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Taxation Act, 1956, the petitioners could not be taxed as it has been found that the trade in which they engage is not being carried on within the State of Punjab. I would, accordingly, accept the petition, quash the notices of demand and assessment orders on which they are based and direct that appropriate writ shall issue to the respondents. In view of the nature of the questions involved, I would, however, leave the parties to bear their own costs.

Gurdev Singh, J.

Grover, J.

A. N. GROVER, J.—I agree.

MISCELLANEOUS CIVIL

Before A. N. Grover and H. R. Khanna, JJ.

MILKHI RAM,—*Petitioner,*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 1675 of 1963

1964

July, 22nd.

Payment of Wages Act (IV of 1936)—S. 6 as amended by Punjab Act (XV of 1962)—Provision for investment of a part of bonus in the prescribed manner—Whether ultra vires *as being beyond the competence of Punjab Legislature and as being violative of Article 14 of the Constitution—Colourable legislation—Meaning of.*

Khanna, J.

Held that the premable to the Payment of Wages Act, 1936, shows that it was enacted to regulate the payment of wages to certain classes of employees employed in the industry, and it is not disputed that it was a legislation, the object of which was the welfare of labour. The object of legislation in providing in Section 6 of the Act that all wages shall be paid in current coins or in currency notes was to ensure the payment of wages in cash and not in any other form. As a result of amendment made in section 6 of the Act by Punjab Amendment Act (XV of 1962), an element of compulsory saving has been introduced not in the monthly wages but in bonus payable to an

industrial worker because it is provided that a certain portion of the bonus must be invested in the manner prescribed. An enactment making provision for compulsory saving of a part of a bonus payable to an industrial worker should be deemed to be a legislation which is covered by the words "welfare of labour" in Entry 24 of the Concurrent List of the Seventh Schedule to the Constitution of India. The Punjab Legislature was, therefore, well within its power to pass the Amending Act of 1962.

Held, also. that the payment of Wages Act is essentially meant for the benefit of industrial employees not getting very high salaries and the provisions of the above Act were enacted to safeguard their interests. As the above classification is founded upon an intelligible differentia, has a rational basis and is related to the object of the welfare of the low-paid industrial workers, it is a valid piece of legislation and cannot be struck down on the score of Article 14 of the Constitution of India.

Held further, that the doctrine of colourable legislation implies that the legislature cannot over-step the field of its competence, directly or indirectly, and that the Court would scrutinize the law to ascertain whether the legislature by device purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. The Payment of wages (Punjab Amendment) Act, 1962, is not a colourable legislation because considering its effect and substance, the State legislature was well within its power to enact it.

Petition under Article 226 of the Constitution of India praying that a writ in the naure of Certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the notification No. GSR 50/C.A. 4/36/S 26/Amd (1)/63, dated 11th February, 1963, and also to direct respondent No. 2 not to invest Rs. 120 due to the petitioner in the shape of National Plan Savings Certificates/National Defence Certificate or Defence Deposit Certificates.

ANAND SWAROOP AND R. S. MITAL, ADVOCATES, for the Petitioner.

M. R. SHARMA, ADVOCATE, for the ADVOCATE-GENERAL, for the Respondents.

ORDER

Khanna, J.

KHANNA, J.—Milkhi Ram petitioner by means of this petition under Article 226 of the Constitution of India seeks to challenge the vires of the Payment of Wages (Punjab Amendment) Act, 1962 (Punjab Act No. 15 of 1962), hereinafter referred to as the Act.

The brief facts of the case are that the petitioner is an employee of the New India Embroidery Mills (Private), Limited, Chheharta. Under a settlement regarding payment of bonus to workmen of that Company for the year ending 31st March, 1963, the petitioner became entitled to a bonus amounting to Rs. 340. The Management of the Company paid the petitioner Rs. 220 in cash and debited Rs. 120 saying that this amount would be paid in the shape of 12 years' National Plan Savings Certificates or National Defence Certificates or 10 years' Defence Deposit Certificates in accordance with Punjab Government Labour Department notification No. GSR 50/C.A. 4/36/S 26/Amd(1)/63, dated the 11th February, 1963. The above notification was issued by the Punjab Government as a consequence of the amendment made in the Payment of Wages Act by the Impugned Act. According to the petitioner, the impugned Act is beyond the competence of the Punjab Legislature and is violative of Article 14 of the Constitution. The petitioner has, accordingly, prayed for a suitable writ, order or direction for quashing the above-mentioned notification.

The petition has been resisted by the Punjab State. It is averred that the impuned Act is constitutional and valid, and is not violative of Article 14 of the Constitution.

Before dealing with the respective contentions of the parties, it would be convenient to refer to the

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relevant provisions of law. Section 6 of the Payment of Wages Act, 1936 (Act No. IV of 1936) provided that "all wages shall be paid in current coins or currency notes or in both." Section 2 of the Payment of Wages Act contains the definition Clauses and sub-clause (c) of clause (vi) of that Section shows that wages shall include any additional remuneration payable under the terms of employment (whether with a bonus or by any other name). The impugned Punjab Act No. 15 of 1962 received the assent of the President of India on June 22, 1962, and was thereafter published in the Punjab Gazette on July 11, 1962, By the impugned Act an amendment was made in section 6 of the Payment of Wages Act and as a result of the amendment Section 6 came to read as under:—

"6. Wages to be paid in current coin or currency notes. All wages shall be paid in current coin or currency notes or in both:

Provided that where the amount of any bonus payable to an employed person exceeds an amount of one hundred rupees for the year to which the bonus relates, fifty per centum of the amount of bonus in excess of one hundred rupees shall be paid or invested in the manner prescribed.

Explanation.—For the purposes of the section, the expression—

(1) "Wages" shall include any bonus of the description given in sub-clause (1) of clause (vi) of section 2.

(2) "bonus" means bonus payable to an employed person under the terms of employment or under any award or settlement or order of a court, and also

includes any bonus of the description given in sub-clause (1) of clause (vi) of section 2."

The case of the Punjab State is that by virtue of powers conferred by Entry 24 in List III, i.e., Concurrent List of the Seventh Schedule to the Constitution, the Punjab Legislature was competent to enact the impugned Act. The above Entry deals with the following subjects :—

"24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits."

Mr. Anand Swaroop, learned counsel for the petitioner, has argued that as under Section 6 of the Payment of Wages Act, as it stood originally, all wages were to be paid in current coins or currency notes, and as under the amendment made by the impugned Act part of the bonus, which is a kind of wages, is not to be paid in current coins or currency notes but may be invested in the manner prescribed, the impugned Act cannot be deemed to be a piece of legislation for welfare of labour and as such is not covered by Entry 24 of the Concurrent List reproduced above. In my opinion, the above contention is not well-founded. The preamble to the Payment of Wages Act of 1936 shows that it was enacted to regulate the payment of wages to certain classes of employees employed in the industry, and it is not disputed that it was a legislation the object of which was the welfare of labour. The object of legislation in providing in Section 6 of the Payment of Wages Act that all wages shall be paid in current coins or in currency notes was to ensure the payment of wages in cash and not in any other form. As a result of

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amendment made in Section 6 an element of compulsory saving has been introduced not in the monthly wages but in the bonus payable to an industrial worker because it is provided that a certain portion of the bonus may be invested in the manner prescribed. An enactment making provision for compusory saving of a part of a bonus payable to an industrial worker should be deemed, in my opinion, to be a piece of legislation which is covered by the words "welfare of labour" in Entry 24 of the Concurrent List reproduced above. It is well settled that different Entries in the Lists contained in the Seventh Schedule to the Constitution should be construed liberally and must be held to cover all subsidiary and ancillary matters. Reference in this connection may be made to *United Provinces* v. *Mt. Atiqa Begum and others* (1) and *Chaturbhai M. Patel* v. *The Union of India and others* (2). If provision about the payment of wages in cash is deemed to be a piece of labour welfare legislation, I fail to understand as to how an enactment making provision for payment of bonus up to Rs. 100 in cash and beyond that partly in cash and partly in the manner prescribed can be held to be not covered by the subject of welfare of labour. There is also no warrant for the proposition that if a provision of law relates to the subject of "welfare of labour", it should be held to be not falling within the ambit of the words "welfare of labour" in Entry 24 of List III of the Seventh Schedule to the Constitution because the provision is considered to be less favourable to the industrial workers compared to the previous law on the subject. The constitutionality of an enactment is to be judged by reference to its own provisions and not by comparison with those of the previous enactment. I am, therefore, of the view that the Punjab legislature was well within its power to make the impugned Act.

(1) A.I.R. 1941 F. C. 16.
(2) 1960 (2) S.C.R. 362.

Argument has also been advanced on behalf of the petitioner that the impugned Act is violative of Article 14 of the Constitution inasmuch as it applies to workmen drawing less than Rs. 400 per mensem. It is contended that the provision about the investment of part of the bonus in the prescribed manner would not apply to employees getting more than Rs. 400 per mensem. This contention is equally devoid of force because there is reasonable basis for the above classification. The Payment of Wages Act is essentially meant for the benefit of industrial employees not getting very high salaries and the provisions of the above Act were enacted to safeguard their interests. As the above classification is founded upon an intelligible differentia, has a rational basis and is related to the object of the welfare of the low-paid industrial workers, it is difficult to strike down the impugned Act on the score of Article 14 of the Constitution.

Lastly it has been argued that the impugned Act is a colourable piece of legislation. This argument, in my opinion, is also bereft of force. The doctrine of colourable legislation implies that the legislature cannot over-step the field of its competence, directly or indirectly, and that the Court would scrutinize the law to ascertain whether the legislature by device purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. The impugned Act, in my opinion, cannot be deemed to be a piece of colourable legislation because considering its effect and substance I am of the view that the State legislature was well within its power to enact the impugned Act.

The petition, accordingly, fails and is dismissed, but, in the circumstances of the case, I would leave the parties to bear their own costs.

A. N. GROVER, J.—I agree. Grover J.

K.S.K.