
(1964) 08 PAT CK 0006

In the Patna High Court

Case No : Misc. Judl. Case No. 771 of 1963

Workmen of Rohtas Industries Ltd.

APPELLANT

Vs

H.K. Choudhuri and Others

RESPONDENT

Date of Decision : 21-08-1964

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 97
Employees State Insurance Act, 1948 — Section 46, 57, 57(1), 61, 72

Citation : AIR 1965 Patna 127 : (1966) 1 LLJ 181

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : B.C. Ghosh, Ranen Roy, Radha Raman and Ram Krishna Prasad, for the Appellant; T.K. Prasad and Chandra Bhushan Sahay, for the Respondent

Final Decision : Allowed

Judgement

Untwalia, J.—The petitioners, the workmen of Rohtas Industries Ltd. represented by Rohtas Industries Staff Union, have obtained the rule from the High Court against the respondents to show cause why the award made in Reference No. 14 of 1962 by respondent No. 1. Shri H.K. Chaudhuri, Presiding Officer, Industrial Tribunal, Patna, be not called up and quashed by grant of a writ of certiorari. Cause has been shown on behalf of respondent No. 2, the Management of Rohtas Industries Ltd.

2. On the 30th of June, 1962, respondent No. 2 issued notices to 15 persons, doctors, hakim, dressers, ward boys, sweepers, sweeperess, dais and nurses, seeking to retrench them on the ground mentioned in the notice, a copy of which is annexure A to the writ application. Upon this, the petitioners raised an industrial dispute, which was ultimately referred by a notification (a copy of which is annexure B to the application) of the State Government dated 28th July, 1962, for adjudication to the Industrial Tribunal, which by its award dated the 31st of August, 1963, A copy of which is annexure C to the writ application, has answered the two questions, referred to it for adjudication, against the workmen.

3. In the notice of retrenchment given to the 15 workmen concerned, it is stated; "You are informed that due to the introduction of the Employees' State Insurance Scheme at Dalmianagar, 83% of employees have been covered under the Scheme. In the circumstances, the maintenance of Dalmianagar Hospital with the present complement of staff has become partially superfluous as it has now to cater to the needs of only about 17% of our employees."

The two points of dispute referred by the notification (annexure B) are;

"(a) Whether the notice of retrenchment given by the Management on the workmen named in Annexure "B" is proper and justified?

(b) Whether curtailment of medical facilities, available in Dalmianagar Hospital by the Management of R. I. Ltd. adversely affects the service condition of the workmen?. If so to what remedy the workmen are entitled"

4. The case of the Management before the tribunal was that medical relief to the workmen was a State responsibility and not of the employer. After the passing of the Employees State Insurance Act, 1948 (Central Act XXXIV of 1948) hereinafter called the Act, an employees State Insurance Corporation was established with an Employees Insurance Fund. Towards the beginning of 1960, the Employees State Insurance Scheme was introduced at Dalmianagar, and the contribution of Rohtas Industries Ltd. to the Insurance Fund amounted to Rs. 2,52,000/- and odd per year. About 83 per cent of the workmen of the Company recovered by the Scheme. Hence, justification for maintaining a medical staff at the scale at which it was being maintained by the company had disappeared and much of it had become surplus. The Company, therefore, decided to retrench the 15 persons concerned in the dispute and in bona fide exercise of its right to curtail the surplus establishment served a notice of retrenchment, observing the rule of "last come, first go" The company asserted that the retrenchment sought to be effected is fully justified and bona fide and is at present on a very small scale, namely, in respect of only 15 employees out of a total strength of 50 employees of the hospital (excluding the Ayurvedic section). The remaining staff even after retrenchment would be much more than the medical need of the remaining 17 per cent, of the employees and further retrenchment of the medical staff would take place in due course in future. The medical facilities provided to the workmen are no part of their service conditions, and they have no right to object to this curtailment. The further case of the Management before the Tribunal has been that the 3 medical officers, namely, two doctors and the hakim are not workmen within the meaning of Industrial Disputes Act of in any event no industrial dispute could be raised by the Union on their behalf on their retrenchment.

5. The case of the Union has been that medical facilities used to be given to the employees, their dependants and the members of their family since long and such facilities being customary have formed part of the service conditions of the employees of the company Their further case is that the Employees' State

Insurance Scheme (for the sake of brevity referred to is the E. S. I. Scheme) does not give adequate medical benefits to the dependants of the employees or their other family members. The scheme has not established any hospital of its own at Dalmianagar, and the existing staff maintained at the hospital of respondent No. 2 is not at all adequate and hence retrenchment is neither necessary nor justified. The two doctors and the hakim are workmen and the industrial dispute had rightly been raised by the Union on their behalf also.

6. The Tribunal in its award has recorded the following findings:

(i) That the two doctors and the hakim are workmen within the meaning of the Industrial Disputes Act.

(ii) But no industrial dispute can be raised by the Union of the Factory workmen on behalf of those 3 technical medical officers.

(iii) That since the introduction of the E. S. I. Scheme at Dalmianagar, there has been a considerable reduction of work in the hospital of the Management; case for retrenchment has been made out by the company; the retrenchment was proper and justified and was not motivated by any extraneous consideration or in a spirit of victimisation and the notice served on the workmen concerned was legal and proper.

(iv) That the medical facilities enjoyed by the workmen amounted to a customary concession and privilege and, therefore, were a part of their service conditions.

(v) The proposed retrenchment will not in any way curtail the medical facility of the workmen so as to affect their service condition.

7. In view of the above findings, the Tribunal has made an award against the petitioners and answered question No. (a) referred to it for adjudication in the affirmative and question No (b) in the negative.

8. I may mention at the outset that the findings of the tribunal that the three medical officers in view of the amended definition of the word "workman" given in the Industrial Disputes Act were workmen and that the medical facilities enjoyed by the workmen of Rohtas Industries Ltd. were a customary concession and privilege and, therefore, a part of their service conditions, were not assailed by Mr. T.K. Prasad, learned counsel for respondent No. 2. It was also not disputed before us that, if the retrenchment, on principle and as a matter of law, was unjustified and if it affected the service conditions of the workmen in general, the retrenchment of the three medical officers could also form part of an industrial dispute raised by the petitioners. The two important questions, however which have been strenuously argued and fall for our decision are

(i) Whether the Management is entitled to retrench its medical staff and reduce the medical benefits given to its employees merely because of the introduction of the E.S.I. Scheme and distribution of some benefits under it to the employees covered by the scheme

(ii) Whether, in fact, the proposed retrenchment of 15 members of the medical staff would reduce the quality and quantum of medical benefits which the employees have been receiving from the Management and would thus affect their service conditions.

9. It must be remembered that the whole and sole ground of the retrenchment of the medical staff in question is the introduction of E. S. I. Scheme at Dalmianagar covering about 83% of the employees of Rohtas Industries Ltd. and that is the central base, on which the award of the Tribunal rests in favour of the Management. In order to decide as to whether the management can curtail its medical staff on the ground it proposes to do, it is necessary to read first the relevant provisions of the Act and the regulations framed thereunder.

10. Section 3 of the Act provides for establishment of Employees State Insurance Corporation, which shall consist of the members enumerated in Section 4. Section 26 provides for creation of an Employees State Insurance Fund to be held and administered by the Corporation for the purposes of the Act, and Section 28 enumerates the purposes for which the fund may be expended. Contributions to the fund are payable both by the employers and the employees as provided in Sections 38 to 45 of Chapter IV of the Act. Chapter V deals with "Benefits" and starts with Section 46 which reads as follows:

"(1) Subject to the provision of this Act, the insured persons or, as the case may be, their dependants shall be entitled to the following benefits, namely,--

(a) periodical payments to any injured persons in case of his sickness certified by a duly appointed medical practitioner (hereinafter referred to as sickness benefit):

(b) periodical payments in case of confinement to an insured woman certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit):

(c) periodical payments to an injured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority in this behalf by the regulations (hereinafter referred to as disablement benefit):

(d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit); and

(e) medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit):

(2) The Corporation may, at the request of the appropriate Government and subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an insured person."

Sections 47 to 55 deal with the various kinds of benefit enumerated in Clauses

(a) to (d) of Sub-section (1) of Section 46. The provision contained in Section 56 of the Act is concerned with the medical benefit mentioned in Clause (e) and it reads thus:--

"(1) An insured person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit.

(2) Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.

(3) A person shall be entitled to medical benefit during any week for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit (or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations):

Provided that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations."

Section 57, which speaks about the scale of medical benefits, reads:

"(1) An insured person and (where such medical benefit is extended to his family) his family shall be entitled to receive medical benefit only of such kind and on such scale as may be provided by the State Government or by the Corporation, and an insured person or where such medical benefit is extended to his family, his family shall not have a right to claim any medical treatment except such as is provided by the dispensary, hospital, clinic or other institution to which he or his family is allotted- or as may be provided by the regulations.

(2) Nothing in this Act shall entitle an insured person and (where such medical benefit is extended to his family) his family to claim reimbursement from the Corporation of any expenses incurred of any medical treatment except as may be provided by the regulations".

Section 59 enables the Corporation to establish and maintain hospital or to enter into agreement with any local authority, private body or individual in regard to the provision of medical treatment and attendance for insured persons and their families in any area and sharing the cost thereof. Section 61 says;

"When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment."

I shall now read Section 72:--

"(1) No employer by reason only of his liability for any contributions payable under this Act shall, directly or indirectly, reduce the wages of any employee, or

except as provided by the regulations, discontinue or reduce benefits payable to him under the conditions of his service which are similar to the benefits conferred by this Act."

Section 97 authorises of the Corporation to make regulations "for carrying into effect the provisions of this Act". In exercise of the said power, the Employees' State Insurance (General) Regulations 1950, have been framed by the Corporation. Regulation 97 of the Regulations provides for continuation or reduction of benefits and states:--

"An employer may discontinue or reduce benefit's payable to his employees under conditions of their service which are similar to the benefits conferred by the Act to the extent specified below, namely,

(a) from the date of the commencement of the first benefit period following the appointed day for his factory or establishment,--

(i) sick leave on half pay to the full extent,

(ii) such proportion of any combined general purposes and sick leave on half pay as may be assigned as sick leave but in any case not exceeding 50 per cent of such combined leave;

(b) any maternity benefits granted to women employees to the extent to which such women employees may become entitled to the maternity benefit under the Act:

Provided that where an employee avails himself of any leave from the employer for sickness, maternity for temporary disablement, the employer shall be entitled to deduct from the leave salary of the employee the amount of benefit to which he may be entitled under the Act for the corresponding period."

11. It would thus be noticed that the benefits payable to a workman under the condition of his service, which are similar to the benefits conferred by the Act, cannot be discontinued or reduced except as provided by the Regulations, and regulation 97 quoted above does provide for discontinuance and reduction of some of the benefits but does not provide for discontinuance or reduction of the medical benefits. The argument put forward on behalf of the Management is that the word "payable" after the word "benefits" in Section 72 of the Act unmistakably indicates that only those benefits which are payable in terms of money and not in terms of medical treatment or service or the like are the only ones which cannot be discontinued or reduced except as provided by the Regulations, but the said section does not debar discontinuance or reduction of medical benefits which are not payable but are merely given or rendered. I am not prepared to accept this argument, In the context of the other provisions of the Act, I am of the view that the word "payable" has been used after the word "benefits" to cover all kinds of benefits payable in the form of cash, kind or service, and the expression "benefits payable" is not meant to include only benefits (a) to (d) provided in Section 46 and exclude benefit (e) from the ambit

of the Regulation. In *R.L. Arora Vs. State of Uttar Pradesh and Others*, Wanchoo, J. has said at pp. 1236-37.

"Further, a literal interpretation is not always the only interpretation of a provision to a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute".

According to the Oxford English Dictionary, the word "pay" has a large connotation also and means:

"To give a recompense for, to recompense, reward, requite (a service, work, or action of any kind):"

It is clear, therefore, that the word "payable" can also have a wide connotation. In *White v. Elmdene Estates, Ltd.* (1959) 2 All ER 605 Lord Evershed, M. R., has observed:

"....The word "payment" in itself is one which, in an appropriate context, may cover many ways of discharging obligations"

The view which I have expressed above, finds some support from regulation 97(a)(i) which provides for the discontinuance or reduction of sick leave on half pay to the full extent. It is obvious that sick leave granted to a workman is not a cash benefit, which is payable to him, but is a benefit available to a workman similar to the benefit of periodical payments in case of the sickness of the workman provided in Clause (a) of Sub-section (1) of Section 46. I may also refer with advantage to the observations of my Lord, the Chief Justice, in *Basanta Kumar Sarkar v. Eagle Rolling Mills Ltd.* ILR 40 Pat 193 where, after quoting sections 61 and 72 of the Act, it has been said:

"It is clear in view of these statutory provisions that the medical benefits enjoyed by the workmen under their contract of service or under the standing orders will not be affected by the introduction of the Employees' State Insurance Scheme, and the employers are not authorised to take away any superior benefits which they are bound to give to their workers under the contract of employment or under the standing orders merely because of the introduction of the Employees' State Insurance Scheme".

12. In my opinion, therefore, the Management is not authorised to discontinue or reduce the medical benefits payable to its workmen unless the Regulations framed by the Corporation authorised it to do so.

13. Learned counsel for the Management laid great stress upon the provisions of Section 57 of the Act and submitted that an insured person is entitled to receive medical benefit only of such kind as may be provided by the State Government or the Corporation, and he shall not have a right to claim any medical treatment except such as is provided by the dispensary, clinic or other institution to which

he or his family is allotted or as may be provided by the Regulations. I do not accept this argument as correct. The prohibition contained in the latter part of Sub-section (1) of Section 57 is with reference to the medical benefit, its nature and scale, as may be provided by the State Government or the Corporation under the Act, and does not bar such benefits which a worker gets from the Management by way of customary concession amounting to a condition of his service,

14. Even assuming that I am not quite correct in interpreting the expression "benefits payable" used in Section 72 of the Act, I am of the view that the Management cannot discontinue or reduce the medical benefits which the workers have been getting from it by way of customary concession having the effect of forming part of their service conditions, as there is no provision in the Act which entitles the Management to discontinue or reduce such benefits or disentitles the workmen from getting them. Section 61 debars a person entitled to any of the benefits provided by the Act from being entitled to receive any similar benefits admissible under any other enactment, but does not debar him to receive similar benefits, to which the workman may be entitled, under his service conditions or by way of customary concession. In this view of the matter also, the Management cannot reduce the medical benefits which it is obliged to give to its workmen by way of customary concession or as part of the service conditions. It can only do so by taking recourse to, and in the manner provided in, Section 9A of the Industrial Disputes Act. It is undisputed in this case that no recourse has been taken by the employer to affect any change in the conditions of service applicable to the workmen of the Rohtas Industries in respect of "withdrawal of any customary concession or privilege or change in usage", the 8th item mentioned in the 4th schedule of the Industrial Disputes Act. In that view of the matter also, retrenchment of the 15 workmen, which will affect a change in the conditions of the service of the workmen is illegal and unjustified. It may well be that 83 per cent, of the workmen (although this fact is disputed by the workmen) have been covered by the E. S. I. Scheme, but that does not mean nor is there any finding to this effect in the award that all those 83 per cent, are receiving full benefits under the scheme including medical benefits to the extent they are receiving from the Management. The Corporation has not yet established any hospital at Dalmianagar. Some stop-gap arrangement has been made by the Corporation with the authorities of the Dalmianagar Hospital established by the Management, some beds have been reserved in that hospital under the E. S. I. Scheme and some other accommodation has been provided to them for dispensing the benefits available to the workmen from time to time.

15. Coming to the second question as to whether the retrenchment of 15 members of the medical staff would reduce the quantum or quality of medical benefits which the employees are receiving from the Management, it is necessary to reiterate that the Management proposes to retrench the 15 workmen only on the ground of introduction of the scheme covering 83 per cent. of the employees resulting, in the staff being partially superfluous as it has now to cater to the

needs of about 17 per cent of the employees. The Tribunal has not recorded any finding that the Management is required to cater to the needs of about only 17 per cent, of the employees, and not to the other 83 per cent, their dependants and their family members. In this connection, it has arrived at the following findings:

(i) The number of outdoor male and female patients in 1961-62 was 62,097 as against 77,892 in the year 1959-60.

(ii) The reduction in the number of indoor patients is insignificant.

(iii) The work in the pathological department has gone down,

In the end, the Tribunal has concluded that there has been an over-all reduction of work and, therefore, a portion of the staff has become surplus. Although many inaccuracies of figures and impropriety of conclusions drawn by the Tribunal have been pointed out to us during the course of the argument, without examining them in any detail, I would only state that the approach of the Tribunal to this aspect of the matter based only upon the introduction of the Scheme has been faulty and illegal. The contribution of the Management to the E. S. I. Scheme amounting to about 21/2 lakhs of rupees is not for the purposes of the medical benefits only but for the purposes of all kinds of benefits enumerated in Clauses (a) to (e) of Sub-section (1) of Section 46. The reasoning of the Tribunal, therefore, that there is undue economic pressure on the Management in asking it to go on spending about Rs. 2,25,000/- over the maintenance of its hospital when it is already contributing annually a sum of about 21/2 lakhs of rupees to the Employees Insurance Fund, is erroneous on the face of it and is an irrelevant consideration. All the dependants and other family members of the workmen who have so long been receiving medical benefits from the Management have not been covered and extended medical benefits by the Scheme. There is no reduction in the number of indoor patients treated at the cost of the Management and some reduction in the number of outdoor patients from about 71,000 in the year 1958-59 to about 61,000 in 1960-61 and from about 77,000 in the year 1959-60 to about 62,000 in 1961-62 cannot justify and lead to the conclusion that 15 members of the staff out of a total of 50 are superfluous and can be justifiably retrenched without affecting the service conditions of the workmen of the Rohtas Industries Ltd. There is no reduction in the number of cases of X-ray investigations and the figures of the pathological department mentioned in the award from Ext. Q are of a time beginning from September, 1962 onwards when the industrial dispute had already been raised and referred to for adjudication by the government. In my judgment, therefore it is not legitimate to hold that the proposed retrenchment of 15 members of the medical staff would not reduce the quantum and quality of medical benefits which the employees have been receiving from the Management and that it would not affect their service conditions. It is a matter of common experience that most of the hospitals including even the State-managed ones are under-staffed in this State, and to allow the Management of an industrial concern to reduce the medical staff in its

hospital merely because of the introduction of the E. S. I. Scheme without there being any regulation or rule in that behalf framed by the Corporation or the Government will be highly unjust and would throw the workmen at the mercy of the Management. It is to be noticed that the Management proposes, as has been its case before the Tribunal, to retrench more members of the medical staff besides the 15 in question, and, if it is left to its discretion to do so, it would ultimately close its hospital even though there may not be one established by the Corporation or there may not be adequate medical benefits available to the persons concerned.

16. In the result, I hold that the award dated the 31st of August, 1963 (annexure C to the application) is illegal and ultra vires and must be quashed. I accordingly allow the application and, in exercise of the authority of this court under Article 226 of the Constitution of India, set aside the award of respondent No. 1 and hold that the two points of dispute referred to it for adjudication must be answered in favour of the petitioners and against respondent No. 2 that is to say, answer to question (a) would be in the negative and that to question (b) would be in the affirmative. On the facts and in the circumstances of the case I would make no order as to costs.

Ramaswami, C.J.

17. I agree to the order proposed by my learned brother Untwalia J. I do not, however, agree with my learned brother with regard to the interpretation of Section 72 of the Employees State Insurance Act, 1948. I am of the view that the expression "Benefits payable" should be construed to mean only those benefits mentioned in Section 46(a) to (d) and not Section 46(e). I think that the expression must, be construed to include only those benefits which are payable in terms of money and not benefits rendered, like medical treatment. I consider, therefore, that Section 72 does not operate as a bar to the action taken by the Management in this case, I agree, however with the view expressed by my learned brother that the Management cannot discontinue or reduce medical benefits that the workers have been getting from it by way of customary concession. The reason is that there is no provision in the Act which entitles the Management to discontinue or reduce such benefits. Section 61 of the Act prohibits a person entitled to any of the benefits provided by the Act from claiming similar benefits admissible under the provisions of any other enactment, but that section does not prohibit the workman from receiving similar benefits to which he may be entitled under the service conditions or in the nature of customary concession. It is a well established principle that the Legislature does not intend to make any substantial alteration in the law beyond what it expressly declared either in express terms or by clarification, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. As I have already stated, there is no provision in the Act which entitles the Management to discontinue or reduce the medical benefits which the workmen have been getting by way of customary

concession and as a part of their service condition. It is also not disputed in this case that the Management has not taken recourse to the procedure contemplated by Section 9A of the Industrial Disputes Act. I, therefore, agree with my learned brother that the award dated the 31st August, 1963, is illegal and ultra vires and must be set aside, and the two points or dispute referred to the Industrial Tribunal, Bihar, for adjudication must be answered in favour of the petitioners and against respondent No. 2.