Md. Qasim Larry, Factory Manager, Sasamusa Sugar Works

Vs

Muhammad Samsuddin and Another

Civil Appeal No. 251 of 1963

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

24.03.1964

JUDGMENT

GAJENDRAGADKAR, C.J. –

The short question which arises in this appeal is whether the term "wages" as defined by section 2(vi) of the Payment of Wages Act, 1936 (No. 4 of 1936) (hereinafter called 'the Act') includes wages fixed by an award in an industrial dispute between the employer and his employees. This question has to be answered in the light of the definition prescribed by s. 2(vi) before it was amended in 1958. The subsequent amendment expressly provides by s. 2(vi)(a) that any remuneration payable under any award or settlement between the parties or order of a Court, would be includes in the main definition under s. 2(vi). The point which we have to decide in the present appeal is whether the remuneration payable under an award was not already included in the definition of wages before the said definition was amended. It is common ground that between the appellant, Sasamusa Sugar Works Ltd., and its workmen, the respondents, an award had been made by an Industrial Tribunal fixing the pay of the employees at Rs. 2/2/- per day, and in pursuance of the said award, the management of the appellant had entered into an agreement with the respondents that effect would be given to the wage structure, prescribed by the said award. This agreement was subsequently published in the Bihar Gazette as a part of the award. In spite of the award and the agreement, the appellant paid its employees only As. -/10/- per day and that led to the present claim made by the respondents under s. 15 of the Act. The respondents contended before the payment of wages authority that the refusal of the appellant to pay to them wages at the rate awarded, in substance, amounted to an illegal deduction from their wages and on that basis, they asked for an order from the authority directing the appellant to pay to the respondents the said prescribed wages.

The appellant raised two pleas against the respondents' claim. It urged that s. 15 of the Act was inapplicable, because the rates of wages fixed by the award did not fall within the definition of wages prescribed by s. 2(vi) and it also argued that the claim of the respondents was barred by limitation. The authority has found that s. 2(vi) includes wages prescribed by the Industrial Tribunal, and so, it has rejected the appellants' contention that the applications made by the respondents were incompetent under s. 15 of the Act. In regard to the question of limitation, the authority did not decide the said question as a preliminary question, because it held, and, in our opinion, rightly, that it was a mixed question of fact and law, and so, it had to be tried after recording evidence.

The appellant challenged the correctness of the conclusion of the authority that the applications made by the respondents were competent under s. 15 of the Act before the Patna High Court by filing a petition under Art. 226 of the Constitution. The High Court has affirmed the finding of the

authority and held that s. 15 was applicable to the case, because the wages prescribed by the award did amount to wages as defined by s. 2(vi) of the Act. On that view, the writ petition filed by the appellant was dismissed. It is this order which the appellant seeks to challenge before us by its present appeal by special leave.

Section 2(vi) as it stood at the relevant time, provides, 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, Mr. Setalvad for the appellant contends that before it is held that the wages prescribed by the award fall under s. 2(vi), it must be shown that they constitute part of the terms of the contract of employment, either express or implied. The terms in question need not be express and can be implied; but they must be terms which arise out of the contract of employment, and since an award made by an Industrial Tribunal cannot be said to amount to a contract of employment, the wage structure prescribed by the award cannot fall within the definition prescribed by s. 2(vi). That, in brief, is the substance of the argument raised by the appellant.

We are not inclined to hold that even under the unamended definition of wages, rates of remuneration prescribed by an award could not be included. In dealing with the question of construing the unamended definition of the term "wages", it is essential to bear in mind the scope and character of the powers conferred on Industrial Tribunals when they deal with industrial disputes under the provisions of the Industrial Disputes Act. It is now well-settled that unlike ordinary civil courts which are bound by the terms of contract between the parties when they deal with disputes arising between them in respect of the said terms, Industrial adjudication is not bound to uphold the terms of contract between the employer and the employees. If it is shown to the satisfaction of Industrial adjudication that the terms of contract of employment, for instance, need to be revised in the interests of social justice, it is at liberty to consider the matter, take into account all relevant factors and if a change or revision of the terms appears to be justified, it can, and often enough it does, radically change the terms of the contract of employment. The development of industrial law during the last decade bears testimony to the fact that on references made under s. 10(i) of the Industrial Disputes Act, terms of employment have constantly been examined by industrial adjudication and wherever it appeared appropriate to make changes in them, they have been made in accordance with the well-recognised principles of fair play and justice to both the parties. Therefore the basic assumption made by Mr. Setalvad in contending that s. 2(vi) cannot take in the wages prescribed by the award, is not well-founded. When an award is made and it prescribes a new wage structure, in law the old contractual wage structure becomes inoperative and its place is taken by the wage structure prescribed by the award. In a sense, the latter wage structure must be deemed to be a contract between the parties, because that, in substance, is the effect of industrial adjudication. The true legal position is that when industrial disputes are decided by industrial adjudication and awards are made, the said awards supplant contractual terms in respect of matters covered by them and are substituted for them. That being so, it is difficult to accede to the argument that the wages prescribed by the award cannot be treated as wages under s. 2(vi) of the Act before it was amended. The amendment has merely clarified what, in our opinion, was included in the unamended definition itself.

In this connection, we may incidentally refer to the decision of this Court in the South Indian Bank Ltd. v. A. R. Chacko [A.I.R. 1964 S.C. 1522], where it has been observed by this Court that the very purpose for which industrial adjudication has been given the peculiar authority and right of making new contracts between employers and workmen makes it reasonable to think that even though the period of operation of the award and the period for which it remains binding on the

parties may elapse - in respect of both of which special provisions have been made under section 23 and 29 respectively - the new contract would continue to govern the relations between the parties till it is replaced by another contract. This observation clearly and emphatically bring out that the terms prescribed by an award, in law, and in substance, constitute a fresh contract between the parties.

This question appears to have been considered by the Bombay and the Calcutta High Courts. In Jogendra Nath Chatterjee and Sons v. Chandreswar Singh [A.I.R. 1951 Cal. 29], the Calcutta High Court appears to have taken the view which supports Mr. Setalvad's argument, whereas in the Modern Mills Ltd. v. V. R. Mangalvedhkar [A.I.R. 1930 Bom. 342], and in V. B. Godse, Manager, Prabha Mills Ltd., v. R. M. Naick, Inspector, under the Payment of Wages Act [[1953] I L.L.J. 577], the Bombay High Court has interpreted s. 2(vi) to include wages directed to be paid by industrial adjudication. In our opinion, the Bombay view correctly represents the true legal position in the matter.

The result is, the appeal fails and is dismissed. The matter will now go back to the authority under the Act for disposal in accordance with law. There would be no order as to costs.

Appeal dismissed.

</html