(1979) 03 MP CK 0017

In the Madhya Pradesh High Court

Western Coal Fields Limited APPELLANT

Vs

Harbanslal Vaid and Others RESPONDENT

Date of Decision : 30-03-1979

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 14, 3, 5, 7
Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 2, 3, 4, 7

Citation : (1980) 2 LLJ 317 : (1980) MPLJ 240

Hon'ble Judges : G.P. Singh, C.J;B.C. Verma, J

Bench : Division Bench

Judgement

G. P. Singh, C.J.

Harbanslal Vaid (respondent No. 1 in this petition) was employed by M/s. Newton Chikli Collieries Ltd. Parasia (respondent No. 2) as Chief Accountant of the Newton Chickli Colliery. Under the Coal Mines (Nationalisation) Act, 1973, the Newton Chickli Colliery like other collieries, was nationalised and taken over by the Central Government u/s 3 of the Act with effect from 1st May, 1973 which is the "appointed day" under the Act. By letter dated 12th October, 1973, Vaid applied for extension of service. Vaid was granted extension upto 31st January, 1974 when his services stood terminated. Vaid then applied to the Assistant Labour Commissioner, who is the Controlling Authority u/s 3 of the Payment of Gratuity Act, 1972, for payment of gratuity. It was contended by M/s. Western Coal fields Ltd. the Government company in which the right, title and interest of the owner in the Newton Chickli Colliery now vest u/s 5 of the Nationalisation Act, that the gratuity was payable by the previous owner, i.e., M/s. Newton Chickli Collieries Ltd. and not by the Central Government or the Government company. The Assistant Labour Commissioner decided this contention against M/s. Western Coalfields Ltd. by order dated 7th December, 1975. There was an appeal by M/s Western Coalfields Ltd. u/s 7 of the Gratuity Act which was dismissed by order dated 17th August, 1976 by the Regional Labour Commissioner. By this petition under Article 226 of the Constitution, M/s.

Western Coalifields Ltd. challenge the aforesaid orders of the Assistant Labour Commissioner and the Regional Labour Commissioner.

The contention raised by the learned Counsel for the petitioner is that having regard to Sections 7(2) and 14(5) of the Nationalisation Act, the gratuity is payable not by the Central Government or the petitioner but by the previous owner of the colliery, i.e., M/s. Newton Chickli Collieries Ltd. It is also contended that as the respondent had completed the age of 58 years before the appointed day, he had already superannuated and the gratuity had become due before the nationalisation.

Section 2(r) of the Payment of Gratuity Act, 1972, defines "superannuation", in relation to an employee to mean--" (i) the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment; and (ii) in any other case, the attainement by the employee of the age of fifty-eight years". The liability for payment of gratuity arises u/s 4 of the Act. The relevant part of Section 4 provides that "gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-- (a) on his superannuation, or (b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease.

Section 3 of the Nationalisation Act vests the right, title and interest of the owners, in relation to coal mines, in the Central Government free from all encumbrances from the appointed day. Section 5 empowers the Central Government to direct that the rights vested in the Central Government u/s 3 shall, instead of continuing to vest in the Central Government, vest in a Government company. It is under this provision that the light, title and interest of the owner in the Newton Chickli Colliery have vested in the petitioner. Section 7(1) of the Nationalisation Act, however, provides that every liability of the owner, agent, manager or managing contractor of a coal mine, in respect of any period prior to the appointed day, shall be the liability of such owner, agent, manager or managing contractor, as the case may be, and shall be enforceable against him and not against the Central Government or the Government company. Sub-section 2(a) of Section 7, on which reliance is placed by the learned Counsel for the petitioner, reads as follows:

(2) For the removal of doubts, it is hereby declared that--

(a) save as otherwise provided elsewhere in this Act, no claim for wages, bonus, royality, rate, rent, taxes provident fund, pension, gratuity or any other claim in relation to a coal mine in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the Government company.

Section 14 of the Act which deals with employment of employees is as under:

14. Employment of certain employees to continue.--(1) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been

immediately before the appointed day, in the employment of a coal mine, shall become on and from the appointed day, an employee of the Central Government or, as the case may be, of the Government company in which the right, title and interest of such mine have vested under this Act, and shall hold office or service in the coal mine with the same rights to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such coal mine had not been transferred to, and vested in, the Central Government or the Government company, as the case may be, and continue to do so unless and until his employment in such coal mine is duly terminated or until his remuneration, terms and conditions of employment are duly altered by !he Central Government or the Government company.

(2) The Central Government or the Government company in which the right, title and interest in relation to a coal mine have vested, may employ, on mutually acceptable terms and conditions, any person who is not a workman within the meaning of the Industrial Disputes Act, 1947, and who has been, immediately before the appointed day, in the employment of a coal mine, and on such employment the said person shall become an employee of the Central Government or the Government company, as the case mey be.

(3) Save as otherwise provided in Sub-section (1) and (2), the services of every person employed by the owner or occupier of a coal mine before the appointed day shall stand terminated on and from the specified date.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee of a coal mine to any other mine shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any Court, Tribunal or other authority,

(5) Where, under the terms of any contract of service or otherwise, any person whose services become terminated or whose services become transferred to the Central Government or a Government company by reason of the provisions of this Act is entitled to any payment by way of gratuity or retirement benefits or for any leave not availed of, or any other benefits, such person may enforce his claim against the owner of the coal mine but not against the Central Government or the Government company.

Sub-section (2) of the Section 7 of the Nationalisation Act, on which the learned Counsel for the petitioner relies, provides that no claim for wages, bonus, royalty, rate, rent, taxes, provident fund, pension, gratuity or any other dues in relation to a coal mine in respect of any period prior to the appointed day shall be enforceable against the Central Government or the Government company. Sub-section (2) should be read along with Sub-section (1) which provides for the continuance of the liability of the owner, etc., in respect of any period prior to the appointed day. A reading of both the sub-sections together shows that the claim for wages, bonus, royalty, rate, rent, taxes, provident fund, pension, gratuity, etc., in respect of any period prior to the appointed day which is declared to be not enforceable against the Central Government by Sub-section (2)(a) of Section 7 is that claim which had already accrued against the owner before the appointed day. Read in the context, Sub-section (2)(a) of Section 7 does not declare the Central Government immune from liability in respect of wages, bonus, royalty, rate, rent, taxes, provident fund, pension, gratuity, etc., which become due after the appointed day. Now, coming to Section 14, Sub-section (1) is limited to every person who is a workman within the meaning of the Industrial Disputes Act, 1947. If such a person has been, immediately before the appointed day, in the employment of a coal mine, he becomes on and from the appointed day an employee of the Central Government or, as the case may be, of the Government company in which the right, title and interest of such mine have vested under the Act. Such a person holds office or service in the coal mine with the same rights to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such coal mine had not been transferred to, and vested in, the Central Government or the Government company, as the case may be. Sub-section (2) of Section 14 applies to those persons who are not '''workmen" but who were in employment immediately before the appointed day in a coal mine. Such persons can be employed by the Central Government or the Government company on mutually acceptable terms and conditions. A perusal of Sub-section (1) and (2) would show that employees who were in employment in a coal mine immediately before the appointed day, are divided into two categories. As regards workmen falling within the meaning of the Industrial Disputes Act, there is a statutory transfer of their services from the owner of the coal mine to the Central Government or the Government company. As regards other employees, there is no statutory transfer of their services from the owner of the coal mine to the Central Government or the Government company. As regards other employees, there is no statutory transfer of services but they can be employed by the Central Government or !he Government company on mutually acceptable terms and conditions, i.e. , on the basis of fresh agreements. The services of employees other than workman, who are not taken in service by the Central Government or the Government company under Sub-section (2), stand terminated under Sub-section (3) which provides that save as otherwise provided in Sub-sections (1) and (2), the services of every person employed by the owner or occupier of a coal mine before the appointed day shall stand terminated on and from the specified date. We were informed that the specified date is 1st August, 1973, Sub-section (5) of Section 14, which is the important provision, deals with the case of "any person whose services become terminated or whose services become transferred to the Central Government or a Government company by reason of the provisions of this Act". Where such a person, under the terms of any contract of service or otherwise, is entitled to any payment by way of gratuity or retirement benefits or for any leave not availed of, or any other benefits, he can enforce his claim against the owner of the coal mine but not against the Central Government or the Government company. The persons dealt with by Sub-section (5) fall under two categories: (i) any person whose services become terminted by reason of the provisions of the Act; and (ii) any person whose services become transferred to the Central Government or the Government company by reason of the provisions of the Act. The first category of persons are those whose services stand terminated from the specified date as provided in Sub-section (3). The second category of persons are those whose services stand transferred to the Central Government or the Government company by Sub-section (1). If a person falling in these categories "is entitled" to payment by way of gratuity or retirement benefits or for any leave not availed of, or for any other benefits, he can enforce his claim only against the owner and not against the Central Government or the Government company. The word " entitled" as used in the sub-section refers to the entitlement at the time at which any person''s services become terminated by virtue of the provisions of the Act or to the entitlement at the time at which any person''s services become transferred to the Central Government or the Government company by reason of the provisions of the Act. As earlier pointed out by us, Sub-section (3) deals with those persons whose services become terminated by virtue of the provisions of the Act. Persons comining under Sub-section (3) would get payment of gratuity or retirement benefits or for any leave not availed of, or any other benefits, from the owner of the coal mine and not from the Central Government or the Government company. Similarly, where any person whose services become transferred to the Central Government or the Government company under Sub-section. (1) is entitled on the date of such transfer, to any payment of the above nature, he shall get the same from the owner and not from the Central Government or the Government company. Now, a person whose services stand transferred u/s 14(1) is not, on the date of transfer, entitled to any gratuity or retirement benefits because such a person continues in service. The subsequent termination of his employment is not by virtue of the provisions of the Act. Therefore, if such a person''s services are terminated later, recourse to Sub-section (5) cannot be taken to contend that the owner is liable and not the Central Government or the Government company for payment of gratuity or retirement benefits, such a person, however, may have a claim for leave not availed of, or a claim in respect of other benefits which had become due against the owner but which he had not paid before the appointed day. Such claims would be enforceable only against the owner and not against the Central Government or the Government company. The construction adopted by us is a reasonable construction. If we were to accept the contention raised by the learned Counsel for the petitioner that even in case of a person whose services are transferred to the Central Government by virtue of Section 14(1) and whose services are later on terminated in the ordinary course the owner of the coal mine remains liable to pay gratuity or retirement benefits, many illogical results would follow. The persons whose services are transferred to the Central Government u/s 14(1) may retire after a long lapse of time when the owner be non-existent or he may have by then withdrawn the entire compensation money payable under the Act. If the persons whose service are transferred to the

Central Government are restricted to claim gratuity and retirement benefits only from the owner, they may virtually get nothing. Moreover, it would also be unreasonable to hold the owner liable in such cases, The contention raised by the learned Counsel for the petitioner, if accepted, will lead to most inconvenient and absurd results. It is also against the plain intention of the Legislature. We are unable to accept it.

The respondent, according to the findings reached by the authorities concerned, was employed immediately before the appointed day in the coal mine. As a result of the provisions contained in Sub-section (1) of Section 14, he became, from the appointed day, an employee of the Central Government and thereafter of the Government company, the petitioner. The respondent was continued in service till 31st July, 1973 when his services were terminated by the petitioner. The respondent''s case does not fall under sub-Section (5). The respondent''s case does not fall under sub-provisions of the Act. On the date of transfer of his service to the Central Government he was not entitled to payment of any gratuity from the owner of the coal mine. In the circumstances, the respondent''s claim for gratuity cannot be enforced against the owner and can be enforced only against the Central Government or the Government company as held by the Assistant Labour Commissioner and the Regional Labour Commissioner.

The learned Counsel for the petitioner submitted that the claim for payment of gratuity relates to past services and as the respondent was in service of the owner of the coal mine before nationalisation, the gratuity for that particular period can be recoverable only from the owner and not from the Central Government or the petitioner. In our opinion, there is no merit in this contention. Section 4 of the Gratuity Act, to which reference has already been made, provides for payment of gratuity to an employee "on the termination of his employment". There is no entitlement for gratuity until the employment is terminated even if a person attains the age of superannuation. It is true that the respondent had crossed the age of 58 years before nationalisation; yet his services were continued by the owner of the coal mine and thereafter by the Central Government. As there was no termination of his employment before nationalisation, there was no entitlement for gratuity before the appointed day. The entitlement for gratuity arose on the date the respondent''s services were termintaed by the gratutity and other retirement benefits to the respondent.

The petition fails and is dismissed. There shall be no order as to costs. The security amount be refunded to the petitioner.

