Union of India and Another

Vs

Majur Mahajan Mandal and Others

Civil Appeal No. 690 of 1976

(P.K. Goswami, Syed M. Fazal Ali JJ)

16.12.1976

JUDGMENT

GOSWAMI J. -

This appeal on certificate is from the judgment of the High Court of Gujarat. The appellants 1 and 2 are respectively the Union of India and the Regional Provident Fund Commissioner. The 1st respondent is Majur Mahajan Mandal (hereinafter to be described as the union), a registered trade union representing the majority of the textile workers of the five textile mills of Baroda (respondents 2 to 6) who are not represented before us and who will be described hereinafter as the mills.

Since some time in 1973, industrial disputes in respect of dearness allowance (D.A.) had been pending between the union and the mills in five references before the Industrial Court, Gujarat, being References Nos. 406, 407, 408, 409, and 421 of 1973. The rate of D.A. for the employees in the cotton textile industry in Ahmedabad had earlier been fixed by an award of an Industrial Tribunal which will be referred to hereinafter as the Ahmedabad Rate. The prevalent D.A. in 1973 in the mills with which we are concerned was 90% of the Ahmedabad Rate. The union was raising the aforesaid disputes for increasing the D.A. to 100% of the Ahmedabad Rate with effect from October 1, 1972. Hence, the above references were pending before the Industrial Court.

As a result of negotiations between the parties during the tendency of the said disputes before the Industrial Court D.A. was agreed to be paid at the rate of 95% of the Ahmedabad Rate of D.A. with effect from January 1, 1974, as will appear from an interim award of the Industrial Court dated June 21, 1974. Thereafter, by further negotiations the disputes regarding D.A. were finally resolved by the mills and the union entering into a settlement on June 28, 1974, by fixing D.A. at 100% of the Ahmedabad Rate with effect from January 1, 1974. Awards were later made by the court in conformity with the said settlement in the pending disputes some time in August and September, 1974.

It is not disputed that the workers and the mills in pursuance of the settlement of the disputes received D.A. at 100% of the Ahmedabad Rate retrospectively with effect from 1st January, 1974. It may even be assumed that the arrear D.A. for the past period from January 1, 1974, was paid to the workers in August or perhaps even later, that is to say, after 6th July, 1974, the significance of which date we will immediately see.

While the aforesaid disputes were pending before the Industrial Court, the Ahmedabad Emoluments (Compulsory Deposit) Act, 1974 (briefly the Act), replacing the earlier Ordinance on the subject,

came into force retrospectively from 6th July, 1974, the appointed day, under the Act. This Act was passed as the preamble says, "to provide, in the interests of national economic development, for the compulsory deposit of additional emoluments and for the framing of a scheme in relation thereto, and for matters connected therewith or incidental thereto".

The employees to whom the Act is applicable are classified into three categories, namely, employees of the Government, of local authorities and other employees.

The principal object of the Ordinance and later of the Act is to control the menacing inflationary trend which has been the bane of the country's economy. On the one hand there has been persistent demand from employees for revision of wages and increase of D.A. on account of the high cost of living and on the other the State has to tackle the national problem of mounting pressure of inflationary forces. While, therefore, meeting with the demands for rise in emoluments, simultaneously, steps with equal force had to be taken so that the additional amounts disbursed do not immediately flow to the market adding a further fillip to inflation. The Ordinance and later the Act thus provide for compulsory deposit for a period of one year of the whole of the additional wages and for a period of three years of half of the additional D.A.

The additional emoluments earned are thus impounded under the Act and are not immediately available to the employees for instant consumption. The Act provides a scheme of beneficial forced and the deposited amounts will be finally repaid to the employees in different ways specified in the Act with interest at 2 1/2% over and above the Bank deposit rate.

Before we proceed further we may note some of the provisions of the Act material for our purpose :

By section 2(a) of the Act, "appointed day" means the "6th day of July, 1974".

By section 2(b) " 'additional dearness allowance' means such dearness allowance as may be sanctioned from time to time, after the appointed day, over and above of dearness allowance payable in accordance with the rate in force immediately before the date from which such sanction of additional dearness allowance is to take effect".

By section 2(e) " 'dearness allowance' means all cash payments, by whatever name called, made to an employee on account of rise in the cost of living". Under section 2(g) " 'emoluments' include wages and dearness allowance".

Under section 5 every specified authority (herein the employer) shall open two separate accounts, namely, the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account. The employer shall open a separate ledger account in the name of each employee. Section 6(2)(b) of the Act enjoins on the employer a duty to make deductions and to remit to the nominated authority additional wages and additional D.A. from emoluments disbursed after the appointed day. In the case of additional wages it will be the whole amount and in the case of additional D.A. it will be half of it.

It is common ground that the Act applies to the mills which are the "employer" under the Act and also "specified authorities" under the Additional Emoluments Compulsory Deposit (Employees other than Employees of Government and Local Authorities) Scheme, 1974, which is made under section 10 of the Act.

The union applied to the High Court under article 226 of the Constitution for a writ of mandamus or

other suitable order to permanently restrain the mills from effecting any deduction from the arrears of dearness allowance payable to their employees from January to June, 1974, on the basis of the settlement of 28th June, 1974. There was a further prayer to permanently restrain the mills from treating the base for calculation of additional D.A. at a rate less than the agreed 100% of the Ahmedabad Rate and to direct the mills not to deduct or deposit 2 1/2% of D.A. per month payable to each employee treating the same as not being additional D.A. within the meaning of section 2(b) of the Act. Lastly, there was a prayer for refund of the mount already deducted by the mills. The High Court allowed the writ application and also granted certificate to appeal to this court.

The appellants content that 100% of the Ahmedabad Rate of D.A. to the workers was sanctioned after the appointed day, that is to say, after 6th July, 1974, when the awards were made between August and September, 1974, in pursuance of the settlement of June 28, 1974. The claim of the appellants is two-fold : First, since the increased D.A. to the workers was sanctioned after the appointed day, only when the awards were made, the difference between the increased D.A. at 100% of the Ahmedabad Rate and the prevailing rate payable in arrears from 1st January, 1974, to 30th June, 1974, will be additional D.A. in terms of section 2(b) of the Act, and is, therefore, subject to deduction of 50% of the same. Second, for future deductions of additional D.A., after the appointed day, the base for calculation of additional D.A. should be 95% of the Ahmedabad Rate of D.A. which was prevailing prior to 6th July, 1974, in terms of the interim award of 21st June, 1974. In other words, for future deductions of additional D.A., after 6th July, 1974, the appellants claim that the workers should be treated as if they were in receipt of D.A., prior to the appointed day, at 95% of the Ahmedabad Rate which had been in force in terms of the interim award of 21st June, 1974, which is the earlier sanction for the 95% rate. Hence, 2 1/2% (that is, 50% of 5% being the difference between 95% and 100%) of the same will be liable for deduction under the Act from 6th July, 1974. According to the appellants, the benefit of 100% was available only after the making of the awards which was, thus, sanctioned after the appointed day notwithstanding the fact that the settlement had been entered upon on 28th June, 1974, Section 2(b) will, therefore, be clearly attracted, according to the appellants.

It is submitted by the appellants thus the word "sanctioned" in the definition of 'additional dearness allowance' under section 2(b) is very significant. It is contended that the settlement during the pendancy of an industrial dispute before the Industrial Court has to be approved by the court before it can be said to be sanctioned within the meaning of the provisions of section 2(b). Reference is made to section 115A of the Bombay Industrial Relations Act, 1946. That section, so far as it is material for our purpose, provides that if any agreement is arrived at between an employer and the union which are parties to an industrial dispute pending before an Industrial Court the award in such proceeding shall be made in terms of such agreement unless the Industrial Court is satisfied that the agreement was in contravention of any of the provisions of the Act or the consent of either party to the agreement was caused by mistake, misrepresentation, fraud, undue influence, coercion or threat. Relying on section 115A, it is submitted by the appellants, that unless the award is made in pursuance of the settlement under the said section the settlement is inchoate and cannot be said to be effective, in law, prior to the making of the award which was done, in the instant case, between August and September, 1974. It is, therefore, submitted that the additional D.A. can be said to be sanctioned only under the award which was made admittedly after the appointed day, that is, after July 6, 1974.

We are unable to accept this contention. It is true that an agreement arrived at between the parties during the pendancy of an industrial dispute before the Industrial Court has to be placed before that court. It is also true that if the Industrial Court is satisfied that certain conditions enumerated in

section 115A exist it will not recognise the settlement and dispose of the dispute in accordance with law. If, however, the conditions enumerated in section 115A do not exist the award "shall be made" in terms of the settlement. There is no other option.

In this particular case the settlement was placed before the Industrial Court which ultimately passed the awards in conformity with the terms of the settlement. We are not required to consider to consider a case where the Industrial Court has not approved of the settlement under section 115A.

Once, therefore, the award is made in terms of the settlement, under section 75 of the Bombay Industrial Relations Act, the award shall come into operation on the date specified in the award or where no such date is specified therein on the date on which it is published under section 74. We are informed that the awards have not yet been published but that should not detain us in this case. It is common ground that the awards were in terms of the settlement which had retrospective operation from January 1, 1974.

Since the settlement has merged in the awards the terms of the awards are those specified in the settlement. It is those dates which are, therefore, specified in the awards and, under section 75 of the Bombay Industrial Relations Act, the awards came into operation with effect from January 1, 1974. The sanction of the awards in such a case is the sanction under the settlement and since the settlement was prior to July 6, 1974, the additional D.A. cannot be said to be sanctioned after the appointed day. 100% of the Ahmedabad Rate of D.A. will be payable to the workers with effect from January 1, 1974, and the sanction for that rise was on 28th June, 1974, the date of the settlement which was prior to the appointed day.

Sanction must have relevance to the reality of the transaction between the parties. The settlement of 28th June, 1974, makes the increased D.A. of 100% payable with effect from January 1, 1974. Hence, the said rate of increased D.A. which was payable to the workers between January 1, 1974, and July 5, 1974, was sanctioned prior to the appointed day.

We have already noted the definition of additional D.A. in section 2(b) which is an integrated definition. The definition clause has twin components both of which will have to be satisfied in order that a particular amount can be held to be additional D.A. To put it clearly the two components are -

> (1) additional D.A. is that part of the D.A. which is sanctioned after the appointed day; and
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> (2) which is over and above what was payable immediately before the date from which sanction of the particular rise in D.A. is to take effect.

With regard to the first component any unilateral decision to increase the D.A. or a bilateral settlement for its increase, to take only two instances, must take place after the appointed day.

It is manifest that if the sanction is after the appointed day it is then only the question of additional D.A. will arise within the meaning of section 2(b). Once it is found that the sanction of rise in D.A. is prior to the appointed day, section 2(b) will not at all be attracted. In that event it will not be necessary even to consider the second component of the definition mentioned above. In the instant case we have already held that the rise in D.A. to 100% of the Ahmedabad Rate of D.A. was sanctioned under the settlement of 28th June, 1974, that is, before the appointed day. One of the principal components of the definition clause is, therefore, clearly absent in this case since there is

no sanction for any rise in D. A. after the appointed day.

We should observe that this is not a case where Explanation I to section 2(b) is applicable.

Mr. Singhvi, for the appellants, submits that in view of the aim and object of the Act the count should lean in favour of an interpretation advancing the remedy by construing the word "sanctioned" in section 2(b) to mean sanctioned by the award and not by the settlement. We have already given our reasons for our inability to accept this submission. One other reason may be added.

The Act recognises agreements and settlements and settlements is the same way as awards of Tribunals, vide section 2(c). The definition of "additional wages" under section 2(c) clearly points to that. Any wage revision "whether by or under an agreement or settlement between the parties or any award....." comes within the sweep of the aforesaid definition clause Agreements and settlements are separately and distinctly mentioned along with awards. Settlement is a type of sanction recognised under the Act. There is, therefore, sufficient warrant under the Act to give effect to the sanction by voluntary settlement in respect of D.A. when the same has never been repudiated by any of the concerned parties. When there is no ambiguity in the word "sanctioned" inspection 2(b), recourse to the aim and object of the Act is not even called for in this case.

Both the contentions of the appellants, therefore, fail on the solitary ground, namely, that the particular sanction of additional D.A. in this case is not after the appointed day. The appeal is dismissed with costs.

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