
(1966) 05 AHC CK 0007
In the Allahabad High Court
Case No : Special Appeal No. 206 of 1961

Amba Prasad and Others	Vs	APPELLANT
Jaswant Sugar Mills Ltd. and Another		RESPONDENT

Date of Decision : 10-05-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Wages Act, 1936 — Section 2(6)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 3

Citation : AIR 1967 All 146 : (1966) 2 LLJ 702

Hon'ble Judges : Jagdish Sahai, J; B.D. Gupta, J

Bench : Division Bench

Advocate : S.N. Misra, for the Appellant; S.N. Kackker, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—This special appeal by Amba Prasad and 27 others is directed against the judgment of J. K. Tandon, J. dated 9-12-1960, allowing writ petition No. 1921 of 1959 filed by the respondent No. 1, M/s Jaswant Sugar Mills Limited, Meerut (hereinafter referred to as the Mills).

2. The appellants approached the Authority under the Payment of Wages Act (hereinafter referred to as the Authority) u/s 15 of the Payment of Wages Act, 1936 (hereinafter referred to as the Act) on the allegation that they were entitled to certain amount of money as retaining allowance which had not been paid to them by the mills. By means of the order dated 15-6-1959, the Authority awarded certain sums to each one of the 28 appellants.

3. The mills then filed writ petition No. 1921 of 1959 in this Court and prayed for the quashing of the order dated 15-6-1959 of the Authority. The writ petition was heard by J. K. Tandon J., who allowed it and quashed the order dated 15-6-1959 passed by the Authority purporting to exercise powers u/s 15(3) of the Act.

4. Dissatisfied with the judgment of the learned single Judge, the 28 appellants

have filed the instant special appeal.

5. We have heard Mr. S. N. Misra, the learned counsel for the appellants, and Mr. S. N. Kackker, the learned counsel for the mills. No one has appeared on behalf of the other respondent, that is, the Authority.

6. Mr. S. N. Misra has very strenuously contended that the learned single Judge was in error in having quashed the order dated 15-6-1959 passed by the Authority and that the view taken by the learned single Judge that the amounts sought to be recovered u/s 15 of the Act were not "wages" as defined in Section 2(vi) of the Act is incorrect.

7. It would contribute to a proper understanding of the question raised before us if it is mentioned at the outset that the mills carries on the business of crushing sugar-cane and manufacture of sugar. For the purposes of the working of the mills, a year is divided into two parts, that is, working season and off season. Working season are the months during which operations in the sugar mills are carried on and crushing of sugar cane and manufacture of sugar take place. Off season is the period during which the actual process of manufacture of sugar or crushing of sugar-cane does not take place. During this period only skeleton staff is maintained in order to keep the premises and machinery installed in the factory clean. Most of the workers are not on duty during the off season.

8. The case of the appellants was that in addition to the remuneration that they were getting during the working season, they were entitled to a certain amount of money as retaining allowance. They rest their claim on the following documents :--

(1) Notification No. 6849(ST)/XXV-A dated November 13, 1957, issued by the labour department. The relevant portions of this document read:--

"And whereas, in the opinion of the State Government it is necessary to enforce the recommendations of the said Committee for securing the public convenience and maintenance of public order and supplies and services essential to the life of the community and for maintaining employment.

Now, therefore, in exercise of the powers conferred by Section 3 of the U. P. Industrial Disputes Act, 1947, (U. P. Act No. XXVIII of 1947) the Government of Uttar Pradesh is pleased to make the following order and to direct, with reference to Section 19 of the said Act, that notice of this order is given by publication in the official Gazette.

ORDER :--

(1) Retaining Allowance (1) The decision of the Hon"ble Supreme Court in Appeals Nos. 179-204 of 1957 (Application for special leave to appeal under Article 136 of the Constitution against the decision of the Labour Appellant Tribunal of India, Calcutta, in Appeal No. Cal 45-59, 61-67, 69-95 and 97-99 of 1955 between the workmen of the sugar factories in Bihar and the certain sugar

factories of Bihar), if given after considering the merits of the case, will be binding on the sugar factories of this State and their workmen. "Payment based on this decision will be made after the decision is announced but will be given effect to from September 1, 1955. Meanwhile the payment of retaining allowance to existing categories drawing this allowance at the present rates will continue."

(Underlined (here into " ") by us.)

(2) Clause "U" of the standing orders applicable to sugar mills reads :--

"No workman shall get less than Rs. 55 per month as his wages or any other statutory minimum wage fixed by Government from time to time.

A factory shall also continue to give every "workman all the existing facilities allowances and concessions" in addition to the wages payable to him."

(Underlined (here in ") by us).

9. The learned single Judge was of the opinion that the retaining allowance paid to the workers during the off season did not amount to wages as defined by Section 2(vi) of the Act. That provision reads :--

"2(vi) "wages" means all remuneration, capable of being expressed in terms of money which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment but does not include-

(a) the value of any house-accommodation, supply of light, water, medical attendance, or other amenity, or of any service excluded by general or special order of the State Government;

(b) any contribution paid by the employer to any pension, fund or provident fund;

(c) any travelling allowance or the value of any travelling concession;

(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(e) any gratuity payable on discharge." It is clear from the definition that before any amount can be "wages", it must be "remuneration." In the Shorter Oxford dictionary the word "remuneration" is, inter alia, given the following meanings :--

"Remuneration, reward, re-compenses, repayment, payment, pay."

According to the Stroud's Judicial Dictionary the word "remuneration" ordinarily means any consideration, which a person receives for giving his services. Remuneration also means a quid pro quo. (See Words and Phrases Judicially

defined, Volume 4).

10. There cannot be any doubt that remuneration is correlated to service and is a return in terms of money or goods for services rendered by one party to another. We have to see whether retaining allowance has an element of quid pro quo or is a return in terms of money or goods for services rendered. Admittedly during the off season no services are rendered by these workmen to the mills. During this period the workmen are free to seek service of others or to keep themselves employed in any undertaking or business of their own. It is, therefore, clear that the retaining allowance cannot be co-related to the services rendered to the mills. In our judgment it is nothing, but a compensation paid to the workmen for their denying themselves the liberty to seek employment elsewhere or to work for themselves, during the coming working season in the mills. Consequently it is not possible to hold that the retaining allowance partakes of the nature of pay or fees or remuneration. Once it is not remuneration, it cannot be wages within the meaning of the Act. We are, therefore, of the opinion that the retaining allowance is not comprehended in the expression "wages" as defined by Section 2(vi) of the Act and for that reason the Authority had no jurisdiction to entertain the claims filed by the 28 appellants before it and to adjudicate upon the same. That being our finding, we are satisfied that the learned Single Judge was correct in holding that the order dated 15-6-1959 passed by the Authority was without jurisdiction and therefore, liable to be quashed.

11. Mr. Misra has strenuously urged that even assuming that the Authority had no jurisdiction to pass the order dated 15-6-1959, it is not a fit case for interference by this Court in the exercise of its discretionary jurisdiction under Article 226 of the Constitution of India. Mr. Misra submits that it has never been the case of the respondent No. 1, the mills, that no amount as retaining allowance is due to the appellants, but only that the amount is not liable to be recovered under the provisions of the Act.

12. It is true that in the writ petition filed by the respondent No. 1, it has not been categorically stated that no amount as retaining allowance was due from them to the appellants. It does also appear that the parties proceeded on the assumption that the amount, though due, was not recoverable under the machinery provided by the Act. But there is no clear or categorical admission of the respondent No. 1 that the amount is in fact due from them, with the result that the matter requires investigation. For the reasons given below it appears to us that in the circumstances of the case the remedy by way of a writ was not proper

13. One of the questions that requires decision is whether or not the appellants were employed in the mills and, if so, whether they fell in the category to which the retaining allowance was payable. Naturally this question and others, connected with it, could have been decided only by a forum which could investigate complicated questions of fact on the basis of such evidence, parole and documentary, as produced by the parties. A writ petition is normally decided

in a summary proceeding on the basis of affidavits alone.

14. It might also be noticed that the notification dated November 13, 1957 on which the appellants have founded their right to receive the retaining allowance has been made u/s 3 of the U. P. Industrial Disputes Act. It has been clearly recited in that notification that the State Government has issued it for the purpose of "securing the public convenience and maintenance of public order and supplies and services essential to the life of the community and for maintaining employment." In other words the sole object of the State Government in issuing the notification was to bring in industrial harmony and to ensure employment to workmen. There is a clear reference to Section 19 of the Industrial Disputes Act in this notification. Consequently there are good grounds to believe that the proper forum for the respondent No. 1, the mills, was either an arbitrator under the provisions of Section 5-B of the U. P. Industrial Disputes Act or a Labour Court or an Industrial Tribunal on a reference made u/s 4-K of that Act.

15. Sri S. N. Misra, the learned counsel for the appellants, and Sri S. N. Kacker, the learned counsel for the respondent No. 1, the mills have made a joint statement before us to have the matter decided by the presiding Officer of the Labour Court Meerut acting as an arbitrator by making a reference to him within a period of three months from today. In this view of the matter we are of the opinion that no order allowing the appeal should be passed and the writ petition should not be dismissed on the ground that in the circumstances of the case the proper remedy was not to file a writ petition.

16. The learned counsel for the parties have also made a joint statement that if either party wriggles out of the agreement to refer the matter to arbitration u/s 5-B of the Industrial Disputes Act, it would be open to the other party to make a request to the State Government to refer the dispute to a Labour Court or Industrial Tribunal. It is obvious that when such a request is made to the State Government, it would make the necessary reference in order to maintain industrial peace.

17. In view of what we have stated above this special appeal is dismissed, but there is no order as to costs.