
(1959) 06 BOM CK 0016

In the Bombay High Court

Case No : Special Civil Application No's. 3665 and 3666 of 1958

Anusuyabai Vithal

APPELLANT

Vs

Mehta J.H.

RESPONDENT

Date of Decision : 20-06-1959

Acts Referred:

Employees State Insurance Act, 1948 — Section 81
Industrial Disputes Act, 1947 — Section 2, 25C, 25D, 25E, 36(3)

Citation : (1959) 61 BOMLR 1417 : (1959) 2 LLJ 742

Hon'ble Judges : V.S. Desai, J;H.K. Chainani, J

Bench : Division Bench

Judgement

Chainani, C.J.—The question which arises for determination in these two applications is whether compensation, payable to workers, who have been laid off, under the provisions of the Industrial Disputes Act, 1947, is "wages" within the meaning of the Payment of Wages Act. The term "lay-off" is defined in Clause (kkk) of S. 2 of the Industrial Disputes Act as meaning the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster-rolls of his industrial establishment and who has not been retrenched. To put it briefly, lay-off therefore means the failure, refusal or inability of an employer to give employment to his employee. There is an explanation to this clause which states :

"Every workman whose name is borne on the muster-rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid off for that day within the meaning of this clause."

2. Section 25C of the Act provides that whenever a workman, whose name is

borne on the muster-rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer, is laid off, he shall be paid by the employer for all days during which he is so laid off except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid off. Section 25D impose an obligation upon the employer to maintain a muster-roll during the period of lay-off, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours. Section 25E specifies cases and circumstances in which no compensation shall be payable to a workman, who has been laid off. For instance, under Clause (i) no compensation is payable, if the workman refuses to accept any alternative employment provided by the employer. These provisions of the Act impose a liability on an employer to make certain payments to his employees, when he fails, refuses or is unable to provide work to them. The payments are referred to as "compensation" and not as "wages." The legislature has drawn a distinction between wages and compensation. It was open to the legislature to say that during the period of lay-off a workman shall be paid wages calculated in the prescribed manner. But the legislature has deliberately referred to the sum payable to a workman during the period of lay-off as compensation, thereby suggesting that the legislature did not intend that it should be regarded as wages.

3. Standing order 17 of the standing orders settled by the Industrial Court under S. 36(3) of the Bombay Industrial Relations Act, 1946, and which determines the relations between the petitioners their employees, i.e., respondent 2, is as follows :

"Any operative played off under order 16 shall not be considered as dismissed from service, but as temporarily unemployed, and shall not be entitled to wages during such unemployment except to the extent mentioned in order 16. Whenever practicable, a reasonable notice shall be given of resumption of normal work and all operatives played off under work 16, who present themselves for work, when the normal working is resumed, shall have prior right of reinstatement."

4. This standing order uses the term "played off" instead of "laid off." It gives right to the employer to lay off his workmen, that is to say, it relieves him from an obligation to provide work to them. It also relieves him from the liability to pay wages during this period. Consequently, during the period of lay-off a workman cannot insist on work bring provided by this employer. There is also no obligation on him to render service. Consequently he does not enjoy a right to demand wages. It is, therefore, urged by Mr. Gokhale that as during this period the mutual obligations of the employer and the employee, of the employer to provide work and to pay wages and of the employee to work, cease to exist and also as the employee cannot claim wages during this period, the contract of

employment does not subsist or at least is suspended during this period. Mr. Nargolkar who appears on behalf of the petitioners, has, on the other hand, urged that the terms of their employment have been modified by statute and that S. 25C of the Industrial Disputes Act makes it a term of their employment that compensation shall be paid to them whenever they are laid off. He has contended that the obligation to pay such compensation and the right to claim it arise under the terms of employment and that consequently it would be wrong to say that during the period of lay-off, the contract of employment does not subsist or is suspended or that the relationship of master and servant ceases to exist. We do not think that it is necessary for us to express any definite opinion on this point in these cases. It is, however, clear that lay-off does not terminate or bring to an end the contract of employment. The employees continue to be on the muster-roll of the employer and they have to be reinstated as soon as normal working is resumed.

5. The next question to be considered is whether the compensation granted for lay-off is wages within the meaning of the Payment of Wages Act. The definition of the word "wages" given in the Act was amended in 1957. The amended definition is as follows :

""Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and include -

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force; ..."

6. Then follow six clauses, under which certain kinds payments are not to be regarded as wages. It is not necessary to refer to them. Leaving out of consideration, for the time being, Cls. (a) to (e), which extend the meaning of the term "wages," the term as defined in the main part of the definition means a payment, which must satisfy three conditions. Firstly, it must be remuneration. Secondly, it must be payable if the terms of employment are fulfilled. Thirdly, it

must be payable in respect of employment or work done in such employment. The word "remuneration" ordinarily means any consideration, which a person receives for giving his services (see Stroud's Judicial Dictionary). It is, therefore, a payment made for services rendered. When no services are rendered and when in fact there is no obligation to render services and when the amount becomes payable owing to the failure of the employer to provide work, it would be difficult to hold that it is remuneration. That the legislature did not also intend that such payments should be regarded as remuneration, is clear from the different phraseology used by it in Cls. (a) to (c) as compared to that used in Cls. (d) and (e) of the definition. In Cls. (a), (b) and (c), the sums payable are described as remuneration. These sums are payable in respect of, or on account of, services which have been or are to be rendered. Clause (d) refers to a sum, which is payable by reason of the termination of employment. Even though such sum may be payable under the contract of employment or under any law, the legislature has not described it as remuneration. The reason is obvious and that is that the amount is payable not on account of services rendered, but by reason of services having been brought to an end. The definition of the term "wages," therefore, itself suggests that the word "remuneration" is used in the sense of any payment, which is made for work done or for services rendered. The Supreme Court appears to have taken the same view in *Bala Subrahmanya Rajaram Vs. B.C. Patil and Others*, , Bose, J., observes :

"Remuneration is only a more formal version of "payment" and payment is a recompense for service rendered."

7. Compensation, which is payable for lay-off, that is, on account of the failure or inability of the employer to provide work, cannot therefore be said to be remuneration. The payment is made not as consideration for work done or services rendered, but as compensation for temporary loss of employment.

8. Another requirement of a payment to fall within the term "wages" is that it must be "in respect of employment or work done in such employment." The expression "in respect of" means "attributable to" [see *Asher v. Seafood Court Estates Ltd.* 1950 A.C. 508 or, if it is given a wider meaning, "relating to or with reference to" [see *Tolaram Relumal and Another Vs. The State of Bombay*, . The payment must, therefore, be attributable to employment, that is, engagement in work, or to work done. During the period of lay-off, the employer is not in a position to provide work and the employee cannot insist on work being provided or wages being paid to him. The employee is also not under any duty to work for his master or even to present himself for work. He has to present himself for work if he desires to claim compensation (see S. 25E of the Industrial Disputes Act). But he has an option in the matter. If he remains absent, he will not be entitled to compensation, but he will not lose the right, which he possesses under the standing orders, of reinstatement when the normal working is resumed. The employer cannot insist on his attendance and there is also no obligation upon him to provide work or to pay wages even if the worker presents

himself for work. In order to escape liability for compensation, the employer may provide the worker with alternative employment, but the worker is not bound to accept it. If he does not accept it, he will not be entitled to claim lay-off compensation, but he will not lose his right of reinstatement when the lay-off ends. The compensation for lay-off is, therefore, paid in respect of a period when no work is done and when in fact there is no liability on the employer to provide work and on the employee to do work. It is not paid as additional remuneration for work done previously. It cannot, therefore, be said to be attributable to the employment of a worker or to the work done by him. It is made payable in order to mitigate or reduce the hardship caused by reason of unemployment or temporary loss of employment. Consequently, it cannot be said to be a payment "in respect of employment or work done in such employment."

9. As, therefore, compensation payable for lay-off is not remuneration and is also not payable to a worker in respect of his employment or work done in such employment, it is not "wages" within the meaning of this term given in the main part of the definition. In this view, it is not necessary to consider whether such compensation is payable by reason of the term of employment being fulfilled.

10. Mr. Nargolkar has also contended that lay-off compensation will fall under Cls. (c) and (e) of the definition of wages. Clause (c) brings within the definition any additional remuneration, such as bonus, payable under the terms of employment. Lay-off compensation is however, not remuneration. It will therefore, not fall under Clause (c).

11. Clause (e) refers to any sum payable under any scheme framed under any law. This clause contemplates a payment under some scheme like a provident fund scheme framed under some enactment. It is not intended to apply to any sum payable under the provisions of the Act itself. If that had been the intention of the legislature, the words "any sum to which the person employed is entitled under any law" would have been sufficient to carry out the intention of the legislature and it would not have been necessary to also add the words "under any scheme framed" before "under any law." In our opinion, therefore, Clause (e) has no application to lay-off compensation.

12. We are accordingly of the opinion that compensation payable lay-off, under the provisions of the Industrial Disputes Act, is not wages within the meaning of the Payment of Wages Act. Similar view was taken in Ref. under S. 81, Employees' State Insurance Act (1955) 58 Bom. L.R. 328 : Nutan Mills Vs. Employees State Insurance Corporation, . That was a case under the Employees' State Insurance Act, but the definition of the "wages" given in that Act was for all practical purposes the same as the unamended definition of this word in the Payment of Wages Act. The definition of "wages" given in the Payment of Wages Act has since then been amended. But the amendment does not in any way alter the ratio or principle of the decision in Ref. under S. 81, Employees' State Insurance Act. With respect, we agree with the view taken in this case that lay-off compensation is not wages.

13. The rules issued in the two applications will therefore, be discharged. There will be no order as to costs.