale has been accepted by the Board and as such, the same was required to be granted. In view of aforesaid facts and in view of decisions as discussed above and also that non-granting of equal pay scale being violative of Articles 14 and 21 of the Constitution of India, the court held that the regular pay scale in the semi-skilled "B" workmen was required to be granted to the writ Petitioners within a period of two months from the date of receipt/production of a copy of the judgment of the writ Court. The date of payment of said salary was decided from the date of filing of the writ petition before this Court.

5. The Bihar State Electricity Board has preferred the present appeals challenging the aforesaid judgment, on amongst the following grounds that the writ Petitioners-Respondents cannot be equated to semiskilled "B" workmen as the nature of work and the services rendered by them cannot be equated and they under no stretch of imagination can be said to be discharging the same duties as was being discharged by the semi-skilled worker. Mr. Mihir Kumar Jha, learned Counsel appearing on behalf of the Appellants-Bihar State Electricity Board, has contended that the learned single Judge has in fact proceeded on the assumption that the semi-skilled "B" workmen was the first and lower-most category, in the revision of pay scale notified by the Board in the year 1990 as such, he had directed for placing the coal unloaders in the aforesaid pay scale. Further contention which has been made by the learned Counsel is that learned Judge did not take into consideration the pay revision committee report which has made a clear distinction between the unskilled category workmen and the semi-skilled category of workmen. It has further been contended that the writ Petitioners had made no pleadings for claiming the pay scale of semi-skilled "B" category workmen, rather the committee had left it entirely upto the Board to decide where such persons as that of coal unloaders were to be fitted in the category of "workman". In view of aforesaid recommendation and in view of clear finding that Petitioners and the persons in their category were not semi-skilled "B" category workmen, it has been argued that the learned single Judge erred in allowing them the aforesaid pay scale.

6. Mr. Mihir Kumar Jha, learned Counsel has further contended that an agreement has already been entered into between the Appellants-board and the coal unloaders pursuant to which coal unloaders were to be treated as piece rated workers with certain benefits of regular employees and in view of the

same, they were being treated as regular employees with specific terms and conditions as mentioned in the 1982 agreement. The judgment of the learned single Judge has further been assailed on the ground that even after finding similarity between the coal unloaders of Muzaffarpur Thermal Power Station, Kanti which is pending before the Industrial Tribunal, learned Judge held that they were not similar and went on to decide the matter on merit.

7. As far as violation of Articles 14 and 21 of the Constitution is concerned it has been argued that the coal unloaders and other regular employees were not similarly situated and therefore, no comparison between the aforesaid two sets can be made in view of nature of job and the task assignment given to the coal unloader vis-a-vis other employees of the Board. It has been contended that the Board employees have not to depend on the contingent conditions for doing their duties as is the case of coal unloaders who for their engagement have to basically depend on the supply and availability of wagons by the railways and in absence thereof they may not work, as no work is available for days together. It has further been contended that inspite of them not being employed for days a minimum amount of wage was being paid to such employees every day and even if they did not discharge their duties they were being paid for the minimum days of work which was guaranteed to them and for any additional work discharged by them they were paid in addition thereto.

8. Further contention has been made that the learned Judge could not have held as would be clear from the judgment without taking into consideration the nature of work of the coal unloader for deciding the dispute raised in the writ application, went to decide only on the principles of equal pay for equal work as according to learned Counsel, the same stood eliminated as equal work was necessary to get equal pay. In absence of the same the equality clause cannot be invoked. Certain other arguments have also been raised to drive home the aforesaid point. One further argument which has been made is that learned single Judge was required to take into consideration was that in fixation of piece rated wages and its revision from time to time, the board always took into consideration the element of dearness allowance in the per tonnage wages and therefore, the finding of the writ Court that the coal unloaders must be paid their wages in a pay scale so that they become entitled for dearness allowance also as and when enhanced by the board in case of regular employees is a finding based on non-consideration of the fact that while fixing the per tonnage wages, the element of dearness allowance required to be paid, had already been taken into consideration by the Appellants-board.

9. Another aspect which has been decided by the learned single Judge which has been also assailed is that while directing the payment of regular wages to the writ Petitioners the learned single Judge held that as the wages of the coal unloaders was being decided on piece rated basis, it denied the post retirement benefit. It has been contended by Mr. Mihir Kumar Jha that the coal unloaders are paid provident fund and gratuity and the same is also in the package of

retirement benefit being given to the regular employees of the board, as such, there was no denial of the post retirement benefit to the coal unloaders even if they were getting piece rated wages.

10. It has further been argued that in any view of the matter as the coal unloaders are not similarly situated as the regular employees they were not entitled for payment of wages in the regular scale which was being paid at the lowest rate to an employee of the board. As far as wages are concerned, it has been contended that it could have been raised before the Labour Court under the Industrial Dispute Act, as has been raised by the similarly situated workmen of Muzaffarpur Thermal Power Station at Kanti.

11. Mr. Umesh Prasad Singh, learned senior counsel appearing on behalf of the Petitioners-Respondents, on the other hand, has contended that the learned writ court had rightly decided the aforesaid aspect and as there was uncertainty and in view of agreement as their services have been regularised they could not get wages rather their pay scale was required to be fixed, may be equivalent to the lowest rank in the employment of the board in the regular establishment. It has been contended that even after making them regular, today the board cannot turn back and argue that though they are regular but are only entitled to wages.

12. A fact which has not been disputed by the parties is that admittedly the coal unloaders are not employed for eight hours a day and 30 days a month. They are engaged in employment only when the railway wagons loaded with coal is available for the purpose of unloading and bringing it to the Thermal Power Station. Admittedly, it is not on every day of the month. Mr. Singh, so far this aspect is concerned, contended that the coal unloaders have to be paid for at least eight hours a day, has been an agreement which still persists and the services of the coal unloaders have been regularised only for the purpose of ending up of uncertainty which guarantees them a minimum wage, if they unload more tonnage of coal as is envisaged in the agreement they get extra wages for the same. It is not denied that they are workmen as defined in the definition of workmen under the Industrial Dispute Act. As they are covered under the aforesaid definition, if there is any dispute they should have very well raised the same before the labour court.

13. In view of aforesaid admitted position in our considered opinion, learned single Judge erred in holding that the writ Petitioners were similarly situated as the other workers of the Respondent board and as their services were regularised and they were required to be paid the regular salary being paid to semi-skilled "B" category workmen. We have already discussed above, the works discharged by them are not the same, they are not even discharging their duties on each and every day of the month, rather, works from them is only taken when the railway wagons are available and the coal is required to be unloaded. Minimum wages have been guaranteed even if no work is discharged. While fixing the per tonnage wages, which is being done from time to time, dearness allowance is also taken into consideration while fixing the aforesaid wages available to them

in discharging the extra work beyond the minimum tonnage prescribed for which additional payments are required. In this view of the matter, we are of the considered opinion that the learned single Judge has erred in directing the Appellants-board to grant a regular pay scale to the Petitioners as semi-skilled "B" workmen.

14. Both the appeals are allowed and the judgment and order of the writ Court in C.W.J.C. No. 7180/1992 and C.W.J.C. No. 8839/1992 is set aside.

15. The writ Petitioners-Respondents, if aggrieved regarding their wages, have liberty to move the labour court for redressal of their grievances.

16. In the facts and circumstances of the case, there shall be no order as to costs.