SUPREME COURT OF INDIA

Payment of Wages Inspector, Ujjain

Vs.

Barnagar Electric Supply and Industrial Co. Ltd.

C.A.No.1577 of 1966

(J. M. Shelat and C. A. Vaidialingam, JJ.)

03.12.1968

JUDGEMENT

SHELAT, J.:-

1. This appeal, by certificate, is directed against the judgment and order of the High Court of Madhya Pradesh and raises the question of the scope of jurisdiction of the Authority under the Payment of Wages Act, 4 of 1936 (hereinafter referred to as the Act).

2. On the licence of the Barnagar Electric Supply and Industry Company, of which respondent 1 was at all material times the managing director, having been revoked by the Madhya Pradesh Government and the company's undertaking having been taken over by the Madhya Pradesh Electricity Board, respondent I served notices on the company's employees that their services would no longer be required as from October 1, 1962. Thereupon the appellant on behalf of 20 employees of the company filed an application under Section 15 (2) of the Act to recover from respondent 1 wages for the notice month and retrenchment compensation amounting to Rs. 12,853.60 P. payable to the employees under Section 25FF of the Industrial Disputes Act, 1947. On respondent 1

contesting the claim as also the jurisdiction of the Authority, the Authority raised certain preliminary issues, namely : (1) whether the said application was maintainable in view of the revocation of the company's licence, (2) whether the Authority had jurisdiction to determine the liability of respondent 1 for retrenchment compensation before the amount thereof was ascertained under Section 33C (2) of the Industrial Disputes Act and (3) whether in view of the services of the workmen not having been interrupted by the said transfer and the terms and conditions of service applicable to them after the said transfer being not in any way less favourable than before and the said Board as the new employer being liable after the transfer for compensation in the event of retrenchment, the employees were entitled to claim any compensation. By his order dated May 21, 1963, the Authority held against respondent 1 on the question of jurisdiction. Respondent 1 thereupon filed a writ petition in the High Court and a Division Bench of the High Court held that Section 15 of the Act did not apply and that the proper forum for such an application was a Labour Court under Sec. 33C (2) of the Industrial Disputes Act. This appeal challenges the correctness of this order.

3. Mr. Shroff for the appellant contended that after the amendent of the definition of 'wages' in the Act by Act 68 of 1957 and the amended definition having now included "any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made" as wages, there could be no doubt that the legislature has conferred jurisdiction on the Authority under the Act to determine compensation payable under Section 25FF of the Industrial Diputes Act in an application under Section 15 (2) of the Act and that therefore the High Court was in error in quashing the order passed by the Authority. Mr. Chagla appearing for Respondents 1 and 2 in the next appeal, on the other hand, contended (1) that the Authority under the Act was a special Authority with limited jurisdiction, that it has to deal only with the subject matters specified in the Act and its jurisdiction must therefore be strictly construed, and (2) that the Act and the Industrial Disputes Act deal with different subjects, provide different tribunals with different jurisdictions and therefore it is not possible to hold that Parliament which enacted both the Acts could possibly have contemplated that a claim arising under the Industrial Disputes Act should be determined by a tribunal set up under a different Act.

4. On these contentions the first question which arises for determination is whether compensation payable under Section 25FF of the Industrial Disputes Act can fall under the amended definition in Section 2 (vi) (d) of the Act and can be called 'wages'. The High Court thought that it was not but Mr. Shroff relied on certain decisions of this Court to contest that part of the conclusion of the High Court. The Industrial Disputes Act, which as enacted in 1947 was a piece of legislation which mainly provided machinery for investigation and settlement of industrial disputes, has since then undergone frequent modifications. In 1953, by Act 43 of that year Chapter VA consisting of Sections 25A to 25J was incorporated providing therein compensation for layoff and retrenchment. It also provided a definition of retrenchment in Sec. 2 (oo). Chapter VA, as it then stood, did not expressly provide for compensation for termination of service on account of transfer of an undertaking by an agreement or as a result of operation of law or the closure of the undertaking. Consequently, in Hariprasad v. A. D. Divelkar, 1957 SCR 121= (AIR 1957 SC 121) this Court held that retrenchment as defined in Section 2 (oo) and the word 'retrenched' in Section 25F meant

discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action and did not include termination of services of all workmen on a bona fide closure of an undertaking or on a change of ownership or management thereof. This decision was followed first by an ordinance and then by Act 18 of 1957 incorporating in the Act the present Sections 25FF and 25FFF. It will be noticed that both these Sections use the words "as if the workman had been retrenched". The intention of the legislature was, therefore, clear that it did not wish to place transfer and closure on the same footing as retrenchment under Section 25F. This is apparent also from the fact that it left the definition of retrenchment in Section 2 (oo) untouched in spite of the decision in Hariprasad's case, 1957 SCR 121=(AIR 1957 SC 121) (supra). The three Sections, Section 25F, 25FF and 25FFF also show that while under Section 25F no retrenchment can be made until conditions therein set out are carried out, the other two Sections do not lay down any such conditions. All the three Sections, however, involve termination of service whether it results in consequence of retrenchment or transfer or closure, and notice and compensation in both Sections 25FF and 25FFF have been provided for "in accordance with the provisions of Section 25F". (See M/s. Hatisingh Mfg. Co. Ltd. v. Union of India, (1960) 3 SCR 528 = (AIR 1960 SC 923) and Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen, 1963 Supp (1) SCR 730 = (AIR 1963 SC 1489)). That being the position a workman whose service is terminated in consequence of a transfer of an undertaking, whether by agreement or by operation of law, has a statutory right under Section 25FF to compensation unless such right is defeated under the proviso to that Section. The same is the position in the case of closure under Sec. 25FFF. Such compensation would be wages as defined by Section 2 (vi) (d) of the Act as it is a "sum which by reason of the termination of employment of the person employed, is payable under any law . . . . . which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made." Since Sections 25-FF and 25-FFF do not contain any conditions precedent, as in the case of retrenchment under S. 25-F, and transfer and closure can validly take place without notice or payment of a month's wages in lieu thereof or payment of compensation, Sec. 25FF can be said not to have provided any time within which such compensation is to be paid. It is well established that the words "in accordance with the provisions of Section 25F" in Sections 25FF and 25FFF are used only as a measure of compensation and are not used for laying down any time within which the employer must pay the compensation. It would therefore, appear that compensation payable under Sections 25FF and 25FFF read with Section 25F would be 'wages' within the meaning of Section 2 (vi) (d) of the Act.

5. It must, however, be remembered that though such compensation falls within the definition of wages, cases may arise where it would not be a simple question of recovery of wages. In the present case, for instance, the defence taken by respondent 1 was that he was not the person responsible for payment of compensation and that the right of the workmen was defeated by reason of the proviso to Section 25FF being, according to him, applicable inasmuch as these workmen were continued in the employment by the said Board, the new employer, that therefore there had been no interruption in their employment, that the terms and conditions of service given to them by the new employer were in no way less favourable than those they had when the company was the employer, and that the new employer was responsible for payment of compensation if any retrenchment took place in future. The question, therefore, is whether in view of the limited jurisdiction of the Authority under Section 15 (2) of the Act, it was intended to deal with such questions, which in some cases might well raise complicated problems of both fact and law.

6. While considering the scope of jurisdiction of the Authority under Section 15 of the Act it is relevant to bear in mind the fact that the right to compensation is conferred by the Industrial Disputes Act which itself provides a special tribunal for trying cases of individual workmen to whom compensation payable under Chapter VA has not been paid. Section 33C of that Act provides both a forum and the procedure for computing both monetary as well as non-monetary benefits in terms of money and further provides machinery for recovery of such claims. In Punjab National Bank Ltd. v. K. L. Kharbanda, 1962 Supp (2) SCR 977= (AIR 1963 SC 487) this Court held that while sub-section (I) of Section 33C applied to cases where any money was due to a workman from an employer under a settlement, award or under the provisions of Chapter VA and the amount was already computed or calculated or at any rate there could be no dispute about its calculation or computation, sub-section (2) applied to benefits including monetary benefits conferred on a workman under an award, settlement etc., but which had not been calculated or computed and there was a dispute as to their calculation or computation. The Court rejected the contention that sub-section (2) applied only to a non-monetary benefit which had to be converted in terms of money. The Court also observed that Section 33C was a provision in the nature of execution and where the amount to be executed was worked out or where it might be worked out without any dispute sub-section (1) would apply but where such amount due to the workman was not stated or worked out and there was a dispute as to its calculation, sub-section (2) would apply and the workman would be entitled to apply thereunder to have the amount computed provided he was entitled to a benefit, whether monetary or non-monetary, which was capable of being paid in terms of money. In the Central Bank of India Ltd. v. Rajagopalan, 1964 (3) SCR 140=(AIR 1964 SC 743) this Court held that where the right of a workman was disputed by his employer the Labour Court could go into the question as to whether he had a right to receive such a benefit. Sub-section (3) of Section 33C under which the Labour Court can appoint a commissioner to take evidence for computing the benefit postulates that it has the jurisdiction to decide whether the workman claiming benefit was entitled to it where such right was disputed by the employer. In Bombay Gas Co. Ltd. v. Gopal Bhiva, 1964-3 SCR 709 = (AIR 1964 SC 752) this Court held that the Labour Court could in an application under Section 33C (2) go even into the question whether the award under which the workman had made a claim was a nullity. Being in the nature of an executing Court it could interpret the award and also, consider the plea that the award sought to be enforced was a nullity. It is thus clear that a workman whose claim, monetary or otherwise, is disputed by his employer can lodge such a claim before a specified Labour Court under Section 33C and obtain an inexpensive and expeditious remedy. The question then is whether for such a claim the legislature intended to provide alternative remedies both under the Industrial Disputes Act and the Payment of Wages Act. For deciding this question it is necessary to refer to some of the provisions of and the scheme of the Payment of Wages Act.

7. The Act was passed to regulate the payment of wages to certain classes of persons employed in any factory or by a railway administration or by a person fulfilling a contract with a railway administration or in any industrial establishment to which a State Government by notification has extended the Act. Section 3 lays down as to who shall be responsible for payment of wages. Section 4 provides for the fixation of wage periods and Section 5 lays down the time within which payment of wages has to be made. Section 7 provides that wages shall be paid without any deductions except those authorised by the Act and Sec. 8 provides that no fine shall be imposed on any employed person save in respect of such acts or omissions on his part as the employer with the previous approval of the State Government or the prescribed authority may have specified by notice. Sections 9 to 13 lay down the deductions which an employer is authorised to make and the conditions under

which such deductions can be made. Section 13A provides for the maintenance of certain registers and records by the employer and Sections 14 and 14A provide for appointment of inspectors under the Act, their powers and the facilities to be afforded by the employer to such inspectors. Section 15 (1) provides for the appointment of a person to be the Authority under the Act to hear and decide for any specified area claims arising out of (a) deduction from wages, or (b) delay in payment of wages of persons employed or paid in that area including all matters incidental to such claims. Sub-section (2) provides that:

"Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union. . . . . or any inspector under this Act, or any other person acting with the permission of the authority. . .. may apply to such authority for a direction under sub-section 3."

The first proviso to sub-section (2) lays down a period of limitation of 12 months from the date of deduction or the due date of payment and the second proviso empowers the Authority to admit applications beyond the period of limitation on sufficient cause being shown. Sub-section (3) empowers the Authority to direct refund to the employed person of the amount deducted, or the payment of the delayed wages and also empowers it to award compensation specified therein without prejudice to any other penalty to which the employer guilt of unauthorised deduction or delay in payment is liable under the Act. Under sub-section (5) of Section 15 the amount awarded by the authority can be recovered as if it were a fine imposed by a magistrate. Section 20 provides for penalty for offences under certain provisions of Sections 5, 7, 8, 9, 10 and 11 to 13 extending upto Rs. 500.

8. It is explicit from the terms of Section 15 (2) that the Authority appointed under sub-section (1) has jurisdiction to entertain applications only in two classes of cases, namely, of deductions and fines not authorised under Sections 7 to 13 and of delay in payment of wages beyond the wage periods fixed under Section 4 and the time of payment laid down in Section 5. This is clear from the opening words of sub-section (2) of Section 15, namely, "where contrary to the provisions of this Act any deduction has been made or any payment of wages has been delayed. These being the governing words in the sub-section the only applications which the Authority can entertain are those where deductions unauthorised under the Act are made from wages or there has been delay in payment beyond the wage period and the time of payment of wages fixed or prescribed under Sections 4 and 5 of the Act. Section 15 (2) postulates that the wages payable by the person responsible for payment under Section 3 are certain and such that they cannot be disputed.

9. In D'Costa v. B. C. Patel, 1955-1 SCR 1353 = (AIR 1955 SC 412) this Court held after considering the scheme of the Act that the jurisdiction of the Authority under Section 15 was confined to deductions and delay in payment of the actual wages to which the workman was entitled and that the Authority under the Act had no jurisdiction to enter into a question of potential wages,

i. e., where the workman pleads that he ought to have been up-graded as persons junior to him were up-graded and that he ought to have been paid wages on a scale paid to those so up-grade . This Court held that the Authority had jurisdiction to interpret the terms of a contract of employment to find out the actual wages payable to the workmen where deduction from or delay in payment of such wages is alleged, but not to enter into the question whether the workman should have been up-graded from being a daily rated worker to a monthly rated workman. In Shri Ambica Mills Co. Ltd. v. S. B. Bhatt, 1961-3 SCR 220 = (AIR 1961 SC 970) this Court again examined the scheme of the Act and held that the only claims which could be entertained by the Authority were claims arising out of deductions or delay made in the payment of wages. The Court, however, observed that in dealing with claims arising out of deductions or delay made in payment of wages the Authority inevitably would have to consider questions incidental to these matters, but in determining the scope of these incidental matters care must be taken to see that under the guise of deciding incidental matters the limited jurisdiction was not unreasonably or unduly expanded. Equally, care must also be taken to see that the scope of these incidental matters was not unduly curtailed so as to affect or impair the limited jurisdiction conferred on the Authority. The Court declined to lay down any hard and fast rule which would afford a determining test to demarcate the field of incidental facts which could be legitimately considered by the Authority and those which could not be so considered.

10. It is true, as stated above, that the Authority has the jurisdiction to try matters which are incidental to the claim in question. Indeed Section 15 (1) itself provides that the Authority has the power to determine all matters incidental to the claim arising from deductions from or delay in payment of wages. It is also true that while deciding whether a particular matter is incidental to claim or not care should be taken neither to unduly expand nor curtail the jurisdiction of the Authority. But it has at the same time to be kept in mind that the jurisdiction under Section 15 is a special jurisdiction. The Authority is conferred with the power to award compensation over and above the liability for penalty of fine which an employer is liable to incur under Section 20.

11. The question, therefore, is whether on the footing that compensation payable under Sections 25FF and 25FFF of the Industrial Disputes Act being wages within the meaning of Section 2 (vi) (d) of the Act, a claim for it on the ground that its payment was delayed by an employer could be entertained under Section 15 (2) of the Act. In our view it could not be so entertained. In the first place, the claim made in the instant case is not a simple case of deductions having been unauthorisedly made or payment having been delayed beyond the wage periods and the time of payment fixed under Sections 4 and 5 of the Act. In the second place, in view of the defence taken by Respondent 1, the Authority would inevitably have to enter into questions arising under the proviso to Section 25FF, viz., whether there was any interruption in the employment of the workmen, whether the conditions of service under the Board were any the less favourable than those under the company and whether the Board, as the new employer, had become liable to pay compensation to the workmen if there was retrenchment in the future. Such an inquiry would necessarily be a prolonged inquiry involving questions of fact and of law. Besides, the failure to pay compensation on the ground of such a plea cannot be said to be either a deduction which is unauthorised under the Act, nor can it fall under the class of delayed wages as envisaged by Ss. 4 and 5 of the Act. It may be that there may conceivably be cases of claims of compensation which are either admitted or which cannot be disputed which by reason of its falling under the definition of wages the Authority may have jurisdiction to try and determine. But we do not think that a claim for

compensation under Section 25FF which is denied by the employer on the ground that it was defeated by the proviso to that Section, of which all the conditions were fulfilled, is one such claim which can fall within the ambit of Section 15 (2). When the definition of wages was expanded to include cases of sums payable under a contract, instrument or a law it could not have been intended that such a claim for compensation which is denied on grounds which inevitably would have to be inquired into and which might entail prolonged inquiry into questions of fact as well as law was one which should be summarily determined by the Authority under Section 15. Nor could the Authority have been intended to try as matters incidental to such a claim questions arising under the proviso to Section 25FF. In our view it would be the Labour Court in such cases which would be the proper forum which can determine such questions under Section 33C(2) of the Industrial Disputes Act which also possesses power to appoint a commissioner to take evidence where questions of facts require detailed evidence. Mr. Shroff, however, drew our attention to the decision in Uttam Chand v. Kartar Singh, 1967-1 Lab LJ 232 (Punj) a decision of a learned Single Judge of the High Court of Punjab, taking a view contrary to the one which we are inclined to take. But that decision contains no reasons and is, therefore, hardly of any assistance.

12. In the result we agree with the High Court that the Authority had no jurisdiction under Section 15 (2) of the Act to try these applications. The appeal consequently must fail and is dismissed. But we make no order as to costs.

Appeal dismissed.