Shri Ambica Mills Co., Ltd.

Vs

Shri S. B. Bhatt and Another

Civil Appeal No. 243 of 1959.

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

12.12.1960

JUDGMENT

GAJENDRAGADKAR, J. -

The principal question which this appeal by special leave raises for our decision relates to the nature and extent of the jurisdiction conferred on the authority by s. 15 of the Payment of Wages Act, 1936 (Act 4 of - 1936) (hereafter called the Act). This question arises in this way. The appellant Shri Ambica Mills Co. Ltd., is a textile mill working at Ahmedabad. Three of its employees named Punamchand, Shamaldas and Vishnuprasad made an application to the authority under s. 16 of the Act and prayed for an order against the appellant to pay them their delayed wages. In order to appreciate the contentions raised by the appellant disputing the validity of the respondents' claim it is necessary to set out the background of the dispute in some detail. It appears that an award called the Standardisation Award which covered the mill industry in Ahmedabad was pronounced by the Industrial Tribunal on April 21, 1948, in Industrial Reference No. 18 of 1947. This award fixed the wages for different categories of workers working in the textile mills at Ahmedabad, but left over the question of clerks for future decision. Amongst the operatives whose wages were determined by the award the case of hand-folders was specifically argued before the Industrial Tribunal. The Labour Association urged that the rate of Rs. 36-9-0 awarded to them was too low and it was pointed out on their behalf that they did the same work as cut-lookers did in Bombay where a head cut-looker was given Rs. 52 - and a cut-looker Rs. 42-4-0. On the other hand the mill owners contended that the rate should have been fixed at Rs. 34-2-0 instead of Rs. 36-9-0. The Tribunal found it difficult to decide the point because enough evidence had not been produced before it to show the kind of work that hand-folders were doing at Ahmedabad; that is why the Tribunal was unable to raise the wage of hand-folders to that of cut-lookers in Bombay. However, it made a significant direction in that behalf in these words : "At the same time", it was observed, "we desire to make it clear that if there are persons who are doing cut-looking as well as folding, they should be paid the rate earned by the cut-lookers in Bombay". This question has been considered by the Tribunal in paragraph 16 of its award.

The question of clerks, the decision of which had been adjourned by the Tribunal was later considered by it and an award pronounced in that behalf. However, the said award was later terminated by the clerks in 1949, and that led to an agreement between the Ahmedabad Mill Owners' Association and the Textile Labour Association in the matter of wages payable to clerks. This agreement was reached on June 22, 1949. Clauses 2 and 5 of this agreement are material for the purpose of this appeal. Let us therefore read the two clauses :

"2. That this agreement shall apply to all the Clerks employed in the local mills, i.e.,

persons doing clerical work, that is those who do routine work of writing, copying or making calculations and shall also include compounders and assistant compounders who are qualified and who are employed in the local mills.

5. A separate scale for those of the employees who occupy the position lower than that of a full-fledged Clerk but higher than that of an operative will be provided as under :-

Rs. 40-3-70-EB-4-90-5-105.

This scale will be applicable in case of ticket-boy, ticket-checker, coupons-seller, talley-boy, scale-boy, production-checker, thread-counter, cloth-measurer or yard-counter, fine-reporter, cloth/yarn-examiner, department storeman, cut-looker and those others who have not been included above but who can properly fall under the above category."

After this agreement was thus reached persons doing the work of cut-lookers began to feel that they were entitled to the benefit of cl. 5 and some claims were put forth on that basis against the employers. Vishnuprasad and Punamchand applied before the authority (Applications Nos. 39 and 40 of 1954) and claimed delayed wages against the appellant on the ground that they were entitled to higher wages under paragraph 16 of the award in Reference No. 18 of 1947. This claim was resisted by the appellant. The appellant urged that the applications were not maintainable under the Act, that they were barred in view of an arbitration award which was then in operation and that on the merits the applicants were not doing the work of cut-looking. All these contentions were rejected by the authority. It examined the duties performed by the applicants, and it came to the conclusion that both the applicants were folders doing cut-looking, and consequently they were entitled each to Rs. 42-4-0 per month; in other words, the authority came to the conclusion that the applicants properly fell under the category specified in paragraph 16 of the award referred to above and as such they were entitled to recover the difference between Rs. 36-9-0 per month which was paid to each one of them and Rs. 42-4-0 which was due to each one of them. This decision was announced on September 2, 1954.

On July 11, 1955, the present respondents moved the authority under s. 16 of the Act. They urged that they were semi-clerks and occupied a position lower than that of a full-fledged clerk and higher than that of an operative, and as such they were governed by cl. 5 of the agreement and were entitled to increment provided by the said clause. This claim was resisted by the appellant on several grounds. It was urged that the present applications were barred by res judicata, that the authority had no jurisdiction to entertain the applications, and that on the merits the respondents were not semi-clerks as contemplated by cl. 5 of the agreement. On these contentions the authority raised four issues. It held against the respondents and in favour of the appellant on issues 1 and 2 which related to the plea of res judicata and the status of the respondents. In view of the said findings it thought it unnecessary to decide the two remaining issues which dealt with quantum of amount claimed by the respondents. It appears that the question of jurisdiction, though urged in its pleading by the appellant, was not raised as an issue and has not been considered by the authority. The finding of res judicata was recorded against Punamchand and Vishnuprasad. Shamaldas had not made any previous application and so no question of res judicata arose against his application. His application was dismissed only on the ground that he could not claim the status of a semi-clerk. The same finding was recorded against the two other respondents. It appears that at the trial before the authority the parties filed a joint Pursis which enumerated the duties performed by the respondents

in paragraphs 2 to 7. The authority took the view that "the duties performed by them cannot be said to be the duties of persons doing the routine work of writing, copying and making calculations". In the result it was held that the respondents were governed by the Standardisation Award and did not fall under the subsequent agreement.

This decision was challenged by the respondents before the District Judge who was the appellate authority under the Act. The appellate authority also was asked to consider the question of jurisdiction. It examined the relevant provisions of the Act and held that the authority had jurisdiction to entertain the applications made before it by the respondents. On the question of res judicata it agreed with the finding of the authority, and held that the claims made by Punamchand and Vishnuprasad were barred by res judicata. Similarly, on the question of the status of the respondents it agreed that they were not semi-clerks. It is clear from the judgment of the appellate authority that in determining the status of the respondents, the appellate authority applied the same test as was invoked by the authority, and it considered the question as to whether the duties performed by the respondents were similar to the duties performed by clerks. It is obvious that the tests applied are tests relevant to the employees falling under cl. 2 of the agreement, and since the application of the said tests led to the conclusion that the respondents did not fall under cl. 2 the appellate authority held that cl. 5 was inapplicable to them; in other words, the judgments of both the authority and the appellate authority clearly show that they took the view that cl. 2 was wholly determinative of the issue, and that unless an employee fell under cl. 2 he cannot claim to be covered by any part of the agreement including cl. 5. That is why the appeals preferred by the respondents were dismissed by the appellate authority on September 2, 1954.

These appellate decisions were challenged by the respondents by filing a writ petition under Arts. 226 and 227 of the Constitution before the Bombay High Court. The Bombay High Court has held that the decision of the appellate authority was patently erroneous in law in that it proceeded on the assumption that unless cl. 2 of the agreement was satisfied cl. 5 would be inapplicable. It also held that the finding concurrently recorded by the authorities below on the question of res judicata against two of the respondents was manifestly erroneous. On these findings the High Court allowed the writ petition filed by the respondents, set aside the orders of the authorities below and sent the case back to the authority for dealing with it in accordance with law in the light of the judgment delivered by the High Court. It is against this decision that the appellant has preferred the present appeal by special leave.

The first contention which the learned Attorney-General has raised before us on behalf of the appellant is that the High Court has exceeded its jurisdiction under Arts. 226 and 227 in interfering with the decision of the appellate authority. He contends that at the highest the error committed by the appellate authority is one of law but it is not an error apparent on the face of the record, and he argues that it was not within the competence of the High Court to sit in appeal over the judgment of the appellate authority and examine meticulously the correctness or the propriety of the conclusions reached by it.

The question about the nature and extent of the jurisdiction of the High Courts in issuing a writ of certiorari under Art. 226 has been the subject-matter of several decisions of this Court. It is now well settled that the said writ can be issued not only in cases of illegal exercise of jurisdiction but also to correct errors of law apparent on the fact of the record. In this connection it may be pertinent to refer to the observations made by Denning, L.J., in Rex v. North-umberland Compensation Appeal Tribunal [[1952] 1 K.B. 338]. "The writ has been supposed to be confined to the correction of excess of jurisdiction", observed Lord Justice Denning, "and not to extend to the correction of

errors of law; and several judges have said as much. But the Lord Chief Justice has, in the present case, restored certiorari to its rightful position and shown that it can be used to correct errors of law which appear on the face of the record even though they do not go to jurisdiction". There is no doubt that it is only errors of law which are apparent on the face of the record that can be corrected, and errors of fact, though they may be apparent on the face of the record, cannot be corrected [Vide : Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam [[1958] S.C.R. 1240]]. It is unnecessary for us to consider in the present appeal whether or not a certiorari can issue to correct an error of fact on the ground that the impugned finding of fact is not supported by any legal evidence. Thus it would be seen that the true legal evidence. Thus it would be seen that the true legal position in regard to the extent of the Court's jurisdiction to issue a writ of certiorari can be stated without much difficulty. Difficulty, however, arises when it is attempted to lay down tests for determining when an error of law can be said to be an error apparent on the fact of the record. Sometimes it is said that it is only errors which are self-evident, that is to say, which are evident without any elaborate examination of the merits that can be corrected, and not those which can be discovered only after an elaborate argument. In a sense it would be correct to say that an error of law which can be corrected by a writ of certiorari must be self-evident; that is what is meant by saying it is an error apparent on the face of the record, and from and point of view, the test that the error should be self-evident and should not need an elaborate examination of the record may be satisfactory as a working test in a large majority of cases; but, as observed by Venkatarama Ayyar, J., in Hari Vishnu Kamath v. Syed Ahmad Ishaque, [[1955] 1 S.C.R. 1104, 1123] "there must be cases in which even this test might break down because judicial opinions also differ, and an error that may be considered by one judge as self-evident might not be so considered by another". Judicial experience, however, shows that though it cannot be easy to lay down an unfailing test of general application it is usually not difficult to decide whether the impugned error of law is apparent on the fact of the record or not.

What then is the error apparent on the face of the record which the High Court has corrected by issuing a writ of certiorari in the present case ? According to the High Court the construction placed by the appellate authority on cls. 2 and 5 of the agreement is patently and manifestly erroneous. The appellate authority held on a construction of the said two clauses that cl. 2 was the determinative clause, and that unless an employee satisfied the requirements of the said clause he could not claim the benefit of cl. 5. In deciding whether the High Court should have issued the writ or not it is necessary to examine the said two clauses. On looking at the two clauses it seems to us that the conclusion is inescapable that the error committed by the appellate authority is manifest and obvious. Clause 2 applies to clerks employed in the local mills, and as such it describes the nature of the work which is required to be done by persons falling under that clause. Clause 5, on the other hand, obviously provides for a separate scale for those employees who are not clerks nor operatives; these employees occupied a position higher than that of an operative and below that of a full-fledged clerk. Therefore there is no doubt that persons falling under cl. 5 cannot fall under cl. 2, and should not therefore be expected to satisfy the test prescribed by the said clause. A bare perusal of the list of employees specified by designation as falling under cl. 5 will show that the application of the test which is relevant under c. 2 would in their case be wholly inappropriate and irrelevant. Therefore, in our opinion, the error committed by the appellate authority was of such a manifest character that the High Court was justified in correcting the said error by the issue of a writ of certiorari. The question involved in the decision of the dispute is not so much of construction of the document as of giving effect to the plain terms of the document. If cl. 5 expressly provides for employees not falling under cl. 2, and if that intention is clarified by the list of designations which fall under cl. 5 and yet the appellate authority reads that clause as subject to cl. 2, that must be regarded as an error patent on

the face of the record. It is not a case where two alternative conclusions are possible; it is a case of plain misreading of the two provisions ignoring altogether the very object with which the two separate provisions were made. In our opinion, therefore, the contention raised by the learned Attorney-General that by issuing the writ the High Court has exceeded its jurisdiction is not well-founded.

That takes us to the second, and in fact the principal, contention which has been seriously argued before us by the learned Attorney-General. He urged that the applications made by the respondents' Union on behalf of the three employees were incompetent under s. 15 of the Act and the authority exceeded its jurisdiction in entertaining them. It is true that this point was not specifically urged before the authority, but it appears to have been argued before the appellate authority and the High Court, and it is this contention which raises the problem of construing s. 15 of the Act. The case for the appellant is that the jurisdiction conferred on the authority under s. 15 is a limited jurisdiction, and it would be unreasonable to extend it on any inferential ground or by implication.

The scheme of the Act is clear. The Act was intended to regulate the payment of wages to certain classes of persons employed in industry, and its object is to provide for a speedy and effective remedy to the employees in respect of their claims arising out of illegal deductions or unjustified delay made in paying wages to them. With that object s. 2(vi) of the Act has defined wages. Section 4 fixes the wage period. Section 5 prescribes the time of payment of wages; and s. 7 allows certain specified deductions to be made. Section 15 confers jurisdiction on the authority appointed under the said section to hear and decide for any specified area claims arising out of deductions from wages, or delay in payment of wages, of persons employed or paid in that area. It is thus clear that the only claims which can be entertained by the authority are claims arising out of deductions or delay made in payment of wages. The jurisdiction thus conferred on the authority to deal with these two categories of claims is exclusive; for s. 22 of the Act provides that matters which lie within the jurisdiction of the authority are excluded from the jurisdiction of ordinary civil courts. Thus in one sense the jurisdiction conferred on the authority is limited by s. 15, and in another sense it is exclusive as prescribed by s. 22.

In dealing with claims arising out of deductions or delay made in payment of wages the authority inevitably would have to consider questions incidental to the said matters. In determining the scope of these incidental questions care must be taken to see that under the guise of deciding incidental matters the limited jurisdiction is not unreasonably or unduly extended. Care must also be taken to see that the scope of these incidental questions is not unduly limited so as to affect or impair the limited jurisdiction conferred on the authority. While considering the question as to what could be reasonably regarded as incidental questions let us revert to the definition of wages prescribed by s. 2(vi). Section 2(vi) as it then stood provided, inter alia, that 'wages' means all remuneration capable of being expressed in terms of money which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and it includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment. It also provided that the word "wages" did not include five kinds of payments specified in clauses (a) to (e). Now, if a claim is made by an employee on the ground of alleged illegal deduction or alleged delay in payment of wages several relevant facts would fall to be considered. Is the applicant an employee of the opponent ?; and that refers to the subsistence of the relation between the employer and the employee. If the said fact is admitted, then the next question would be what are the terms of employment ? Is there any contract of employment in writing or is the contract oral ? If that is not a point of dispute between the parties then it would be necessary to

enquire what are the terms of the admitted contract. In some cases a question may arise whether the contract which was subsisting at one time had ceased to subsist and the relationship of employer and employee had come to an end at the relevant period. In regard to an illegal deduction a question may arise whether the lock-out declared by the employer is legal or illegal. In regard to contracts of service some times parties may be at variance and may set up rival contracts, and in such a case it may be necessary to enquire which contract was in existence at the relevant time. Some of these questions have in fact been the subject-matter of judicial decisions. (Vide : A. R. Sarin v. B. C. Patil [(1951) 53 Bom. L.R. 674], Vishwanath Tukaram v. The General Manager, Central Railway, V.T. Bombay [(1957) Bom. L.R. 892]; and Maharaja Sri Umaid Mills, Ltd. v. Collector of Pali [[1960] 11 L.L.J. 364]; but we do not propose to consider these possible questions in the present appeal, because, in our opinion, it would be inexpedient to lay down any hard and fast or general rule which would afford a determining test to demarcate the field of incidental facts which can be legitimately considered by the authority and those which cannot be so considered. We propose to confine our decision to the facts in the present case.

What are the facts in the present case ? The relationship of employer and employee is not in dispute. It is admitted that the three workmen are employed by the appellant, and do the work of bleach-folders. These folders are classified into Uttarnars and Chadhavnars. Indeed, the items of work assigned to these categories of folders are admitted. The appellant contends that the employment of the three workmen is governed by the Award which is in operation, whereas the respondent Union contends that they are governed by cl. 5 of the subsequent agreement. It is common ground that both the Award and the agreement are in operation in respect of the persons governed respectively by them, so that it is not disputed by the appellant that the persons who are specified by their designation under cl. 5 would be entitled to the benefit of the said clause and would not be governed by the Award. If an employee is called a cut-looker by any mill he would naturally fall under cl. 5; in other words, all the specified categories of employees named by designation in that clause would not be governed by the Award though at one stage they were treated as operatives but they would be governed by cl. 5 of the agreement; and if a person bearing that designation applied under s. 15 of the Act his application would be competent. The appellant's argument, however, is that when the last part of cl. 5 refers to other employees "who have not been included above but who can properly fall under the above category" no designation is attached to that class, and in such a case it would be necessary to enquire whether a particular employee can properly fall under the said category, and that, it is urged, means that such an employee cannot apply under s. 15 but must go to the industrial court under the ordinary industrial law. Thus the controversy between the parties lies within a very narrow compass. An employee designated as a cut-looker can apply under s. 15 and obtain relief from the authority; an employee not so designated but falling under the said category by virtue of the work assigned to him, it is said, cannot apply under s. 15 because the authority cannot deal with the question as to whether the said employee properly falls under the said category or not. In our opinion, on these facts, the question as to whether a particular employee is an operative falling under the Award or one who is above an operative and below the clerk falling under cl. 5 is a question which is so intimately and integrally connected with the problem of wages as defined under s. 2(vi) that it would be unreasonable to exclude the decision of such a question from the jurisdiction of the authority under s. 15. If a contract of employment is admitted and there is a dispute about the construction of its terms, that obviously falls within s. 15 of the Act. If that is so, what is the difference in principle where a contract is admitted, its terms are not in dispute, and the only point in dispute is which of the two subsisting contracts applies to the particular employee in question. If the appellant's argument were to prevail it would lead to this anomalous position that if a general contract of employment provides for payment of wages to different categories of

employees and describes the said categories by reference to the duties discharged by them, none of the employees can ever avail himself of the speedy remedy provided by s. 15 of the Act. In such a case every time a dispute may arise about the duties assigned to a particular employee before his wages are determined. In our opinion, to place such an artificial limitation on the limits of the jurisdiction conferred on the authority by s. 15 is wholly unreasonable. That is the view take by the High Court in the present case and we see no reason to differ from it.

The question about the nature and scope of the limited jurisdiction conferred on the authority under s. 15 has been considered by this Court in the case of A. V. D'Costa v. B. C. Patel [[1955] 1 S.C.R. 1353]. In that case the scheme of the Act has been examined by Sinha, J., as he then was, who spoke for the majority view, and it has been held that "if an employee were to say that his wages were Rs. 100 per month which he actually received as and when they fell due but that he would be entitled to higher wages if his claims to be placed on the higher wages scheme had been recognised and given effect to, that would not be a matter within the ambit of the authority's jurisdiction. The authority has the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages; but the authority has no jurisdiction to determine the question of potential wages". The Court took the view that the employee's complaint in that case fell within the latter illustration. It would thus be seen that according to this decision the authority has jurisdiction to determine what the terms of contract between the parties are, and if the terms of the contract are admitted and the only dispute is whether or not a particular employee falls within one category or another, that would be incidental to the decision of the main question as to what the terms of the contract are, and that precisely is the nature of the dispute between the parties in the present case.

The learned Attorney-General has relied very strongly on the decision of the Bombay High Court in Anthony Sabastin Almeda v. R. M. T. Taylor [(1956) Bom. L.R. 899]. In that case the employer and the employee went before the Court on the basis of different contracts and the Court held that it was not within the jurisdiction of the authority to decide which of the two contracts held the field, which of them was subsisting, and under which of them the employer was liable to pay wages. It would be clear from the facts in that case that two rival contracts were pleaded by the parties, according to whom only one contract was subsisting and not the other, and so the question for decision was which contract was really subsisting. We do not propose to express any opinion on the correctness of the view taken by the Bombay High Court on this question. All we are concerned to point out is that in present appeal the dispute is substantially different. Both contracts admittedly are subsisting. The only point of dispute is : do the three workmen fall within the category of cut-lookers or do they not ? If they do then cl. 5 applies; if they do not the Award will come into operation. That being so, we do not see how the decision in Almeda's case [(1956) Bom. L.R. 899] can really assist the appellant.

In this connection we may point out that it is common ground that in Ahmedabad textile mills do not have a class of employees called cut-lookers as in Bombay. The work cut-looking along with other kind of work is done by bleach-folders and other folders. That was the finding made by the authority on an earlier occasion when Punamchand and Vishnuprasad had moved the authority under s. 15 of the Act. The learned Attorney-General has strenuously contended that it is unfair to give the same pay to the three workmen who are doing the work of cut-lookers only for a part of the time and were substantially doing the work of bleach-folders; that, however, has no relevance in determining the present dispute. The only point which calls for decision is whether or not the work done by the three respondents takes them within the category of cut-lookers specified under cl. 5, and as we have already pointed out, on an earlier occasion the authority has found in favour of two

of the three respondents when it held that they were folders doing cut-looking. If the said finding amounts to res judicata it is in favour of the two respondents and not in favour of the appellant; that is why the learned Attorney-General did not seriously dispute the correctness of the decision of the High Court on the question of res judicata.

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

Appeal dismissed.

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