Bharat Aluminium Company Limited Vs Sukumar Mukherjee

Court: Calcutta High Court

Date of Decision: April 1, 1998

Acts Referred: Aluminium Corporation of India Limited (Acquisition and Transfer of Aluminium Undertaking) Act, 1984 â€" Section 20(4)
Coking Coal Mines (Nationalisation) Act, 1972 â€" Section 17, 9
Industries (Development and Regulation) Act, 1951 â€" Section 12, 14, 17, 18AA, 2
Payment of Gratuity Act, 1972 â€" Section 4

Citation: (1998) 2 ILR (Cal) 280

Hon'ble Judges: Satyabrata Sinha, J; Dibyendu Bhusan Dutta, J

Bench: Division Bench

Advocate: Ashok Banerjee and L.N. Seth, for the Appellant; K.K. Maitra, Alok Ghosh and Srikanta Maitra, for the Respondent

Final Decision: Dismissed

Judgement

Satyabrata Sinha, J.
This appeal is directed against a judgment and order dated July 24, 1996 passed by a learned single Judge of this

Court in C.R. No. 143 (W) of 1987, whereby and whereunder the writ application filed by the writ Petitioners was allowed. The writ

Petitioners/Respondents filed the aforementioned writ application claiming, inter alia, the following reliefs:

(a) as to why declaratory order should not issue on the Respondents, their agents, subordinates and employees, namely, the Petitioners, are in

continuous service with the company, namely, Aluminium Corporation of India Limited, entitling them even after the Aluminium Corporation of

India Limited (Acquisition and Transfer of Aluminium Undertaking) Act, 1981 and to the continuity of service by the payment of notional gratuity

u/s 4 of the Payment of Gratuity Act, 1972;

(b) as to why an order in nature of Prohibition should not be issued on the Respondents for non exercise of powers u/s 4 of the Payment of

Gratuity Act, 1972 for not paying notional gratuity to the Petitioners ;

(c) as to why an order in nature of Mandamus should not issue on the Respondent No. 5 his/their agents and subordinates to cancel/rescind the

claims of diverse amounts as paid by Respondent No. 5 with particulars given in paragraphs 23 to 42 of this petition with verdict u/s 20(4) of the

Aluminium Corporation of India Limited (Acquisition & Transfer of Aluminium Undertaking) Act, 1984 and on such cancellation being made to

pay notional gratuity u/s 4 of the Payment of Gratuity Act, 1972 in accordance with law to the Petitioners.

2. The basic facts of the matter are not in dispute.

The employees concerned were working under Aluminium Corporation of India. A lock out was declared by the said company. On or about May

1,. 1978, the management of the said undertaking was taken over by the Appellant company in terms of Section 18AA of the Industries

(Development and Regulation) Act, 1951. Parliament thereafter enacted The Aluminium Corporation of India Limited (Acquisition and Transfer of

Aluminium Undertaking) Act, 1984 (hereinafter referred to as the said Act), whereby and whereunder the undertaking of the Aluminium

Corporation of India Limited (hereinafter called as Aluminium Corporation) was nationalised. The aforementioned nationalisation was made for

giving effect to the policy decision as laid down under Article 39(c) of the Constitution of India. According to the writ Petitioners, they were asked

by the erstwhile employer to go on leave without pay. After the management was taken over by the Appellant with effect from May 1, 1978, their

services were taken back. In terms of the provisions of the said Act, some of the writ Petitioners filed applications for payment of the amount of

gratuity before the Commissioner of Payments, constituted u/s 14 of the said Act. Some orders had been passed by the Commissioner of

Payments who was arrayed as Respondent No. 5 in the writ application without taking into consideration the period of service rendered by the

writ Petitioners in the Aluminium Corporation. In the aforementioned premises, the writ Petitioners filed the writ application.

3. The learned trial Judge upon taking into consideration the contentions made before him, inter alia, held that the writ Petitioners had been

discriminated against. It was further held that the Petitioners were presumed to be in continuous service in terms of Section 12 of the said Act, and

on that ground the writ petition was allowed.

4. Mr. Banerjee appearing on behalf of the Appellants, inter alia, submitted that keeping in view the purport and object of the said Act, and further

keeping in view the fact that a bi-partite settlement had been entered into by and between the Appellant and the workmen, the same is a clear

pointer to show that the services of the writ Petitioners were to be treated as new services. Learned Counsel contended that in that view of the

matter, the amount of gratuity payable to the writ Petitioners could not have been directed to be paid upon treating their services rendered by them

in the Aluminium Corporation as also in the Appellant company as continuous services within the meaning of Section 2A of Payment of Gratuity

Act.

5. Mr. Maitra, Learned Counsel appearing on behalf of the writ Petitioners/Respondents, on the other hand supported the judgment of the learned

trial Judge, inter alia, by submitting that the conduct of the authorities of the Appellant company clearly shows that the writ Petitioners had been

treated to be in continuous employment. The said Act was enacted, inter alia, for maintaining harmonious industrial relations and other reasons in

view of the fact that the erstwhile company failed to maintain harmonious relations and other reasons as also with a view to re-starting the said

undertaking the management of the said undertaking was taken over by the Central Government on May 1, 1978, and as it become necessary to

make such investment for securing proper utilisation of available facilities for production of aluminium. The said Act was enacted in public interest

so as to enable the Central Government to acquire such undertaking and to ensure production of aluminium and aluminium fabricated products.

The said Act came into force on June 2, 1984, which was thus the appointed day. Section 3 of the said Act provides that on and from the

appointed day, the aluminium undertaking of the company together with its right, title and interest shall stand transferred to and vest in the Central

Government. Section 5 reads thus:

5(1) Every liability of the company in relation to the Aluminium undertaking in respect of any period prior to the appointed day shall be the liability

of the company and shall be enforceable against it and not against the Central Government or where the Aluminium undertaking is directed u/s 6, to

vest in the Bharat Aluminium Company, against that company.

(2) For the removal of doubts, it is hereby declared that,-(a) save as otherwise expressly provided in this Act, no liability of the company in relation

to the Aluminium undertaking in respect of any period prior to the appointed day, shall be enforceable against the Central Government or where

the Aluminium undertaking is directed u/s 6 to vest in the Bharat Aluminium Company, against that company;

(b) no award, decree or order of any court, tribunal or other authority in relation to the Aluminium undertaking, passed after the appointed day, in

respect of any matter, claim or dispute which arose before that day, shall be enforceable against the Central Government or where the Aluminium

undertaking is directed u/s 5 to vest in the Bharat Aluminium Company, against that company;

(c) no liability incurred by the Company before the appointed day, for the contravention of any provision of law for the time being in force, shall be

enforceable against the Central Government or where the Aluminium undertaking is directed u/s 6 to vest in the Bharat Aluminium Company,

against that company.

6. The Central Government, admittedly, in exercise of its jurisdiction conferred upon it u/s 6 of the said Act, issued a notification on or about June

21, 1984, whereby and whereunder the said undertaking instead and piece of continuing to vest in the Central Government, vested in the Appellant

company. Section 9 which occurs in Chapter IV of the said Act empowers the Appellant company to exercise and do ail such things which the

Central Government was empowered.

Section 12 reads thus:

12(1) Every person who has been, immediately before the appointed day, employed in the Aluminium undertaking shall become:

(a) on and from the appointed day, an employee of the Central Government; and (b) where the Aluminium undertaking is directed u/s 6, to vest in

the Bharat Aluminium Company, an employee of that company on and from the date of such vesting, and shall hold office or service under the

Central Government or the Bharat Aluminium Company, as the case may be, with the same rights and privileges as to pension, gratuity and other

matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under

the Central Government or the Bharat Aluminium Company, as the case may be, is duly terminated or until his remuneration and other conditions

of wages are duly altered by the Central Government or the Bharat Aluminium Company, as the case may be.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the

services of any officer or other person employed in the Aluminium undertaking to the Central Government or the Bharat Aluminium Company shall

not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim

shall be entertained by any court, tribunal or other authority.

7. Chapter VI of the said Act provides for appointment of Commissioner of Payments. The manner in which the Commissioner is to deal with the

said claims has been laid down in the said Chapter. Section 17 of the said Act provides that every person having a claim against the company in

relation to the Aluminium undertaking shall prefer such claim before the Commissioner within thirty days from the specified date. The question

which arises for consideration is as to whether the writ Petitioners were entitled to payment of gratuity or not. Payment of Gratuity Act, 1972 was

enacted to provide for a scheme of payment of gratuity to employees engaged in factories, mines, oil fields, plantations etc., and for matters

connected therewith or incidental thereto. It is now well settled that the very essence of the gratuity is past and not the present. Since the definition

of "employee" as contained in Section 2(e) of the said Act provided for an enlarged definition any person who satisfies the requirements of the

inclusive clause contained in the said provision, continues to be an employee, and thus becomes entitled to payment of gratuity. Section 2-A reads

thus:

2-A. Continuous service.- For the purpose of this Act,- (1) an employee shall be said to be in continuous service for a period if he has, for that

period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty

without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the

standing orders, rules or regulations governing the employee of the establishment), lay-off, strike or a lock-out or cessation of work not due to any

fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

8. A bare perusal of the aforementioned provision would clearly show that a larger meaning has been assigned to the word "continuous service".

Section 4 provides for payment of gratuity, which clearly states that the gratuity shall be payable to an employee on the termination of his

employment after he was rendered continuous service for not less than 5 years,- (a) on his superannuation, or (b) or his retirement or resignation,

or (c) on his death or disablement due to accident or disease. It is not in dispute that the writ Petitioners were in the services of the company

immediately prior to the appointed day, namely, June 2, 1984 by reason of the provisions contained in Section 12 of the said Act, and therefore,

they became employees of the Central Government with effect from the said date and employees of the Appellant company with effect from June

21, 1984.

9. Once the employees became the employees of the Central Government prior whereto there was no disruption in their services, there cannot be

any doubt whatsoever in view of the enlarged provision of continuous service as contained in Section 2-A of Payment of Gratuity Act, the entire

period of service whether rendered by the concerned employees in the Aluminium Corporation or the Appellant company shall have to be

considered for computation in terms of Section 4 thereof. The Apex Court in Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd., ,

held that Payment of Gratuity Act is a beneficial legislation. While construing the provision of Section 2A, the Apex Court took into consideration

the history or legislation as set out in the statements and objects of reasons accompanying the Bill and held:

In construing a social welfare legislation, the court should adopt a beneficent rule of construction ; if a Section is capable of two constructions, that

construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed.

When, however, the language is plain and unambiguous, as here, we must give effect to it whatever may be the consequences, for, in that case, the

words of the statute speak the intention of the legislature when the language is explicit, its consequences are for the legislature and not for the courts

to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the

stature is obscure and there are two methods of construction. In their anxiety to advance beneficent purpose of legislation, the courts must not yield

to the temptation of seeking ambiguity when there is none. Craies on Statues. 8th Edn. Pp.. 84-91.

In dealing with interpretation of Sub-section (1) of Section 4, we must keep In view the scheme of the Act. Sub-section (1) of Section 4 of the Act

incorporates the concept of gratuity being a reward for long, continuous and meritorious service. The emphasis therein Is not on ''continuity of

employment'' ; but on rendering of ''continuous service''. The legislature inserted the two Explanations in the definition, to extend the benefit to

employees who are not in uninterrupted service for one year subject to the fulfilment of the conditions laid down therein. By the use of a legal

fiction in these Explanations, an employee is deemed to be in ''continuous service'' for purposes of Sub-section (1) of Section 4 of the Act. The

legislature never intended that the expression ''actually employed'' in Explanation I and the expression ''actually worked'' in Explanation il should

have two different meanings because it wanted to extend the benefit to an employee who ''works'' for a particular number of days in a year in either

case. in a case falling under Explanation I, an employee is deemed to be in continuous service if he has been actually employed for not less than

190 days if employed below the ground in a mine, or 240 days in any other case, except when he is employed in a seasonal establishment.

10. In view of the aforementioned decision, there cannot, therefore, be any doubt that the word ''continuous service'' has to be interpreted liberally.

The submission of Mr. Banerjee to the effect that as a lock-out had been declared, there was a cessation in the relationship of employer and

employee, cannot be accepted. Not only by reason of a lock-out the relationship of employer and employee does not come to an end, but the

same continues. Furthermore, as noticed hereinbefore, the very purpose of the Act was to take over the management at the first instance and to

take over the assets of the said undertaking, read with Section 12 thereof clearly goes to show the intention of the Parliament that all those

employees who had been working in the Aluminium Corporation, should continue to work in the Central Government and the Appellant company,

as the case may be. The submission of Mr. Banerjee to the effect that the liability of the erstwhile owner cannot be the liability of the Appellant

company, cannot be accepted. The Apex Court in The Workmen Vs. The Bharat Coking Coal Ltd. and Others, clearly held that even a workman

who was illegally dismissed by the erstwhile employer and in whose favour an award has been made by the industrial tribunal, would continue to be

governed by the Nationalisation Act. In that case, the Apex Court was considering the provisions of Sections 9 and 17 of the Coking Coal Mines

Nationalisation Act, which are in pari materia with the provisions of the said Act. The Apex Court held:

Section 9 deals with the topic of prior liabilities of the previous owner. Section 9(1) speaks of ''every liability of the owner... prior to the appointed

day, shall be the liability of such owner... and shall be enforceable against him and not against the Central Government or the Government

company. The inference is irresistible that Section 9(1) has nothing to do with wrongful dismissals and awards for reinstatement. Employees are not

a liability (as yet in our country). Section 9(1) deals with pecuniary and other liabilities and has nothing to do with workmen. If at all it has anything

to do with workmen, it is regarding arrears of wages or other contractual, statutory or tortious liabilities. Section 9(2) operates only in the area of

Section 9(1) and that it why it starts off by saying ''For the removal of doubts it is hereby declared.....''. So, Section 9(2) seeks only to remove

doubts in the area covered by Section 9(1) and does not deal with any other topic or subject matter. Section 9(2)(b) when it refers to ''awards'',

goes along with the words ''decree'', or ''order''. By the canon of construction of noscitur a socils the expression ''award'' must have a restricted

meaning. Moreover, it scope is delimited by Section 9(1). If back wages before the appointed day have been awarded or other sums, accrued

prior to nationalisation, have been directed to be paid to any workman by the new owner. Section 9(2)(b) makes such claims non-enforceable.

We do not see any reason to hold that Section 9(2)(b) nullifies Section 17(1) or has a larger operation than Section 9(1). We are clear that the

whole provision confers immunity against liability, not a right to jettison workmen under the employ of the previous owner in the eye of law.

11. The aforementioned decision of the Apex Court has been considered by a Full Bench of the Patna High Court in Agent, Murlidhar Colliery v.

Sital Chandra Pathak 1986 P.L.J.R. 1168. In that case also, upon consideration of the provisions of Sections 9 and 17 as also the provisions of

the Coking Coal Mines (Nationalisation) Act, as also provisions of Section 4 of the Payment of Gratuity Act. Sandhawlia, C.J. speaking for the

Bench stated:

Equally worthy of notice is the fact that the claim to gratuity is not an indefeasible right and may be defeated either wholly or partially for reasons

specified in the a fore quoted Sub-section (6) of Section 4. Therefore, the right to the payment of gratuity arises only on the fulfillment of the

statutory conditions and termination of the employment in anyone of the five modes indicated above. It is only at the end of the period of his service

that a workman can strict sense claim that he has now become entitled to the payment of gratuity.

Upon consideration of various provisions the Full Bench clearly held:

One must also notice the anomalous results which necessarily flow from the construction canvassed on behalf of the Petitioner. !f it could be said

that, however, long after the nationalisation and the appointed day the workman must seek to claim his pensionary and gratuity benefits from the

previous owners, it would be virtually throwing such workmen to the wolves. A period of nearly a decade and naif has elapsed since the

nationalisation and the appointed day and as time passes a workman might well have served for 20 years and more under the Central! Government

or the Government company, as the case may be. To require that thereafter on superannuation, retirement, or termination otherwise of his service,

he should after a period of 20 years start seeking his previous employers for his service benefits would look wholly farcical and would render

nugatory the very purpose and object of Section 17 of the Act. indeed such, previous employers or owners may now be non-existent and

therefore, his claims pertaining to the period of service rendered to previous owner prior to the appointed day would be merely chimerical and

wholly in the air. This aspect is well illustrated and highlighted by the present case itself. Herein the Respondent Sital Chandra Pathak had served

two or three employers during the period of his first employment from the 24th of June 1946 till the appointed day of 1st May 1972, That he

should now be asked to seek his original employer of the year 1946 for gratuity which has become due to him on the successful completion of his

service and retirement does not stand to reason. Therefore, a construction which would lead to such anomalous, and if one may say so,

mischievous consequences and result in grave hardship to workmen whose rights were expressly sought to be protected by the Act has to be

avoided on larger canons of construction as well.

12. The said decision applies in all fours to the fact of the present case. |n this view of the matter, we have absolutely no hesitation to declare that

the writ Petitioners would be deemed to be in continuous service within the meaning of the Payment of Gratuity Act vis-a-vis the said Act. The fact

that some of the writ Petitioners have filed claim petitions before the Commissioner of Payments is of no value. As indicated hereinbefore, in terms

of Section 4 of the Payment of Gratuity Act, an occasion to pay gratuity arises only upon cessation of employment. No such cessation of

employment having taken place, the Commissioner of Payments had absolutely no jurisdiction to entertain the claim application. The said claim

applications filed by the writ Petitioners, therefore, were misconceived and ought not to have been entertained. There cannot, therefore, be any

doubt whatsoever that the said claim applications were filed and entertained by the Commissioner of Payments on a misconceived notice. Any

decision thus rendered by the Commissioner of Payments in relation to the said claim applications filed by some of the writ Petitioners must,

therefore, be held to be wholly without jurisdiction and thus non est in the eye of law. Furthermore, the bi-partite agreement entered into by and

between the employees and the management cannot stand in the way of the statutory right conferred upon the employees* in terms of the

provisions of the said Act. In case where there exists a conflict between a bi-partite agreement and the provisions of a statute, Wis latter shall

prevail. Furthermore, such a bi-partite agreement and/or filing of claim applications before the Commissioner of Payments must be held to have

been made on a mistaken notice of the interpretation of the provisions of the said Act, and thus no credence can be given thereto. If, however,

while computing the amount of gratuity payable to any employee of the Appellant company, the competent authority finds that by reason of their

taking employment with another employer during the pendency of the lock-out any cessation of employment had taken place, the said fact may be

taken into consideration in each individual case, but it is not for us to go into the said question at this juncture as the same would be dependent on

determination of fact in each case by the competent authority, as and when occasion arises therefore.

13. We, therefore, in agreement with the judgment and order passed by the learned trial Judge hold that the writ Petitioners would be deemed to

be in continuous service, and would be entitled to payment of gratuity despite the fact that a part of service had been rendered by them in

Aluminium Corporation of India, subject however, to the observations made hereinbefore. The appeal is, therefore, dismissed, but in the facts and

circumstances of this case, there will be no order as to costs.

14. Prayer for stay of operation of the judgment made on behalf of the Appellants is considered and refused as this judgment is pronounced on the

basis of the decisions of the Apex Court and the Full Bench of Patna High Court.

15. Xerox certified copy, if applied, be supplied on priority basis.

Dibyendu Bhusan Dutta, J.

16. I agree.