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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No: 315 of 1990

T.A. No: of 199

DATE OF DECISION: 12-7-93

Union of India ---------- PETITIONER.

---------- ADVOCATE FOR THE PETITIONER

V E R S U S

Raj Mani ---------- RESPONDENTS

---------- ADVOCATES FOR THE RESPONDENTS

CORAM:-

The Hon'ble Mr. A.K. Singh J.M

The Hon'ble Mr. V.K. Seth, A.M

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the judgement? ✓
4. Whether to be circulated to all other Benches?

SIGNATURE

JAYANTI/

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Original Application No.315 of 1990.

Union of India ... ... Applicant.

Versus.

Raj Mani ... ... Respondant.

Hon'ble Mr. A.K. Sinha, Member-J.
Hon'ble Mr. V.K. Seth , Member-A.

(By Hon'ble Mr. A.K. Sinha,Member-J.)

The applicant (Union of India) through Divisional Personnel Officer, Northen Railway D.R.M. Office Allahabad has filed this application challanging the impugned order dt.22.2.90 (Annexture A-1) passed by the Authority under the Payment of Wages Act,1936 (hereinafter called the Act) in payment case no.90/88 awarding Rs.54,278/-(Rs.Fifty four thousand two hundred and seventy-eight) only as arrears of wages for the period from 25.2.84 to 31.7.88 which includes National holiday allowance,Public holiday allowance and productivity bonus to the employee-respondant Raj Mani.

2. The short facts, giving rise to this application, are that the employee-respondant Raj Mani filed the case before the Prescribed Authority under the Act under Section 15 of the Act claiming wages for the period from 25.2.84 to 31.7.88 amounting to Rs.54,278/-only as stated above. It appears that the Railway Administration appeared before the Prescribed Authority and denied the claim of the employee-respondant on the ground that the respondant did not work for the said period even for a single day and, therefore, he was not entitled to payment and that no court

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court had held that his retrenchment was illegal. It is averred that inspite of all these facts, the Prescribed Authority awarded the said relief to the employee-respondant which illegal and without jurisdiction. It was further stated that the award of 'bonus' incorporated in the impugned order was illegal, for it is beyond the perview of the Prescribed Authority to adjudicate upon as it was not covered by the definition of 'wages' under the Act.

3. It may, however, be mentioned that inspite of notices sent to the employee-respondant under registered cover on the address mentioned by the applicant, he did not appear to file any counter affidavit/written statement and, even on the date of hearing of this case by us, no body appeared on his behalf and, therefore, we proceeded to hear and decide the case on the basis of the materials available on the record.

4. The only question for consideration is as to whether the impugned order dt.20.2.90 passed by the Prescribed Authrity under the Act awarding the relief claimed to the employee-respondant was illegal and bad in law and without jurisdiction.?

5. We have, in our anxiety to do justice to the parties, perused the record of this case and we notice from Annexture 2-A,which is the copy of the original application filed before the Prescribed Authority under the Act by the employee-respondant, that the respondant was employed by the Railway Administration on 15.5.71 as Gangman and while working as such, he sustained injury and was hospitalised in the Northen Railway Hospital from 9.7.73 to 11.6.75 as a case 'Hurt on duty' vide medical certificate no.931626. As a consequence of the said accident, the employee's injury was assessed as partial permanent disability to the extent of 20% and partial permanent disability compensation to that extent

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extent was assessed and the amount of compensation was paid to him. Subsequently, his duty was changed over to the category of a 'Choukidar' as a sort of alternative employment under the Permanent Way Inspector Northen Railway Chunar.

6. The case of the employee-respondant was that on and from 25.9.78, the daily rated gangman choukidars who had completed more than 120 days of their continuous service were ordered to be changed into regular scale of pay treating them as having acquired the status of a temporary casual labour. The employee-respondant, it was alleged, was not included in the said scale of pay while others junior to him were included and, therefore, he put in his representation before the Railway Administration, the applicants, but nothing was done and on the contrary, out of vegeance, the employee-respondant was not allowed to work from 6.3.81 despite his presence at the work-site. It is further averred that under compelling circumstances, the employee-respondant filed P.W. Case No.9 of 1984 for payment of his wages from 25.9.78 to 24.2.84 before the Prescribed Authority under the Act and it was decided in his favour on 27.6.88 on contest by the Railway Administration treating the employee-respondant on duty for the said period.

7. The case of the employee-respondant further was that even after 24.2.84 till 26.6.88 he regularly reported on duty for work but the officers of the railway administration did not allow any work to him and also did not pay the back wages the award of which was passed in P.W.Case No.9/84. by the Prescribed Authority under the Act. It is stated when the employee-respondant approached to the railway officials after the aforesaid award of the Prescribed Authority, the railway officials told him that the matter would be looked into helding threats of vengeance to the employee-respondant. It is stated that after waiting for 30 days, the employee-respondant filed the P.W. case No.90/88 claiming his

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wages for the period from 25.2.84 to 31.7.88 as per terms of his employment with other consequential benefits. The Prescribed Authority, after considering the rival contention of the parties together with the evidence on record as also hearing the argument, decided the case in favour of the employee -respondant ex-parte.

8. We have gone through the impugned order passed by the prescribed authority as contained in annexture A-1 and on perusal it would appear that the applicants had contested the claim of the employee-respondant before the Prescribed Authority and even had filed their objections but subsequenly they did not turn up and the case was decided ex-parte in favour of the employee-respondant.

9. The contention of the learned counsel for the applicant is that the employee respondant hand not worked for the period claimed by him and so he was not entitled to any payment of wages for that period on the principle of 'no work no pay' and also submitted that 'bonus' is not within the definition of'wages' and as such the order passed by the Prescribed Authority incorporating 'bonus' was without jurisction. A plea of limitation was also taken by the applicants.

10. We have heard the learned counsel for the applicant and also perused the pleading of the parties of the court below and after having gone through the impugned order, we feel, having regards to the facts of the case, that the employee-respondant was not guilty of any inaction on his part in filing the claim cases. It is noticed that while on duty, he sustained injury and even received partial permanent disability compensation and thereafter his duty was changed to that of a 'choukidar' and even after completing 120 days of continuous service and acquiring the temporar -y staus of a casual labour, he was entitled to regular scale of pay which was denied to him although his juniors were allowed by the railway administration and when he put in his

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his representation before the officials of the Railway Administration, they out of vengeance did not allow him to work although he was present at the work-site through for duty. The applicant has not shown to us any retrenchment order of the employee-respondant. The Prescribed Authority has also held in his order under scruitny that the employee-respondant had acquired the status of a temporary casual labour on completion of his continuous service of 120 days and that his services was not terminated and the employee remained under the employment of the applicants. So all these facts clearly indicate and prove that there was no inaction on the part of the employee-respondant whereas there was total inaction on the part of the employer, the Railway Administration, the applicants before us under whose employment while working the employee had even suffered partial permanent disablement and notwithstanding the orders passed by the Prescribed Authority in P.W. Case No. 9/84, the applicants did not act even to pay his wages for the relevant period. All these factors taken together goes to show the inaction and recalcitrant attitude on the part of the Railway Administration towards its employee.

11 In that view of the matter, we are of the opinion and hold accordingly that there is no illegality or impropriety in the impugned order passed by the Prescribed Authority in awarding the relief claimed by the employee-respondant and in the facts and circumstance where there is total inaction on the part of the employer and not on the part of the employee, it must be held that the claim of the employee-respondent was not barred by limitation nor the order passed was without jurisdiction.

12 It is true that under the Payment of Wages Act, 1936, 'bonus' cannot form part of the wages but where under the scheme of the Government, the payment of 'bonus'

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'bonus' to employee drawing certain scale of pay forms part of his wages, it becomes competent for the Prescribed Authority to adjudicate and decide on the question moreso when it is linked with productivity bonus. In that view of the matter if the Prescribed Authority adjudicated and decided the matter relating to the wages linked with productivity bonus in-favour of the employee-respondant, after considering the evidence on record with just, fair and reasonably, it cannot be said that the order is either illegal or without jurisdiction.

13. It is now well settled that Article 21 of the Constitution guarantees right to life which includes right to livlihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Art.14 and 21 of the Constitution so as to be just, fair and reasonable and not faciful oppressive or at vagary. In the instant case, as we have stated above that no order of retrenchment of the employee-respondant was shown to us and as such he continued in service of the applicants and was entitled to his wages for the relevant period as decreed by the Prescribed Authority.

14. In the conspectus of facts and circumstances, we donot find either any illegality or impropriety in the impugned order (Annexture A-1) dt.20.2.90 passed by the Prescribed Authority. The result, therefore, is that there is no merit in this application and the same is accordingly dismissed but there would, however, be no costs.

Member- A.

Allahabad,
Dt. July , 1993.

Member-J.
12/7/93.