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Court : Guwahati

Decided On : May-19-1961

Judge : H. Deka, C.J. and S.K. Dutta, J.

Appellant : Cachar Cha Sramik Union and anr.

Respondent : Chandighat Tea Estate and ors.

Judgement :

H. Deka, C.J.

1. These are three applications--the former two under Article 226 of the Constitution of India and the third under Section 115 of the Code of Civil Procedure and under Article 227 of the Constitution of India--and since the same point or points arise for decision, these rules are treated as analogous and the same judgment will cover all the three applications.

2. The facts relating to the oases are slightly different and they are as follows.

3. Civil Rule No. 111 of 1960 filed by the Oachar Cha Sramik Union and one Atul Chandra Ankara is in regard to the minimum wages claimed by Atul Chandra Ankara, who made his application on 8 July 1957, under Section 20(2) of the Minimum Wages Act claiming back-wages as a member of the staff on the allegation that he was entitled to the minimum wages prescribed under the Government notification No. O.L.R. 352/51/56 of 11 March 1952. The claim up to 8 February 1957 was considered to be barred. The employer contested that the

petitioner was not a member of the staff bat was an unskilled labour and was not entitled to any minimum wages as prescribed under the said notification of 11 March 1952,

4. In Civil Rule No. 112 of 1960 the petition for minimum wages was made by one Narayan Tantubal, carpenter, of Majhegram Tea Estate, Cachar, on 8 July 1957 as an artisan under the notification of 11 March 1952, as mentioned in connexion with the other case. In this case also, the claim of the workman was barred up to 8 February 1957. The claim of the workman was opposed by the employer on the ground that he was not an artisan and that he was entitled only. to the wages prescribed for an unskilled labour.

5. In Civil Rule No. 89 of 1960, Naresh Chandra Das and Makhan Lal Sarkar claimed back-wages or the remainder of the minimum wages alleged to be due from their employer, manager, Dewan Tea Estate, Caohar. The employees made the application under Section 20(2) of the Minimum Wages Act, 1948, on 1 December 1954, claiming the minimum wages prescribed for an artisan under the Government notification of 11 March 1952, which claim was opposed by the employer, In this particular case, the claim up to 1 July 1954 was considered to be barred.

6. At the first instance, in all these matters the prescribed authority, coming within Section 20 of the Minimum Wages Act, decided in favour of the employers and held that the workmen were not entitled to the minimum wages prescribed under the Government notification of 11 March 1952 as either members of the staff or as artisans. Against this order, all these parties came to the High Court and the High Court by its decision In Civil Revision Nos. 3 and 4 of 1959 dated 28 July 1959, decided in favour of the workmen to the extent that Atul Chandra Ankura was a member of the staff and the other claimant Narayan Tantubai, an artisan.

7. The oases of Naresh Chandra Das and Makhan Lal Sarkar came up for consideration in Civil Revision No. 61 of 1958--disposed of on 3 October 1958--and the High Court held them to be artisans. As a result, the High Court in all these oases sent back the records to the prescribed authority or the Additional Deputy Commissioner, as he then was, for determining the minimum wages due to

these persons on the basis of the finding that they were entitled to the minimum wages being either members of the staff or artisans coming within the notification of 11 March 1952, The ordering portion in Civil Revision Nos. 3 and 4 of 1959 runs as follows:

I accordingly allow this petition also, set aside the order of the Additional Deputy Commissioner and send back the case to him for determination of the other questions raised in the case.

This case has since been reported in Cachar Cha Sramik Union v. Manager, Majhegram Tea Estate A.I.R. 1960 Assam 123. The decision in Civil Revision No. 61 of 1958 has been reported in Prafulla Chandra v. Manager, Dewan Tea Estate A.I.R. 1960 Assam 97 and there also the ordering portion was almost similar.

8. When these matters came up before the Additional Deputy Commissioner as the prescribed authority, he dismissed the claim of the petitioners by separate Judgments holding that because of the Government notification No. C.L.R. 65/54/31 of 18 March 1954, the workmen were not entitled to any minimum wages as a staff or an artisan as prescribed under the Government notification of 11 March 1952, which was superseded by the later notification of 18 March 1954. It is on this basis that all the claims under the Minimum Wages Act either as members of the staff or as artisans were refused. The petitioners have come up for relief against these orders.

9. We have heard Mr. N.M. Lahiri and Mr. N.M. Dam in favour of the petitioners--Mr. Lahiri representing the petitioners in Civil Rule Nos. 111 and 112 of 1960 and Mr. Dam in Civil Rule No. 89 of 1960. Their first contention is that there was no supersession, or at least complete supersession, of the notification of March 1952, whereby minimum wages were prescribed for the members of the staff and artisans.

10. They argued that the notification of 18 March 1954 only revised the scale of pay (minimum wages) of the unskilled labour but it did not purport to touch or revise the minimum wages prescribed for the members of the staff and artisans under the earlier Government notification of 11 March 1952. Another contention

raised on behalf of the petitioners is that since the bar now pleaded under the notification of 18 March 1954 was raised at the time when the matter was first beard by the Additional Deputy Commissioner, this plea is now not available to the employers and the point should be treated as one of constructive res judicata,

11. Another argument addressed by Mr. Lahiri was that even if it be held that by the Government notification of 18 March 1954; notification of 11 March 1952 was completely superseded, it should be held that the Government had no power to do inasmuch as they could not curtail any privilege prescribed under the Minimum Wages Act already given to any of the classes of labourers in the scheduled employments.

12. We consider that the first objection is of primary importance, namely, whether it could be said on a perusal of the two notifications--one of 11 March 1952 and the other of 18 March 1954--that the latter notification completely wipes out the existence of the earlier notification. In case it does, then of course, there would be no special minimum wages prescribed for the members of the staff or artisans as was provided under the earlier notification of 11 March 1952.

13. Both the notifications have been placed before us and it appears from the notification of 11 March 1952 that for the first time the labourers were put for the purpose of minimum wages, under two classes--

(2) ordinary unskilled labour, whose daily wages were prescribed inclusive of working children, and

(2) staff and artisans.

For the members the staff, the basic wage was fixed at Ra. 60 per month with dearness allowance going up to 50 per cent with a minimum of Rs. 30 per mensem.

14. The artisans were entitled to Rs. 50 per month as basic wages and the dearness allowance 50 per cent with a minimum of Rs. 30 per mensem. In the notification of 18 March 1954, the classification does not appear but the basic wages and dearness allowances are shown for male, female and working minors

--two scales of wages being prescribed for tea estates yielding 7 1/2 maunds or above per registered acre and for the tea gardens yielding less than 7 1/2 maunds per registered acre. It does not speak anything regarding the members of the staff or artisans, although some other concessions are prescribed under this notification, to which we need not refer. The opening portion of this notification of 18 March 1954 rune as follows:

No. C.L.R. 65/54/31.-In exercise of the powers conferred by Sub-clause. (b) of Sub-section (1) of Section 3 of the Minimum Wages Act, 1948 (IX of 1948), and in supersession of this department notification No. C.L.R. 350/52/196, dated 9 February 1953 and No. C.L.R. 352/51/56, dated 11 March 1952, the Governor of Assam, having considered the report of the Advisory Committee constituted under Section 6 of the said Act (vide notification No. C.L.R. 65/54/11 dated 16 February 1954), is pleased to revise the minimum wages fixed under notification Nos. C.L.R. 352/51/56 dated 11 March 1952, C.L.R. 350/52/196 dated 9 February 1953 and C.L.R. 350/52 dated 12 October 1953 a follows subject to the condtions mentioned here-under....

15. The learned Counsel for the petitioners urged that we should accept a qualified Inter-pretation of this notification, namely, that it should be treated as one to revise the scale of pay for the unskilled labour and not for the staff and artisans, about whom there is no reference. Acceptance of this rendering would mean that we should interpret the words in 'in supersession of' as 'in partial supersession of.'

16. Since the wordings are very clear and there is no ambiguity and in the absence of anything to show that the word 'partial' has been dropped through mistake of the Government in the matter of notification, we cannot accept this rendering which is not supported by the text of the notification. As a matter of course, in an application under Article 226 of the Constitution of India or even under Section 115 of the Code of Civil Procedure, this Court has no jurisdiction to go into the contentious matters relating to facts, or interfere unless the error is patent and one of jurisdiction.

17. Therefore, we do not treat it as obligatory on our part to find out the correct Interpretation of the notification after examining the surrounding circumstances in

which the Impugned notification was issued superseding the earlier ones. We can issue a writ of certlorari only when there is patent mistake of law apparent on the face of the record. In the present case, we cannot say that there has been any such mistake of law or that the notification has been wrongly interpreted on the clear wordings of the text. There does not appear to be any error of jurisdiction either to attract our Interference under Section 115 of the Code of Civil Procedure.

18. In regard to the next contention, namely, as to whether the garden authorities could be estopped from raising a plea in bar in regard to payment of minimum wages by virtue of the notification of 18 March 1954, we are not prepared to say that it would be hit by the principle of constructive resjudicata. On a reference to the order of the earlier civil revision oases (Civil Revision Nos. 3 and 4 of 1959) we find that the High Court sent the matter back to the Additional Deputy Commissioner to decide all outstanding issues apart from the fact that the status of the respective applicants was decided categoricaly.

19. On a reference to the order passed in Civil Revision No. 61 of 1958 [reported in A.I.R. 1960 Assam 97] it appears that the only point decided was that Nareeh Chandra Das and Makhan Lal Sarkar (the petitioners in Civil Rule No. 89 of 1960) should be considered as artisans coming within the scope of the notification of 11 March 1952 and matter was sent back for ascertaining the minimum wages in respect of them. Other points were kept open.

20. Mr. Lahiri placed before us the case of Burn & Co. v. their employees 1957--I L.L.J. 226 and contended that the principle of res judicata applied to these cases. The Supreme Court did not go to the length of saying that Section 11 of the Civil Procedure Code applied in its entirety to a proceeding under the Minimum Wages Act, but observed that the principle of res judicata is founded on sound Ipublio policy and is dictated by a wisdom which is for all time and as snch it was held that a decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be re-agitated.

21. Mr. Choudhary for the employers states before us that there was was an objection in the employers' written statement as to whether the workmen were legally entitled to the wages as claimed. Therefore, they could raise such a plea or

produce such evidence as was at their disposal to substantiate this issue which was not disposed of earlier. In this case no formal evidence was necessary except the Government notification of 18 March 1954, which, on the face of it, went in favour of the employers since it purported to supersede the earlier notification of 11 March 1952 under which the workmen claimed their minimum wages. This point also we must, therefore, decide in favour of the opposite parties.

22. The third contention of Mr. Lahiri is that the Government could not by notification of 18 March 1954 withdraw the advantages given to the labourers belonging to the class of staff and artisans by the notifications of 11 March 1952. Under Section 3(1)(6) of the Minimum Wages Act, 1948, the appropriate Government was entitled to

review at such Intervals as it may think fit, such intervals not exceeding five yeare, the minimum rates of wages so fixed and review the minimum rates, if necessary.

23. The notification No. C.L.R. 65/54/31 of 18 March 1954 seems to be issued in exercise of powers conferred by Sub-clause (6) of Sub-section (1) of Section 3 of the Minimum Wages Act, 1948, and thereby sought to supersede the department notification No. C.L.R. 350/52/196 dated 9 February 1953 and No. C.L.E. 352/61/56 dated 11 March 1952, which was within the competence of the State Government. Even assuming for argument's sake that the Government was wrong, for any wrong act of the Government a third party, particularly the employers, could not be made liable. In this particular case, no relief has been sought against the Government.

24. On a consideration of the circumstances and for the reasons mentioned above, we see no reason to Interfere and the rules mast be discharged but without costs.

S.K. Dutta, J.

25. I agree.