

The Sawatram Ramprasad Mills Co. Ltd.

Vs

Baliram Ukandaji and Another

Civil Appeal No. 525 of 1964

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

09.09.1965

JUDGMENT

HIDAYATULLAH, J. –

In this appeal by certificate against the judgment of the Bombay High Court dated August 25, 1962 the appellant is the Sawatram Ramprasad Mills Co. Ltd., Akola and the respondents two of the workmen of the Mills. The respondents are claiming from the Mills compensation for lay off from March 5, 1960 to October 22, 1960. The proceedings were commenced by an application to the Second Labour Court, Bombay under s. 33C(1) of the Industrial Disputes Act, 1947 (Act XIV of 1947). The Mills objected on various grounds including firstly that the Second Labour Court had no jurisdiction to hear the case as the dispute fell to be tried under the C. P. & Berar Industrial Disputes (Settlement) Act, 1947 and, secondly, that the application under s. 33C, in any event, was incompetent. The Second Labour Court held against the Mills on both the grounds. The Mills applied to the High Court of Bombay under Arts. 226 and 227 of the Constitution but by the judgment under appeal their application was dismissed.

In this Court only these two grounds were urged. The contention on behalf of the Mills on the first ground was two-fold. The Mills attempted to establish that the dispute could not be tried under the Central Act but only under the C. P. & Berar Act and further that even if the Central Act applied the calculation of the amount could not be made under s. 33C of the Industrial Disputes Act as that required proceedings other than those contemplated by that section.

The Industrial Disputes Act was passed in 1947 and was brought into force on April 1, 1947. It is not disputed that it applied to the Textile Industry. The C. P. & Berar Industrial Disputes (Settlement) Act (23 of 1947) came into force on June 2, 1947 but only the first section was then brought into force. Later, remaining sections were brought into force by a notification dated November 20, 1947 in all industries except the Textile Industry. From March 1, 1951, the Act was also made applicable to the Textile Industry. In 1953 the Industrial Disputes Act, 1947 was amended by Industrial Disputes (Amendment) Act, 1953. The changes material to our purpose were the addition of two definitions and a new chapter in the Act. Previous to the Act there was an Ordinance which the Act replaced but as nothing turns upon the existence of the Ordinance we need not refer to it. The two definitions introduced in s. 2 of the Parent Act were :

"(kkk) 'lay-off' (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or for any other reason to give employment to a workman whose name is borne on the

muster rolls of his industrial establishment and who has not been retrenched :

Explanation-Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause :

Provided,..... ..".

and s. (oo) 'retrenchment'. The definition of 'retrenchment' need not be quoted here because no question has been raised about retrenchment in this case. Section 3 of the 1953 Amendment Act inserted Chapter V-A headed "Lay Off and Retrenchment". Section 25C gave a right to a workman to ask for compensation if laid off, provided he fulfilled certain conditions. It is not necessary to go into those conditions here. Section 25J then provided as follows :

"25J. Effect of laws inconsistent with this Chapter :-

(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946) :

Provided that nothing contained in this Act shall have effect to derogate from any right which a workman has under any award for the time being in operation or any contract with the employer.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay off and retrenchment shall be determined in accordance with the provisions of this Chapter."

In 1956 the Industrial Disputes Act was again amended by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. Section 23 of the Amending Act inserted section 33C which reads as follows :

"33C. Recovery of money due from an employer.-

(1) Where any money is due to a workman from an employer under a settlement of an award or under the provisions of Chapter V-A, the workman may without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit

should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in sub-section (1).

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case."

The powers of the Government under the above section admittedly have been delegated to the Second Labour Court Bombay. Section 31 of this Amending Act provides as follows :-

"31. Act not to override State laws.

(1) If, immediately before the commencement of this Act, there is in force in any State any Provincial Act or State Act relating to the settlement or adjudication of disputes, the operation of such an Act in that State in relation to matters covered by that Act shall not be affected by the Industrial Disputes Act, 1947, as amended by this Act.

(2)..... .."

From these sections, which we have quoted, certain conclusions indisputably arise. The first conclusion is that compensation for lay off can only be determined under Chapter V-A of the Industrial Disputes Act. This follows from s. 25J(2) as it is so stated there. The next is that the workmen are entitled under s. 33C(1) to go before the Second Labour Court to realise money due from their employers under Chapter V-A. This is clearly stated in s. 33C. The contention on behalf of the Mills, however, is that the Industrial Disputes Act, 1947 does not apply to the present matter but the C. P. & Berar Industrial Disputes (Settlement) Act does. This argument is put in two ways. By one argument the application of the Industrial Disputes Act is sought to be evaded and by the second the C. P. & Berar Industrial Disputes (Settlement) Act is sought to be applied. We shall examine these two arguments in the same order. The attempt to oust the Central Act is based upon s. 31 of the 1956 (Amendment) Act and the opening par

The next contention is that the claim for lay off is not a claim for money due because calculations have to be made before the money due can be found. This argument has been considered on more than one occasion and it was rejected recently by this Court in Kays Construction Co. (P.) Ltd. v. State of U. P. & Ors. It is not essential that the claim which can be brought before the Government or its delegate under s. 33C(1) must always be for a predetermined sum. The Government or the Labour Court may satisfy itself about the exact amount and then take action under that section. In the present case the dates of lay off are known and each workmen will show to the Second Labour Court that he is qualified to receive compensation for lay off. That will be shown from the muster roll which the employer is required to maintain and it will then be a simple arithmetical calculation which, in our judgment, s. 33C permits to be made. If there is any question whether there was lay off or not the Labour Court will decide it.

The result is that the appeal must fail and is dismissed with costs. The employers have by

prolonging this litigation on a preliminary point, managed to avoid the trial of the real issue for a number of years and we hope that the Second Labour Court will now deal with this matter as expeditiously as possible.

Appeal dismissed.

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