

(2003) 01 RAJ CK 0073

Rajasthan High Court

Case No: Civil Special Appeal No. 682 of 1998

Director, State Farms
Corporation of India
Ltd.

APPELLANT

Vs

Judge, Industrial
Tribunal and Labour
Court and Others

RESPONDENT

Date of Decision: Jan. 24, 2003

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2, 9A

Citation: (2003) 2 WLN 629

Hon'ble Judges: Rajesh Balia, J; Anil Dev Singh, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Anil Dev Singh, C.J.

This D.B. Civil Spl. Appeal is directed against the order of the learned Single Judge dated 14.5.1998 rendered in S.B. Civil Writ Petition No. 3240 of 1984. By that order, the learned Single Judge rejected the writ petition challenging the award of the Industrial Tribunal, Bikaner dated 31.3.1984. The facts giving rise to the appeal are as follows.

2. The appellant is the State Farm Corporation of India Ltd. It is located at Jetsar, Rajasthan. The appellant was established on 3.3.1964. Till 31.7.1969 its administrative control vested with the Ministry of Agriculture, Government of India. While the administrative control over the appellant was still being exercised by Government of India the latter by its order dated 28.10.1966 granted 10% project allowance to the workers employed at Jetsar project. Subsequently, with effect from 1.8.1969 the administrative control was transferred to the Corporation itself vide notification of the Government of India dated 23.6.1969. By virtue of the notification pay, leave, travelling and other

allowances and service conditions of the staff remained unchanged. The notification provided that pay, leave, travelling and other allowances and service conditions of the workers shall be governed mutatis mutandis by the existing rules and regulations applicable to the employees or as may be issued by the Government of India from time to time till they stand replaced by the rules framed by the Corporation. As a consequence of the notification project allowance to the workers employed at Jetsar site was continued to be paid to them even after the administrative control was vested in the Corporation itself. On 30.11.1974, the appellant reduced the project allowance from 10 per cent to 8 per cent.

3. The employees of the appellant not being satisfied with the reduction of the project allowance raised an industrial dispute. The appropriate Government by its order dated 2.6.1978 referred the question namely, whether or not reduction of the project allowance from 10 per cent to 8 per cent was legally justifiable. The Industrial Tribunal, Bikaner to whom the reference was made concluded by its order dated 31.3.1984 that the reduction of project allowance from 10 per cent to 8 per cent brought about a change in the service conditions of the employees. Since the reduction was made without giving 21 days' Notice of Change to the workmen provisions of Section 9A of the Industrial Disputes Act, 1947 (for short "the Act") were violated.

4. The appellant being aggrieved by the order passed by the Industrial Tribunal, Bikaner filed a writ petition S.B. No. 3240 of 1984. The writ petition came to be dismissed by the learned Single Judge of this Court on 14.5.1998. Having failed before the learned Single Judge, the appellant has filed the instant special appeal.

5. The learned Counsel appearing for the appellant submitted that the conditions of service of the employees of the appellant did not undergo a change by reduction of the project allowance from 10 per cent to 8 per cent. According to him, only in those cases notice of change is required to be given where the employer proposes to effect change in the condition of service applicable to a workman in respect of matters specified in the Fourth Schedule to the Act. As per the learned Counsel project allowance which is being given to the workmen is not covered by the Fourth Schedule.

6. In order to appreciate the submission of the learned Counsel it may be necessary to refer to Section 9A of the Act and the Fourth Schedule appended thereto. Section 9A of the Act and the Fourth Schedule, the extent relevant, read as follows:

9-A. Notice of change.--No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,--

(a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice.

THE FOURTH SCHEDULE

CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN

1. Wages, including the period and mode of payment;

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3. Compensatory and other allowances;

7. Thus, according to Section 9A no employer is permitted to effect any change in the conditions of service applicable to a workman in respect of any matter specified in the Fourth Schedule without giving to the workman likely to be affected by such change a notice in the prescribed manner, of the nature of the change proposed to be effected. Item No. 3 of the Fourth Schedule shows that compensatory and other allowances are to be treated as conditions of service for change of which notice is to be given. The words "other allowances" cannot be read in a restricted manner. These are words of wide amplitude which will take into their ambit the project allowance as well. Besides, Item No. 1 of the Fourth Schedule refers to wages including the period and mode of payment. Therefore, the wages are to be treated as conditions of service. The term wages is defined in Section 2(rr) of the Act. Section 2(rr), to the extent is relevant, reads as follows:

2(rr).--"wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes--

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

It is obvious from the definition of "wages" that allowances are included therein. Since the project allowance falls within the meaning of the term "wages" it is a condition of service and for effecting any change to the detriment of the employees notice is required to be given to the employees.

8. In *Indian Oil Corporation v. Workmen*, 1975 (2) LLJ 319, the Supreme Court held that Section 9A of the Act would come into operation the moment of employer proposes to change any condition of service applicable to any workman. It was also held that grant of compensatory allowance to the employees of the Indian Oil Corporation posted in far off and backward area like Assam was undoubtedly an implied condition of service and proposal to change the same attracted the mandatory provisions of Section 9A of the Act

requiring 21 days" prior Notice of Change to be given to the workman. Since Notice of Change was not given the withdrawal of the compensatory allowance to the employees clearly falls foul of Section 9A of the Act.

9. Keeping in view the aforesaid decision of the Supreme Court and having regard to the above discussion, we have no hesitation in holding that the project allowance is part of the conditions of service of the workmen and the mandatory procedure laid down in Section 9A of the Act for effecting the change was not followed.

10. learned Counsel for the appellant then contended that project allowance was given at the rate of 10 per cent by the Government of India vide order dated 28.10.1966 when the basic minimum amenities were not available to them at places which were under-developed and out of way. The learned Counsel asserted that basic amenities have been made available over the years to the workers from 1964 to 1973. He also submitted that the appellant following the report of the Third Pay Commission reduced the project allowance. It was pointed out by the learned Counsel that the employees Unions and Associations were heard by the Third Pay Commission before recommendation for phased reduction in the quantum of project allowance. As a sicutur, the learned counsel canvassed that since the unions were heard by the Pay Commission it was not necessary for the appellant to give a notice to the workmen of an individual Corporation likely to be affected by the reduction in the rate of project allowance.

11. We have considered the submissions of the learned Counsel for the appellant. We, however, regret our inability to accept the same. The fact that the unions of workmen belonging to various companies were heard by the Pay Commission before making its recommendations with regard to the project allowance did not obviate the requirement of giving a prior Notice of the proposed Change by the appellant Corporation to the workmen u/s 9A of the Act before reducing the rate of project allowance from 10 per cent to 8 per cent. The Corporation was bound to follow the mandate of Section 9A of the Act. After recommendations of the Third Pay Commission were accepted by the Government, the appellant blindly followed the same without taking an independent and voluntary decision on their own with regard to the question whether or not to reduce the project allowance. The dependence of the appellant on the report of the Pay Commission was so heavy that it thought that since the unions of workmen of various enterprises have already pleaded their case before the Pay Commission it was not necessary to give the mandatory 21 days" notice to its employees working in the projects before effecting the change. This was clearly a wrong approach which cannot be countenanced in law. Since the appellant Corporation failed to comply with the provisions of Section 9A, the change effected in the rate of the project allowance payable to the workmen cannot be sustained.

12. We also cannot go into the question whether or not basic amenities were provided by the appellant to the workmen at the project site. That question will require investigation into facts. Assuming that basic facilities have been provided to the employees at the project sites, still the appellant was required to give Notice of the proposed Change in the

rate of the project allowance in accordance with Section 9A of the Act as project allowance, as already held, is a condition of service of the workmen. Project allowance can be altered only by following the procedure known to law.

13. Moreover, we are informed by the learned Counsel for the parties that amenities extended to workmen, which is now used as shield to defend the action of management in unilateral reduction of project allowance from 10% to 8%, had already come into existence long before the unilateral reduction of the allowance and for long workmen were receiving project allowance @ 10% in addition to amenities made available to them. Thus no nexus between the reduction in project allowance as quid pro quo for extending additional benefits in lieu thereof is discernible. The reduction in project allowance undoubtedly results in reduction of wages as defined in Section 2(rr) of the Industrial Disputes Act, 1947 and falls within "conditions of service for change of which notice is to be given" under items 1 and 3 of Schedule IV appended to the Act which attracted operation of Section 9A of the said Act; which has been held to be mandatory requirement before any such alteration can be affected.

14. For the foregoing reasons, we hold that the view of the learned Single Judge that the change in the rate of project allowance adversely affected the conditions of service of the employees working in project and they were required to be given notice u/s 9A of the Act, which the appellant failed to do cannot be faulted and must be sustained. We order accordingly. The appeal, therefore, fails and is hereby dismissed.