

BOMBAY HIGH COURT

Modern Mills Ltd

Vs.

V.R. Mangalvedhekar

O.C.J. Appeal No. 48 at 1949

(Chagla, C.J. and Bhagwati, J.)

13.03.1950

JUDGMENT

Chagla, C.J.

1. This is an appeal from an order of Coyajee, J. by which he dismissed the petition presented by the Modern Mills Ltd., for a writ of certiorari against the authority appointed under the Payment of wages Act, 1936. It would appear that an award was made by the Industrial Court under the Bombay Industrial Relations Act, 1946, on 20th March 1948, in respect of certain disputes between the textile mills and their employees, and condition 6 of this award provided :

"Persons who are eligible for bonus but who are not in service of the Mill on the date of payment shall be paid in one lump sum on 31st May 1948, provided claims in writing are submitted to the Manager of the Mill concerned before 21st May 1948, after which no application for bonus shall be entertained."

One Jagardeo Shantaram, an employee of the Modern Mills, who had left the services on 12th March 1948, made an application for the bonus which had been declared by a letter dated 18th May 1948, and which Utter he had posted on that day. But the letter was received by the Modern Mills on 24th May 1948, and the contention of the Modern Mills was that as the claim had been submitted after 21st May 1948, he was not entitled to any bonus. Thereupon Jagardeo applied to the authority under the Payment of Wages Act and that authority held that Jagardeo was entitled to be paid the bonus declared under the award. It is this order which was sought to be challenged by a writ of certiorari.

2. Now, the contention of Mr. Rege is that it was not open to the authority under the Payment of Wages Act to construe the award made by the Industrial Court. According to him it is only the Labour Court act up under the Bombay Industrial Relations Act which is entitled to construe the

award, and in construing the award the authority has acted beyond his jurisdiction.

3. Now, in order to understand this contention we must look at the scheme of the Payment of Wages Act, IV [4] of 1936. Section 15 of the Act confers jurisdiction upon the authority that is to be appointed under Sub-Section (1) of that section, and Sub-Section (2) provides :

"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 authorized in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under Sub-Section (1), may apply to such authority for a direction under Sub-Section (3)."

Therefore it is competent to the authority appointed under Section 15(1) to determine whether any deduction has been made from the wages of an employed person contrary to the provisions of the Act; and under the definition of "wages" bonus is a part of wages. Now, Section 7 lays down what are the deductions which may be made from the wages of an employee, and sub-Clause (2) (h) provides the deductions required to be made by an order of a Court or other authority competent to make such order. The contention of Mr. Rege is that the Modern Mills refused to pay the bonus to the employee because they were required not to pay that bonus under the award of the Industrial Court. But it is for the authority under Section 15(2) to determine whether such a deduction made by the employers was an authorized deduction under Section 7. If the contention of the employer is that he is required by the award not to pay the wages, it is for the authority to be satisfied that such a contention is a valid one, and in order to determine that he must construe the award and be satisfied that the award on which the employer is relying requires the employer not to pay the bonus. It is impossible to contend, in my opinion, that it is not open to the authority under the Payment of wages Act to construe the award in order to determine whether the deduction made by the employer was an authorised deduction or not.

4. It is then urged that what the authority has done is really to make a change in the award which was passed by the Industrial Court. Now, turning to the provisions of the Industrial Relations Act, in the definition Section 3 (18) where "Industrial matter" is defined, all matters pertaining to any right or claim under or in respect of or concerning a registered agreement or a submission, settlement or award made under the Act would constitute an industrial matter, and there is no dispute, and there can be none, that an interpretation of an award would be an industrial matter. Then under Section 42(4) it is open to an employee desiring a change in respect of, among other matters, an industrial matter specified in Schedule 3 to make an application to the Labor Court; and when we turn to Schedule 3 we find that item (5) relates to construction and interpretation of awards, agreements and settlements. Therefore, Mr. Rege is quite right when he says that if an employee requires a change in the award, then he has got to apply to the Labor Court for that purpose, and the power of the Labor Court is dealt with in Section 78(1)(A)(8), and sub-Clause

(iii) of that Sub-clause provides for any change made by an employer or desired by an employee in respect of an Industrial matter specified in Schedule 3 and matters arising out of such change. Therefore, it is clear from the scheme of the Bombay Industrial Relations Act 1946, that it is only when a change is sought by an employee in the terms of an award made by the Industrial Court that he has got to make an application to the Labor Court and only the Labor Court has jurisdiction to make such changes. "We quite agree with Mr. Rege that an authority appointed under the Payment of wages Act would have no jurisdiction to order any change in an award made by the Industrial Court. But the question that we have to consider is whether in ordering the payment of the bonus the authority in any way has made a change in the award. For that purpose we must turn to the judgment delivered by the authority. It is clear from that judgment that the case of the employee was that he had complied with the terms of the award in sending his application on 18th May 1948, by registered post and his whole contention was that when he posted the letter he must be deemed to have submitted his application to the management, and as he posted the letter before 21st May 1948, he complied with condition 6 and he did submit the application before 21st May 1948. Now, that contention was accepted by the authority. He may have been quite wrong in putting that interpretation upon condition 6. But the authority nowhere suggests in his judgment that when he ordered the mills to pay the wages he was doing so contrary to the provisions of clause 6 of the award or that he was in any way altering or amending clause 6. It is quite clear from the judgment that in ordering so he was giving effect to the award as he understood it and interpreted it. Really the grievance that Mr. Rege has is that the interpretation put by the authority is an erroneous one. But that would be preferring an appeal against the decision of the authority, and we are not here hearing an appeal from his decision. The question which we have to consider and decide is whether in passing the order he did he acted within or without jurisdiction in construing condition 6 as he understood it. In our opinion, in giving effect to it by ordering the Modern Mills to pay the wages he was acting within jurisdiction. In our opinion, therefore, the learned Judge was right in coming to the conclusion which he did, and the result is that the appeal fails and is dismissed with costs.

Bhagwati, J.

I agree.

Appeal dismissed.