SUPREME COURT OF INDIA

Management of Itakhoolie Tea Estate

Vs.

Its Workmen

C.A.No.214 of 1955

(P. B. Gajendragadkar, K. Subba Rao and K. C. Das Gupta, JJ.)

14.01.1960

JUDGEMENT

SUBBA RAO, J.:

1. This appeal by special leave is directed against the decision of the Labour Appellate Tribunal of India setting aside the award of the Industrial Tribunal, Assam, in the matter of an industrial dispute between the Management of Itakhoolie Tea Estate and its workmen.

2. The facts lie in a small compass. The Government of Assam by a Gazette notification dated October 13, 1952, referred the dispute between the said parties under S. 10(1) (c) of the Industrial Disputes Act (XIV of 1947) to the Judge, Industrial Tribunal, Assam, for adjudication on the following issues :

"(1) Whether the management of Itakhoolie Tea Estate was justified in declaring a lock-out in the garden from 13th September to 25th September, 1952.

(2) If not, are the workmen involved entitled to wages for the above period."

The said dispute between the management and the workmen of the Tea Estate arose under the following circumstances. On September 5, 1952, at 12 noon, the labourers wanted leave on the ground that it was raining, but the manager of the Estate refused to give the leave and directed them to pluck leaves in the afternoon also. The labourers did not do any work in the afternoon on that day. On September 11, 1952, thirty-nine men-labourers left plucking at 3-20 p.m. without permission, although the schedule time for stopping work was approximately 4-30 p. m. Those who left early were weighed in after all the other labourers had been weighed in and they were also each fined two annas and were also directed not to pluck but to weed on the next day. On the next day i.e., on September 12, 1952, the other men also left plucking and joined the weeders and later on in the day all went on plucking. At mid-day on the same day the women-labourers were weighed in, but the men-labourers refused to be weighed in unless those who were ordered to weed were also weighed in. The Manager did not agree to this course. The same trouble occurred in the evening also. In the afternoon of September 12, 1952, the then Zonal Secretary, Mr. Allen, and the Government Labour Officer, Dibrugarh, arrived at the garden at 3 p.m. and they were apprised of the intention of the Manager to close down the garden from September 13, 1952, for garden labour and from September 14, 1952, for factory labourers. At the intervention of the said officers, the Manager agreed not to close down the garden without any further instance of insubordination on the

part of the labourers. On the morning of September 13, 1952, upto 9 O'clock only 402 out of the 1542 labourers had turned up for work. The practice in the garden was that the labourers who turned up late were allowed to work but they had to make up for their late arrival in the evening by working after the schedule time for stoppage of work. The Manager declared a lock-out of all labour of the garden at 9 a.m. on September 13, 1952, and the lock-out continued till September 25, 1952, and the garden was opened on the morning of September 26, 1952. On the aforesaid facts the question arises whether the lock-out was justified. On issue (1) the Tribunal held on the material placed before it that the action of the Manager in declaring a lock-out at 9 a.m. was hasty, that it was not just or equitable to punish all the labourers for the acts of indiscipline committed by a few of them and that, therefore, the lock-out was not justified. On issue (2) it found that there was no material showing that the workers reported for work but were refused work on any of the working days from September 14 to September 27, 1952. But as 402 workmen reported for work on September 13, 1952, it directed their wages for that day to be paid to them. In regard to the women-labourers who were weighed in on September 11 and 12, 1952, and also the men-labourers whose leaves were weighed in on September 11, 1952, they were directed to be paid off their dues. Against the said award the workmen filed an appeal to the Appellate Tribunal of India in so far as the award was against them, but the management did not prefer any appeal. The Appellate Tribunal held that, as the lock-out was not justified, the entire body of workmen were entitled to compensation for the period of lock-out. The learned counsel for the management sought to sustain the award of the Tribunal on the ground that the lockout was justified. The Appellate Tribunal negatived the contention for the reason that "it is not open to the party-respondent to challenge a finding where on the challenged finding disappearing, the relief given against it would be affected" In the result the appeal filed by the workmen was allowed. The management preferred the present appeal questioning the correctness of the said order of the Appellate Tribunal.

3. The learned Attorney-General, appearing for the management, raised before us the following two points : (i) The management, though it did not prefer an appeal against the award of the Appellate Tribunal in so far as it was against it, was entitled under Order XLI, rule 22, of the Code of Civil Procedure to support the said award on any of the grounds decided against it by the original Tribunal, and, therefore, the Appellate Tribunal was wrong in disallowing its contention in that regard; and (ii) the labour refused to attend the conciliation proceedings on September 17, 1952; and therefore they were not entitled to compensation after that date.

4. The first question turns upon the provisions of Order XLI, rule 22, of the Code of Civil Procedure. There is cleavage of judicial opinion on the interpretation of this rule. One of the two divergent views is expressed by a division bench of the Madras High Court in Sri Ranga Thathachariar v. Srinivasa Thathachariar, ILR 50 Mad 866: (AIR 1927 Mad 801), and the other by a Full Bench of the same High Court in Venkata Rao v. Satyanarayanamurthy, ILR (1944) Mad 147: (AIR 1943 Mad 698). In the former case, Srinivasa Ayyangar, J., states at p. 875 (of ILR Mad): (at p. 804 of AIR) thus :

"But when the relief granted depends upon the adjudication by the lower Court with respect to rights or causes of action, it is inconceivable that such decision or adjudication shall be sought to be attacked in the appellate Court without any notice whatever to the other party. Though the word "decree" has been used in rule 22, it is clear that what the rule contemplates really is the decision arrived at by the lower Court to be supported on grounds other than those on which the lower Court proceeded. We are satisfied that under that rule it is not open to a respondent to have adjudicated by the appellate Court rights or causes of action which have been decided against him in the Court below and in respect of which he has filed no appeal or memorandum of objections."

In the Full Bench decision it was ruled that "under Order XLI, rule 22, of the Code of Civil Procedure it is open to a defendant-respondent who has not taken any cross-objections to the partial decree passed against him, to urge in opposition to the appeal of the plaintiff a contention which, if accepted by the trial Court, would have necessitated the total dismissal of the suit." Some of the other High Courts agreed with the view expressed by the earlier division bench of the Madras High Court. It is not necessary to express our preference for one or the other of the views, as even on the assumption that the decision of the Full Bench of the Madras High Court lays down the correct law, the appellant will not be entitled to succeed.

5. Under Order XLI, rule 22, of the Code of Civil Procedure any respondent may support the decree on any of the grounds decided against him in the Court below. But this does not, and cannot, confer on him a right higher than that he would have had if he had preferred an appeal against the ground decided against him. To put it differently, he cannot, support the decree on a ground which would not have been available to him if he were an appellant. The Tribunal held that the lock-out was not justified and, on that basis, it decreed partially the claim of the labourers. If the appellant had preferred an appeal against that award in so far as it went against it, could it have canvassed the correctness of the finding of the Tribunal that the lockout was to justified? The Industrial Disputes (Appellate Tribunal) Act, 1950, provided for an appeal against an award of a Tribunal to an Appellate Tribunal. Section 7 of the said Act read :

"(1) Subject to the provisions of this section, an appeal shall lie to the Appellate Tribunal from any award or decision of an industrial tribunal if-

(a) the appeal involves any substantial question of law; or

(b) the award or decision is in respect of any of the following matters, namely :-

(i) wages,

(ii) bonus or travelling allowance,

(iii) any contribution paid or payable by the employer to any pension fund or provident fund,

(iv) any sum paid or payable to, or on behalf of, the workman to defray special expenses entailed on him by the nature of his employment,

(v) gratuity payable on discharge,

(vi) classification by grade,

(vii) retrenchment of workmen,

(viii) any other matter which may be prescribed."

Under the above section the Appellate Tribunal had power to entertain appeals from any award or decision on any one or more of the grounds mentioned therein. It is conceded that in the present case the appellant could have preferred an appeal from the award only under sub-s. (1)(a) i. e., if it involved a substantial question of law. If so, the question is whether the finding of the Tribunal that the lock-out was not justified involved any substantial question of law : if it did not involve any substantial question of law, the appellant could not have sustained the award of the Tribunal on the

ground that the finding of the Tribunal was wrong. A perusal of the judgment of the Tribunal shows that it has considered the entire material placed before it and come to the conclusion that the lock-out was not justified. The finding is purely one of fact. The learned Attorney-General attempted to argue that the said finding was wrong. We cannot see how the said finding gives rise to any question of law, much less to a substantial question of law. If so, the appellant could not before the said Appellate Tribunal attack the said finding to sustain the award passed by the Tribunal. We, therefore, reject the first contention of the appellant.

6. To appreciate the second contention some relevant facts may be stated here. The Government Labour Officer, having been apprised of the situation in the garden, made an attempt for conciliation. On September 15, 1952, the employer's representative wanted one day's time in order to enable the employer to participate in the conciliation proceedings, for his representative was to come from the head office at Calcutta. The said representative came on September 17,1952, and attended the conciliation proceedings but the workmen's representative declined to appear at the conciliation proceedings held on that date on the ground that there was no dispute which required settlement. On the said facts it was contended before the Appellate Tribunal that at any rate the workmen were not entitled to any compensation for the period of lock-out after September 17, 1952. The Appellate Tribunal rejected the contention on the ground that the argument was based upon an assumption that in case the workmen's representative had taken part in the conciliation proceedings, the matter would have been settled and the lock-out would have been lifted, and that the said assumption was only a surmise. The same argument has been repeated before us by the learned Attorney-General. This point was not pressed before the Tribunal. That apart, we agree with the view expressed by the Tribunal. Further, the question raised is not such as can be permitted to be raised under Art. 136 of the Constitution.

7. In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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