Express Newspapers (P) Ltd.

Vs

Michael Mark and Another

Civil Appeal Nos. 294 and 295 of 1961

(P. B. Gajendragadkar, J. R. Mudholkar, K. C. Das Gupta JJ)

25.07.1962

JUDGMENT

MUDHOLKAR, J. -

The judgment will govern C. As. 294 and 295 of 1961 which arise out of identical facts. The facts necessary for deciding these appeals may be stated thus :

> The first respondent in C.A. 294 of 1961 and the first 97 respondents in the other appeal were employees of the Express Newspapers Ltd., the appellants, at Bombay. On December 31, 1956, all the employees of the appellants went on strike because three demands which were made by them on the previous day were not granted by the appellants. On that day the appellants posted the following two notices addressed to the workmen who had struck work on their notice board :
>
> "TO ALL WORKMEN WHO HAVE STRUCK WORK
>
> You have struck work in contravention of the provision of the Industrial Disputes Act. The undersigned takes a serious view of the uncalled for and unjustified strike.
>
> If you do not resume work immediately the management will be free to take such action as it deems fit in the matter."
>
> "TO ALL WORKMEN WHO HAVE STRUCK WORK
>
> Further to our notice of date, we have to inform all the workers on strike that unless they resume work unconditionally with immediate effect the management will make alternative arrangements to fill in the vacancies caused by the desertion of workers from their places of duty.
>
> It may be noted that the management will take disciplinary action against those workers who have instigated others to go on strike."

On the next day they published a third notice standing therein that those workers who are desirous of resuming duty should report for duty on January 2, 1957 at 10 a.m. That notice also stated "if the workers fail to resume duty by 10 a.m. on January 2, 1957 we shall consider that they are not interested in continuing in our employment and as such shall remove their names from our muster as their having left services of their own accord." It would appear that a letter was also addressed to the workers' union on December 31, 1956. In answer to it the General Secretary of the Union said in

his reply dated January 2, 1957 that the workers went on strike because their demands were not met and that no other alternative was left to them for securing their demands. He further stated that the strike was perfectly legal and that the various notices which were being published one after another by the appellants will not deter the workers in their resolve to continue the strike till their demands were met. On January 14, 1957, the General Manager of the appellants sent by registered post a letter to every employee on strike in the following terms :

> "Further to our notices dated January 1, 1957 and January 3, 1957, the workers who are not attending work since December 31, 1956 in spite of several requests to resume work, are hereby advised that their names are removed from the Muster as from 2 p.m. today (January 14, 1957) as their having left our services of their own accord. Arrangements have been made to fill up the vacancies occurring as a result of desertion of workers from their places of duty.
>
> Arrangements will be made to make payment of their dues, if any.
>
> #....."##

A notice was published on the notice board at the premises of the appellants in similar terms. The strike was called of on March 26, 1957. It may be maintained that all the employees of the appellants had not joined the strike and that some of those who had gone on strike rejoined before the strike was called off. A considerable number of the appellants' employees could, however, not be taken back even after the strike ended because their vacancies had been filled up.

One of the workmen filed an application under s. 15 of the Payment of Wages Act, 1936 in which a claim was made for 30 days' wages in lieu of notice, 20 days' wages in lieu of leave, two month wages as compensation and full pay from March 26, 1957. The claims for the last two items were given up by that worker. On September 12, 1957, the Payment of Wages Authority granted the application in so far as the first and second items were concerned. Against this order a writ petition was filed before the High Court of Bombay which was allowed on November 26, 1957. It may be mentioned that 116 other workmen had also filed applications claiming similar relief before the Payment of Wages Authority, including the first respondent in C.A. 294 of 1961 and the first 97 respondents in the other. It would appear that these applications were kept pending till the decision of the High Court in the application earlier mentioned. Following the view taken by the High Court with regard to the claim in that application all the 116 applications were dismissed by the Payment of Wages Authority. Most of the aggrieved parties preferred writ petitions to the High Court of Bombay which were allowed by it. Against the decision of the High Court these two appeals have been preferred before us.

What is strenuously urged by Mr. Viswanatha Sastri on behalf of the appellants is that the respondents by going on an illegal strike had not only deserted from their posts but also abandoned their employment. They had, therefore, ceased to be workmen as from January 14, 1957 and could consequently not claim the reliefs which they had sought before the Payment of Wages Authority. He points out that under Standing Order 25 an employee is entitled to such reliefs if his service is terminated by the employer. But he contends that if, as here, the service is not terminated by the employer but the employment itself is abandoned by the employee he gets no right under the Standing Order.

It it common ground that the respondents' claim is based upon the aforesaid Standing Order. The

High Court seems to think that where it admitted on both the sides that employment of an employee has come to an end, Standing Order 25(1) would apply and the employee would be entitled to compensation thereunder. Prima facia that does not appear to be quite the right way of interpreting the Standing Order. The Standing Order 25 contemplates separately cases of termination of employment by the employer and by the employee and provides for compensation only where the termination is by the employer. However that may be, we have no doubt that here it was the appellants who had terminated the services of the respondents. The respondents by going on strike clearly indicated that they wanted to continue in their employment but were only demanding better terms. Such an attitude, far from indicating abandonment of employment, emphasises the fact that the employment continued as far as they were concerned. Mr. Sastri, however, contended that where a person deliberately absents himself from work he would not be entitled to his wages and, therefore, it would not be right to regard such a person as being in service where the abstention from work is attributable to an illegal strike. Whether the strike was legal or illegal is not a matter on which we need express any opinion in this case. All that we want to say is that where the employees absent themselves from work because they have gone on strike with the specific object of enforcing the acceptance of their demands they cannot be deemed to have abandoned their employment.

Mr. Sastri then refers us to the various notices given by the management from time to time indicating that if the workers did not return to work by a certain date they will be deemed to have abandoned their employment. In our opinion, the management could not, by imposing a new term of employment, unilaterally convert the absence from duty of striking employees into abandonment of their employment. it may well be that under the standing orders the appellants could, if the strike was in fact illegal, take disciplinary action against the strikers and even dismiss them. If they did that the strikers would not be entitled to any compensation whatsoever under Standing Order 25. But that is not what the appellants purported to do. They did not serve a charge sheet on any of the respondents but hoped to get the benefit of disciplinary action without holding any inquiry by purporting to treat the strikers' absence as abandonment of employment. In their notices and particularly in their notice of January 14, the appellants have said that the names of those who had not returned to duty would be removed from the muster roll as from 2 p.m. on that day, that is, on January 14. Clearly, therefore, according to this notice the strikers continued to be the appellants' employees till 2 p.m. on January 14, 1957. It is only thereafter that they ceased to be their workman. The reason why they ceased to be workman was the removal of their names from the muster roll. This means nothing else than termination of their employment. The relevant portion of Standing Order 25(1) reads thus.

> "The employment of a permanent employee employed on monthly rates of pay may be terminated by giving one month's notice or on payment of one months wages (including all allowances) in lieu of notice....."

Under this provision, the respondents, in question were entitled to the reliefs sought by union before the Payment of Wages Authority inasmuch as the action of the appellants in removing their name from the Muster rolls as from 2 p.m. on January 14, 1957 was in fact termination of their service without notice.

The appeals, therefore, fail and are dismissed with costs. Both the appeals were heard together and there will be one hearing fee.

Appeal dismissed.

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