SUPREME COURT OF INDIA

Bombay Gas Co. Ltd.

Vs.

Shridhar Bhau Parab

C.A.No.247 of 1959

(P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.)

21.04.1960

JUDGEMENT

WANCHOO, J.:

1. The main question raised in this appeal by special leave is about the jurisdiction of the Authority appointed under the Payment of Wages Act, No. IV of 1936. The brief facts necessary for the purpose are these. The appellant is The Bombay Gas Company Limited (hereinafter called the Company). The respondent belongs to the class of meter readers and their assistants working under the company. It appears that there was a dispute between the appellant and its workmen which was referred to the industrial tribunal, Bombay in 1952. There were a number of demands in the schedule to the reference, but we are concerned only with one, namely, demand No. 4, which was in these terms:

"Meter-readers and their assistants should get overtime wages for all extra work beyond eight hours per day on all week days and for afternoon Saturdays and Sunday work."

The tribunal gave its award in November 1953. On this demand, it was conceded by the workmen before the tribunal that meter readers and their assistants (hereafter called these workmen) were not governed by the Factories Act, No. LXIII of 1948, even though they were workmen of the company. That is why the dispute was raised in order that these workmen might get extra remuneration for work extending over eight hours on a day, and the contention of the workmen was that there was no justification for making a distinction between workers covered by the Factories Act and those not covered by its provisions. The tribunal went into the matter and after considering the facts and circumstances of the case rejected the demand for treating these workmen in the same way as workers covered by the Factories Act, except that it order that the Company should pay not only extra basic wages for work done by these workmen on Sundays falling within their meter-reading period at the end of the month but also dearness allowance for work done on such Sundays. This award is still in force and has not been terminated under S. 19(6) of the Industrial Dispute Act, No. XIV of 1947.

2. It appears that after this award, applications were made by these workmen individually before the Authority under the Payment of Wages Act under S. 15(2) of that Act. The present appeal is from the decision of one such application which has been treated as a test case.

3. The case of the respondent was that his wages for work done on Sundays or weekly off days had

not been paid by the Company at double the ordinary rate of wages inclusive of dearness allowance. Consequently the respondent prayed for the issue of a direction for payment of his wages illegally deducted and for compensation. The application was based on the respondent's claim that he was entitled to double the ordinary wages under S. 59 of the Factories Act, which governed him.

4. The Company denied that the respondent was a worker under the Factories Act and was therefore entitled to the benefit of S. 59 of that Act. It further pleaded that the respondent was governed by the award of 1953 and had been paid in accordance with that award. The argument put before the Authority on the basis of the award was that as it was conceded at that time that these workmen were not governed by the Factories Act, it was not open to the respondent, who was one of them, to contend that he was entitled to the benefit of the said Act.

5. The Authority held that merely because a concession has been made at the time when the award of 1953 was given that would not debar the respondent from raising a question of law subsequently. It, therefore, held that it was open to it to consider the question whether the respondent was governed by the Factories Act. It then went on to consider that question and held that the respondent was governed by the Factories Act and directed payment of a certain amount as delayed and deducted wages and also awarded a small compensation.

6. In the present appeal before us the learned Attorney-General has relied on the award of 1953; but his contention is some what different from what was urged before the Authority. He contends that as the award of 1953 is still in force and has not been terminated under S. 19(6) of the Industrial Disputes Act, the application before the Authority was not maintainable and the Authority had no jurisdiction to decide it. It is further contended that in any case the decision of the Authority that the respondent was governed by S. 59of the Factories Act is incorrect.

7. The first question therefore is whether the Authority had jurisdiction to entertain and decide the matter in view of the fact that the award of 1953 is still in force and has not been terminated. The question whether these workmen should get overtime wages in the same way as workers governed by the Factories Act was considered in the reference which resulted in the award of 1953. If these workmen had been governed by S. 59 of the Factories Act, there would have been no difficulty and the tribunal would have given an award as desired in their favour. But before the tribunal it was conceded that these workmen were not covered by S. 59 of the Factories Act and the claim for the same overtime wages as those payable to workers under the Factories Act was based on the ground that there was no reason for any distinction between the two sets of workmen. The tribunal considered the matter and naturally held on the basis of the concession made before it that these workmen were not covered by the Factories Act. It then considered the demand on merit and rejected it except that dearness allowance was also ordered to be paid in addition to extra basic wages for work done on Sundays falling within the meter reading period of these workmen at the end of the month. In effect therefore the decision of the tribunal was that these workmen were not covered by the Factories Act and were only entitled to a certain concession which it granted them. That award is still in force as it has not been terminated under S. 19(6) of the Industrial Dispute Act. So long therefore as that award remains in force it must be held that these workmen, including the respondent are not governed by the Factories Act and are not entitled to the benefits thereof and can only claim what the tribunal awarded them in 1953. It cannot be disputed that the tribunal had the jurisdiction to decide the question referred to it and though in the present case its decision that these workmen were not governed by the Factories Act was based on a concession it could have come to same decision even without the concession. In these circumstances so long as the award of 1953 remains in force we cannot see how these workmen can go to the Authority and say that part of their

overtime wages has been delayed or deducted when they have all along been paid in accordance with the award of 1953, which in effect is the contract governing the matter. It would be different if the conditions of service of these workmen had changed since the award of 1953, for in that event it may be that on a change of conditions of service a case may be made out for reconsideration of the question whether these workmen were entitled to the benefits of the Factories Act. But there is nothing on the record to show that there has been any change in the conditions of service since that award. Learned counsel for the respondent told us that there was some change in the conditions of service of these workmen at the end of 1956 or the beginning of 1957 and since then they were required to attend the Factory. As to that we say nothing because the record is silent on the point. But even if it be so, this change in the conditions of service cannot affect the present claim which is for a period from November 1955 to October 1956. So far therefore as the present claim is concerned the award which negatived the claim of these workmen (including the respondent) stands as a bar and we cannot see how in the face of that award the respondent can ask the Authority to over look that award which has not yet been terminated and hold that he is governed by the Factories Act. So long therefore as the award stands and so long as there is no proof that there has been a change in the conditions of service after the award necessitating reconsideration of the matter, the claim of the respondent for delayed or deducted wages when he has all along been paid in accordance with that award cannot be entertained and decided by the Authority. If this were permissible it would mean that the Authority under the Payment of Wages Act would be practically sitting in appeal on awards of industrial tribunals and upsetting them. This it cannot do so long as an award of an industrial tribunal which had jurisdiction to decide the matter remains in force. We are therefore of opinion that the appeal must be allowed on the ground that the Authority had no jurisdiction to entertain the application and decide it. It is therefore not necessary to consider the other point raised by the learned Attorney-General, namely, whether the respondent was in fact a worker at the relevant time under the Factories Act.

8. We therefore allow the appeal, set aside the decision of the Authority under the Payment of Wages Act and reject the application of the respondent. In the circumstances of the case as the point urged before us was not urged in the same form before the Authority, we order the parties to bear their own costs.

Appeal allowed.

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