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AN
RP

18.11.2021
Ct. No. 16

MAT 1858 of 2016

Bharat Cooking Coal Ltd. & anr.
vs.
Aloka Mahato & ors.

Mr. Alok Banerjee
Mr. S. M. Obaidullah
Mr. P. Basu

... for the appellant

This mandamus appeal is directed against order dated 14.07.2016 passed in WP 2221(W)/2015 (Aloka Mahato vs. BCCL). The appellants were arrayed as respondent No. 1 and 2 in the writ petition. Third respondent was the Commissioner of the Coal Mines Provident Fund, Jharkhand and the forth respondent was the Regional Manager, Coal Mines Provident Fund.

Learned Single Judge by order dated 14.07.2016 had disposed of the writ petition. The operative portion of the order reads as follows:

“Under the 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 the principal employer is to pay the wages of the contractor. Under Section 2(h) of the said Act wages have been assigned the same meaning as given to it by Clause (vi) of Section 2 of the Payment of Wages Act, 1936. Wages includes gratuity under Section 2(vi)(d) of the said Act.

In those circumstances, the respondent no. 5 is directed to pay the gratuity claim of the petitioners by 16th August, 2016. In default, the respondent no. 1 will have to pay this claim to the petitioners by 29th September, 2016.

All the papers are before this Court.

Affidavits were not invited. The allegations contained in the petition are deemed not to have been admitted.

This writ application is accordingly disposed of.”

The appellant management being aggrieved by the above order preferred an appeal before this Hon'ble Court. Learned counsel for the appellant submitted that the learned Single Judge had wrongly applied provisions of Section 2(h) of the Contract Labour (Regulation and Abolition) Act, 1970 while interpreting the definition of wages as contained in Section 2(s) of the Payment of Wages Act, 1972.

It is submitted that the learned writ court ought to have considered that the duty or obligation of a principal employer to supervise payment of wages to contract labourer cannot be a question of liability to pay gratuity to a contract labour. Further, the learned counsel has referred to the definition of 'employee' and 'employer' as contained in Sections 2(e) and 2(f) of the Payment of Gratuity Act and submitted that it gives no scope for any wider interpretation of the said definition of classes.

Further, it is submitted that in terms of Section 8 of the Act if there is any dispute, the employee has to approach the controlling authority under the Act and the writ petition is not maintainable for such reason. Without prejudice to the rights and contention of the appellant, it is submitted that assuming that the management is

directed to pay the gratuity which is payable by the contractor then in terms of provisions of the Act, the principal employer should be able to recover the amount from the contractor in accordance with law.

We have elaborately heard the learned counsel for the appellant. In our considered view, in the instant case, the legal issue need not be adjudicated for the reason that the employee is no more and his wife who is pursuing the matter seeks for payment of gratuity due and payable to her late husband. Therefore, this court is of the view that the legal issue which can be canvassed by the learned counsel for the appellant is as to whether the employer can be made liable to be paid the gratuity when there is contractor through whom service of the workmen was engaged. It can be left open to be decided at an appropriate stage in an appropriate matter.

Therefore, we hold that it is fit and proper to make a slight modification to the order passed by the learned Single Judge dated 14.07.2016 by directing that, in the event, the fifth respondent does not settle the gratuity amount to the widow of the deceased employee which obviously have not been done by 16.08.2016, then the appellant was directed to pay the amount of gratuity by 29.09.2016. However, the appellant filed this appeal and there is also an interim order of stay granted by the Division Bench.

Therefore, we are of the view that the appellant

can be directed to pay the gratuity amount to the widow of the deceased employee within 60 days from the date of receipt of the copy of this order and upon payment of the same to the widow of the deceased employee, the appellants are granted liberty to recover the said amount from the said contractor who is impleaded as the fifth respondent in the writ petition namely, M/s. Radha Mohan Singh having its office at Chasnala main road, P.O. Chasnala, Dist. Dhanbad, Jharkhand, Pin 828835.

With the above observations, the appeal stands disposed of with slight modification to the order passed by the learned Single Judge.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)