

BOMBAY HIGH COURT

Laxman Pandu

Vs.

Chief Mechanical Engineer

Civil Revn. Appln. No. 361 of 1953, in Appeal No.15 of 1951

(Chagla, C.J.)

01.10.1954

JUDGMENT

Chagla, C.J.

1. A rather important question arises on this civil revision application as to the right of appeal by an employer under Section 17 of the Payment of Wages Act. It appears that a joint application of certain employees totalling about 99 of the opponent railway was made to the Authority under the Payment of Wages Act. Their claim was that they were entitled to house rent as part of their wages, that that part had not been paid, and therefore there was delay in payment of wages, The Authority upheld the contention of the employees and gave a direction that a sum of Rs. 8,775 plus Rs. 9,165 should be deposited by the railway authority in Court to be paid to the various employees in the amounts mentioned in the schedule to the order. Against this decision the railway went in appeal to the Small Causes Court at Bombay and the learned Chief Judge reversed the decision of the Authority, allowed the appeal, and dismissed the application of the workers. It is against that order that this revision application is preferred, and the first contention urged by Mr. Vakharia on behalf of the employees is that the Small Causes Court had no jurisdiction to entertain the appeal.

2. Now, turning to the relevant provisions of the Act, Section 15 deals with the jurisdiction of the Authority and his authority is to direct the refund to the employed person of the amount deducted or the payment of the delayed wages together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter. Section 16 (2) enables the employed persons belonging to the same unpaid group if they are borne on the same establishment and if their wages for the same wage-period or periods have remained unpaid after the day fixed by Section 5, to present a single application instead of each employee belonging to such a group having to present separate applications. Sub-section (3) authorizes the authority to treat as a single application any number

of applications made by various employees if they belong to the same unpaid group. Then we come to Section 17 which deals with the right of appeal, and the right of appeal is given against a direction made under Sub-Section (3) or Sub-Section (4) of Section 15, and in this case we are only concerned with the direction given under Sub-Section (3) of Section 15. Clause (a) of Section 17 (1) gives the right of appeal to the employer and it provides:

"by the employer or other person responsible for payment of wages under Section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees."

And Clause (b) confers the right of appeal upon an employed person if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees.

3. Now, the argument of the employer, briefly put, is that inasmuch as the order made by the Authority against the employer for payment of wages exceeded Rs. 300, the employer had a right of appeal under Section 17 (1) (a), and it is this argument which I have got to consider and examine. In my opinion, Section 16 (2) is purely procedural. Instead of various employed persons who belong to the same unpaid group being compelled to file separate applications and to pay separate court-fees, the Legislature has conferred upon them the facility of presenting a single application and paying a single court-fee. But what must be borne in mind is that although the application is one, the claims are made by various employees and those claims are separate and distinct, and in my opinion the direction which the authority has to give under Section 15 (3) is not in respect of the group as a whole, but it must be in respect of each individual employee. It is said by Mr. Parikh that in this case the direction of the Authority is that a sum far exceeding Rs. 300 should be paid by the employer to the person in the unpaid group. I do not look upon the order of the Authority in that light. The order of the Authority in substance is that the employer should pay to each employee the amount mentioned in the schedule, and the mere fact that the Authority aggregates those amounts and the result is a sum exceeding Rs. 300 does not lead to the inference that the order made was a composite order against the employer in respect of payment of a composite sum, but the direction clearly is to the employer to satisfy the separate individual claims of each employee mentioned in the schedule to the order. If I were to accept Mr. Parikh's contention, it would result in this curious situation that by the Legislature's desire to confer a facility upon the employees the right of appeal given to the employer was expanded. Admittedly, if these employees had made separate applications, the employer would have had no right of appeal, but merely because they combine in one application in order to save court-fees and to avail themselves of the facility provided by the Legislature, it is suggested that the employer obtained a right of appeal. In my opinion, such an interpretation of the statute should be avoided if it is possible.

4. But let us look at it from the point of view of the discretion conferred upon the Authority

under Sub-Section (3) of Section 16. Several persons may make an application who may belong to the same unpaid group. The Authority by exercising its discretion and combining those applications in one application may, by the exercise of that discretion, confer a right of appeal upon the employer if Mr. Parikh's submission were to be accepted. If the applications of those employees continued to remain separate, the employer would have no right of appeal, but if for procedural reasons the Authority thought it more convenient to treat those applications as a single application, straightway the employer would get a right of appeal.

Now, a right of appeal is both an important right and in certain circumstances it may impose a disability, and I do not think that pure procedural provisions should be read or construed as either conferring that right or imposing that disability. In this very case all the employees would have been saved from the legal ingenuity of their employer in the Court of Appeal if they had presented separate applications and they would have been paid the amount directed by the Authority. But because they chose a procedural facility given to them by statute, a serious disability has been imposed upon them in that the decision in their favor is subject to challenge by the employer in the Court of Appeal, and in this case the challenge has been successful.

5. There is one further indication in Section 17 which to my mind clearly shows that with regard to unpaid groups a distinction was deliberately sought to be made by the Legislature between the right of the employer and the right of the employee. When we turn to Section 17 (1) (b) which deals with the right of appeal by an employed person, a very wide right of appeal is given to him because he can appeal if the wages withheld from him individually exceed Rs. 50 and he can also appeal if he is one of the unpaid group and if the total amount of wages withheld with regard to the whole of that unpaid group exceeds Rs. 50. But when we turn to the provision of the right of the employer in Clause (a) of Section 17 (1), the Legislature advisedly has not referred to an unpaid group in that clause, and in my opinion the absence of the words "unpaid group" in Clause (a) are significant and can only point to one conclusion.

6. Mr. Parikh has drawn my attention to the serious anomaly that may result if my interpretation was to be accepted. He says that in an unpaid group there may be one employee who may be awarded a sum exceeding Rs. 300. According to my interpretation the employer could only appeal against the direction in favor of that individual employee, but he could not appeal against the direction in respect of the whole of the unpaid group if the wages awarded to the other employees did not exceed Rs. 300, and Mr. Parikh says that the Court of Appeal with regard to that particular employee on the appeal of the employer may reverse the decision of the Authority and the result of such a reversal would be that whereas various employees forming part of the unpaid group would receive wages according to the direction of the Authority, the one individual whose wages awarded exceed Rs. 300 would be deprived of the benefit of the direction of the Authority under the Payment of Wages Act. Now, I see the force of that contention, but the answer is clear. The same anomalous situation would arise if two employees made applications on an identical ground to the authority under the Act and in one case the employee is awarded a sum of Rs. 300 and in the other case he is awarded a sum less than Rs. 300. It is not suggested

that the employer could appeal against both because the decision of the authority turned on the same ground. His right of appeal would only be against the employee who received wages exceeding Rs. 300. The anomaly which Mr. Parikh apprehends is really no anomaly at all, because when one carefully considers the principle underlying the Payment of Wages Act, the principle is that poor employees who are awarded wages in small amounts should not be further harassed by being dragged to the appellate Court by the all powerful employer. The intention of the Legislature was that the decision of the authority should become final and conclusive when it awards small wages to poor humble workers. That is the principle which underlies the whole of the Act and every section of it, and it is the duty of the Court to give effect to that intention of the Legislature.

7. My attention has been drawn to a decision of the Madras High Court in - '*Union of India v. S.P. Nataraja*', which is the judgment of Subbarao, J., In that case a petition for a writ was applied for by the employer against the decision of the Authority under the Payment of Wages Act and the learned Judge refused to grant the writ on the ground that the employer had a right of appeal and he should exercise that right and not come to Court for a writ under Article 226 of the Constitution. I agree with Mr. Parikh that there the question directly arose as to whether under the circumstances of that case the employer had a right of appeal and I also agree with him that the circumstances of that case are similar to the circumstances of this case and on the facts that case is not distinguishable. But with very great respect to Subbarao, J., I am unable to agree with the reasoning which led that Judge to hold that an employer had a right of appeal under Section 17 (1) (a) if the total amount of wages directed to be paid by the Authority to an unpaid group exceeds Rs. 300. The reason which led the learned Judge to come to the conclusion that he did was that there was no reason why a distinction should be made in the case of an employed person under Section 17 (1) (b) and in the case of an employer under Section 17 (1) (a). The learned Judge says that if an employed person can have a right of appeal if the amount claimed exceeds Rs. 50 whether individually or collectively in the unpaid group, there was no reason why the employer should not have a similar right of appeal under Section 17 (1) (a). With respect again to the learned Judge, he has overlooked the principle which I have just adverted to underlying the Act. The Legislature wanted to make a distinction between the rights of an employer and an employee and therefore it is not a matter of surprise that the employees should be differently treated under Section 17 (1) (b) from the manner in which the employers are treated under Section 17 (1) (a), nor is there anything unreasonable in treating the employer and the employee differently. Again, in my opinion, the learned Judge has failed to attach the importance which he should have attached to the absence of the words "unpaid group" in Section 17 (1) (a).

8. For these reasons I have come to the conclusion that the Small Causes Court had no jurisdiction to entertain the appeal which it did. Therefore, no question arises as to whether the decision of the Small Causes Court Judge was right on merits.

9. The result is that the revision application will be allowed, the order of the learned Chief Judge will be set aside, and the order of the Authority under the Payment of Wages Act will be restored.

Rule absolute with costs.

10. The amount directed by the Authority to be paid should be deposited within two weeks from today in the Court of the Authority under the Payment of Wages Act. If any further Court-fees are payable they should be paid by the employer.

Revision allowed.

¹ AIR 1952 Mad 808