BOMBAY HIGH COURT

C.T. Daru

Vs.

Ahmedabad Spinning and Manufacturing Co., Ltd

Special Civil Appln. No. 2684 of 1954

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

01.03.1955

JUDGMENT

Chagla, C.J.

1. 168 employees of the Ahmadabad Spinning and Manufacturing Company, Ltd., which is represented by its manager as opponent No.1, filed an application before the Authority under the Payment of Wages Act alleging that wages were due to them from 29-12-1953 to 10-1-1954, amounting in all to Rs. 114. The contention of the employees was that they were each attending to four looms in the mills, that they had been paid on a certain basis and that their wages had been illegally reduced by the mills and their proper wages had not been paid to them. The Authority gave a direction to the mills to pay the amount claimed. The mills went in appeal to the District Court and the learned Extra Assistant Judge at Ahmadabad has reversed the decision of the Authority and the employees through the General Secretary of the Mill Mazdoor Mandal, of which they are members, have come on this petition challenging that decision.

2. Now, it appears that an award was made in 1948 in a dispute between the Ahmedabad Millowners' Association and the Textile Labour Association by which the rates of various textile workers were standardised, and among the wages that were standardised were the wages of this type of workers. The mills in question started a weaving department only in 1951 and they introduced the four loom system, and the wages that they paid to these workers were higher than the wages fixed under this award. The mills subsequently gave notice reducing the wages of these workers so as to conform to the wages laid down under the award, and the contention of the workers was that the mills were liable to pay to them their contractual wages even though that wage may be higher than the wage fixed by the award. It is not suggested by Mr. Tarkunde on behalf of the petitioners that the wages which the employees are claiming and in respect of which the Authority under the Payment of Wages Act has made an order are not higher than the wages fixed under the award, but Mr. Tarkunde's contention is that there is nothing in the labour

legislation which prevents an employer from paying higher wages than the wages fixed under the award. The only obligation upon the employer is that he cannot pay wages which are lower than the wages fixed by the award. It is said that if an employer pays wages which are higher than the wages fixed under the award, the proper procedure he must follow is to give a notice of a change to the employee under Section 42(1), Bombay Industrial Relations Act, 1946, but it is not open to him without complying with the procedure laid down in Section 42(1), to make an alteration in the wages payable to the employees. Mr. Tarkunde points out that payment of wages is an industrial matter specified in Schedule II to the Act and therefore it was obligatory on the employer under Section 42(1) to effect a change in respect of that industrial matter only in accordance with the procedure laid down in that section.

3. As against that it is pointed out that the award has standardized certain wages and it was not open to the employer to pay a wage different from the standardized wage. If he were to do so, he would be committing an offence under the Bombay Industrial Relations Act, 1946, and he would be liable to be prosecuted.

4. Now, under Section 46(3) no employer shall make any such change in contravention of the terms of a settlement, effective award, registered agreement or effective order or decision of a wage Board; and Section 47 makes it incumbent upon the employer to comply with any change which is fixed by any decision or order of a wage Board, Labor Court or the Industrial Court; and Section 106(1) provides for a penalty which the employer may be subjected to if he makes an illegal change. Therefore, the contention of the employer is that it was incumbent upon him to give effect to the provision of the award with regard to wages, that he could not pay wages different from the wages settled under the award, and if he were not to carry out the provision of the award, he would be contravening the terms and provisions of the award and thereby guilty of an illegal change which would subject him to a penalty under Section 106(1).

5. In order to decide this contention what we really have to determine is what were the provisions of the award in question and whether there was an obligation upon the employer to pay a certain wage and whether in paying a different wage he would be acting contrary to the provisions of the award, because it is clear that if there was an obligation upon him to pay a certain wage, he could not even by a contract pay to his employee a wage different from the wage fixed under the award. When we turn to the award, it is rather important to note that what the Cotton Textile workers were demanding was (1) the obligation of contract labor, (2) minimum wages, and (3) standardization of wages. The award first dealt with minimum wages and fixed the minimum wage at Rs. 28 in the whole of the industry. Then it appears that the assessor considered 219 occupations and with regard to 87 occupations he recommended a minimum wage and he pointed out that it would be improper to fix standard wages for these occupations because the wages vary from Rs. 25 to Rs. 80. The assessor pointed out that the mills were free to pay any wages for these occupations in excess of the minimum but does not imply thereby that any reduction should be made in the existing wages which might be above the minimum.

The members of the Industrial Court accepted this view of the assessor and with regard to these 87 occupations they accepted the minimum wage fixed by the assessor, but they introduced this modification that workers who got below the minimum should be brought to or above the minimum so that no worker got less than Rs. 5 by way of increase and workers who got above the minimum should get an increase of 10 per cent, provided that it was not less than Rs. 5. Then they turn to the other occupations and there they have fixed standard wages. It is clear therefore on a reading of this award that a clear distinction was made between fixation of minimum wages and the fixation of standard wages.

In the case of minimum wages the only obligation upon the employer was not to pay anything less than the minimum. Not only was there not a prohibition against the employer paying more than minimum wages but a hope was entertained that the employer will not reduce the wages of those who were being paid more than the minimum wages. Now, it is clear from this award and from general principles to which we shall presently refer that when you find in an industry divergent wages being paid and there is a considerable difference between the top wage and the lowest wage, it is very difficult to standardize these wages, and therefore the first thing to be done in the interest of labor is to fix a minimum wage which is generally somewhere between the top and bottom. But the position is different when wages in a particular occupation are not very divergent and when the wages being paid are more or less uniform. That is the time and the stage when a Labour Tribunal may well standardize those wages, because in standardizing them although it may result in some workers being paid less than what they are being paid, the loss to them would not be considerable,, and if it is in the interest of labor that all workers should be paid the same wages who are doing the same work, then the standardization would result in the benefit to the cause of labor. Mr. Tarkunde's reading of this award is that when the Industrial Court standardized wages, including the wages with which we are concerned, all that they did was to lay down a rule stating that certain wages were fair and reasonable, but that did not prevent the employer from paying higher wages. If that was the true meaning of standard wages or standardization of wages, then it is difficult to understand what is the distinction between standardization of wages and fixing of minimum wages. According to Mr. Tarkunde in both cases the only obligation upon the employer is not to pay wages less than the standard wages. Therefore, there must be some difference and some difference of substance between fixation of minimum wages and the fixation of standard wages. In our opinion the only distinction can be that whereas in the case of minimum, as the word itself implies, the obligation upon the employer is not to pay less than the minimum wages, in the case of standardization of wages the obligation upon the employer is two fold. He can neither pay less wages nor pay more wages than the wages fixed, the intention in the latter case being to stabilise and standardize wages on a definite basis.

6. This view that we are expressing finds considerable support from the view expressed in the Report of the Textile Labour Inquiry Committee. That committee considered both the questions of minimum wages and standardization of wages, and with regard to minimum wages it points out at page 89 that

> '"The basis of wage fixation have been sometime put into three classes: (i) the living wage, (ii) the capacity to pay, and (iii) relation to wages in other industries."

And coming to standardization of wages they point out that their terms of reference required them to make recommendations regarding the standardization of wages so that the variations may be reduced and common standards of payment for similar classes of work adopted. That is the aim of standardization of wages - the fixing for any one or ail of the centers of an industry uniform scales of payment for identical types of work. Once standardization of wages is introduced, divergences in the standards of payment of labour are eliminated and thereby a fruitful cause of recurrent wage disputes is removed. Then they point out that from the point of view of labor, too, standardization of wages presents several advantages. The removal of a frequent cause of disputes is: as great a gain to employees as to employers, and so is the widened scope for collective bargaining. A constant source of irritation is banished in so far as workers engaged in the same occupation in a centre get payment on the same scale. They also point out that no less valuable is the influence of standardization in developing a feeling of solidaiity among the workers; and it is significant to note that at page 100 they point out that the principles on which the standard wage rates for weavers were to be determined by the Ahmadabad Millowners' Association and the Textile Labor Association, Ahmadabad, were embodied in an agreement in 1937, and that agreement provided:

> "Standardization of weavers' wages shall be put into effect immediately on the understanding that mills paying lower than the standard agreed upon shall immediately raise their wages up to the standard, and those paying higher than the standard shall automatically come down to the standard on the expiry of six months from the date the standardization is given effect to".

Therefore, it is clear from this agreement to which reference is made that standardization involved not only the raising of the wages but also the lowering of the wages so that all wages should be co-ordinate and should be paid on the same basis. At page 105 again they point out that any scheme of standardization acceptable to the owners will involve the bringing down of the wage rates in some units which pay more than others and in some occupations where the earnings are comparatively high. The Committee is again conscious of the fact that any proposal of standardization must result in lowering of certain wages, because at page 117 they say that

> "The effort at standardization presumes the existence of variations in the current rates of payment from unit to unit. A standardized rate, while raising the level in units where it is specially low, will necessarily mean a reduction in the earnings of workers in units where the level rules above the average. It may be possible to persuade these workers to accept a reduction in earnings for the sake of benefiting the low-paid section and for attaining a permanently desirable end'.

7. We have also been referred to the views of the well-known economist Dr. D.R. Gadgil in his publication on the Regulation of Wages and other problems of Industrial Labor in India where he points out at page 44 that standardization of wages is a step which in regulatory practice follows and does not precede the establishment of minimum levels of wages. The minimum regulates merely the level below which nobody shall pay. Under minimum wage regulation it is still open for the more efficient employer to offer rates in all occupations or in particular occupations higher than the minimum rates. This is what happens under Trade Board regulation in England or in Bombay with the working of the Millowners' Association's minimum schedule. Under a scheme of standardized rates of wages no such variation is allowed, and all units must pay a uniform wage. Where, as in India, rates of payments differ widely from unit to unit and some concerns pay a very low wage, it is both more desirable and more feasible to introduce immediately a system of minimum wage regulation than that of standardization. Standardization would mean, in these circumstances either too great an additional burden on some units or too great a reduction in the level of earnings of workers in some others. At page 55 the learned author points out the distinction between minimum wages and standardized wages. The essential difference between minimum wages and standardized wages is that while under minimum wage regulation it is open to an employer to vary the wage in an upward direction, the standard wage rate cannot be varied in either direction. The advantages of standardization are that it does away with even that measure of diversity which is permissible under minimum wage regulation, and by bringing about a measure of fixity and determinateness in all wage payments, reduces still further the possibility of minor wage disputes. These views are of considerable help to us in deciding the question which is essentially a labour question.

8. Mr. Tarkunde has very strongly urged upon us not to give effect to the award which would result in preventing some employees earning more than the wages settled by the award if there are liberal minded employers who are prepared to pay higher wages. Naturally we would be reluctant to construe an award in a manner which would be prejudicial to the interest of the labor. Mr. Tarkunde also says that the whole object of the labor legislation is to ensure to the workers a minimum wage and not to prevent the workers from getting more than the minimum wage. We have already pointed out from the Textile Labor Inquiry Committee Report and Mr. Gadgil's opinion that labor stands to benefit definitely by standardized wages. It is not in the interest of labor that in the same industry in the same occupation workers doing the same type of work should receive different wages. A temporary gain to a few employees is not necessarily a permanent gain to the cause of labor, and therefore, in our opinion, in coming to the conclusion that when wages are standardized it is not open to the employer to pay to the employee higher wages than those fixed in the award, we are really giving a beneficial construction to the directions of the award in the larger interest of the solidarity of labour. Therefore, in our opinion, the learned Extra Assistant Judge was right when he came to the conclusion that inasmuch as the wages for the work which the employees were doing in the Ahmedabad Mills have been standardized by the award it was not open to the Mills to pay higher wages.

9. Under the circumstances the petition must fail and is dismissed. No order as to costs.

10. A point of procedure was raised by Mr. Patel and his contention was that as this petition challenges an order of the Extra Assistant Judge, Ahmedabad, the application should have been filed under Section 115 of the Code and not under Article 226 or 227 of the Constitution. He points out that the decision is given by a Court subordinate to the High Court and therefore a revision application would he against this decision under Section 115.

11. We would have acceded to that contention but for a certain special circumstance which prevails in the case of decisions under the Payment of Wages Act. Now, it has been held that the Authority appointed under the Payment of Wages Act is not a Court subordinate to this Court and therefore no revisional application would lie against his decision. There are some decisions of his which are not made subject to appeal, and if such a decision was to be challenged, it could only be challenged under Article 227 of the Constitution as a decision of a Tribunal which is situated within the State of Bombay. Therefore, we find ourselves in this position that if a decision is given by the Authority under the Payment of Wages Act which is not subject to appeal, it could only be challenged under Article 227 of the Constitution. But if an appeal is provided and a party aggrieved appeals and a decision is given by the District Court, then that decision can be challenged in revision under Section 115. Now, it may be that when a revisional application is preferred against a decision of a District Court we may have to interfere with the order of the Authority under the Payment of Wages Act. Strictly we have no jurisdiction to interfere with his decision under Section 115 and in our opinion it would not be proper to interfere with that decision by the rather circuitous method of permitting a revisional application against the decision of an appellate Court and then interfering with his decision which was under the Payment of Wages Act. Therefore as a matter of practice it would be better that all decisions under the Payment of Wages Act, if they are to be challenged at all, are challenged under Article 227 of the Constitution. We have jurisdiction under Article 227 not only to interfere with the decisions of Tribunals but also of Courts subordinate to us, and in the interest of uniformity it would be better if one definite and settled practice was adopted.
Petition dismissed.