

(1957) 10 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 1564 of 1957

Aruna Mills Ltd.

APPELLANT

Vs

Industrial Court, Bombay and Others

RESPONDENT

Date of Decision : 11-10-1957

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78, 79

Citation : (1958) 60 BOMLR 206 : (1958) 2 LLJ 388

Hon'ble Judges : H.K. Chainani, J;D.G. Tambe, J

Bench : Division Bench

Judgement

Chainani, J.—The petitioner is a public limited company running a cotton textile mill at Ahmedabad. In 1948 the industrial court made an award known as the Standardization award, by which the wages of all employees, including assistant stampers, but excluding clerks, were fixed. In 1949 the industrial court made another award fixing the wages of clerks. Subsequently, on 22 June 1949 there was an agreement between the Textile Labour Association, Ahmedabad, which is a representative union, and the Ahmedabad Millowner's Association by which the wages of clerks were revised. Respondents 6 to 11 in this petition, who are the only contesting respondents and to whom I will hereafter refer as the respondents, are employed as assistant stampers in the mill run by the petitioner. Since 1948, they were being paid wages fixed for assistant stampers by the Standardization award. On 20 March 1956, respondent 6 through a union, wrote a letter Ex. 19 to the petitioner. In Para. 5 of that letter he stated that although the duties performed by him were of a clerical nature since seven years", he was not being paid wages in accordance with the agreement arrived at in 1949, by which the wages of clerks were revised. He also stated that the nature of his work had been changed after he had made a complaint about proper wages not being paid to him to the manager. The petitioner replied to respondent 6 on 17 April 1956, and in its reply it denied that respondent 6 was a clerk or that he was entitled to the wages of a clerk. On 20 April 1956 the petitioner made an application to the labour court, pupating to be an application

under Ss. 78 and 79 of the Bombay Industrial Relations Act, in which they asked for an interpretation of the Standardization award and the agreement regarding clerks arrived at in 1949 and for a decision on the question whether the respondents and one other person Gangadas, who was also working as an assistant stampers, were entitled to be benefits of the agreement regarding clerks arrived at on 22 June 1949. The respondents contended that the application was not maintainable, as the petitioner was not entitled to approach the labour court under S. 78 of the Act. This contention was accepted by the labour court, which accordingly dismissed the application made by the petitioner. On appeal by the petitioner, the industrial court confirmed the decision of the labour court. The petitioner has, therefore, filed the present special civil application, in which the petitioner has prayed that the orders passed by the labour court and the industrial court should be set aside and that the labour court should be asked to decide the application made to it by the petitioner on merits.

2. The relevant part of S. 78 of the Bombay Industrial Relations Act provides as follows :

"(1) A labour court shall have power to -

A. decide -

(a) disputes regarding -

(iii) Any change made by an employer or desired by an employee in respect of an industrial matter specified in Sch. III and matters arising out of such change."

3. The explanation to this section provides that a dispute falling under Clause (a) of Para. A of Sub-section (1) shall be deemed to have arisen, if within the period prescribed under the provision to Sub-section (4) of S. 42 no agreement is arrived at in respect of an order, matter or change referred to in the said proviso. Sub-section (4) of S. 42 provides that an employee desiring a change in respect of (iii) an industrial matter specified in Sch. III shall make an application to the labour court : provided that no such application shall lie unless the employee has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period. Item (5) in Sch. III to the Act is as follows : "Construction and interpretation of awards, agreements and settlements." Reading these provisions together, it is clear that a labour court has power to decide disputes relating to the construction and interpretation of awards and agreements. In view of the explanation to S. 78, such an industrial dispute with regard to the construction of an award and/or agreement shall be deemed to have arisen. If, after an employee has requested the employer for a change, no agreement is arrived at between the parties in respect of that matter within the prescribed period.

4. The first question to be determined, therefore, is whether there was a dispute in regard to the interpretation of the Standardization award and the agreement

regarding clerks arrived at in 1949. The industrial court in its order has observed that respondent 1 (present respondent 6) had raised a dispute alleging that he was entitled to be paid the scales under this agreement (dated 22 June 1949) and in the letter dated 20 March 1956, had complained to the company about it. The industrial court, therefore, evidently took the view that there was a dispute between the parties regarding the interpretation of the award and the agreement regarding clerks. Mr. Rane, who appears on behalf of the respondents, has strenuously argued that there was no dispute within the meaning of the Act, as respondent 6 had, in his letter dated 20 March 1956 (Ex. 19) not asked for any change. There is no substance in this argument. In Para. 3 of his letter dated 20 March 1956 (Ex. 19) respondent 6 had stated that, although for seven years clerical work was taken from him, he had been designated as an assistant stampers and paid wages as such. In Para. 5 of his letter, he had stated that he had, therefore, approached the manager-cum salesman to grant him salary gradation as per clerical agreement and that he had been told that his case would be considered in the following month. In Para. 6 it was stated that after he had complained to the manager, there was a change in the nature of work assigned to him. In Para. 7 he stated that he felt aggrieved by this action of the mills and in Para. 8 he asked for his grievances being inquired into. In reply to this letter, the petitioner stated that respondent 6 was being paid correct wages as fixed under the award. There was, therefore, clearly a dispute between the petitioner and respondent 6 as to whether respondent 6, who was working as an assistant stampers, was entitled to wages fixed for clerks by the agreement of 22 June 1949 or those fixed for assistant stampers by the Standardization award. Mr. Rane has contended that the letter of respondent 6 was only a letter of request and not a letter asking for a change within the meaning of Sub-sec (4) of S. 42. This argument again cannot be accepted, for in his letter respondent 6 had clearly stated that he had asked the manager to pay him the wages of a clerk. He had, therefore, asked for a change in his wages.

5. The proviso to Sub-sec (4) of S. 42 states that an approach to the employer for change should be made in the prescribed manner. Sub-rule (1) of rule 53 provides that a copy of the application made to the employer shall be forwarded to the Commissioner of Labour and also to the labour officer for the local area. Respondent 6 had not sent copies of his letter to the petitioner, to these officers. Mr. Rane has, therefore, urged that as the prescribed procedure had not been followed, respondent 6 cannot be said to have asked for a change within the meaning of Sub-section (4) of S. 42. It is, however, clear from his letter that he had asked for a change in his wages. It will be difficult to hold that he had not asked for a change, merely because he did not send copies of his letter to the Commissioner of Labour and the labour officer, as he ought to have done under the rules.

6. In Para. 9 of the written statement filed by the respondent in the labour court it was denied that the agreement of 22 June 1949 did not apply to the respondents. Their contention; therefore, was that they were entitled to wage in

accordance with this agreement. The respondents further stated in the same paragraph that respondent 6 "alone had asked for scales under the clerical agreement by reason of his duties" and that "this dispute" did not affect the other opponents. They therefore admitted that there was a dispute between the petitioner and respondent 6. The statement that this dispute did not effect the other respondents is inconsistent with their contention that their wages should have been regulated by the agreement of 1949. In para. 7 it was stated that the respondents denied that they were paid wages "on legal and proper interpretation of the award" or that they were "covered by the Standardization award" or "that they could not be legally covered by the clerks agreement dated 22 June 1949." It is, therefore, obvious that there was a dispute at least between respondent 6 and the petitioner in regard to the interpretation of the Standardization award and the agreement in regard to clerks reached in 1949 and that this dispute affected the other respondents also.

7. The next question to be considered is whether the petitioner could approach the labour court for the settlement of this dispute. There is nothing in S. 78, which prevents an employer from approaching the labour court. Sub-sec (1) of S. 79 provides that proceedings before a labour court in respect of disputes falling under Clause (a) of Para. A of sub-section (1) of S. 78 shall commenced on an application made by any of the parties to the dispute. The parties to an industrial dispute are the employer on the one hand and the employee or the employees on the other. Section 79 gives a right to either of the parties to the dispute to approach the labour court. On a plain reading of this section, it must, therefore, be held that the petitioner could make an application to the labour court for the settlement of the dispute. Sub-sec (2) of S. 79 states that every application under Sub-section (1) shall be made in the prescribed form and manner. Rule 71 provides that every application under Sub-section (1) of S. 79 shall be made in form P. The relevant portion of form P is as follows :

Name of the employer/registered union/ employee/labour officer Applicant"

8. This form, therefore, also provides for an application being made to the labour court by an employer.

9. Sub-sec (3) of S. 79 lays down a period of limitation for making applications to the labour court. It provides for a period of three months from the date of the employee concerned having approached the employer under the proviso to Sub-section (4) of S. 42. The industrial court seems to have taken the view that this Sub-section lays down a period of limitation only for employees and not for the employer. This view does not appear to be correct. The sub-section will apply when either party makes an application to the labour court. If the employer wishes to approach the labour court, he must also make the application within three months after the employee has made an application to him for a change under Sub-sec (4) of S. 42.

10. The industrial court has also referred to the fact that there is no provision in

the Act corresponding to Sub-section (4) of S. 42, stating that an employer desiring a change shall apply to the labour court. The effect of this is that it is not obligatory on the employer to approach the labour court before he makes a change. But we have not been able to find any provision in the Act or the rules, which prevents an employer from approaching the labour court under S. 78 of the Act, after a dispute has arisen.

11. Another reason given by the industrial court in support of its view is that an employer can act upon his own interpretation of the award and leave it to the employee to approach the labour court. That is undoubtedly true. But if an employer acts on his own interpretation or makes a change, it might give rise to disputes and create discontent amongst the workers. In order to avoid this contingency, an employer may prefer to approach the labour court to get the dispute resolved rather than to act on his own interpretation. One of the objects of the Act, as stated in the preamble, is to make provision for the settlement of "industrial disputes." We must, therefore, interpret the provisions of the Act in manner, which would promote its objects. It would certainly be more conducive to the maintenance of industrial price, if, in case there is a dispute as to the correct interpretation of an award, agreement or a settlement, the employer, before acting on his own interpretation, approaches the labour court and obtains a decision as to its correct interpretation.

12. In any case, Sub-section (1) of 79 clearly shows that the legislature intended to give the right to approach the labour court to both the parties, i.e., the employer and the employees.

13. The view taken by the industrial court and the labour court was, therefore, wrong. Accordingly, we set aside the order passed by the labour court confirmed in appeal by the industrial court and direct that the labour court should hear the application made by the petitioner on its merits and then dispose of it in accordance with law. The petitioner should get its costs from respondents 6 to 11.

14. We may also observe that the attitude adopted by respondents 6 to 11 in this case seems to us to be very unfair. Respondents 6 himself raised a dispute by complaining first orally and therefore in writing that he has not being paid his proper wages, to which he was entitled either under the award or under the agreement of 1949. Respondents 7 to 11 in their written statement in the labour court also contended that they were entitled to receive the wages fixed for the clerks. When, however, the petitioner tried to obtain a settlement of the dispute, a respondents 6 to 11 objected to it. They themselves did not make an application to the labour court for resolving the dispute. There is, therefore, force in the argument advanced on behalf of the petitioner that the object of these respondents was either to harass the petitioner by filing a number of applications before the Payment of Wages Authority or to raise a dispute, keep it unresolved and thereby create a cause for agitation and discontent amongst the workers. Such an attitude is unreasonable and does not reflect credit on these respondents.