

Prantiya Vidhyut Mandal Mazdoor Federation

Vs

Rajasthan State Electricity Board and others

Civil Appeals Nos. 1790 with 1791 of 1992

(Kuldip Singh, Yogeshwar Dayal JJ)

23.04.1992

JUDGEMENT

KULDIP SINGH, J.:-

1. Special leave granted.

2. The question for our consideration in these appeals is whether arrears of wages, as a result of wage-increase-award under the Industrial Disputes Act, 1947 (The Act), would come within the definition of "basic wages" under Section 2(b) of the Provident Fund and Miscellaneous Provisions Act, 1952 (The Fund Act).

3. A dispute regarding wages and other conditions of service arose between the Rajasthan State Electricity Board (The Board) and its workmen. The parties arrived at a settlement as a result of which the dispute was referred to the arbitrators under the Act. The arbitrators entered upon the reference and gave an award dated May 20, 1985., The relevant part of the award is reproduced as under:-

"The matters in dispute (terms of reference) are as under:-

(1) Wages increase:

a) What should be the Minimum Wages for regular unskilled workmen of Rajasthan State Electricity Board in Pay Scales No. 1 with effect from April 1, 1980?

b) What should be the wage structure of different categories of workmen of Rajasthan State Electricity Board covered under pay scales Nos. 1 to 6 with effect from April 1, 1980?

Decisions on matters in dispute (terms of reference)

After hearing the arguments on behalf of the parties and considering the documents supplied by them, and taking into account other relevant matters, our decisions on the matters in dispute are given below:-

The minimum wages for regular unskilled workmen of RSEB in pay scale No. 1 with effect from 1st April, 1980 shall be Rs. 400 (Four hundred only) with NIL Dearness Allowance or any other addition to wages in the nature of Dearness Allowance, henceforth referred to as D.A.

Revised pay scales: On the basis of minimum basic pay of Rs. 400 with NIL DA, Revised pay scales Nos. 1 to 6 shall be as per Annexure-1 to this Award with NIL DA with effect from 1st April, 1980".

4. According to the award various categories of workmen were to be paid higher wages with effect from April 1, 1980. The arrears of pay and other benefits accrued to the workmen were to be paid in four equal instalments. The first instalment was payable on December 1, 1985 and the remaining three at an interval of six months each. The Provident Fund authorities issued directions that provident fund contributions be deducted from the arrears paid to the workmen. Accordingly when the first instalment was disbursed the Board deducted the employees contribution and also made its own contribution as required under the Fund Act. However, at the time of the second instalment, the Board filed a writ petition under Article 226 of the Constitution of India before the Rajasthan High Court challenging the directions of the Provident Fund authorities on the ground that arrears payable to the employees as a result of the award of the arbitrators were not the "basic wages" under Section 2(b) of the Fund Act. A learned single Judge of the High Court dismissed the writ petition. On appeal, a Division Bench of the High Court set aside the judgment of the learned single Judge and allowed the writ petition on the following reasoning:-

"If a contract of employment provides for payment of wages at a future date then it may fall within the definition of wages as the same becomes payable under the contract of employment, wages payable under some statute or payable, under orders of a Court cannot be said to be wages payable under a contract of employment. The scheme framed under Section 6 of the P.F. Act provides for calculation of the contribution on basis of the emoluments actually drawn during a whole month. The employer has to submit a consolidated statement of the employees who are members of the Fund along with their basic wages and this return is to be submitted within a prescribed time. If subsequently there is a change in the basic wages then there is no provision in the scheme for preparing an amended statement. The contribution recovered from the employees has to be entered every month by the employer in the contribution card. A monthly entry once made will have to remain there unchanged. Unless there is a specific provision in the scheme for payment of contribution to the Fund, the same cannot be said to be payable by implication. Contribution is to be paid on wages 'for the time being payable to the employees and not on wages, the payment of which, even at a future date, is undecided and does not arise out of the contract of employment. Wages payable under an award of the arbitrators cannot be termed as deferred wages so as to mean that they had accrued at a particular time but were payable at a later date according to the terms of the contract. It has also not been shown that the reference of disputes to the arbitrators was under the terms of the employment so as to include wages payable under the award into the definition of wages under S. 2(b) of the P.F. Act. Wages payable under the award are neither in the nature of increments payable to an employee nor wages which have remained unpaid due to some reason."

5. These two appeals by the Regional Provident Fund Commissioner, Jaipur Rajasthan and by the Workmen of the Board are against the judgment of the Division Bench of the High Court.

6. Sections 2 (b) and 6 of the Act which are relevant are reproduced hereunder.-

2(b). "BASIC WAGES" means all emoluments which are earned by an employee

while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include -

(i) cash value of any food concession;

(ii) any dearness allowance that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employments.

(iii) any presents made by the employer."

(6) "Contributions and matters which may be provided for in Scheme:- The contribution which shall be paid by the employer to the Fund shall be six and a quarter percent of the basic wages [dearness allowance and retaining allowance (if any)] for the time being payable to each of the employees (whether employed by him directly or by or through a contractor) and the employees' contributions shall be equal to the contribution payable by the employer in respect of nim and may, if any employee so desires and if the Scheme makes provision therefor, be an amount not exceeding eight and one-third per cent. of his basic wages (dearness allowance and retaining allowance if any)....."

7. Reading the above quoted two sections together the expression "basic wages" means:-

(i) all emoluments which are earned by an employee while on duty or on leave;

(ii) with wages in accordance with the terms of the contract of employment;

(iii) which are paid or payable in cash; and

(iv) are payable for the time being to each of the employees.

8. When an award gives revised payscales the employees become entitled to the revised emoluments and where the said revision is with retrospective effect, the arrears paid to the employees, as a consequence, are the emoluments earned by them while on duty.

9. We do not agree with the Division Bench of the High Court that the wages which are substituted from back-date as a result of an award under the Act are not the basic wages as defined under the Fund Act. If the original emoluments earned by an employee were "basic wages" under the Fund Act, there is no justification to hold that the substituted emoluments as a result of the award are not the "basic wages". The reference to the arbitration, the acceptance of the award by the parties and the resultant wage-increase with retrospective effect are the direct consequences of the settlement between the workmen and the Board. We are of the view that revision of wage-structure, as a result of an award under the Act has to be taken as a part of the contract of employment in the context of the Fund Act. This Court in Harihar Polyfibres v. The Regional Director, ESI Corporation, (1985) 1 SCR 712 : (AIR 1984 SC 1680), while dealing with the definition of wages under Employees' State Insurance Act, 1948 held as under (para 2 of AIR):-

"Now, under the definition first, whatever remuneration is paid or payable to an

employee under the terms of the contract of the employment, express or implied is wages; thus if remuneration is paid in terms of the original contract of employment or in terms of a settlement arrived at between the employer and the employees which by necessary implication becomes part of the contract of employment it is wages".

10. The workmen have inherent right to collective bargaining under the Act. The demands raised by the workmen through their unions are decided by conciliation, settlement or adjudication under the Act. These are time-consuming proceedings. When ultimately the dispute is settled/ decided in workers favour the accrued-benefit may be made available to them from back-date. This is what has happened in the present case. The award given in the year 1985 has been made operative from April 1, 1980. Under the circumstances it would be in conformity with the objects of the Fund Act, which is a social welfare legislation, to hold that the revised pay-scales have become part of the contract of employment with effect from April 1, 1980.

11. The expression "basic wages for the time being payable to each of the employees under Section 6 of the Act means the "basic wages" at the relevant time. When the existing pay-scales are revised with effect from back-date then the revised-wages posterior to that date are the "basic wages for the time being payable". The High Court in our view fell into error in giving a strained interpretation to the provisions of the Fund Act.

12. We, therefore, allow the appeals, set aside the judgment of the Division Bench of the High Court and dismiss the writ petition of the Board with costs. We quantify the costs at Rs. 10,000/- to be paid to the workmen. Appeals allowed.

</html