
(1971) 08 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jur. Case No. 1272 of 1968

The Management of Saran Engineering Co. Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-08-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1972 Patna 177

Hon'ble Judges : U.N. Sinha, C.J;C.P. Sinha, J

Bench : Division Bench

Advocate : Ranen Roy, J. Krishna and Ranjit K. Das, for the Appellant; B.C. Ghose and D.N. Pandey and Tarakant Jha, Standing Counsel No. 2, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Sinha, C.J.—This writ application has been filed by the Management of Saran Engineering Company Limited, complaining of an award dated the 12th October, 1968, given by the Industrial Tribunal, Bihar in Reference No. 8 of 1968. The reference was for an award on the following point:--

"Whether the management is justified in having once put Shri Ramdeo Prasad to clerical Grade "A" and then subsequently putting him in Grade "B" after agreement dated 2-9-1963 ?"

It may be stated that this agreement of 1963 had been entered into between the management of the company and Marhowarah Factories Labour Union, whereas the reference to arbitration was on the footing that there existed or was apprehended an industrial dispute between the management and their workmen represented by Marhowrah Factories Mazdoor Sangh. According to the finding of the Industrial Tribunal, once Shri Ramdeo Prasad had been put in Grade "A" the management was not justified in putting him in Grade "B", after the abovementioned agreement. The relevant portions of the memorandum of

settlement, dated the 2nd September, 1963, are quoted below:--

"Clerical staff - Sub-divided into following categories: ?

Grade "A". Head clerk or office Superintendent Store keeper.

Grade B

Senior Accounts Clerk, General Office, Senior Accounts Clerk, Stores, Senior Costs Clerk, Senior Works Clerk, Time Office Supervisor. Senior Stenographer. Assistant Store Keeper, Cashier.

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... ..

Graded scales of pay for monthly paid clerical staff.

Basic per month. D. A. per month.

Grade A. Rs. 240-15-315-EB-20-415 Rs. 50/-

Grade B. Rs. 130-8-170-EB-8-210. Rs. 40/-

Grade C. Rs. 99-6-129-EB-7-164. Rs. 30/-

Grade D. Rs. 81-4-101-EB.5-126. Rs. 25/-

Grade E. Rs. 71-3-80-EB-3-92. Rs. 20/-

2. The relevant facts are stated below. Shri Ramdeo Prasad, a Class I Stenographer was appointed by the petitioner Company in January 1946- Of the previous history of dispute it will be enough to refer to the following. By 1961 certain employees of this Company including Shri Ramdeo Prasad had reached the top of their grades and had received no increment of pay for a few years. Therefore, the General Manager had recommended a special increment to some of the employees including Shri Ramdeo Pd. (Annexure 4). By a communication dated the 11th May, 1961 (Annexure 5), the recommendation was accepted in the following terms :--

"In regard to the increments with effect from 1st April, 1961 we enclose herewith the duplicate copy of the Increment List duly sanctioned. As a very special case, we have sanctioned all the special increments and those which will bring certain employees above their existing "top of grades" but which should not under any circumstances be allowed as a precedent in future years."

It appears that the special Increment was at the rate of Rs. 10/- per month from a certain date thereafter. According to the case of this workman, when he was given an increment of Rs. 10/-per month, in his basic wages, the dearness allowance was decreed from 43 per cent and odd to 37 per cent and odd, to fit him in the grade of Rs. 150-10-300. So, according to the workman, long before the agreement dated the 2nd September, 1963 had come into existence, he was

drawing his pay at the grade of the head clerk's pay of 1955 (Annexure 1), which was Rs. 150-10-300 basic with 37 1/2 per cent. D. F. A., and, therefore, the senior stenographer was wrongly put in grade "B" in 1963, while the head clerk was put in grade "A". According to the workman, he had made a representation to the General Manager of the Company on the 12th November, 1963 for the consideration of his case, giving all the previous history, but without any avail and this was the genesis of the present dispute.

3. According to the case of the Management, this workman, namely, Shri Ramdeo Prasad had never been put in the highest scale of pay of 1955, although on a sympathetic view having been taken, he had been given certain increment, as stated above. The dearness allowance had been cut down because the workman was getting pay at a higher scale.

4. According to the Industrial Tribunal, when the revised scale of pay came into existence in 1963, this workman had been allowed to go to the highest scale of pay of 1955, drawing dearness allowance of that scale, and, therefore, fitting him in grade "B" in the year 1963 was wrong.

5. Two contentions have been raised on behalf of the Management in this court. The first contention is one that has been dealt with in paragraph 13 of the award. The argument of the learned counsel is to the effect that the dispute terminating in the reference in question had not been raised by any Union and, therefore, the reference was illegal. In substance, the contention is that there was no industrial dispute within the meaning of the Industrial Disputes Act, as the cause of this particular workman had been taken up only by the President of the Mazdoor Sangh and not by the Union itself. The finding of the Industrial Tribunal is to the effect, that, the evidence discloses that the dispute had been sponsored by the workmen, who were members of the Mazdoor Sangh and not by the President in his individual capacity. In this context, the oral evidence given by Shri Ram Bhawan Singh, President of the Marhowrah Factories Mazdoor Sangh has been dealt with elaborately, learned counsel for the petitioner has also referred to the evidence of this person as also that of the concerned workman, Shri Ramdeo Pd., copies of which depositions have been given as Annexures 12 and 12/1, respectively. According to the deposition of the President, the Mazdoor Sangh had taken up the case of Shri Ramdeo Pd. even prior to the registration of the Union. Although the President was cross-examined in this context, the Industrial Tribunal has held, on facts, that, the Management's case was unacceptable and I do not think that in a writ application, this conclusion can be interfered with. The Tribunal has referred to the reference to adjudication by Industrial Tribunal, where it is mentioned that the Governor of Bihar is of opinion that an industrial dispute exists or is apprehended between the management of the company and their workmen represented by Marhowrah Factories Mazdoor Sangh, and this matter cannot be ignored at all. The second contention made by learned counsel for the petitioner is one which had not been urged before the Industrial Tribunal. The argument is that even if the Mazdoor Sangh had approached the State

Government, raising some dispute, as the Mazdoor Sangh had not made any demand before the employer of the concerned workman, there was no industrial dispute with the employer within the meaning of the Industrial Disputes Act. This point has been raised in paragraph 14 of the writ application. This has been controverted in the counter-affidavit filed on behalf of opposite parties Nos. 3 and 4, who are the General Secretary of Marhowrah Factories Mazdoor Sangh and the concerned workman. Shri Ramdeo Prasad, respectively. Referring to the evidence given by the President of the Mazdoor Sangh (Annexure 12) learned counsel for the petitioner has contended that there is no evidence that even the President had taken up the cause of Shri Ramdeo Prasad with the Management of the company to make it an industrial dispute. Reference is made to the case, The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, . I do not think that the point re-quires any elaborate discussion, inasmuch as the question is one of fact, which was not agitated before the Industrial Tribunal. According to the written statement of the workmen represented by the Mazdoor Sangh filed before the industrial Tribunal, the Mazdoor Sangh had represented the grievance with respect to this particular workman to the Conciliation Officer and to the Labour Commissioner, Bihar, and the President, Shri Ram Bhawan Singh has also deposed to the effect that he had moved the Labour Commissioner in this case on behalf of this workman. If the matter had been investigated before the Industrial Tribunal, facts may have come to light, which would have been sufficient to meet the second contention raised in this court, and when this argument had not been advanced before the Industrial Tribunal, it is not possible to consider the point at this stage.

6. In the result, I am of the opinion that the petitioner company has not been able to make out a case for interference. The writ application is, therefore, dismissed with cost, which is assessed at Rs. 100/-.

C.P. Sinha, J.

7. I agree.