(1940) 07 BOM CK 0012

In the Bombay High Court

Case No : Civil Revision Application No. 337 of 1939

Arvind Mills Ltd. APPELLANT

Vs

K.R. Gadgil RESPONDENT

Date of Decision : 05-07-1940

Acts Referred:

Payment of Wages Act, 1936 — Section 2

Citation : AIR 1941 Bom 26 : (1940) 42 BOMLR 955

Hon'ble Judges : Wassoodew, J;John Beaumont, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Beaumont, Kt., C.J.—These are two revisional applications which call in question an order made by the First Class Sub-Divisional Magistrate, Ahmedabad, u/s 15 of the Payment of Wages Act, 1936. The learned Magistrate''s decision was upheld by the Assistant Judge, Ahmedabad.

2. The short point is this, The Arvind Mills, Ltd., who are the applicants, carry on the business of the manufacture of yarn and cloth at Ahmedabad, and they employ workmen at their Mills, some of whom are paid by the piece, and some by time. The Mill authorities recently introduced a scheme for paying a bonus to) workmen. In the case of workmen paid by the piece the scheme is that any workman who turns out within a week the number of pieces set opposite the quality of the cloth in a published list will be paid a bonus of four annas for each week of six days. In the case of time workers the scheme seems to be that the workers are employed for a Hapta, which means a time period of sixteen days, at certain remuneration, and the scheme provides that a bonus of a specified amount will be paid to any worker who attends throughout the whole of the Hapta; if he is absent for any day of the first eight days he loses half the bonus, and if he is, absent for any day of the other eight days he loses the rest of the bonus. The scheme is obviously intended to encourage regular and quick work. The result of the learned Magistrate''s decision is, not to declare the bonus

scheme unlawful under the Payment of Wages Act, but to affirm that the bonus is payable, not only to those who come within the terms of the scheme, but to all other employees of the applicants. That seems on the face of it a rather remarkable conclusion at which to arrive. Prima facie, an employer isi not bound to pay for work which has not been done, and an employee is not entitled to receive payment which he has not earned. However, the question is whether the decision which the learned Magistrate has arrived at is in conformity with the Act.

3. Now, the Act recites that it is expedient to regulate the payment of wages to certain classes of persons employed in industry. Then u/s 2 there are various definitions, including a definition of " wages", and since the whole argument of the respondent, which prevailed in the Courts below, turns on that definition, I will come back to it after noticing the general scheme of the Act. Section 3 provides that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Act. Section 4 requires wage-periods to be fixed, and Section 5 deals with the time of payment of wages. Section 6 provides that all wages shall be paid in current coin or currency notes or in both. Section 7 provides that the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under the Act, and the rest of the Section authorises certain deductions. Section 8 deals with fines, and Section 9 deals with deductions for absence from duty, the effect of the Section being to provide that the deductions from wages shall be proportionate to the period of absence from work; so that if a man is absent for one day out of eight he can only lose one-eighth of his wages, and the employer cannot make a greater deduction because of the inconvenience occasioned to him by the absence. Then later Section s deal with deductions for damage caused by neglect or default of the employed person and other deductions. Section 23 prohibits an employed person from contracting himself out of the rights con-ferred by the Act. So that the general purpose of the Act appears to be to provide that employed persons shall be paid their wages in a particular form and at regular intervals and without any unauthorised deductions. But apart from the definition of " wages ", to which I will now refer, there is nothing in the Act to suggest that a workman is to be paid wages which under the terms of the contract of employment have not been earned.

4. Now, the definition of "wages" in Section 2 is this:

(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,...

The argument on behalf of the respondent is that " wages " under that defi nition means potential wages, and not actual wages; that the words " all remuneration which would, if the terms of the contract of employment were fulfilled, be payable," include in wages sums capable of being earned undet the contract; and that inasmuch as every workman might earn the bonus, the bonus forms part of the wages of all the workmen. That argument appealed to both the lower Courts, who took the view that the " wages " as defined were not wages actually earned, but wages capable of being earned. No doubt, on the language of the definition there is something to be said for that view, but it has to be observed that, under the opening words of Section 2, the definitions only apply if there is nothing repugnant in the subject or context. It seems to me that the word " wages " as used in most, at any rate, of the Section s of the Act, plainly does not mean potential wages, but wages earned. Section 5, for instance, provides that the wages of every person employed shall be paid before a particular date. That must clearly mean wages earned, though curiously enough in Sub-section (2) the expression "wages earned " is actually used in connection with wages of men whose employment has been terminated. Section 7, which is the Section under which it is suggested that the bonus cannot be deducted because it forms part of the wages, in my opinion, plainly refers to wages earned. It says: " ...the wages of an employed person shall be paid to him without deductions of any kind..." That cannot mean that wages which may be earned, but have not been earned, shall be paid without deductions. The expression " wages " there must mean " wages earned ".

5. Even if therefore the bonus falls within the definition of wages, I am of opinion that there is nothing in the Act to prevent its deduction if not earned. But, in my opinion, taking the definition in conjunction with the rest of the Act, it does not embrace potential wages. The expression " remuneration, which would, if the terms of the contract were fulfilled, be payable," seems to me to mean no more than " remuneration payable on the fulfilment of the contract." In my judgment the bonus never became payable to the employees who did not earn it under the terms of the bonus scheme, and the judgments of the lower Courts were wrong, and these revisional applications must be allowed with costs throughout.

Wassoodew, J.

6. I agree.

