

Workmen of The Rajasthan Atomic Power Project

Vs

Management of Rajasthan Atomic Power Project

Civil Appeal No. 705 of 1975

(Y. V. Chandrachud, V. R. Krishna Iyer, A. C. Gupta JJ)

18.12.1975

JUDGMENT

GUPTA, J. -

1. The following dispute was referred under Section 10(2) of the Industrial Disputes Act, 1947 for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur :

Whether the action of the management of Rajasthan Atomic Power Project, post office Anushakti, via Kota in giving a notice of change dated March 20, 1973 under Section 9A of the Industrial Disputes Act, 1947, in so far as payment of overtime allowance to staff car drivers is concerned, is justified ? If not, to what relief are they entitled ?

The dispute arose in the following manner. Prior to August 1, 1971 the motor vehicle drivers employed in the Rajasthan Atomic Power Project, hereinafter called the project, were being paid overtime allowance in accordance with the Staff Car Rules. The Rajasthan Anushakti Pariyojana Karamchhari Sangh, which was the recognised union of the employees of the project, referred to hereinafter as the union, claimed that the overtime allowance paid to the drivers should be fixed at the rates at which the other employees of the project were being paid. This claim gave rise to a dispute which was settled after protracted discussions on certain terms and a memorandum of settlement was signed by the representatives of the parties concerned before the Assistant Labour Commissioner (Central), Kota, on November 17, 1971. The memorandum of settlement reads as follows :

TERMS OF SETTLEMENT

It is agreed that :

1. The Motor Vehicle Drivers and Bus Helpers shall paid overtime in accordance with the provision of the Motor Transport Workers Act, 1961 and the rules framed thereunder by the Government of Rajasthan with effect from August 1, 1971.
2. The arrears accruing in regard to clause (1) above shall be paid to all the entitled workers by December 31, 1971.
3. The parties shall furnish their implementation report to the Assistant Labour Commissioner (C), Kota, on or before January 15, 1972.

2. On December 12, 1972 the management of the project gave notice to the General Secretary of the union under Section 19(2) of the Industrial Disputes Act conveying their intention to terminate the settlement dated November 17, 1971 in so far as the staff car drivers were concerned. On the expiry of two months from the service of this notice, the management served on the union a notice under Section 9A of the Industrial Disputes Act proposing to effect a change in the conditions of service of the staff car drivers as indicated in the notice under Section 19 (2). The notice under Section 9A stated that with effect from April 12, 1973 the staff car drivers would be entitled to overtime allowance as admissible to them under the Staff Car Rules and not under the Motor Transport Workers Act, 1961. This gave rise to the dispute which, as stated earlier, was referred for adjudication to the Central Government Industrial Tribunal-cum-Labour court, Jabalpur. Before the tribunal it was contended on behalf of the management that they had entered into the settlement dated November 17, 1971 under a mistaken belief that the staff car drivers were covered by the provisions of the Motor Transport Workers Act, 1961 but they found later that the definition of "motor transport workers" in Section 2(h) of the Motor Transport Workers Act, 1961 did not include the staff car drivers of the project. The tribunal agreed that the staff car drivers were not entitled to any relief and made his award accordingly. The workmen of the project represented by their union have preferred this appeal by special leave challenging the validity of the award.

3. It seems to us that the question whether the staff car drivers of the project were motor transport workers as defined in the Motor Transport Workers Act, 1961 was not relevant to the issue before the tribunal. The workmen were not seeking to enforce their right to overtime allowance under the Motor Transport Workers Act. The settlement dated November 17, 1971 resolved the existing dispute as to the rate of overtime allowance payable to the motor vehicle drivers by providing in one of the terms that they should be paid overtime in accordance with the provisions of the Motor Transport Workers Act, 1961. The agreement making the provisions as to overtime in the Motor Transport Workers Act, 1961 applicable to the motor vehicle drivers employed in the project itself suggests that the parties were that the Act by its own force did not apply to the motor vehicle drivers. If these motor vehicle drivers were governed by the provisions of the Motor Transport Workers Act, then no question of applying that Act for a settlement between the parties could possibly arise. It is not disputed that motor vehicle drivers include staff car drivers. The right asserted by the staff car drivers arise on the settlement and does not flow out of the Motor Transport Workers Act, 1961, and it appears from the memorandum of settlement that it was arrived at "after protracted discussions". In these circumstances we do not think that it could be said that the management of the project entered into the settlement on a mistaken belief. As the award proceeds on the management's case of 'mistaken belief' which we do not consider acceptable, we allow the appeal and set aside the award. The appellants will be entitled to the costs of this appeal.

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