The Raipur Manufacturing Co. Ltd.

Vs

Okhabhai Devarajbhai Patni

Civil Appeal No. 1102 of 1975

(P. N. Bhagwati, Syed M. Fazal Ali, P. N. Shinghal JJ)

26.11.1975

JUDGMENT

BHAGWATI, J. -

1. This appeal, by special leave, raises, a short question of construction of certain provisions of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as the Act). The facts giving rise to the appeal are few and may be briefly stated as follows :

2. The appellant carries on business of manufacturing cloth in a textile mill situate in the city of Ahmedabad. The respondent was working as a jobber in the textile mill in the employment of the appellant and, according to the records of the appellant, he was due to superannuate on January 7, 1971 on reaching the age of 60 years and intimation to that effect was accordingly given to him by the appellant by a notice dated October 1, 1970 under Standing Order 19. It appears, however, that the appellant decided to continue the respondent in service for a period of one year after the date of superannuation and the appellant accordingly gave a notice dated September 24, 1970 under Standing Order 19-A continuing the service of the respondent for a period of one year and intimating to him that he would be retired on January 8, 1972. Thereafter there was another extension of service granted by the appellant by a notice dated January 12, 1972 issued under Standing Order 19-A and it was intimated to the respondent that he would be retired on January 8, 1973. The respondent, by his letter dated January 5, 1973, requested the appellant on compassionate grounds to grant him further extension of service for a period of two years from January 8, 1973, but the appellant declined to do so and in the result the service of the respondent came to an end by retirement on January 8, 1973. The respondent did not at any time until his retirement on January 8, 1973 question the correctness of the records of the appellant showing that he had completed the age of 60 years on January 7, 1971. It was only after his retirement that the respondent for the first time, by his letter dated February 13, 1973, gave notice to the appellant that his age was only 56 years on January 8, 1973 and his retirement was, therefore, null and void and he should be reinstated in service. This was rightly regarded as a letter of approach by the respondent to the appellant under Section 42, sub-section (4) of the Act requesting for a change in respect of the order passed by the appellant under Standing Order 19 retiring the respondent. The appellant did not send any reply to this letter of approach and no agreement was arrived at between the appellant and the respondent within 15 days of the receipt of the letter of approach by the appellant. It appears that since there was no favourable response from the appellant, the respondent made an application to the Labour Commissioner on March 17, 1973 requesting his intervention in the matter. The Labour Officer of the appellant appeared before the Labour Commissioner pursuant to the notice issued to the

appellant and, to quote the words used by the respondent in his application before the Labour court, "took adjournment for making compromise". But no compromise was arrived at between the parties and respondents ultimately on June 7, 1973 filed an application before the Labour Court under Section 79(1) read with Section 78(1) (A)(a)(i) of the Act praying that the order passed by the appellant retiring hims from service should be treated as null and void and he should be reinstated in service with all benefits. The appellant resisted the application on various grounds and apart from disputing the claim of the respondent merits, the appellant raised a preliminary objection that the application was barred by time under Section 79(3)(a) of the Act since it was filed more than three months after the arising of the dispute. The respondent had also filed along with the application under Section 78(1)(A)(a)(i) an application for condonation of delay and to this application the answer given by the appellant was that the Labour Court had no jurisdiction to condone the delay in filing the application under Section 78(1) (A)(a)(i). The Labour Court took the view that the application of the respondent under Section 78(1)(A)(a)(i) was barred under Section 79(3)(a) as it was not filed within three months of the arising of the dispute and the Labour Court had no jurisdiction to condone the delay in filing the application and in this view, the Labour Court rejected the application without going into the merits. The respondent preferred an appeal to the Industrial Court, but the Industrial Court also took the same view and dismissed the appeal. The respondent thereupon preferred a petition in the High Court under Article 226 of the Constitution and on this petition, the High Court reversed the view taken by the Labour Court and the Industrial Court and held that the application filed by the respondent under Section 78(1)(A)(a)(i) was within three months of the arising of the dispute and hence it could not be said to the barred under Section 79(3)(a). The High Court accordingly set aside the order passed by the Industrial Court and remanded the application to the Labour Court to dispose it of on merits. This decision of the High Court is impugned in the present appeal brought with special leave obtained from this Court.

3. The question which arises for determination in this appeal lies in a very narrow compass, but in order to appreciate it, it is necessary to refer to a few relevant sections of the Act. The first material section to which we must refer is Section 42 sub-section (4) which is in the following terms :

> 42 (4) Any employee or a representative Union desiring a change in respect of -
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> (i) any order passed by the employer under Standing Orders, or
>
> #(ii) * * * *(iii) * * * *##

shall make an application to the Labour Court :

Provided that no such application shall lie unless the employee or a representative Union has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period.

What is the 'prescribed period' is to be found in R. 53 of the Rules made under the Act. That rule so far as meterial reads :

> 53 (1) Any employee or a representative union desiring a change in respect of (i) any order passed by the employer concerned under Standing Orders .... shall make an application in writing to the employer. An application for change in respect of an order passed by the employer under standing orders shall be made within a period of six months from the date of such order. Where such application is made by the

employee it may be made to the employer direct or through the Labour Officer for the local area or the representative of employees concerned. A copy of the application shall be forwarded to the Commissioner of Labour and in cases where such application is not made through the labour Officer for the local areas to the Officer.

(2) Where an application has been made by an employee under sub-rule (1) the employer and the employee may arrive at an agreement within fifteen days of the receipt of the application by the employer or within fifteen days of the receipt of the application by the employer or within such further period as may be mutually fixed by the employer and the employee or the Labour Officer for the local area or the representative or employee as the case may be.

(3) Where an application has been made by the representative Union under sub-rule (1), the employer and the representative union may arrive at an agreement within fifteen days of the receipt of the application by the employer or within such further period as may be mutually agreed upon by the parties.

Then there is Section 78 which deals with the powers of the Labour Court and sub-section (1)(A)(a)(i) of that section provides inter alia :

78 (1) A Labour Court shall have power to

A. decide -

(a) disputes regarding -

(i) the propriety or legality of an order passed by an employer acting or purporting to act under the Standing Orders.

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Explanation. - A dispute falling under clause (a) of paragraph A of sub-section (1) shall be deemed to have arisen if within the prescribed period under the Proviso to sub-section (4) of Section 42, no agreement is arrived at in respect of an order, matter or change referred to in the said Proviso.

And lastly, sub-sections (1) and (3)(a) of Section 79 provide how and within what time proceedings before a Labour Court in respect of a dispute falling under Section 78(1)(A)(a)(i) are to be commended and they read as follows :

79(1) Proceedings before a Labour Court in respect of dispute falling under clause (a) of paragraph A of sub-section (1) of Section 78 shall be commenced on an application made by any of the parties of the dispute ....

#(2) * * * *##

(3) An application in respect of a dispute falling under clause (a) of paragraph A of sub-section (1) of Section 78 shall be made -

(a) if it is a dispute falling under sub-clause (i) of (ii) of the said clause, within three

months of the arising of the dispute;

It will be seen on a combined reading of these provisions that an application to the Labour Court under Section 79(1) in respect of dispute falling under Section 78(1)(A)(a)(i) must be made within three months from the arising of the dispute and the dispute would be deemed to have arisen if, within a period of 15 days from the receipt of the letter of approach under Section 42, sub-section (4) by the employer or within such further period as may be mutually fixed by the employer and the employee, no agreement is arrived at in respect of the change desired by the employee.

4. Here in the present case, the letter of approach under Section 42, sub-section (4) was sent by the respondent to the appellant on February 13, 1973 and it may be presumed that it was received by the appellant, on the same day. The period of 15 days calculated from the date of the receipt of the letter of approach by the appellant, therefore, expired on February 28, 1973 and admittedly until that time no agreement was arrived at between the appellant and the respondent in respect of the change desired by the respondent. There can, therefore, be no doubt that if nothing further had transpired, the dispute between the parties would be deemed to have arisen at the latest on March 1, 1973 and the application under Section 79, sub-section (1) read with Section 78(1) (A)(a)(i) should have been filed within three months from that date, that is, on or before June 1, 1973 and in the circumstances, the application made by the respondent on June 7, 1973 would be clearly barred under Section 79(3)(a). Both the Labour Court and the Industrial Court accepted this view and rejected the application of the respondent in limine without examining the merits of the case. The High Court, however, took a different view and held that by reason of the Labour Officer of the appellant asking for adjournment on or after March 17, 1973 in order to compromise the dispute between the parties, the period of 15 days was extended by mutual agreement between the parties to some date beyond March 17, 1973 and the application filed by the respondent on June 7, 1973 was, therefore, within three months of the arising of the dispute and was accordingly saved from the bar of Section 79(3)(a). The question is : whether this view taken by the High Court is correct, or it suffers from any infirmity and requires to be set aside ?

5. Now, it is obvious that the view taken by the High Court can be sustained only if it can be shown that, though no settlement in respect of the change desired by the respondent was arrived at within a period of 15 days from the receipt of the letter of approach by the appellant, further period upto some date beyond March 7, 1973 was mutually fixed between the appellant and the respondent, for then the dispute would be deemed to have arisen on or after that date and in that event, the application filed by the respondent on June 7, 1973 would be within three months of the arising of the dispute and hence within time. The appellant submitted that two conditions were required to be satisfied for this purpose : (1) further period for arriving at a settlement must have been fixed before the expiration of the initial period of 15 days, and (2) it must have been mutually fixed between the appellant and respondent. The respondent conceded that the second was a necessary condition, but so far as the first condition was concerned, the respondent contended that it was not necessary that the further period should have been fixed before the expiration of the initial period of 15 days. It was sufficient to attract the applicability of the provision, said the respondent, even if the further period was fixed after the expiration of the initial period of 15 days, so long as that was done before the period of three months expired and the application of the respondent became barred under Section 79(3)(a). We think there is great force in the condition of the respondent. We do not find anything in Rule 53(2) which provides that further period should be mutually fixed by the employer and the employee before the expiration of the initial period of 15 days from the receipt of the letter of approach by the employer. The words used by the rule-making authority are

within 15 days of the receipt of the application by the employer or within such further period as may be mutually fixed between the employer and the employee and these words are sufficiently wide to cover a situation where further period is mutually fixed after the expiration of the initial period of 15 days. There is really no warrant for reading in the words used by the rule-making authority any restriction that further period must be mutually fixed before the expiration of the initial period of 15 days. It must be remembered that the object of this provision is that, as far as possible, the employer and the employee should arrive at an agreement in respect of the change desired by the employee and it is only where an agreement is not possible that the employee should be allowed to approach the Labour Court. The provisions of the Act are intended to bring about settlement of disputes between the employer and the employees and so far as the methodology or mechanics of the resolution of such disputes is concerned, the greatest importance is attached by the legislature to settlement by negotiations. It is only where settlement through negotiations fails that other modes of resolution of disputes are provided by the legislature in the different provisions of the Act. It is in the light of this philosophy underlying the provisions of the Act and this policy and principle to promote, as far as possible, settlement by negotiations and avoid adjudication, that the words used by the rule-making authority in Rule 53 (2) must be construed and if that is done, there can be little doubt that further period may be mutually fixed between the employer and the employee even after the initial period of 15 days has expired. It is quite possible that even after the expiration of the initial period of 15 days, the employer and the employee may come together and arrive at a settlement. Why should that be discouraged by compelling the employee to file an application under Section 78(1)(A)(a)(i) within three months of the expiration of the initial period of 15 days, on pain of his application becoming time barred. Such an interpretation would not advance the object and purpose of the Act. The employer and the employee may very well agree, even after the expiration of the initial period of 15 days, that they will try to negotiate a settlement and that would impliedly mean that during the time fixed by them for such negotiations, the employee should not rush to the Labour Court. It is only when such period mutually fixed by them expires without any settlement having been arrived at, that a dispute can be deemed to arise, for adjudication of which the employee may approach the Labour Court under Section 78(1)(A)(a) (i). We are, therefore, of the view that further period for arriving at a settlement can be mutually fixed by the employer and the employee even after the expiration of the initial period of 15 days and where such is the case, the dispute would be deemed to arise on the expiration of such further period, if within that time no settlement is arrived at between the parties. We should of course make it clear that prima facie it seems to us that such further period cannot be mutually fixed after three months have elapsed from the expiration of the initial period of 15 days and the application of the employee under Section 78(1) (A)(a)(i) has already become barred under Section 79(3)(a).

6. It would, therefore, seem clear that if, as a result of what transpired before the Labour Commissioner, further period for arriving at a settlement in respect of the change desired by the respondent was mutually fixed between the appellant and the respondent, the dispute would not be deemed to have arisen till the expiration of such further period and in that event, the application made by the respondent on June 7, 1973 would be within time. The question, however, is whether it can be said at all that further period wa.m.tually fixed by the appellant and the respondent before the Labour Commissioner. We do not think this question can be answered in favour of the respondent. It we look at the application of the respondent, we do not find in it anything even remotely suggesting that further period for arriving at a settlement wa.m.tually agreed upon between the appellant and the respondent. In the first place, there must be a specific period agreed upon between the parties. Here we do not find any averment of a specific period. Even if we construe the application of the respondent most liberally, the utmost we can extract from it is that adjournment must have been

granted by the Labour Commissioner to the Labour Officer for the purpose of arriving at a settlement upto a specific date and that would indicate a specific period. The difficulty, however, still remains that there is no averment that such specific period was mutually fixed by the parties. The only averment made in the application of the respondent is that at the hearing before the Labour Commissioner, the Labour Officer of the appellant, "took adjournment to make a compromise", but ultimately no compromise was arrived at. It is not even stated in the application that the respondent consented to the adjournment so that the application for adjournment by the appellant and the consent to the adjournment by the respondent could be construed as an agreement mutually fixing further period for arriving at a settlement. There being absolutely no averment of further period being mutually fixed between the parties, it is difficult to see how the case of the respondent could be brought within the latter part of Rule 53(2). It was never the case of the respondent that further period was mutually fixed and that saved his case from the bar of limitation. The relief that he asked for from the Labour Court as well as Industrial Court was condonation of delay but so far as this relief is concerned, the Labour Court had unfortunately no power to condone the delay and hence his request was rejected. We are, therefore, of the view that the High Court was in error in holding that the application made by the respondent under Section 78(1)(A)(a)(i) was within the three months of the arising of the dispute and was hence not barred under Section 79(3)(a).

7. We accordingly set aside the order passed by the High Court and restore the order of the Industrial Court rejecting the application of the respondent as barred under Section 79(3)(a). So far as the cost of this appeal is concerned, when the appellant was granted special leave, it was made a condition that the appellant would in any event pay the cost of the respondent. Therefore, the appellant, though it has succeeded, will pay the cost of the appeal to the respondent.

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