

(2009) 08 JH CK 0030

Jharkhand High Court

Case No: None

Amar Mukherjee, Samar
Mukherjee and Prabir Mukherjee

APPELLANT

Vs

The State of Jharkhand,
Inspector General of
Registration-cum-Payment
Commissioner, Kumardubi
Engineering Works Limited and
Secretary to Payment
Commissioner, Kumardubi
Engineering Works Limited

RESPONDENT

Date of Decision: Aug. 25, 2009

Acts Referred:

- Industrial Disputes Act, 1947 - Section 24

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Amareshwar Sahay, J.
Heard the parties.

2. The abovenamed three writ petitioners have been arrayed as petitioners in place of Brindaban Mukherjee i.e. their father who died during the pendency of the writ petition and, therefore, in his place, these writ petitioners have been substituted. The claim made in the writ petition is for a direction to the respondents to pay arrears with interest on account of claim made by Brindaban Mukherjee by quashing order dated 24.01.2001 as contained in Annexure-5 to the writ petition which was rejected by the Payment Commissioner.

3. Brindaban Mukherjee, the father of the petitioners was employed as a Time Keeper in Kumardubi Engineering Works Limited, Dhanbad. He was dismissed from

the service w.e.f. 04.11.1971. He raised Industrial Dispute which was referred to the Labour Court, Bokaro Steel City and the Labour Court, by an Award dated 31.01.1983, held the dismissal of Brindaban Mukherjee by the Management of Kumardubi Engineering Works Limited, Dhanbad to be unjustified and he was declared to be entitled to reinstatement in service with backwages and continuity in service.

This Award passed by the Labour Court was never challenged and therefore, it becomes final.

4. Case of the petitioners is that M/s. Kumardubi Engineering Works Limited, Dhanbad closed its operation on 30.09.1979 since it went for liquidation and Official Liquidator was appointed by Calcutta High Court. Subsequently, an Act was enacted by Bihar Legislature namely Kumardubi Engineering Works Limited (KEW)(Acquisition & Management) Act, 1982 (Bihar Act 12 of 1983) which received the assent of President of India on 29.07.1983. u/s 8 of the said Act, Payment Commissioner was appointed to determine the claim of the respective workers of the said Company. The payment Commissioner, after relying on the provisions of Section 24 of the Act, by order dated 26.12.1987, rejected the claim of the father of the petitioners and other similarly situated workmen.

5. Father of the petitioners as well as five other workmen moved this Court in separate Writ Petitions namely C.W.J.C. Nos. 183, 184, 188, 189, 190 and 191 of 1988 (R). Brindaban Mukherjee, the father of the petitioners herein, filed C.W.J.C. No. 190 of 1988 (R). All the six Writ Petitions were heard together and were allowed by Judgment dated 26.06.1996. The Order of the Payment Commissioner dated 26.12.1987 in all the cases, was set aside.

Paras-8, 9 and 10 of the aforesaid Judgment, which are relevant, are being quoted herein:

8. It would appear from the scheme of the Act that the liabilities of the erstwhile Undertaking had not been transferred to the State of Bihar or to the Undertaking established for the Management of the Establishment. Those liabilities remained the liabilities of the earlier Undertaking. A sum of Rs. 400 lacs had been deposited with the prescribed authority upon whom is enjoined the duty to consider the claims made before it, and to make payment in accordance with the priorities attaching to such claims under the Act. It will appear from the Second Schedule to the Act that in the matter of settlement of claims, the first priority is to be given to employees' dues on account of unpaid salary, wages, provident fund etc. The Act, therefore, conceives of a situation where the workmen may not have been paid their wages by the erstwhile management and provides for payment of such wages on a priority basis out of the funds deposited with the prescribed authority. The claim of a workman for payment of wages may arise on account of non-payment of wages, by the erstwhile management or on account of any award or adjudication under the

Industrial Disputes Act. It would, therefore, not be reasonable to Section 24 in such a wide manner as to defeat the rights of the workmen to receive wages under an award, by holding that the award is deemed to be vacated u/s 24 of the Act. In our view, an adjudication of an industrial dispute cannot be said to be a proceeding against the erstwhile Undertaking, and in any event for the purpose of Section 24 of the Act, an award in an industrial adjudication cannot be said to be an order against the erstwhile Undertaking. The Act itself conceives of a situation where wages may be due to workmen which have to be paid. Section 24 must be given a contextual meaning so as to bring within its scope only such proceedings against the Company as may be inconsistent with the provisions of the Act or which tend to defeat the very objective which the Act seeks to achieve. It cannot certainly be given such wide scope as to nullify awards made under the provisions of the Industrial Disputes Act so as to defeat the right of workmen to receive wages due under such awards.

9. We are, therefore, of the considered opinion that Section 24 of the Act does not have the effect of vacating an Award passed by the Industrial Tribunal or the Labour Court under the provisions of the Industrial Disputes Act. The claims preferred by the workmen on the basis of such award are, therefore, entertainable by the prescribed authority under the Act.

10. In the result, these writ petitions are allowed and the order passed by the Payment Commissioner dated 26.12.1987 in all the cases are set aside and the Payment Commissioner is directed to consider the claims of the petitioners in accordance with law. There will be no order as to costs.

6. That in spite of the aforesaid Judgment, the Payment Commissioner did not decide the claim and therefore, the father of the petitioners moved this Court again in C.W.J.C. No. 3308 of 1997 (R) which was disposed of by order dated 05.05.1999 directing the Payment Commissioner to decide the claim of the petitioner preferably within a period of four months from the date of receipt of order.

7. As it appears that the petitioner was asked to appear by issue of Notice dated 22.10.1999 as contained in Annexure-3 by the office of the Payment Commissioner and, thereafter, by order dated 29.10.1999, as contained in Annexure-4, the Payment Commissioner held that it was unreasonable to settle the claim of the petitioner in a hurry while 100s of others are also awaiting for settlements of their claims.

8. The father of the petitioner, thereafter, filed an application for initiating contempt proceedings against the Payment Commissioner being M.J.C. No. 628 of 1999 (R). In the said contempt proceeding, a show-cause was filed by the Payment Commissioner enclosing a copy of the order dated 24.01.2001 passed by him wherein, the claim of Brindaban Mukherjee was allowed for Rs. 45,661/- only calculating his arrears from the date of his dismissal i.e. 01.10.1970 till 30.09.1979 i.e. till the date of closure of the Company. The Contempt proceeding was ultimately

dropped with the following order:

6.02.2001. Pursuant to order dated 15.1.2001 supplementary show-cause has been filed stating inter alia that order and direction of this Court has been complied with inasmuch as claim of the petitioner has been considered and decided by the Payment Commissioner in terms of order dated 24.01.2001. By the said Order the Commissioner has held that the claimant is entitled to a sum of Rs. 45,661 /-. Although, on the face of the order, it does not appear that it is in consonance of the Judgment passed by a Bench of this Court in C.W.J.C. No. 161/97 I am of the opinion that petitioner may challenge the order before the appropriate forum. So far amount assessed by the Commissioner, Mr. Poddar. Addl. Advocate General submits that the said amount shall be paid to the petitioner within a short time. I, therefore, direct the opposite parties to make payment of the amount assessed by the Commissioner within two weeks from the date of receipt of copy of this order.

With the aforesaid direction, this proceeding is dropped. Rule issued against the opposite parties is discharged.

9. Consequent upon the liberty given, the father of the petitioners filed the present writ petition challenging the impugned order passed by the Payment commissioner as contained in Annexure-5 to the writ petition but during the pendency of this writ petition, Brindaban Mukherjee died and as such, his sons i.e. the present petitioners have been added as petitioners.

10. Mr. Navin Kumar, learned Counsel appearing for the petitioner submitted that the petitioners' father Brindaban Mukherjee had made his claim to the tune of Rs. 1,29,283.35 paise by filing an application, whereas, the Payment Commissioner has wrongly and illegally allowed the claim for Rs. 45,661/- only. He submitted that when the Division Bench of this Court, in the aforementioned batch writ petitions, clearly held Section 24 of the Act does not have the effect of vacating an award passed by the Industrial Tribunal or Labour Court under the provisions of the Industrial Disputes Act and set aside the order dated 26.12.1987 of the Payment Commissioner, then Payment Commissioner has no other option but to implement and comply the directions given in the Award of the Labour Court.

11. On the other hand, by filing counter affidavit, it is stated on behalf of the respondents that the Payment Commissioner is empowered to consider the claim up to 30.09.1979 and he has no jurisdiction to give any other decision and, therefore, the claim of the petitioner for the aforesaid period has not been allowed. It is also stated that by issue of Annexure-B, after bifurcation of Jharkhand from the erstwhile State of Bihar,- the Payment Commissioner got himself relieved from the charge of Payment Commissioner, Kumardubi Engineering Works Limited, Dhanbad, since the area of Dhanbad did not fall within the jurisdiction of State of Bihar. It is stated that presently, the post of Payment Commissioner is lying vacant. This counter affidavit has been sworn and filed by Sheo Deo Singh who is posted as

Secretary to Payment Commissioner, Kumardhubi Engineering Works Limited, Dhanbad. As it appears that the office of the Payment Commissioner, Kumardubi Engineering Works Limited, Dhanbad is still functioning and the office has not been abolished.

12. Therefore, even if the post of Payment Commissioner, lying vacant presently but that does not make any different. This office is functional and in view of the interim order dated 15.12.1988 passed by the Division Bench in C.W.J.C. No. 190 of 1988 (R) filed by the Writ Petitioner Brindaban Mukherjee, an amount of Rs. 1,29,283.35 Paise was directed to set apart from his funds, which was subject to the result of the writ petition and when writ petition was allowed then there may not be any hitch in paying the amount to the petitioners which was set apart in terms of the interim order of the Division Bench of this Court. The impugned order passed by the Payment Commissioner dated 24.01.2001 is apparently not in terms of the Judgment and order passed by the Division Bench of this Court in the batch of writ petitions i.e. C.W.J.C. Nos. 183, 184, 188, 189, 190 and 191 of 1988 (R). The operative-portion of the Order and direction given therein have already been quoted hereinabove from which, it appears that the Payment Commissioner has tried to overreach the Judgment and Order passed by the Division Bench of this Court which he had no jurisdiction at all to interpret the order in his own way. The calculation and payment of arrears has to be made on the basis of the directions passed in the aforesaid Judgment of the Division Bench as well as the Award of the Labour Court.

13. Accordingly, this writ application is allowed. The order dated 24.01.2001 as contained in Annexure-1 is hereby quashed and the respondents are directed to make payment of the arrears and legal dues to the petitioner minus the payment already made, in terms of the Judgment and order passed by the Division Bench of this Court dated 26.06.1996 as well as as per the directions given in the Award of the Labour Court as expeditiously as possible, preferably within a period of four months from the date of receipt/ production of a copy of this order failing which, it will carry interest at the rate of 9% per annum from the date of the Award till the date of payment.

There shall be no order as to costs.