Sitaram Ramcharan Etc.

Vs

M. N. Nagarshana & Others

Civil Appeals Nos. 9 to 28 of 1957

(B. P. Sinha, P. B. Gajendragadkar, K. N. Wanchoo JJ)

25.09.1959

JUDGMENT

GAJENDRAGADKAR J. –

This group of consolidated appeals has come before this Court with a certificate granted by the High Court at Bombay, under Art. 133 of the Constitution; the certificate shows that according to the High Court the amount of the value of the subject-matter in dispute involved in these consolidated appeals exceeds Rs. 20,000 and they raise a substantial question of law.

The 385 appellants concerned in these 20 appeals are employees in the Watch & Ward Department of various textile mills in Ahmedabad. They had filed 20 applications between July 22, 1953, to October 6, 1953, before the authority under the Payment of Wages Act (hereinafter called the authority) and had claimed overtime wages for the period between January, 1951, to December, 1951, and June-July, 1953. These applications were accompanied by another set of 20 applications in which they prayed for condonation of delay made in putting forward the claim for overtime wages under the second proviso to s. 15(2) of the Payment of Wages Act 4 of 1936 (hereinafter called the Act). The authority considered the case made out by the appellants for condonation of delay and held that they had failed to prove sufficient cause for not making their applications within the prescribed period. The appellants then moved the High Court at Bombay under Arts. 226 and 227 of the Constitution. These applications also failed and were dismissed. Then the appellants moved the High Court for a certificate, and a certificate was granted to them. It is with this certificate that they have come to this Court.

It is necessary at first to set out the circumstances under which the appellants have made their claim for overtime wages in their present applications. Section 59 of the Factories Act, 1948 (63 of 1948) which came into force on September 23, 1948, provides for the payment of extra wages for overtime to persons who are workers as defined by s. 2(1) of the Act. It is common ground that the appellants are not workers under the said section; and so they did not claim any of the benefits conferred on workers by the provisions of the Factories Act. The Bombay Shops and Establishments Act, 1948 (Bombay Act 79 of 1948) came into force in the State of Bombay on January 11 1949; and it is not denied that the appellants are employees under s. 2(6) of the said Act. S. 70 of this Act provides for the application of s. 59 of the Factories Act to all employees working in factories like the appellants, but the words used in s. 70 are not very clear and the effect of its provisions was a matter of doubt which was finally resolved by the decision of this Court in the case of Shri B. P. Hira, Works Manager, Central Railway, Parel, Bombay, etc. v. Shri C. M. Pradhan etc., [[1960] 1 S.C.R. 32] on May 8, 1959. It is because the true effect of this section was not appreciated by the appellants that the present difficulty has arisen.

Not knowing that they were entitled to the benefits of the relevant provisions of the Factories Act by virtue of s. 70 of the Bombay Shops and Establishments Act, the representative union of the appellants raised an industrial dispute by a notice on September 20, 1949, claiming some of the amenities provided by the Factories Act (Ref. (IC) No. 192 of 1949). While delivering its award on this reference on November 25 1950, the Full Bench of the Industrial Tribunal observed that the employees did not appear to be covered by the Factories Act and on that basis it awarded to them a nine-hour day, two holidays per month and a limited provision for overtime wages. It is clear that this award proceeded on the assumption that the relevant provisions of the Factories Act did not apply to the appellants. On May 2, 1952, the appellate decision delivered by the Chief Judge of the Court of Small Causes, in the case of Ruby Mills [Vide Bombay Labour Gazette, dated January 1953, Vol. 32, No. 5, p. 521], however, construed s. 70 of the Bombay Shops and Establishments Act and held that the employees falling under the provisions of the said section were entitled to claim overtime wages under s. 59 of the Factories Act. In other words, this decision for the first time properly construed s. 70 of the Bombay Act and held that the said section in substance extended the provisions of s. 59 of the Factories Act to the employees covered by s. 70.

When the appellants' union come to know about this decision it moved the Minister of Labour, Bombay, on October 30, 1952, and requested him to persuade the Ahmedabad mills to extend the benefits of the Factories Act to their Watch & Ward staff; on November 1, 1952, the union received a reply from the Minister stating that he had drawn the attention of the factories Department to the judgment in the Ruby Mills' case [Vide Bombay Labour Gazette, dated January 1953, Vol. 32, No. 5, p. 521]. Thereafter the secretary of the union requested the Chief Inspector of Factories, Ahmedabad, to enforce the above decision in Ahmedabad. Subsequent correspondence followed between the union, the factory authorities and the Mill Owners' Association, Ahmedabad. In May, 1953, the Mill Owners' Association accepted the position that the appellants were covered by the Factories Act and in July, 1953, the appellants were for the first time paid for overtime at the rate provided under the Factories Act. Some mills paid the overtime wages with effect from January, 1953, some from May, 1953, and some from July, 1953.

In August, 1953, the secretary of the new union, which the appellants had jointed in the meanwhile, wrote to the employers requesting them to pay overtime wages for the prior period; and when this request did not receive a synpathetic response from the employers the present applications were filed before the authority making a claim for overtime wages for the period already mentioned.

In their applications for the condonation of delay the appellants alleged that they had bona fide believed that neither the Factories Act nor the Bombay Shops and Establishments Act applied to the Watch & ward staff, and so they had moved the industrial court for redress of their grievances. The step thus taken by the appellants shows that in asserting their rights they were exercising due diligence and care. The employers conceded the position that the appellants were entitled to claim overtime wages only in May, 1953, and then the appellants tried to negotiate with them for the payment of the overtime wages claimed in the present applications. It is on these grounds that the appellants prayed that the delay made in presenting the claim should be condoned.

This claim was resisted by the employers on two grounds; it was urged by them that the main ground alleged by the appellants for claiming condonation of delay amounted to a plea of ignorance of law and that ignorance of law cannot be a sufficient cause under the relevant proviso. It was also contended that no sufficient or satisfactory reasons had been given by the appellants for the delay made by them in filing the present applications subsequent to May 2, 1952, when s. 70 of the Bombay Act had been authoritatively considered by the appellate court in the case of Ruby Mills

[Vide Bombay Labour Gazette, dated January 1953, Vol. 32, No. 5, p. 521]; and so the employers argued that the appellants were not entitled to ask for condonation of delay.

The authority upheld both these contentions raised by the employers. It considered the judicial decisions cited before it and held that even if the appellants were ignorant of the rights that they got under s. 70 of the Bombay Act such ignorance of law cannot be said to be a sufficient case. It also examined the conduct of the appellant subsequent to the date of the decision in the Ruby Mills case [Vide Bombay Labour Gazette, dated January 1953, Vol. 32, No. 5, p. 521] and held that the said conduct did not justify the appellants' claim that they were acting bona fide and with due diligence in asserting their rights. In dealing with this latter question the authority observed that the appellants did not specify when they came to know about the decision in the case of Ruby Mills [Vide Bombay Labour Gazette, dated January 1953, Vol. 32, No. 5, p. 521], and no satisfactory explanation had been given by them as to why, immediately after coming to know of the said decision, they did not move the authority. The authority also examined the correspondence that passed between the parties after the decision in the Ruby Mills case [Vide Bombay Labour Gazette, dated January 1953, Vol. 32, No. 5, p. 521] and found that the appellants were even then claiming the benefit of the Factories Act prospectively and not retrospectively. In the absence of any affidavit explaining the conduct of the appellants after May 2, 1952, when the Ruby Mills' case [Vide Bombay Labour Gazette, dated January 1953, Vol. 32, No. 5, p. 521] was decided, the authority came to the conclusion that the inaction of the appellants was not at all satisfactorily explained, and so no sufficient cause could be said to have been shown by them to justify the condonation of delay. As a result of these two findings the authority refused to excuse delay, and so the claim made by the appellants for overtime wages for a period beyond the prescribed period of limitation was rejected.

When this decision was challenged by the appellants before the High Court by their petitions under Arts. 226 and 227 apparently the only point urged before the High Court was that the authority was in error in holding that an error of law cannot be a sufficient cause under the relevant proviso to s. 15(2) of the Act. It does not appear that the attention of the High Court was drawn to the second finding made by the authority, and so, that aspect of the matter has not been considered in the judgment of the High Court. Dealing with the point raised before it the High Court agreed with the view taken by the authority, and held that ignorance of law cannot constitute a sufficient cause. "Ignorance of law", observed the High Court, "is ignorance of the rights of a party which the law confers upon him, whereas mistake of law is mistake in establishing those rights by, for instance, going to one forum instead of another." The High Court has observed that in cases where there is a mistake of law courts have almost uniformly taken the view that the time taken up by asserting the rights in a wrong court or a wrong forum should be excused, and in coming to this conclusion they had been largely influenced by the principle underlying s. 14 of the Limitation Act. That is how the petitions filed by the appellants in the High Court were dismissed.

Before dealing with the merits of the contentions raised by Mr. Phadke in the present appeals it is necessary to read the relevant provisions of s. 15 of the Act. S. 15(1) provides for the appointment of the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages of persons employed or paid in that area. Sub-s. (2) provides, inter alia, that if any deduction has been made from the wages of an employed person contrary to the provisions of the Act or any payment of wages has been delayed, such person may apply to such authority for a direction under sub-s. (3). It is under this sub-section that the present applications have been made. The first proviso to sub-s. (2) prescribes limitation, and says that every such application shall be presented within six months from the date on which the cause of action accrued. It is the second proviso with which we are directly concerned in the present appeals.

This proviso lays down further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient case for not making the application within such period. The principal question which has been agitated in the High Court and before the authority was whether ignorance of law can be said to constitute sufficient cause within the meaning of this proviso.

Mr. Phadke contends that this proviso confers wide discretion on the authority and Legislature has deliberately not circumscribed or regulated in any manner the exercise of the said discretion. He concedes that it has to be exercised judicially but he protests against the imposition of any right rule, or, as he called it, self-denying ordinance, by which the authority would invariably refuse to teat ignorance of law as falling within the expression "sufficient case" under the proviso. According to him there is no rule in India that ignorance of law cannot be a sufficient cause for explaining the delay made in instituting legal proceedings; and he strongly urged that even if such a rule applies to ordinary legal proceedings it would be singularly inappropriate in the interpretation of the provisions of welfare legislation like the Act.

In support of this argument Mr. Phadke has invited our attention to the decision of the House of Lords in Hyman v. Rose [[1912] A.C. 623] as well as the decision of this Court in Namdeo Lokman Lodhi v. Narmadabai [[1953] S.C.R. 1009; 1027]. Both these decisions dealt with the question of the discretion vested in the courts to grant relief against forfeiture, and Mr. Phadke's argument was that the relevant words used in that behalf in conferring discretion on the courts have been construed in their widest denotation and are similar to those in the proviso with which we are concerned; and so the same construction should be adopted in interpreting it. He has also strongly relied on the decision of the Privy Council in Brij Indar Singh v. Kanshi Ram [(1917) L.R. 44 I.A. 218] where their Lordships have considered the trend of judicial decisions in India which interpreted s. 5 of the Indian Limitation Act, 1908, and have observed that there appeared to be a uniform practice in the Indian High Courts under which a mistake in law was in proper cases treated as sufficient cause for excusing delay. "Now if the matter were entirely open", said Lord Dunedin in delivering the judgment of the Board, "in as much as a mere mistake in law is not per se sufficient reason for asking the court to exercise its discretion under s. 5, there would be a good deal to be said in argument in favour of making the rule universal . . . . . But the matter is not open. To interfere with a rule which after all is only a rule of procedure which has been laid down as a general rule by Full Benches in all the Courts of India, and acted on for many years, would cause great inconvenience, and their Lordships do not propose so to interfere". Mr. Phadke argues that this decision is an authority for the proposition that in a proper case a mistake of law or ignorance of law may constitute a sufficient cause under s. 5 of the Limitation Act, and according to him, the same principle should apply in construing the proviso in question. We do not propose to deal with this argument because, as we will presently point out, we have come to the conclusion that the appellants would fail even if we were to uphold Mr. Phadke's present contention.

As we have already noticed the authority has held against the appellants on two grounds, one that ignorance of law cannot be a sufficient cause, and second that, even if it was, in fact the appellants had not explained the delay made by them in making the present applications after they knew of the decision in the case of Ruby Mills [Vide Bombay Labour Gazette, dated January 1953, Vol. 32, No. 5, p. 521] on May 2, 1952. This latter conclusion is a finding on a question of fact and its propriety or validity could not have been challenged before the High Court and cannot be questioned before us in the present appeals. Unfortunately it appears that the attention of the learned judges of the High Court was not drawn to this finding; otherwise they would have considered this aspect of the matter before they proceeded to deal with the interesting question of law raised before them.

Mr. Phadke fairly conceded that he could not effectively challenge the finding of the authority that no satisfactory explanations had been given for the delay in question. He, however, argued that the said finding would not effect the final decision because, according to him, once it is held that ignorance of law can be a sufficient cause, then the period until May 2, 1952, would be covered by the appellants' ignorance about the true scope and effect of the provisions of s. 70 of the Bombay Shops and Establishments Act. This position may be conceded. It is true that the true effect of the said section was not appreciated by either the workmen and their union or the employers or the authorities under the Factories Act, or even by the industrial courts. But the question still remains whether the appellants are not required to explain the delay made by them after May 2, 1952. Mr. Phadke says that it is not necessary for his clients to explain this delay. His argument is that what the relevant proviso really means is that if sufficient cause has been shown for not making the application within the prescribed period of six months then the application can be made any time thereafter. The statutory bar created by the prescribed limitation is removed once it is shown that there was sufficient cause for not making the application within the said period; and once that bar is removed, there is no further question of limitation and the applicant cannot be called upon to explain the subsequent delay. That is the effect of the argument urged by Mr. Phadke on the relevant proviso.

This argument is substantially founded on the decision of the Court of Appeal in Lingley v. Thomas Firth & Sons Ltd. [(1921) 1 K.B. 655]. In that case the court had to construe the words "reasonable cause" used in proviso (b) to s. 2, sub-s. (1) of the Workmen's Compensation Act, 1906 (6 Edw. 7, C. 58). S. 2(1) prescribes a limitation of six months for the making of a claim for compensation arising out of an accident caused to the workmen falling within its purview, and proviso (b) lays down that the "failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom or other reasonable cause." In the case of Lingley [(1921) 1 K.B. 655] the claim had been admittedly made beyond the period of six months and within a couple of months thereafter an application for arbitration for compensation was filed. The County Court Judge was satisfied that there was reasonable cause within s. 2, sub-s. (1) for the applicant's failure to make a claim within the prescribed period, and he held that when once the bar to the proceedings had been surmounted by the establishment of reasonable cause, there was no further limited period within which the claim must be made. Accordingly, compensation was awarded to the applicant. The employer appealed against this award and his appeal was allowed. The Court of Appeal reversed the finding of the County Court Judge on the first point, and held that for the applicant's failure to make the claim within six months she had not shown any reasonable cause, and that naturally led to the reversal of the award. Even so, in considering the question of the construction of s. 2(1), proviso (b), the learned judges observed that if sufficient cause had been established by the applicant she would have succeeded in obtaining compensation, because they agreed that, if the bar imposed by the statutory period of six months prescribed for the making of the claim had been raised, the claim of the applicant could not be subjected to any further bar of limitation. It is this view on which Mr. Phadke relies, and he contends that the same principle should be applied in construing the relevant proviso to s. 15 of the Act. In this connection Mr. Phadke has invited our attention to three Indian decisions - J. Hogan v. Gafur Ramzan [XXXV B.L.R. 1143], Salamat v. Agent, East Indian Railway [(1938) I.L.R. 2 Cal. 52, 58], and Kamarhatti Co. Ltd. v. Abdul Samad [(1952) I L.L.J. 490, 492]. These decisions were concerned with claims for compensation made under s. 10 of the Workmen's Compensation Act (VIII of 1923), the first two under s. 10 as it stood prior to its amendment in 1938, and the last one under the said section as it was amended in 1938. It may be added that all the three decisions purpose to adopt the view taken by the Court of Appeal in the case of Lingley

[(1921) 1 K.B. 655].

Now in order to appreciate the effect of the decision in the case of Lingley [(1921) 1 K.B. 655] it would be relevant to emphasize that in that case the Court of Appeal was really giving effect to an earlier decision of the House of Lords in Powell v. The Main Colliery Co. Ltd. [(1900) A.C. 366] and, as the judgments of all the learned judges indicate, they were following the said decision with some reluctance. In the case of Powell [(1900) A.C. 366] the House of Lords had held that the claim for compensation specified in s. 2(1) of the English Act does not mean initiation of the proceedings before the tribunal by which compensation is to be assessed, but a notice of claim of compensation sent to the workman's employer. In other words, according to the workmen's employer. In other words, according to that decision, the limitation of six months prescribed by s. 2(1) applies to the notice of claim which a workman has to give to his employer; it had no reference to the proceedings which a workman would institute before the tribunal claiming to recover the said compensation. The notice of claim had to be served on the employer within six months after the date of the accident, and after serving such notice, proceedings had to be initiated before the tribunal claiming compensation. The effect of the two English decisions, therefore, is that if a workman shows sufficient cause for the delay made by him in serving the notice of claim on the employer there was no question of calling upon him to explain any further delay made by him in instituting the proceedings before the tribunal for the recovery of compensation. In fact, for the institution of such proceedings there was no statutory limitation at all.

Let us now turn to s. 10 of our Workmen's Compensation Act. S. 10(1) as it originally stood prescribed a period of six months for the making of the claim for compensation. It also required that notice of the accident had to be given as soon as practicable after the happening thereof and before the workman had voluntarily left the employment in which he was injured. The second proviso to s. 10(1) lays down that the Commissioner may admit and decide any claim to compensation notwithstanding that the notice had not been given or the claim had not been instituted in due time as provided by the sub-section if he is satisfied that the failure so to give notice or to institute the claim as the case may be was due to sufficient cause. It appears that in construing the material terms of this proviso it was thought that the position under the proviso was similar to the position under the proviso (b) of s. 2(1) of the English Act. It is open to argument whether that is really so; but, in any case, after s. 10 was amended in 1938, the position is clearly different and distinguishable from the position of the English section. The relevant proviso under the amended section lays down that a Commissioner may entertain and decide any claim for compensation in any case notwithstanding that notice has not been given, or the claim has not been preferred before it in due time as provided by s. 10, sub-s. (1), if he is satisfied that the failure so to give the notice or prefer the claim as the case may be was due to sufficient cause. It is significant that s. 10(1) requires the notice of accident to be given as soon as practicable and the claim to be preferred before the Commissioner within six months. This period has subsequently been enlarged to a period of one year; but that is another matter. Thus the position under s. 10 as amended clearly is that the six months' limitation has been prescribed for preferring the application for compensation before the Commissioner; and so there can be no analogy between the limitation thus prescribed and the limitation prescribed by s. 2(1) of the English Act. With respect, we may add that in the case of Kamarhatti Co., Ltd. [(1952) I L.L.J. 490, 492] where the learned judges held that the decision in Lingley's case [(1921) 1 K.B. 655] was applicable to the case before them, their attention was not drawn to the material change made by the amendment of s. 10 of the Indian Act. But the view expressed by the court in that case on the point of law is clearly obiter. The actual decision was that no sufficient cause had been shown by the claimant even on the liberal construction of the proviso, and so the order directing the employer to pay compensation to his workmen was set aside. Thus it would be clear that the decisions on which

Mr. Phadke founds his argument were concerned with a statutory provision as to limitation which is essentially different from the provision made by the proviso with which we are concerned.

The proviso with which we are concerned has prescribed the limitation of six months for the institution of the application itself, and so the principle laid down in Lingley's case [(1921) 1 K.B. 655] can have no application to the question which we have to decide. Indeed, the present proviso is in substance similar to the provision in s. 5 of the Limitation Act and Mr. Phadke has fairly conceded that there is consensus of judicial opinion on the question of the construction of s. 5. It cannot be disputed that in dealing which the question of condoning delay under s. 5 of the Limitation Act the party has to satisfy the court that he had sufficient cause for not preferring the appeal or making the application within the prescribed time, and this has always been understood to mean that the explanation has to cover the whole of the period of delay (Vide Ram Narain Joshi v. Parameswar Narain Mehta [[1903] I.L.R. 30 Cal. 309]). Therefore the finding recorded by the authority that the appellants have failed to establish sufficient cause for their inaction between May 2, 1952, and the respective dates on which they filed their present applications is fatal to their claim. That is why we think it unnecessary to consider the larger question of law which Mr. Phadke sought to raise before us.

We would like to add that the learned Attorney-General had raised a preliminary objection against the validity of the certificate granted by the High Court in the present appeals. He wanted to urge that the High Court was in error in considering the total value of the consolidated appeals for the purpose of granting certificate under Art. 133. We have, however, not thought it necessary to consider this argument.

The result is the appeals fail and are dismissed. The respondent has fairly not pressed for his costs, and so we direct that the parties should bear their own costs in this Court. No order as to Court fees.

Appeals dismissed.

</html