J. K. Cotton Spinning & Weaving Mills Co., Ltd.

Vs

Badri Mali and Others

Civil Appeals Nos. 480 & 481 of 1962

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

09.05.1963

JUDGMENT

GAJENDRAGADKAR J. –

An Industrial dispute which arose between the appellant, J. K. Cotton Spinning & Weaving Mills Co., Ltd., and the respondents, its employees, was referred by the Government of Uttar Pradesh for adjudication to the Adjudicator, Kanpur, on November 30, 1953. This dispute covered two items of claim made by the respondents. The first item was in regard to the dismissal of a gardener (Mali) Badri by name. The respondents urged that the said dismissal was unlawful and Badri was entitled to reinstatement with all the wages during the period of his enforced unemployment. The second item of dispute was in regard to the claim made by the 10 Malis employed by the appellant to receive dear food allowance, weekly holidays and leave with wages.

Before the Adjudicator, the appellant contended that the Malis were not workmen within the meaning of the U. P. Industrial Disputes Act, 1947 (No. 28 of 1947), and so, the reference was invalid. It was also urged by the appellant that the claim made by the respondents for dear food allowance could not be sustained, because G.O. No. 3754 (LL)/XVIII-894 (L)-1948 issued by the U.P. Government on December 6, 1948, was inapplicable to the Malis inasmuch as the said Government order applied only to industrial employees and the Malis are not industrial employees within the meaning of the said order. The other claims made by the respondents for weekly holidays and leave with wages were also resisted on the ground that the Malis were not workmen under the Act, and so, they were entitled to no relief in the present proceedings.

The Adjudicator held that the Malis were workmen under the Act, and so, he rejected the appellant's contention that the reference was bad. On the merits, he found that the dismissal of Badri was without justification, and so, he was entitled to reinstatement. He also ordered that the appellant should pay Badri half his wages at Rs. 45/- p.m. as compensation from the date of his dismissal to the date of his reinstatement. That is how the first item of dispute was decided by the Adjudicator. On the second item of dispute, the Adjudicator found that the Malis were not industrial employees, and so, they were not entitled to claim dear food allowance under the relevant Government order. The other claims made by the Malis with regard to weekly holidays and leave with wages were likewise rejected by the Adjudicator. In other words, the second item of dispute was decided against the respondents. This award was pronounced on May 31, 1954.

The decision of the Adjudicator gave rise to two appeals before the Labour Appellate Tribunal. The appellant by its appeal No. 300 of 1954 disputed the correctness of the Adjudicator's conclusion that Badri was a workman and that his dismissal was unjustified. The Labour Appellate Tribunal has

rejected this contention and the appellant's appeal was dismissed. The respondents by their appeal No. 274/1954 contended that the Adjudicator was in error in holding that the Malis were not industrial employees and as such, were not entitled to dear food allowance. The Labour Appellate Tribunal has upheld this plea and has given the Malis the benefit of the provision contained in the relevant Government order in respect of dear food allowance. The claim of the respondents for a weekly holiday was, however, rejected by the Labour Appellate Tribunal, while their claim for leave with wages was allowed, and a direction was issued that the Malis in question should be given leave in the manner prescribed by section 79 of the Factories Act (No. 63 of 1948). The Labour Appellate Tribunal held that though the said Act was, in terms, not applicable to the Malis, the principle on which the statutory provision for leave prescribed by s. 79 was based was a principle of social justice, and so, the Malis were entitled to have a similar benefit. The respondents had also claimed that Badri should be given the full wages for the period of his enforced unemployment instead of Rs. 45/- p.m. as allowed by the Adjudicator. This plea has also been upheld by the Labour Appellate Tribunal. In the result, the respondents' appeal substantially succeeded. The decision of the Labour Appellate Tribunal was pronounced on 15.7.1955.

This decision was challenged by the appellant before the Allahabad High Court by preferring a writ petition No. 1006/1955. It was urged by the appellant that the decision of the Labour Appellate Tribunal was patently erroneous and illegal, and so, it should be quashed under Art. 226 of the Constitution. Whilst the writ petition was pending in the said High Court, the Bench of the Labour Appellate Tribunal that sat at Lucknow ceased to exist, and so, the High Court took the view that it had no jurisdiction to entertain a writ petition in respect of the decision of the Labour Appellate Tribunal which was not functioning within the limits of its territorial jurisdiction. That is why the said writ petition was dismissed as having become infructuous. This decision was pronounced on March 10, 1958.

The two present appeals Nos. 480 & 481/1962 have been brought to this Court by the appellant by special leave and they are directed against the decision of the High Court dismissing the appellant's writ petition and against the decision of the Labour Appellate Tribunal respectively. Mr. Pathak who appeared before us for the appellant stated that he did not propose to argue Civil Appeal No. 480/1962, because this Court's decision in Civil Appeal No. 481/1962 would determine the dispute between the parties. Civil Appeal No. 480/1962 has in that sense become unnecessary, because the merits of the main dispute are raised by the appellant in its appeal No. 481/1962 which is directed against the decision of the Labour Appellate Tribunal. We would, therefore, deal with Civil Appeal No. 481/1962 only.

In this appeal, Mr. Pathak has not disputed the correctness or propriety of the decision of the Labour Appellate Tribunal in regard to the claim made by the respondents in respect of Badri's dismissal. So, that part of the dispute need not detain us in the present appeal. The principal contention which has been seriously pressed before us by Mr. Pathak is that the Labour Appellate Tribunal was in error in holding that the Malis are workmen under section 2 of the Act. Section 2 of the Act, as it stood at the relevant time, provided, inter alia, that in this Act the expression "workman" shall have the meaning assigned to it in s. 2 of the Industrial Disputes Act, 1947, and that takes us to s. 2(s) of the Industrial Disputes Act, 1947 (No. 14 of 1947) which defines a workman. Section 2(s), inter alia, provides that a "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied; and so, the question is whether the 10 Malis whose claims have given rise to the present reference can be said to be workmen under s. 2(s).

For deciding this point, it is necessary to refer to the relevant facts as they have been found by the Tribunals below. The 10 Malis have been appointed by the appellant for the maintenance of gardens attached to the bungalows of some of the officers of the Mills which are situated in the compound, of the Mills, while others are employed for looking after the gardens attached to Kamla Niwas which is a residential buildings allotted to the Governing Director of the Mills and which is also situated within the compound of the Mills. Some of these Malis have also to work in the gardens attached to the residential building of the Director-in-charge of the Mills. The gardens which are looked after by these Malis are not the gardens attached to the Mills as such. It appears that in the large and expansive colony of the Mills, the factory of the Mills is inside a compound. Outside this compound of the factory, but within the colony of the Mills, are situated the bungalows occupied by the officers of the Mills and the Director. It is the gardens attached to these bungalows that are looked after by the 10 Malis.

It is also clear that the Malis are appointed by the appellant. The total monthly wages of these 10 Malis come to about Rs. 450/-. The appellant collects a small amount from the officers as a contribution to the salaries of these Malis and the bulk of it approximating to 78% is paid by the appellant. The contributions made by the officers are credited to the revenue of the appellant and from the funds of the appellant, the Malis are paid their wages and they are debited in the accounts of the appellant. The names of the Malis are borne on a register maintained by the clerk of the appellant who supervises their work. This clerk notes their attendance from day to day. Their appointment is made by the appellant, their work is supervised and controlled by the appellant and they are liable to be dismissed by the appellant. The officers who are allotted the bungalows have no control over the Malis and can exercise no jurisdiction over them. It is in the light of these facts that the question raised by Mr. Pathak in regard to the status of the Malis has to be determined.

Mr. Pathak contends that the crucial words used in the definition prescribed by s. 2(s) are "employed in any industry". He argues that before any person can claim to be a workman under s. 2(s), it must be shown that he has been employed in the industry of the employer. The industry of the appellant is spinning and weaving operations and, says Mr. Pathak, the Malis have obviously nothing to do either with the spinning or weaving operations of the appellant; since they are not employed in the industry of the appellant, the fact that they have been employed by the appellant would not make them workmen within the meaning of the Act. Thus presented, the argument is no doubt prima facie attractive; but as soon as we begin to examine it more carefully, it breaks down. If the construction for which Mr. Pathak contends is accepted without any modification, clerks employed in the factory would not be workmen, because on the test suggested by Mr. Pathak, they are not employed in the spinning or weaving operation carried on by the appellant and yet, there is no doubt that clerks employed by the appellant to do clerical work are workmen under s. 2(s), and so, the literal construction of the clause "employed in any industry" cannot be accepted and that means that "employed in any industry" must take in employees who are employed in connection with operations incidental to the main industry, and once we are compelled to introduce this concept of incidental connection with the main industry, the literal construction for which the appellant contends has to be rejected.

It is, of course, not very easy to decide what is the field of employment included by the principle of incidental relationship, and what would be the limitations of the said principle ? If sweepers are employed by the appellant to clean the premises of the Mills, that clearly would be work incidental to the main industry itself, because though the work of the sweepers has no direct relation either with the spinning or weaving, it is so manifestly necessary for the efficient functioning of the industry itself that it would be irrational to exclude sweepers from the purview of s. 2(s). If buses

are owned by the industry for transporting the workmen, would the drivers of such buses be workmen or not ? It would be noticed that the incidental connection in the present illustration is one degree removed from the main industry; the workmen who work in the industry are intended to be brought to the factory by the buses and it is these buses that the drivers run. Even so, it would not be easy to exclude drivers of buses engaged by the factory solely for the purpose of transporting its employees to the Mills from their respective homes and back, on the basis that they are not workmen under s. 2(s). Mr. Pathak was unable to resist the extension of the definition to such cases; but, nevertheless, he attempted to argue that though sweepers who sweep the premises of the factory may be called workmen, sweepers who sweep the area around the factory may not be included under s. 2(s). Sweeping the area outside the factory, it is argued, may be incidentally connected with the main industry, but the incidental connection is indirect and remote, and so, this class of employees must be excluded from the definition. We are not prepared to accept this argument. In our opinion, an employee who is engaged in any work or operation which is incidentally connected with the main industry of the employer would be a workman, provided the other requirements of s. 2(s) are satisfied.

In this connection, it is hardly necessary to emphasise that in the modern world industrial operations have become complex and complicated and for the efficient and successful functioning of any industry, several incidental operations are called in aid and it is the totality of all these operations that ultimately constitutes the industry as a whole. Wherever it is shown that the industry has employed an employee to assist one or the other operation incidental to the main industrial operation, it would be unreasonable to deny such an employee the status of a workman on the ground that his work is not directly concerned with the main work or operation of the industry. Reverting to the illustration of the buses owned by the factory for the purpose of transporting its workmen, if the bus drivers can legitimately be held to assist an operation incidental to the main work of the industry, we do not see why a Mali should not claim that he is also engaged in an operation which is incidental to the main industry.

While we are dealing with this point, it is necessary to bear in mind that the bungalows are owned by the appellant and they are allotted to the officers as required by the terms and conditions of the officers' employment. Since the bungalows are allotted to the officers, it is the duty of the appellant to look after the bungalows and take care of the gardens attached to them. If the terms and conditions of service require that the officers should be given bungalows and gardens are attached to such bungalows, it is difficult to see why in the case of Malis who are employed by the appellant, are paid by it, and who work subject to its control and supervision and discharge the function of looking after the appellant's property, it should be said that the work done by them has no relation with the industry carried on by the appellant. The employment is by the appellant, the conditions of service are determined by the appellant, the payment is substantially by the appellant, the continuance of service depends upon the pleasure of the appellant, subject, of course, to the Standing Orders prescribed in that behalf, and the work assigned to the Malis is the work of looking after the properties which have been allotted to the officers of the appellant. Like the transport amenity provided by a factory to its employees, bungalows and gardens are also a kind of amenity supplied by the employer to his officers and the drivers who look after the buses and the Malis who look after the gardens must, therefore, be held to be engaged in operations which are incidentally connected with the main industry carried on by the employer. It is true that in matters of this kind it is not easy to draw a line, and it may also be conceded that in dealing with the question of incidental relationship with the main industrial operation, a limit has to be prescribed so as to exclude operations or activities whose relation with the main industrial activity may be remote, indirect and far-fetched. We are not prepared to hold that the relation of the work carried on by the Malis in the

present case can be characterised as remote, indirect or far-fetched. That is why we think that the Labour Appellate Tribunal was right in coming to the conclusion that Malis are workmen under the Act.

Before we part with this point, we would like to add that industrial adjudication appears consistently to have taken the view that Malis looking after the gardens attached to the bungalows occupied by officers of any industrial concern are workmen under s. 2(s). Our attention has been drawn to two decisions of the Labour Appellate Tribunal dealing with the question. In Shri Bhikari, Kanpur v. Messrs. Cooper Allen & Co., Kanpur [[1952] L.A.C. 298], the Labour Appellate Tribunal while dealing with the case of Bhikari who was engaged as a gardener by the Company and was on the pay-roll of the Company observed that the Tribunal failed to see why he is not to be regarded as a workman within the meaning of s. 2(s) of the Industrial Disputes Act which definition has been adopted by the U.P. Industrial Disputes Act under which the case was started. The same view was taken by the Labour Appellate Tribunal in the case of The Upper India Chini Mills Mazdoor Union v. The Upper India Sugar Mills [1953 L.A.C. 870]. Dealing with the case of Rati Ram who was engaged as a Mali, the Tribunal rejected the employer's contention that the said Mali was a domestic servant and observed that merely because the Company chooses to put Rati Ram on the work of a gardner with the Managing Director which the Company is admittedly required to provide for and pay for, it does not follow that Rati Ram became a domestic servant. It is remarkable that both these decisions which are directly in point, were under s. 2(s) of the Act with which we are concerned. In dealing with industrial dispute we are reluctant to interfere with the well established and consistent course of decisions pronounced by the Labour Appellate Court unless, of course, it is shown that the said decisions are plainly erroneous.

The next question which calls for our decision is whether the Malis are industrial employees within the meaning of the relevant G.O. The said G.O. opens with two operative paragraphs which are followed by the table of minimum basic wages prescribed by it and other paragraphs. These first two paragraphs read thus :

> "(1) This order shall he deemed to have come into force with effect from December 1, 1948 and shall, in respect of the matters covered by it, bind all the industries affected thereby and the workmen employed therein.
>
> (2) The minimum basic wage payable to employees (industrial or clerical) in the various industries and undertakings specified in column I of Table I hereunder shall, so long as this order remain in force, be the amounts mentioned against them in column 2 or 3 thereof, as the case may be."

Paragraph 3 prescribes the dear food allowance, and it is in respect of this claim made by the respondents that the appellant has raised the contention that this paragraph does not apply, because the Malis are not industrial employees. It will be noticed that the first paragraph makes it perfectly clear that the order binds all the industries affected by it and the workmen employed therein; so that as soon as it is held that the Malis are workmen under s. 2 of the Act, it would follows that the order would apply to the Malis. In considering the present point, it is necessary to bear in mind that this order has been issued in exercise of the powers conferred by clauses (b) and (g) of section 3 of the Act, and that clearly means that persons who are workmen under s. 2 of the Act are referred to by paragraph 1 and there would be no escape from the conclusion that the order would apply to such workmen and the Industries that employed them.

It is, however, urged that in paragraph 2, the minimum basic wage is specified as being payable to employees, industrial, or clerical, in the various industries and the suggestion is that it is only employees who are either industrial or clerical to whom the order applies. Industrial employees are not defined; but it is assumed by the appellant in urging this argument that the class of industrial employees would be narrower than the class of workmen covered by s. 2 of the Act. In our opinion, this argument is wholly fallacious. It is clear that the second paragraph refers to industrial or clerical employees, because the table prescribing the minimum basic wages divides the employees into two categories, industrial and clerical. It is only because his division is made by the table that for the purpose of clarification, paragraph 2 mentions industrial or clerical in bracket after referring to the employees. Besides it would be unreasonable to assume that when the order prescribed minimum basic wages for workmen to whom paragraph 1 expressly refers, it could have been intended that the said minimum basic wages should not be extended to some workmen falling under paragraph 1 because they do not fall under the category of industrial employees or clerical employees. The scheme of the order is plain and unambiguous; to all workmen falling under s. 2 the benefits of the order are intended to be extended. That is the view taken by the Labour Appellate Tribunal and, in our opinion, that view is obviously right. If that be so, the validity of the order passed by the Labour Appellate Tribunal awarding the respondents' claim for dear food allowance under paragraph 3 of the G.O. cannot be questioned.

It is true that in The Suti Mill Mazdoor Sabha Kanpur v. Messrs. The British Indian Corporation Ltd. Kanpur [1956 L.A.C. 549], the Labour Appellate Tribunal appears to have taken the view that the expression "industrial employees" is limited to the class of employees who are employed directly or indirectly for the purpose of manufacturing process carried on by the factory. In coming to this conclusion, the Labour Appellate Tribunal noticed the fact that the expression "industrial employees" had not been defined, but it was disposed to drive assistance from the definition of the word "worker" in the Factories Act in determining the scope of the expression "industrial employees". No doubt, it was urged before the Tribunal that expression "industrial employees" should be understood in the same comprehensive sense as the word "industry" as defined in the industrial Disputes Act, but this contention was rejected by the Tribunal. It seems to us that the Tribunal was in error in limiting the scope of the expression "industrial employees" by reference to the definition of the word "worker" prescribed by the Factories Act. Indeed, it would be relevant and appropriate to refer to the definition of the word "workmen" under s. 2(s) of the Industrial Disputes Act, because the G.O. in question had been issued under the Act and the definition of a "workmen" prescribed by s. 2 of the Act as s. 2(s) of the Industrial Disputes Act would determine the true denotation of the expression "industrial employees". We must accordingly hold that the Labour Appellate Tribunal was in error in accepting the very narrow construction of the expression "industrial employees" used in the Government order.

The next point which has been urged before us by Mr. Pathak is in regard to the decision of the Labour Appellate Tribunal awarding the benefit of leave of the respondents on the same lines as s. 79 of the Factories Act. Mr. Pathak attempted to argue that the claim for leave had been made specifically on the basis of provisions of the Factories Act and the U.P. Shops and Commercial Establishments Act, and he suggested that as soon as it was found that these two Acts were inapplicable to the Malis, the said claim should have been rejected. The Labour Appellate Tribunal has, however, held that though the said two Acts do not apply, a claim for leave can be justified on the ground of social justice. Mr. Pathak objects to this decision on the technical ground that the claim itself was based on the provisions of the said two Acts and no other. This contention is not well-founded. It does appear that in paragraph 10 of the written statement filed on behalf of the respondents reference is made to the said two Acts, but in the prayer clause the claim is made in

general terms without reference to the Acts, and the reference itself is in general terms and makes no mention of the said two Acts. Therefore, the technical ground urged by Mr. Pathak that the relevant claim was made on the provisions of the two specified Acts and should be rejected solely on the ground that the said Acts do not apply, cannot be sustained. It was a general reference which the Adjudicator was called upon to decide and the fact that the said two Acts did not apply, cannot be said to rule out the said claim as to leave in limine.

Then Mr. Pathak was driven to contend that the ground of social justice given by the Labour Appellate Tribunal in support of its award is really not sound in law, and he referred us to the observations made by this Court on some occasions that the considerations of social justice were "not only irrelevant but untenable" vide J. K. Iron & Steel Co., Ltd. Kanpur v. The Iron and Steel Mazdoor Union, Kanpur [[1955] 2 S.C.R. 1315], and Muir Mills Co., Ltd. v. Suti Mills Mazdoor Union, Kanpur [[1955] 1 S.C.R. 991]. In our opinion, the argument that the considerations of social justice are irrelevant and untenable in dealing with industrial disputes, has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this Court in dealing with industrial matters have emphasised the relevance, validity and significance of the doctrine of social justice, vide Messrs. Crown Aluminium Works v. Their Workmen [[1958] S.C.R. 651], and The State of Mysore v. The Workers of Gold Mines [[1959] S.C.R. 895]. Indeed the concept of social justice has now become such an integral part of industrial law that it would be idle for any part to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, one-sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities; nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It, therefore, endeavour to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and Labour and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fair-play and justice. That is the reason why on several occasions, industrial adjudication has thought it fit to make reasonable provision for leave in respect of the workmen who may not strictly fall within the purview of the Factories Act or the Shops and Commercial Establishments Acts. We are, therefore, satisfied that there is no substance in the grievance made by Mr. Pathak that the Labour Appellate Tribunal should not have granted the deemed of the respondents for leave on grounds of fair-play and social justice.

The result is, Civil Appeal No. 481/1962 fails and is dismissed with costs. Civil Appeal No. 480 of 1962 has not been pressed and is, therefore, dismissed. There would be no order as to costs.

Appeals dismissed.

</html