

Samir Kumar Chatterjee and ors. Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Dec-12-1973

Reported in : (1974)IILLJ407Cal

Judge : Ghose, J.

Appellant : Samir Kumar Chatterjee and ors.

Respondent : State of West Bengal and ors.

Judgement :

Ghose, J.

1. Petitioners are the employees under the respondent, the Calcutta State Transport Corporation working at its City Office, Central Workshop as well as various depots. The Pay Review Committee established by the Government of West Bengal made recommendations for fixing of new scales of pay of the employees of the Government of West Bengal. The Government of West Bengal in its turn by a notification made the said recommendations of the said Pay Review Committee applicable to the employees of the Calcutta State Transport Corporation with effect from April 1, 1970. The respondent No. 3 thereafter fixed such pay scale for its employees which include the petitioners with effect from April 1, 1970. The order fixing such scale of pay was made on November 29, 1972. A copy of the said order has been set out in Annexure A to the petition. The said order, inter alia, provides as follows:

As per G.O. 10565 W. T. dated September 30, 1972, the arrears of payments (except P. F. elements) for the period from April 1, 1970 to March 31, 1972, should not be paid in cash but be credited to a special fund to be named as Retirement Benefit Fund, subject to the terms and conditions laid down therein.

Because of the aforesaid directions contained in the said order, the petitioners have not been paid their arrears of salaries payable to them at the enhanced rate as mentioned hereinabove for the period from April 1, 1970 to March 31, 1972. The petitioners in the instant application impugned the said directions contained in the said order for withholding their salary at the enhanced rate from April 1, 1970 to March 31, 1972 and pray for the issue of a writ in the nature of mandamus for having the said directions quashed.

2. The contention of Mr. Sadhan Gupta appearing on behalf of the petitioners is that the said directions for withholding of the said pay for the said period was and is contrary to the provisions of law and in particular Section 7 of the Payment of Wages Act and, therefore, should be struck down. The petitioners also in the instant proceeding pray for a writ in the nature of mandamus directing the respondent Nos. 2 to 5 to pay all arrears of salaries withheld from the petitioners for the said period between April 1, 1970 to March 31, 1972. Section 7 of the Payment of Wages Act provides for the payment of the wages of an employed person to him without the deduction of any kind except those authorised by or under this Act. It has not been disputed by or on behalf of any of the respondents that Section 7 is applicable to the instant case.

3. Mr. Somen Bose appearing on behalf of the respondents contended that Section 7 provides for deductions to be made in terms of different clauses under Sub-section (2) of the said section. The present deductions have been authorised by the Government of West Bengal in terms of Clause (h) to Sub-section (2) of the said section of the Act, Sub-section (2) authorises deductions from the wages of an employee in accordance with the provisions of the said Act only and enumerates the kinds of deductions that can be made under the provisions of the said Act. Clause (h) to the said subsection reads as follows:

(h) deductions required to be made by order of a Court or other authority competent to make such order.

Mr. Bose submitted that the State Government is an authority within the contemplation of the said Clause (h) which was competent to pass the said order of deductions from the said salary in order to keep the same in a reserve fund as and by way of retiring benefit to be paid to the petitioners. Mr. Bose filed two orders, one dated July 22, 1972 and the other dated September 30, 1972 made by the Government of West Bengal. The order dated September 30, 1972 directs the deduction of the said salary for the said period for the purpose of crediting the same to a special fund to be named as Retirement Benefit Fund bearing interest at 5 per cent per annum payable at the time of retirement or termination of service of an employee including the petitioners along with provident fund payable to them. Mr. Bose contended that the Road Transport Corporation Act, 1950 under the provisions whereof the Calcutta State Transport Corporation was formed authorised the State Government to pass the impugned orders and Mr. Bose relied on Sub-section (3) to Section 14, Section 29 and Section 34 of the said Act as authorising the Government to pass the impugned orders. Section 14 of the said Act reads as follows:

'14. (1) Every Corporation shall have a Chief Executive Officer or General Manager and a Chief Accounts Officer appointed by the State Government.

(2) A Corporation may appoint such other officers and servants as it considers necessary for the efficient performance of its functions.

(3) The conditions of appointment and service and the scales of pay of the officers and servants of a Corporation shall-

(a) as respects the Chief Executive Officer or General Manager and the Chief Accounts Officer be such as may be prescribed, and

(b) as respects the other officers and servants be such as may subject to the provisions of Section 34, be determined by regulations made under this Act.

Sub-section (3) quoted above authorises prescribing the conditions of appointment and service and the scales of pay of the officer and servants of a Corporation in the manner as stated in Clauses (a) and (b) of the said sub-section. None of the petitioners is either the Chief Executive Officer or General Manager or Chief Accounts Officer of the Corporation. They, therefore, formed a part of the servants of the Corporation as mentioned in Clause (b) to the said Section 14 of the Act. No regulation has been framed under the provisions of the said Act authorising the deduction of the said salary and such deduction of salary under the impugned order as mentioned above cannot be supported by Section 14 of Sub-section (3) thereto of the said Act. Section 29 of the Act reads as follows;

29. (1) A Corporation shall make such provisions for depreciation and for reserve and other funds, as the State Government may from time to time, direct.

(2) The management of the said funds, the sums to be carried from time to time to the credit thereof and the application of the moneys comprised therein shall be determined by Corporation .Provided that no fund shall be utilised for any purpose other than that for which it was created without the previous approval of the State Government.

Sub-section (1) to Section 29 of the Act authorises the Corporation at the direction of the State Government to make provision for depreciation and for reserve and other funds. The management of the said funds, the sums to be carried to the credit thereof and the application of the moneys compassed therein shall be determined by the Corporation. In the instant case it is evident that the Corporation has not decided or determined the sums to be carried to any fund to be constituted as Retiring Benefit Fund nor has the Corporation decided as to the application of the moneys to be comprised in such fund in accordance with Sub-section (2) to Section 29. As a matter of fact the impugned direction is not the direction of the Corporation but of the Government. Section 29, in my opinion, does not authorise the Government to determine or decide as to what sums should be carried from time to time to any reserve or other funds as may be formed or constituted under Section 29(1) of the said Act. The only other section that remains to be considered by me in the instant application is Section 34 of the said Act. Section 34 of the said

Act reads as follows:

34. (1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under Sub-section (1) except with the previous permission of the State Government.

Section 34 is really by way of residuary provision or power conferred upon the State Government by the Act. The Government may under the said section give any direction or instruction to the Corporation in re-yard to the recruitment, conditions of service or training of the employees or wages to be paid to the employees reserves to be maintained by the Corporation and disposal of its profits or stocks. The said section also does not, in my opinion, confer any right upon the Government to direct deduction from any wages lawfully payable to any of the employees of the Corporation including the petitioners. It must be noted that in depriving; the petitioners or any of the employees of the wages earned by them, a vested right of such employees or petitioners are taken away. Plain and express terms must, therefore, have to be shown in any statute authorising such deprivation or deduction of wages or employees. Such deduction or deprivation cannot be supported by mere implications from different provisions in Act. In my opinion, there is no such express provision in the Act authorising either the Corporation or the State Government to pass impugned direction or act in the manner us it has been doing in deducting the salary of its employees including the petitioner for the period mentioned hereinabove. The said directions and acts are unauthorised.

4. For the reasons mentioned above, this application must succeed Rule nisi is made absolute. Each party shall, however, pay and bear his or its own costs of and incidental to this application. The operation of this order shall, however,

remain stayed until January 3, 1974.

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