

Association of Engineering Workers Vs. Permanent Magnets Ltd. and Another

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Court : Mumbai

Decided On : Jul-09-1999

Reported in : 1999(4)ALLMR5; 1999(4)BomCR498; (1999)3BOMLR391; 1999(3)MhLj303

Judge : A.P. Shah, J.

Acts : [Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971](#) - Sections 28; [Constitution of India](#) - Article 226; [Payment of Wages Act, 1936](#) - Order 25(5-A); Maharashtra Workmen's Minimum House-Rent Allowance Act, 1983 - Sections 4(1)

Appeal No. : Writ Petition No. 1371 of 1999

Appellant : Association of Engineering Workers

Respondent : Permanent Magnets Ltd. and Another

Advocate for Def. : S.M. Naik, Adv.

Advocate for Pet/Ap. : N.M. Ganguli, Adv.

Judgement :

ORDER

A.P. Shah, J.

1. This petition under Article 226 challenges the order dated 24th November, 1998 passed by the Industrial Court, Mumbai in Complaint (U.L.P.) No. 1557 of 1990, a proceeding under the [Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971](#) ('the Act' for short).

2. The 1st respondent is a company engaged in the business of manufacture of various types of magnets. The petitioner is a trade union, registered under the Trade Unions Act, 1926 and represents some of the workmen of the respondent company. The petitioner union filed Complaint (U.L.P.) No. 1557 of 1990 in the Industrial Court, Mumbai alleging unfair labour practice on the part of the company under Item 9 of Schedule IV of the Act. The Union has alleged that the management has not paid subsistence allowance to 17 workmen who have been put under suspension by the management pending the domestic enquiry. It is alleged that the company paid only the basic pay and dearness allowance (DA) at the rate of 50% during the first three months and at the rate of 75% thereafter for the next three months and at the full rate during the subsequent period which lasted for about two years. The grievance of the union is that under the relevant Standing Order 25(5-A), the subsistence allowance is liable to be fixed on the basis of the basic pay, DA and other compensatory allowances but the management has not taken into account the house rent allowance (HRA), educational allowance and medical allowance while fixing the subsistence allowance of the workmen. On consideration of the evidence adduced before him, oral and documentary, the learned Judge of the Industrial Court came to the conclusion that HRA, educational and medical allowances were not the part of the subsistence allowance and, therefore, the workmen are not entitled to those allowances during the period of suspension. For coming to this conclusion, the Industrial Court relied upon a decision of the Apex Court in *Indian Oil Corporation v. Workmen* : (1975) IILLJ319SC .

3. Thus the short question which falls for consideration is whether HRA, educational and medical allowances are compensatory allowance within the meaning of the Standing Order 25(5-A). Standing Order 25(5-A) reads as follows:

'(5-A) Subject to the provisions of the [Payment of Wages Act, 1936](#) a workman who is placed under suspension under sub-clause (5) shall, during the period of such suspension, be paid a subsistence allowance at the following rates namely: -

(i) For the first ninety days of the suspension period subsistence allowance to be paid per month shall be equal to one-half of basic wages, dearness allowance and other compensatory allowance to which the workman would have been entitled if he were on leave with wages.

(ii) If the enquiry gets prolonged and the workman continues to be under suspension for a period exceeding ninety days, the subsistence allowance to be paid per month for a further period of ninety days shall be equal to three-fourths of such basic wages, dearness allowance and other compensatory allowances.

(iii) If the enquiry is not completed within a period for 180 days, the workman shall be paid basic wages, dearness allowance and other compensatory allowance in full as subsistence allowance to be paid per month until such time as the inquiry is finally concluded....

On a plain reading of the above provision, it is clearly seen that compensatory allowances to which the workman would have been entitled if he were on leave with wages are liable to be included while computing the subsistence allowance.

4. At the outset, let me clarify that the judgment of the Apex Court in *Indian Oil Corporation v. Workmen* (supra) does not in any way assist the management. That was a case where the Apex Court was dealing with the question whether the concession of compensatory allowance granted to the employees posted in Assam was an implied condition of service. It was held that the grant of compensatory allowance to the workman posted at Assam was an implied term of service and unilateral withdrawal of the compensatory allowance attracts the mandatory provisions of section 9-A of the Industrial Disputes Act. The said decision is obviously not relevant for the purpose of deciding the issue; raised in this petition.

5. Mr. Ganguly, learned Counsel, appearing for the Union brought to my notice the decision of Kantharia, J., in *Rajendra Shiva Karkera of Bombay & others v. Hotel Natraj & another* 1988(II) C.L.R. 456 wherein the learned Judge held that a workman is entitled to service charges while calculating his subsistence allowance. Relying upon the above judgment, Mr. Ganguly urged that under the Model Standing Orders, subsistence allowance included basic wages, dearness allowance and other compensatory allowance to which the workman would be entitled even if he was on leave with wages. In the submission of Mr. Ganguly, therefore, HRA, medical and educational allowances will have to be included in the basic wages of the workman for the purpose of subsistence allowance payable under Standing Order 25(5-A) governing the service conditions of the workmen of the respondent company. In reply, Mr. Naik, appearing for the company, submits that HRA or medical and educational allowances cannot form part and parcel of the subsistence allowance when a workman is under suspension. According to Mr. Naik HRA, medical and educational allowances are not in the nature of compensatory allowance.

6. It is an admitted fact that in the instant case HRA is payable under the Maharashtra Workmen's Minimum House-Rent Allowance Act, 1983. Under section 4(1)(d) and (e) of the said Act, HRA is payable where the workman has been on authorised leave including weekly or other declared holiday, sick leave or permissible casual or optional leave and if he has been on any kind of leave with wages. It would be, therefore, reasonable to include HRA as the other compensatory allowance for the purpose of calculating subsistence allowance as the said allowance is payable even during the leave period. As far as other allowances are concerned, namely, educational and medical allowances, they are paid under a settlement. I do not see any reason as to why these two allowances should not be included as other compensatory allowances for the purpose of calculating the subsistence allowance. Otherwise the words compensatory allowances would be meaningless because nothing has been brought to my notice as to what other kind of compensatory allowances the workman would be entitled in the establishment of the 1st respondent company. It is not the case of the company that medical and educational allowances are not paid to an employee who is on leave. An employee who is on earned leave, very much remains in the

employment of the employees and so is the case with regard to a workman who stands suspended. The contract of service subsists during the period of suspension and an employee remains in service and he is entitled to all benefits of service, even though he is not expected to work during the period of suspension. Therefore, I have no hesitation to hold that the employees would be entitled to compensatory allowance like HRA, educational and medical allowances as part of subsistence allowance in accordance with the Model Standing Order.

7. In view of the foregoing discussion, it is clear that the subsistence allowance paid by the company was not in accordance with the relevant Standing Order. Thus Item 9 of Schedule IV of the Act is squarely attracted. Hence, petition is allowed. The impugned order dated 24th November, 1998 is quashed and set aside. The company is directed to pay the subsistence allowance by including HRA, educational allowance and medical allowance. The differential amount to be paid within six weeks from today.

8. Petition allowed.