Workmen of The Bombay Port Trust

Vs

Trustees of Port of Bombay

Civil Appeal No. 529/1959

(K. N. Wanchoo, K. C. Das Gupta, J. C. Shah JJ)

10.10.1961

JUDGMENT

DAS GUPTA, J. –

This appeal by special leave is against an award of the Central Government Industrial Tribunal at Calcutta in a dispute referred to that Tribunal by the Central Government under s. 10 of the Industrial Disputes Act between the workmen of the Bombay Port Trust, who are the appellants before us and the Trustees of the Port of Bombay, the respondent in the appeal. The workmen concerned in the dispute as referred are shore workers belonging to "A" category, "B" category and casual category. These three categories came into existence under the scheme adopted by the Bombay Port Trust in April 1948 for direct employment of shore workers in place of the system previously in force under which such labourers used to be supplied by contractors known as Toliwallas. The matters in dispute were specified thus in the letter of reference to the Tribunal :-

> "Arrears due to the shore workers belonging to the "A" category, "B" category and casual category in respect of
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> (i) weekly off with pay for the period 15th March, 1951 to 2nd March, 1956;
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> (ii) work on weekly off days during the period 15th March, 1951 to 2nd March, 1956, without a compensatory day off in lieu; and
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> (iii) average daily wages for the weekly off days after the introduction of the piece-rate scheme with effect from 3rd March, 1956, when the average fluctuated from week to week."

It became clear at the hearing before the Tribunal that of the period mentioned in Item (i) and Item (ii), viz., the 15th March, 1951 to 2nd March, 1956, no "weekly off" was given at all from the 15th March 1951 to October 1953 but workmen were made to work generally for all the 7 days of the week, and further that from October, 1953 to 2nd March, 1956, Sunday was given as the "weekly off" and no work was taken on that day. The real dispute therefore as regards Item (i) and Item (ii) was in respect of (a) arrears of wages for Sunday the weekly off on which no work was done from October, 1953 to March 2, 1956, and (b) arrears of wages for work done during the period 15th March, 1951 to October, 1953 on Sundays which should have been given as a weekly off day but was not, though no compensatory day was given in lieu thereof.

As regards arrears of wages for Sundays on which no work was done the worksmen's case is that

they were entitled to receive payment for each such Sunday amounts equal to their average daily wages during the preceding week. But admittedly no payment was made for these Sundays. The respondent's case however is that on a proper interpretation of Rules 23 of the Minimum Wages (Central) Rules, 1960, the workmen were not entitled to payment for Sundays on which no work was done by them and further that in any case they have been constructively paid for the Sundays also inasmuch as the daily wages were fixed at 1/26th of the monthly wage.

The Tribunal accepted these contentions raised on behalf of the employer and held that there were no arrears of wages in respect of Sundays for which no work was done. With regard to the period March, 15, 1951 to October, 1953 it appears the workmen except morphias were aid at twice the ordinary rate inclusive of all allowances, for all work done on Sundays; Morphias were paid one and a half times the normal rates of wages. The worker's case is that for the work done on Sundays during this period they were entitled to three times the ordinary rate. This claim was also rejected by the Tribunal which however held that the Morphias were entitled to double their wages inclusive of all allowances and so directed that they shall be paid for work done by them on weekly rest days from 15th March, 1951 to October 1953 the difference between double their wages inclusive of all allowances and what they have been paid.

We may state at once that the dispute as regards arrears due to workers belonging to "casual" category has not been pressed before us and does not therefore require consideration in this appeal. The claim as regards arrears of wages for the period March 15, 1951, to October 1953 (except what has already been awarded for this period to Morphias) does not also merit serious consideration as the learned counsel for the appellant was unable to show any legal basis for such a claim. He tried to persuade us that as Rule 23 of the Minimum Wages (Central) Rules requires the employer to give a weekly holiday on Sunday (unless this is given on some other day instead) it is not right that when the employer does not comply with that requirement he should get off with paying nothing more than what he would have paid for such work done on any day of the week because of the Rules in respect of extra payment for over-time work. The Minimum Wages Act, 1948 itself contains provisions for contravention of the provisions of the Act or Rules or Orders made thereunder. Section 22 provides for punishment inter alia for contravention of rules or orders under section 13. Section 22A provides for punishment with fine (which may extend to five hundred rupees) for contravention of any provision of the Act or of any rule or order made thereunder if no other penalty is provided for such contravention. The Minimum Wages Rules were made by the Central Government in exercise of the powers conferred by s. 30 of the Minimum Wages Act, 1948 (Act XI of 1948) and so contravention of rule 23 of these rules is punishable under section 22A of the Act. Whether or not any action is taken against the employer for such contravention, the Industrial Tribunal has no authority to impose some other penalty in the shape of making the employer pay in respect of work done on Sundays something more than what he would have otherwise have to pay. Neither the Minimum Wages Act nor the Rules contain any provision for such additional payment over and above what would be payable for over time work as such. The workmen's claim for further payment in respect of work done on Sunday during, the period March 15, 1951 to October 1953 has therefore been rightly rejected.

In respect of the claim for pay on Sundays during the period October 1953 to March 2, 1956, on which no work was done we have first to decide on the correct interpretation of the words "for which" in Rule 23, as it stood before it was amended by a Notification GSR 918 dated the 29th July, 1960. The Rule as it stood before the amendment ran thus :-

"23. Weekly Holidays - (1) Unless otherwise permitted by the Central Government,

> no worker shall be required or allowed to work in a scheduled employment, on the first day of the week (hereinafter referred to as the said day) except when he has or will have a holiday for the whole day on one of the five days immediately before or after the said day for which he shall receive payment equal to his average daily wages during the preceding week :
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> Provided that the weekly holidays may be substituted by another day :
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> Provided further that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day."

We are not concerned with cl. 2 of Rule 23. The Explanation to the Rule is in the following words:-

> "Explanation - For the purpose of this rule "week" shall mean a period of seven days beginning at midnight on Saturday night."

The main policy underlying the rule obviously is that workmen shall have full rest at frequent intervals - ordinarily once in every 7 days but in no case at intervals of more than 10 days. This was clearly in accordance with the principle laid down in s. 13 of the Minimum Wages Act that the Government may provide for a day of rest for every period of 7 days even though in framing the Minimum Wages (Central) Rules 1960 (which covers many other matters other than the matters mentioned in s. 13) no reference has been made to section 13 at all. In giving effect to this policy of providing for a day of rest - ordinarily once in 7 days but in no case at intervals of more than 10 days - the rule-making authority has thought fit also to make provision for making some payment in connection with this. Difficulty has however been caused by the unfortunate complexcity of the sentence, in which the main provision as regards the day of rest and also the subsidiary provision for payment have been combined.

The dispute is about the meaning of the words "for which". If one remembers the rule of grammar that what the grammarians call the "antecedent" (that is the noun or pronoun to which a relative pronoun relates) should be used as near as possible to the relative pronoun, one is tempted to think that "which" relates to the word "day" of the "said day" immediately preceding the preposition "for". Breaking up this last portion of the rule, the rule thus analysed would be equivalent to "and for the said day he shall receive payment equal to his average daily wages during the preceding week". That will be however only a grammarian's construction. In the Courts however while we have to remember the rules of grammar, because such rules are ordinarily observed by people in expressing their intentions, we have to look a little more closely to understand the real intention expressed. It seems to us unreasonable to impute the rule-making authority an intention that while if the weekly rest is given "on the said day" that is, Sunday the workmen shall receive payment, he shall receive no payment if and when the employer takes advantage of the provisions that no workman may be required or allowed to work on Sunday when "he has or will have a holiday for the whole day on one of the five days immediately before or after the said day." For, it that be permitted, the employer would always give the weekly holiday on one of the 5 days immediately before or after the Sunday and thus avoid payment for the rest day. It seems clear to us therefore that in using the words "for which" after the words "the said day" the rule-making authority did not intend to confine the word "which" to this "said day" but intended to relate this "which" to any of the days on which rest is given. In other words, "for which" was used as short for "and on such holiday whether on the said day or not". We do not think the rules of grammar stand in the way of this interpretation.

Mr. Desai's argument on behalf of the respondent is that "which" relates to the word "holiday" and that accordingly it is only when the workman has or will have a holiday on one of the five days immediately before or after the said day, that he shall receive payment. According to him, the two phrases "for the whole day" and "one of the five days immediately before or after the said day" are adverbial phrases modifying the verb "has" and "will have" and no part of these phrases can have any connection with the words "for which". Leaving these out, the rule properly analysed is, he says, in really two portions : the first being "no worker shall be required or allowed to work in a scheduled employment on the first day of week"; the second being "except when he has or will have a holiday for which he shall receive payment equal to his average daily wages during the preceding week". That will however be to re-write the sentence in a manner for which we can find no justification. It is proper to remember also that this interpretation will have the peculiar consequence that if the rest day is given on first day of the week no payment will have to be made, but if it is given on some other day payment will have to be made. It will be unreasonable to ascribe such an intention to the legislature.

The Tribunal was so impressed by the unreasonableness of such a consequence that it came to the conclusion that no payment will be receivable by the workmen whether the weekly rest day is given on the first day of the week or on one of the five days immediately before or after the said day.

Reading the operative portion of this rule with the proviso that the weekly holiday may be substituted by another day it appears to us clear that the rule making authority did not draw any distinction between the holiday on the first day of the week or the holiday on one of the five days immediately before or after the said day. It was this weekly holiday - whether given on the 1st day of the week or whether on one of the five days immediately before or after the said day - that under the proviso could be substituted by another day. The scheme clearly is for one holiday, generally once in a week and it is for this one holiday that payment is provided.

Our attention was drawn to the view taken by the Bombay High Court in Trustees of the Port of Bombay v. Authority under the Payment of Wages Act [1957 (1) L.L.J. 627] which was followed by the Madras High Court in A.C.C. v. Labour Inspector [1960 (1) L.L.J. 192] that the proper construction of the words "for which" is to relate to word "holiday" preceding the words "for the whole day". In Jaswant Sugar Mills v. Sub-divisional Magistrate [1960 (II) L.L.J. 373] the Allahabad High Court took the view that "for which" refers to the weekly holiday whether it is on a Sunday or on any other days of the week as permitted under the Rules. In our opinion, the view taken by the Allahabad High Court is correct.

On a proper construction of the rule it must, in our opinion, be held that the workmen of categories A and B were entitled to receive payment "equal to the average wages during the preceding week" in respect of the period October 1953 to March 2, 1956.

This brings us to the employer's claim that there has been constructive payment for the Sundays during this period, viz., October 1953 to March 2, 1956. The argument is that the daily wage for these workmen was fixed by dividing all the components of the monthly scale of pay and allowances by 26 so that what a workman receives as daily wage is really 1/26th of the wage for 30 days. Thus it is said, the total receipts for the 26 days, if no separate payment is made for the rest days will be 26 x 1/26th of 30 days' wage, that is, 30 days' wage. The fallacy in this argument is that it ignores the essential fact that once the daily wage is fixed at a certain figure it no longer retains its character of being 1/26th of the monthly wage. However arrived at, the daily wage is a daily wage and it is wrong to regard it as a certain fraction of the monthly wage. When the Central Government

making in these Minimum Wages Rules made this provision for payment on a holiday it clearly intended that something in addition to what was being actually received for the six days of the week should be paid. This cannot be defeated by a statement that though in form six days wages were being paid, in fact and in substance, seven days wages were being paid. By no stretch of imagination can payment for six days be equated to payment for seven days.

We have therefore come to the conclusion that the workmen of the A and B categories are entitled to arrears of wages in respect of Sundays during the period October 1953 to March 2, 1956.

With effect from March 3, 1856 the piece-rate scheme was introduced for the shore workers belonging to the "A" category and "B" category. The essentials of this scheme are that a datum line was fixed for the different kinds of work and the piece-rate would vary with the proportion which the out-turn of the gang bears to the datum line in the following manner :-

> "For a shift fully occupied in doing piece rate work the piece rate wage of the basic gang worker (inclusive of basic pay and the allowances above mentioned) shall rise uniformly from Rs. 3-1-0 at 76% to Rs. 4-5-0 at 100% to Rs. 8 at 150% of the datum line. The piece rate wage earned after 150% of the datum line shall be processed at double the daily wage than is to say the piece rate wage will rise uniformly from Rs. 8 at 150% to Rs. 12 at to 200% of the datum line."

The scheme further provided that :-

> "Rs. 3-1-0 (comprised of Rs. 1-8-3 basic was including allowances and Rs. 1-9-0 dearness allowance) shall be the minimum guaranteed wage per day on which a gang worker is given employment; if on any day the piece work earning plus idle time payment and/or other earning under this appendix fall short of the said minimum, the Port Trust shall make up the difference that day."
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> "Rs. 3-7-0 (comprised of Rs. 1-14-0 basic wage including allowances and Rs. 1-9-0 dearness allowance) shall be the minimum guaranteed wage per day on which a morpia is given employment."

On behalf of the respondent a question was raised before us that Rule 23 of the Minimum Wages Rules does not apply to these workmen after the piece rate scheme was introduced. It is urged that for such worker there is no daily wage, as what the piece worker receives various from day to day according to his total output. It may even happen, it is suggested, that on a certain day on which output is nil, the piece rate worker will receive nothing. Against this, Mr. Gokhale's argument is that average daily wages during the preceding week means average of the total earning per day during the preceding week and so there can be no difficulty in ascertaining for every his worker his average daily wages during any week.

We are not prepared to accept this construction of average daily wages as average earnings per day. The daily wage has in the industrial world a definite significance in contra-distinction to weekly wages or monthly wages. The weekly wages or monthly wages of a person would not as ordinarily understood include the extra earning of the workmen by working over-time. So also, in our opinion, the term daily wages as ordinarily understood does not include over-time earnings. If it does not include overtime earning, can it reasonably be said that it includes the high additional earnings, that a worker may receive by increasing his output above the minimum fixed ? We do not think that to

be a reasonable interpretation of the words "daily wages." At the same time, we see no reason why the guaranteed minimum fixed for each workman per day should not be considered his daily wages. The piece rate system introduced for these workmen has fixed such a minimum. Indeed, the fixation of such a minimum wage for a piece rate system makes, it may be said, the piece rate a time rate-cum-piece rate in which the guaranteed minimum is the time rate daily wage and the extra earnings are piece rates. The argument that Rule 23 does not apply to these workmen after the introduction of the piece rate scheme must therefore be rejected.

As regards this period also (that is, the period from March 3, 1956 onwards) Mr. Desai contended that there has been constructive payment of the workers as the guaranteed minimum was arrived at by dividing the monthly wage by 26. For the reasons for which this argument was rejected in respect of the period October, 1953, to March 2, 1956, we reject this plea of constructive payment.

We are therefore of opinion that the workers of categories A and B are entitled to arrears of wages for the Sundays from March 3, 1956 on the basis that the guaranteed minimum wage was the daily wage.

As has already been mentioned, Rule 23 was amended in July 1960, i.e., long after the Tribunal gave the award under appeal. We express no opinion as to what the position in law is, after this amendment of Rule 23.

The appeal is accordingly allowed in part. In the circumstances, the parties will bear their own costs in this Court.

Appeal allowed in part.

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