The Nagpur Electric Light and Power Co. Ltd. & Others

Vs

K. Shreepathirao

Civil Appeal No. 5 of 1958

(CJI S. R. Dass, Vivin Bose, T. L. Venkatarama Ayyar, S. K. Das, P. B. Gajendragadkar JJ)

11.04.1958

JUDGMENT

S. K. DAS J. -

This is an appeal by special leave. The appellants before us are the Nagpur Electric Light and Power Company, Ltd. (hereinafter referred to as the company), a public limited company having its registered office at Nagpur in Madhya Pradesh, its Manager, and Assistant Manager. The respondent, Shreepathi Rao, joined the service of the Company as a typist on a salary of Rs. 30 per month in July 1936. He rose in rank from time to time and was appointed Deputy Head Clerk in 1947 in the grade of Rs. 120-10-225. Since 1952, he has been receiving a basic salary of Rs. 245 per month. On November 28, 1955, an explanation was called for from him with regard to the issue of certain bills to consumers of electricity called "high tension consumers", without having certain "notes for the information of consumers" printed at the back of the bills. The respondent submitted his explanation on the next day, marking a copy thereof to one of the directors of the company. On December 2, 1955, he was again asked to explain why he marked a copy of his explanation to one of the directors. The respondent submitted an explanation in respect of this matter also. On the same date, he was again asked to explain as to how and why certain "double adjustments" had been made in the accounts of 1954 relating to the consumers' department of the Company, the allegation being that a sum of Rs. 1,05,894-7-7 which represented the amount of bills of the Central Railway had been deducted twice in the accounts. The respondent submitted an explanation on December 3, 1955, in which he said that the charge was vague and that, after 1949, he was not in any way concerned with the preparation of summaries and annual statements of accounts of the consumers' department. On December 5, 1955, an order of suspension was made against the respondent which stated that the order was to take immediate effect and to remain in force until further orders, pending some investigation against the respondent. Two days later, on December 7, 1955, a memorandum was served on the respondent terminating his services his services with effect from 31 January, 1956. The memorandum, so far as it is relevant for our purpose, read -

> "We hereby give you notice under Standing Order 16(1) that your services will stand terminated as from 31st January, 1956.

The Company's Managing Director is satisfied that it is not in the interests of the business of the Company to disclose reasons for terminating your services."

On December 19, 1955, a notice was served on the company on behalf of the respondent wherein it was stated that the order of suspension, dated December 5, 1955, and the order of termination dated December 7, 1955, were illegal and ultra vires and a request was made to withdraw the said orders

and reinstate the respondent within 24 hours, failing which the respondent said that he would take legal action in the matter. On December 26, 1955, the Company sent a reply to the notice denying the allegations, and the Company further stated that it had no desire to enter into a discussion with the respondent as to the propriety of the orders passed.

On January 2, 1956, the respondent filed a petition under Art. 226 of the Constitution in the High Court at Nagpur in which he prayed for the issue of appropriate writs or directions quashing the orders of suspension and termination, dated December 5, 1955, and December 7, 1955, respectively and asking for certain other reliefs. This petition was heard by a learned single Judge on certain preliminary objections raised by the present appellants, and, by an order dated April 14, 1956, he upheld the preliminary objections and dismissed the petition. The preliminary objections taken were these : it was urged that the service of the respondent was terminated in accordance with the Standing Orders of the company, approved by the relevant authorities under the provisions of the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946), hereinafter referred to as the Central Act, and also under the provisions of the Central Provisions and Berar Industrial Disputes Settlement Act, 1947 (C.P. and Berar Act XXIII of 1947), hereinafter called the Local Act; and if the respondent had any grievance against the said Standing Orders, his only remedy was to get the Standing Orders amended as provided for in the relevant Act, but he had no right to move the High Court under Art. 226 of the Constitution for quashing the orders passed against him or for reinstatement, etc. Alternatively it was urged that if the Standing Orders did not apply in the case of the respondent as was the respondent's case, then the ordinary law of master and servant applied, and the only remedy of the respondent was to sue the company in damages for wrongful dismissal. On these preliminary objections the learned Judge held (1) that the respondent was not an employee within the meaning of the Standing Orders and, therefore his case was not governed by the Standing Orders; (2) that the relationship between the appellants and the respondent was contractual and not statutory and the remedy of the respondent was to sue the Company in damages for wrongful dismissal; and (3) as for amendment of the Standing Orders so as to include the respondent and persons in his category, the only remedy open to the respondent was to take action under the relevant Act by approaching a recognised union to move in the matter.

On the dismissal of his petition, the respondent preferred an appeal under cl. 10 of the Letters Patent. This appeal was heard and allowed by a Division Bench on September 26, 1956, on the findings that (1) the Standing Orders did not apply to the respondent, though he was an employee within the meaning of that expression in section 2(1) of the local Act; (2) the conditions of the respondent's service were governed by the provisions of the local Act and on a breach thereof, the respondent had a right to move the High Court for appropriate orders under Art. 226 of the Constitution; and (3) as the termination of the service of the respondent was without statutory authority, it must be vacated. The Division Bench accordingly allowed the appeal, quashed the orders of suspension and termination of service and declared that the respondent continued to be an employee of the company on terms which were applicable to him on the date of his suspension, namely, September 5, 1955. There was also a direction to the company to pay back wages to the respondent.

The appellants herein then moved this Court and obtained special leave to appeal from the order of the Division Bench dated September 26, 1956. The present appeal has been brought in pursuance of the order granting special leave to the appellants.

The first and foremost question which arises for decision in this appeal is whether the Standing Orders of the company apply to the respondent. We have already stated - and it is not in dispute -

that the Standing Orders were approved by the certifying officer under the provisions of the Central Act and by the Labour Commissioner under section 30 of the Local Act. It is necessary to explain here the general scheme of the provision of the two Acts under which the Standing Orders were approved. Under the Central Act, the expression "Standing Orders" means rules relating to matters set out in the Schedule and section 3 requires that within six months from the date on which the Central Act becomes applicable to an industrial establishment the employer shall submit to the certifying officer five copies of the draft Standing Orders proposed by him for adoption in his industrial establishment. Sub-section (2) of section 3 lays down that provision shall be made in such draft for every matter set out in the schedule which may be applicable to the industrial establishment and where model Standing Orders have been prescribed, the draft shall be, so far as practicable, in conformity with such model. The schedule refers to the matters which are to be provided by Standing Orders, and item 8 of the Schedule relates to "termination of employment, and the notice thereof to be given by employer and workman". We may state here that the central Act contains a definition of "workman" which, at the material time in this case, meant any person employed in any industrial establishment to do any skilled or unskilled, manual or clerical, labour for hire or reward, but did not include any member of the armed forces. Sections 4 to 10 of the central Act deal with (a) conditions for certification of Standing Orders, (b) certification of Standing Orders, (c) appeals, (d) date of operation of Standing Orders (e) register of Standing Orders, (f) posting of Standing Orders and (g) duration and modification of Standing Orders. There are similar provisions in the Local Act, Chapter IV of which deals with Standing Orders. Sub-section (1) of section 30 of the local Act lays down -

> "Every employer, in respect of any industry to which this Act has been made applicable under Sub-sec. (3) of section 1, shall, within two months of the date of such notifications, submit to the Labour Commissioner for approval, in such manner as may be prescribed, a copy of the Standing Orders concerning the relations between him and his employees with regard to all industrial matters mentioned in Schedule I."

Item 8 of Schedule I of the Local Act is again "termination of employment, notice to be given by employer and employee." The other sub-sections of section 30 lay down the procedure to be followed for the approval of Standing Orders by the Labour Commissioner, appeal by an aggrieved person, etc. Sections 31 and 32 lay down the procedure for an amendment of the Standing Orders either at the instance of the employer or at the instance of a representative of employees. It is worthy of note that Sub-sec. (1) of section 30 requires every employer to submit to the Labour Commissioner a copy of the Standing Orders concerning the relations between him and his employees with regard to all industrial matters mentioned in Schedule I. The Local Act defines the expression "employee" and, at the relevant time, it meant any person employed by an employer to do any skilled or unskilled, manual or clerical work for contract or hire or reward in any industry. It is worthy of note that the definition of "employee" in the Local Act corresponds more or less to the definition of "workman" under the Central Act. There are some minor differences in the definition of the two expressions in the two Acts, but with those differences we are not concerned in the present case.

The Standing Orders with which we are concerned in the present case came into force on November 14, 1951, and it is convenient at this stage to refer to the relevant Standing Orders. Standing Order No. 2 defines certain expressions used in the Standing Orders. It states -

> "In these orders, unless there is anything repugnant in the subject or context :-

> (a) "employees" means all persons, male or female, employed in the office or Mains Department or Stores or Power House or Receiving Stations of the Company, either at Nagpur or at Wardha, whose names and ticket numbers are included in the departmental musters.
>
> (b) "the Manager" means the person appointed as such and includes the Assistant Manager and in relation to Wardha establishment "the Resident Engineer".
>
> (c) "Ticket" includes a Card, pass or token.
>
> (d) "Workman" means such categories of employees as may from time to time be declared to be "Workman" by the Management."

Standing Order No. 3 classifies employees into certain categories and Standing Order No. 4 deals with tickets. In substance, it says that every workman, permanent or temporary, shall have a ticket or card, and an apprentice shall have an apprentice card; the tickets or cards issued shall be surrendered when the workman is discharged or ceases to belong to the class of employment for which the card or ticket is issued. It is to be noticed that under the definition clause "workmen" means such categories of employees as may from time to time be declared to be workmen by the management and Standing Order No. 4 makes it clear that every workman, permanent or temporary, will have a ticket. Standing Order No. 16 deals with termination of employment, and cl. (1) thereof, relevant for our purpose, must be quoted in full -

> "For terminating the employment of a permanent employee, a notice in writing shall be given either by the employer or the employee, giving one calendar month's notice. The reasons for the termination of the services will be communicated to the employee in writing, if he so desires at the time of discharge, unless such a communication, in the opinion of the Management, may directly or indirectly lay the company and the Management or the person signing the communication open to criminal or civil proceedings at the instance of the employee or the Company's Managing Director is satisfied that it is not in the interests of the business of the Company to disclose the reasons and so orders in writing."

Now, it is not in dispute that the respondent is a 'workman' within the meaning of the Central Act and an 'employee' as defined in the Local Act. The controversy before us is as to whether he is an 'employee' within the meaning of the Standing Orders. Admittedly no ticket has been issued to the respondent by the Company; his ticket number cannot, therefore, be included in the departmental muster. The learned Judges of the High Court held that the inclusion of the name and ticket number in the departmental muster was an essential characteristic of an 'employee' as defined for the purpose of the Standing Orders, and the mere fact of employment in the Office, Mains Department, Stores, Power House or Receiving Station of the Company was not enough to make a person so employed an 'employee' within the meaning of the Standing Orders, and as the respondent did not fulfil the necessary condition of having his name and ticket number included in the departmental muster, he was not an 'employee' as defined for the Standing Orders, which did not therefore apply to him. On behalf of the appellants, it is contended that regard being had to the context and the entire body of the Standing Orders, the aforesaid view of the High Court is not correct, and on a proper construction, inclusion of the name and ticket number in the departmental muster is not an essential characteristic of an 'employee' as defined for the Standing Orders. It is rightly pointed out that if the possession of a ticket and a ticket number is taken as an essential characteristic of an

'employee', then there is hardly any difference between an 'employee' and a 'workman' as defined in the Standing Orders; because a 'workman' means such categories of employees as may from time to time be declared to be workmen, and under Standing Order 4 all workmen must have tickets. If a person employed by the company must have a ticket before he can be an employee, and if workmen are such categories of employees as have tickets, the distinction between the two disappears and it is difficult to understand why two definitions were necessary.

On a consideration, however, of the subject or context of the Standing Orders, read in their entirely and in harmony with one another, it becomes at once clear why two definitions are necessary and what is the distinction between the two classes - 'employees' and 'workmen' - in the Standing Orders. The expression 'employee' denotes a larger group - namely, all persons, male or female, who are employed in the Office, Mains Department, Stores, Power House, or Receiving Station of the Company, either at Nagpur or Wardha. 'Workmen' denotes a smaller group, viz., such categories of employees as have been declared to be workmen, and who must have a ticket. Such a distinction is clearly intelligible in an industrial establishment, where for security and other reasons a system of tickets or passes is necessary for those who work in the Power House or Mains Department or other places where essential machinery is installed while others, such as the clerical staff, may work in an office building where security demands are either non-existent or much less insistent. This distinction means that all 'workmen' are 'employees', but all 'employees' are not 'workmen' for the purpose of the Standing Orders, and the inclusion of ticket numbers in the departmental musters will be applicable to those employees only to whom tickets have been issued, but such inclusion is not an essential characteristic of an employee.

Let us now see if such a distinction is consistent with the Standing Orders as a whole. Standing Order No. 3, which classifies employees, defines a probationer in cl. (c) and says that a probationer means an employee who is appointed in a clear vacancy on probation for a period not exceeding twelve months, etc. Standing Order No. 4 does not require the issue of a ticket to a probationer; yet a probationer is an employee. It is thus obvious that the Standing Orders do make a distinction between 'employees' and 'workmen', and there may also be employees who have no tickets. Some of the Standing Orders apply to workmen only, e.g., Standing Orders 12, 13, 14 and 15. Other Standing Orders apply to all employees, whether they are workmen or not. Standing Order No. 16 falls in the latter category; it applies to all employees.

Standing Order No. 8(b), we think, makes the position still more clear. It says -

> "Any employee, who after marking his attendance or presenting his ticket, card, or token, as the case may be, is found absent from his proper place of work during working hours without permission or without any sufficient reason, shall be liable to be treated as absent for the period of his absence."

If every employee has to have a ticket it is difficult to understand why this Standing Order should make a distinction between an employee who marks his attendance and another who presents his ticket, card or token. Such a distinction is easily understandable when some employees do not possess a ticket, card or token. So that they merely mark their attendance; while those who possess a ticket, card or token present it.

It has been suggested that Standing Order No. 4 is not exhaustive in the matter of issue of tickets; it talks of an issue of a ticket to every permanent workman, a card to every badli workman, temporary ticket to every temporary workman, and an apprentice card to every apprentice. It does not prescribe

the issue of a pass or token, though the definition of a 'ticket' includes a pass or token. The suggestion further is that Standing Order 2(a) itself authorises the issue of tickets to other employees, so that there may be one kind of tickets issued to workmen under Standing Order No. 4 and another kind of tickets to other employees under Standing Order No. 2(a). On this view, it is suggested that the alternatives mentioned in Standing Order No. 8(b) really amount to an option given to an employee either to mark his attendance or present his ticket. It is, however, difficult to understand the necessity of an option of this kind when every employee must have a ticket, particularly when the exercise of such an option is likely to defeat the very purpose for which tickets are issued in an industrial establishment. We do not, however, think that the case of the respondent is in any way strengthened by holding that Standing Order No. 2(a) itself authorises the issue of tickets to employees other than workmen. Even on that construction, the failure of the company to issue tickets under Standing Order No. 2(a) will not deprive the employees of their real status as employees and of the benefit of the Standing Orders. The direction for the issue of tickets will, in that view of the Standing Order, be an enabling provision only and not an essential characteristic of an employee. Further Standing Order 4 provides for the surrender of tickets issued thereunder but Standing Order No. 2(a), if it is construed as enabling the company to issue tickets, makes no provision for the surrender of tickets when the employee ceased to be an employee. This absence of any provision for surrender applicable to such tickets clearly implies that issue of tickets is not contemplated by the Standing Order No. 2(a) itself.

On behalf of the respondent, however, the main argument has been of a different character. It has been argued that there need not be one set of Standing Orders for all employees, and the Standing Orders in question being confined to those employees to whom tickets had been issued, the respondent who had no ticket was outside their purview, and the result was that the company had committed a breach of the statutory provision in section 30 of the Local Act in the sense that no Standing Orders had been made in respect of the respondent and employees like him to whom tickets had not been issued. It has been argued that, therefore, no action could be taken against the respondent either under the Standing Orders or even under the ordinary law of master and servant. We are unable to accept this argument as correct. We have pointed out that the Standing Orders themselves make a distinction between 'employees' and 'workmen', and there may also be employees who have no tickets. To hold that the Standing Orders apply to those employees only to whom tickets have been issued will make employees synonymous with workmen - a result negatived by two separate definitions given in Standing Order No. 2. The Central Act as well as the Local Act contemplate the making of Standing Orders for all employees in respect of matters which are required to be dealt with by Standing Orders. The Standing Orders in question were not objected to as being defective or incomplete by workmen, and they have been approved by the appropriate authority and they must be construed with reference to their subject or context. In the absence of compelling reasons, to the contrary, it should be held that they apply to all employees for whose benefit they have been made. We see no compelling reasons for holding that the Standing Orders do not apply to the respondent. In our view, and having regard to the subject or context of the Standing Order, the words "whose names and ticket numbers are included in the departmental musters" in Standing Order No. 2(a) do not lay down any essential characteristic of an employee and are applicable only in cases where tickets have been issued to an employee. The essential content of the definition of an employee is employment in the office, Mains Department, etc., of the company, either at Nagpur or Wardha, and that of a workman the necessary declaration by the company which would entitle him to a ticket under Standing Order No. 4.

There is also another relevant consideration which must be borne in mind in construing the Standing Orders in question. Section 30 of the Local Act imposes a statutory obligation on the employer to

make Standing Orders in respect of all his employees and a breach of the statutory obligation involves a criminal liability. That being so, the Court would be justified, if it can reasonably do so, to construe the Standing Orders so as to make them consistent with the compliance of the said statutory obligation.

We are not unmindful of the principle that in construing a statutory provision or rule, every word occurring therein must be given its proper meaning and weight. The necessity of such an interpretation is all the more important in a definition clause. But even a definition clause must derive its meaning from the context or subject. In Cortis v. The Kent Waterworks Company ([1827] 7 B & C. 314; 108 E.R. 741), the question for consideration was the interpretation of the appeal clause in an Act for Paving, Cleansing, Lighting, etc., of the Town and Parish of Woolwich (47 Geo. III, Sess. 2, cap. CXI). By the 16th section of the statute, "the commissioners are to make rates upon all and every person or persons who do or shall hold, occupy, possess, etc., any land within the parish". The statute also gave a right of appeal to any person or persons aggrieved by any rate, but the appeal clause required the person or persons appealing against a rate to enter into a recognisance; the question was, if this requirement was intended to exclude corporations from the purview of the appeal clause, as corporations, it was urged, cannot enter into a recognisance. In interpreting the appeal clause, Bayley J., observed -

> "But assuming that they cannot enter into a recognizance, yet if they are persons capable of being aggrieved by and appealing against a rate, I should say that that part of the clause which gives the appeal applies to all persons capable of appealing, and that the other part of the clause which requires a recognizance to be entered into applies only to those persons who are capable of entering into a recognizance, but is inapplicable to those who are not."

The same principle of interpretation was applied in Perumal Goundan v. Thirumalarayapuram Jananukoola Dhanasekhara Sangha Nidhi ([1917] I.L.R. 41 Mad. 624), in construing the Explanation to O. XXXIII, rule 1, of the Code of Civil Procedure, which says inter alia that "a person is a pauper........ when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit." The question was if the aforesaid provision applied to companies. It was held that it would be wrong to construe the provision to mean that only persons who possess wearing apparel can sue as paupers. We are of the view that the same rule of construction should apply in the present case, and the words "whose names and ticket numbers are included in the departmental musters" occurring in Standing Order No. 2(a) should be read as "whose names and ticket numbers, if any, are included in the departmental musters" and should apply in the case of those employees only who possess tickets and whose ticket numbers are capable of being entered in departmental muster; they are not intended to exclude employees who do not possess tickets or to whom tickets have not been issued and consequently whose names only are so entered.

The Learned Judges of the High Court were influenced by the circumstances that in an earlier case D. C. Dungore v. S. S. Dandige (Miscellaneous Petition No. 134 of 1954 decided by the same High Court on September 23, 1955) the company took up the stand that the Standing Orders applied to employees to whom tickets had been issued - a stand different from and inconsistent with that taken in the present case. It may be pointed out, however, that D. C. Dungore of the earlier case was not an employee within the meaning of the relevant Act, and there could be no Standing Orders in respect of his conditions of service. Moreover, in the matter of construction of a statutory provision no question of estoppel arises, and the learned-Judges had pointed out that the respondent himself

though that the Standing Orders applied to all employees. We have rested our decision as to applicability of the Standing Orders not on what the appellants or the respondent thought at one time or another but on a true construction of the Standing Orders themselves, including the definition clause in Standing Order 2(a).

We take the view that the Standing Orders apply to the respondent. This is really decisive of the appeal; because if the Standing Orders apply to the respondent and his service has been terminated in accordance with Standing Order No. 16(1), the writ application which the respondent made to the High Court must fail.

The learned Attorney-General appearing for the appellants addressed us on the scope and ambit of Art. 226 of the Constitution, and he contended that even if the respondent had been wrongfully dismissed by his private employer, the proper remedy was by means of a suit and not by invoking the special writ jurisdiction of the High Court. These contentions raise important questions, but we do not think that we are called upon to decide them in this case.

Lastly, it has been urged on behalf of the respondent that even if we hold that the Standing Orders apply to the respondent, we should remand the case to the High Court for a decision on merits of other points raised by the respondent, because the question whether the Standing Orders apply or not was treated as a preliminary issue by the High Court and no decision was given on other points. We asked learned advocate for the respondent what other points remain for decision on his writ application, once it is held that the Standing Orders apply to the respondent and his service has been terminated in a accordance with Standing Order No. 16(1). Learned advocate then referred us to Standing Order No. 18, which provides for penalties for misconduct, and submitted that the provisions thereof have not been complied with by the appellants. He particularly referred to cl. (c) of Standing Order No. 18 and submitted that the order of suspension passed against the respondent was in violation of the safeguards mentioned therein. The short answer to this argument is that no penalty for misconduct has been imposed on the respondent under Standing Order No. 18. The Company paid his salary to the respondent from the date of suspension to January 31, 1956, which also showed that no order was passed by way of punishment for misconduct. The Company chose to terminate the service of the respondent in accordance with Standing Order No. 16, and did not think fit to proceed against the respondent for any alleged misconduct, and it was open to the Company to do so. So far as Standing Order No. 16 is concerned, all the requirements thereof have been complied with. That being the position, no other point remains for decision in the present case.

The result, therefore, is that the appeal succeeds and is allowed. The judgment and order of the High Court dated September 26, 1956, are set aside and the writ petition of the respondent is dismissed. In view of the stand which the appellants had taken in the stand which the appellants had taken in the earlier case with regard to the Standing Orders, we think it proper to say in this case that the parties must bear their own costs throughout.

Appeal allowed.

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