
(1964) 08 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Writ Petition No. 110 of 1964

Bijai Cotton Mills Ltd.

APPELLANT

Vs

Sub-Divisional Magistrate and Another

RESPONDENT

Date of Decision : 06-08-1964

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 15(2), 15(3), 2, 5

Citation : AIR 1965 Raj 11 : (1965) 10 FLR 154 : (1964) RLW 519

Hon'ble Judges : D.M. Bhandari, J;C.B. Bhargava, J

Bench : Division Bench

Advocate : Hastimal, for the Appellant; B.C. Chatterji, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Bhandari, J.—This is a Writ Petition under Article 226 of the Constitution on behalf of Bijai Cotton Mills Ltd., Bijainagar which carries on the business of manufacturing yarn at Bijainagar, Tehsil Beawar, which formed part of the State of Ajmer-Merwara before its merger in Rajasthan in 1956.

2. Sometime in the year 1950 a dispute arose between the petitioner and its workmen regarding the scale of wages being paid to the workmen. The contention of the workmen was that it was much below the subsistence level. The Government of Ajmer referred the dispute for adjudication to the Industrial Tribunal u/s 10(1) read with Section 12(15) of the Industrial Disputes Act, 1947. These proceedings after a prolonged trial ended on the 7th June 1955 in an award by Mr. C. Jacob, who was appointed as the Tribunal. In substance the award fixed the basic minimum wages to be paid to all categories of workmen as specified in the enclosure to the award. The workmen were further held entitled to the dearness allowance at a uniform rate of Rs. 10/-per mensem. The wages and dearness allowance were directed to be paid from 1st of December 1950. Both the parties went in appeal to the Labour Appellate Tribunal of India at Bombay. By their order dated 12th of December 1956, the Labour Appellate

Tribunal modified the award in respect of the minimum wages and it was ordered that the minimum wages shall be paid as fixed in the notification of the Government of India dated. 8th of October 1952. The petitioner took the matter in appeal to the Supreme Court. The appeal was dismissed by the Supreme Court on 12th of February 1960. The judgment of their Lordships of the Supreme Court is reported in *Bijai Cotton Mills Ltd. v. Its workmen, Bijay Cotton Mills Ltd. Vs. Their Workmen and Another*, Thereafter, Shri J.P. Bhargava, Labour Inspector and ex-officio Inspector under the Payment of Wages Act, Ajmer District, Beawar, applied to the Sub Divisional Magistrate, Beawar who was the authority under the Payment of Wages Act to hear and decide all claims arising out of deductions from wages or delay in payment of wages of persons employed or paid in the labour area in Beawar. The Labour Inspector prayed that a direction be issued u/s 15(3) of the said Act for the payment of Rs. 12,63,366.54 or such greater or lesser amount as the authority may find due to the workmen of the Mill for the short payment made to them during the period falling between 1-12-1950 and 7-1-1953. The Labour Inspector further claimed that the compensation amounting to Rs. 1,27,690/- be also directed to be paid at the rate of Rs. 10/- per head to each workman. This application was made on 22nd of August 1960. Shri Bijai Cotton Mills Ltd., Bijainagar and Seth Raghunath Mansinghka, Managing Director of the said Mill were parties to this application. One of the grounds taken up by the petitioner in the reply submitted by it before the said authority was that the application of the Labour Inspector for the reliefs sought was not maintainable under the Payment of Wages Act. The learned Sub Divisional Magistrate framed several issues. The first issue was, as follows:--

Is the application not maintainable under the Payment of Wages Act?

The learned Sub Divisional Magistrate decided this issue against the petitioner on 17th of February 1964 and held that the application was maintainable u/s 15 of the Payment of Wages Act.

3. In this Writ Petition, the petitioner challenges the aforesaid order passed by the learned Sub Divisional Magistrate and contends that for the reliefs prayed by the Labour Inspector no proceedings can be taken under the Payment of Wages Act and the proper remedy, if any, for getting relief is under the Industrial Disputes Act. It is prayed by the petitioner that an order, direction or a Writ including a Writ in the nature of prohibition be issued and the Sub Divisional Magistrate who is non-petitioner No. 1 in this Writ Petition be prohibited from proceeding with the trial of the application filed by the Labour Inspector who is non-petitioner No. 2, It is further prayed that the order dated 17th of February 1964 of the Sub Divisional Magistrate be quashed. This Writ Petition is contested by the non-petitioners.

4. The only point for decision in this Writ petition is:

"Whether in the circumstances of the case the Sub Divisional Magistrate, Beawar was competent to grant relief to the workmen u/s 15 of the Payment of Wages

Act?"

5. To appreciate the contentions of the learned counsel for the petitioner it is necessary to refer to the definition of wages given in Section 2 (vi) and to the provisions of Section 15 of the Payment of Wages Act. The relevant part of Section 2 (vi) 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 includes-

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

* * * * *

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

(d) * * *

(e) ***** "

6. Section 15(2) runs, as follows:--

"15 (2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner, or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under Sub-section (1), may apply to such authority for a direction under Sub-section (3): "

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7. The first contention of the learned counsel of the petitioner is that the money which is sought to be recovered from his client under the award of the Labour Tribunal, Bombay is no part of the wages as defined in Section 2 (vi), and, as such, no proceedings under the Payment of Wages Act can be taken for the recovery of such amount. Then, it is contended that u/s 15(2), it is only in cases when deduction has been made from the wages of an employed person or any delay in its payment has been made that action can be taken by the authority appointed u/s 15(1) of the Payment of Wages Act and in this case, there is no question of any deduction nor of any delay in the payment of wages.

8. On the other hand, learned counsel for the non-petitioners has contended that the amount sought to be recovered by the application filed by the Labour Inspector fell within the definition of wages as it was remuneration, which was payable under an award to the workmen employed by the petitioner in respect of

their employment, of work done in such employment. It is also contended that Section 15 of the Payment of Wages Act was directly applicable to the case as the petitioner must be deemed to have deducted part of the wages of the workmen or at any event the petitioner had delayed the payment of part of their wages. Before we take the respective contentions urged by the learned counsel for the petitioner into consideration, we may point out that Clause (vi) to Section 2 has been substituted by the Payment of Wages Amendment Act, 1957 for the following clause which stood earlier:

"(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--
**"

The material changes which have been introduced in the definition of wages by the amending Act, 1957, and which demand our consideration are the following:
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- (i) The words "of the contract" in the main definition have been omitted
- (ii) in the inclusive definition Clauses (a) and (c) have been introduced.

9. There was some room for argument that under the old definition of "wages", remuneration payable under any award of Industrial Tribunal did not constitute wages. The Patna High Court in *Md. Qasim Lari, Factory Manager Sasamusa Sugar Works Ltd. Vs. Md. Shamsuddin and Another*, held that-

"The principle behind the labour laws including the Industrial Disputes Act is the recognition of the collective bargaining and if I am right in that supposition, any wage fixed by the award of a tribunal or by a conciliation proceeding must necessarily mean the wages which, though not expressly agreed upon between the parties, must be taken to have been impliedly agreed upon between the parties,"

The law laid down by the Patna High Court is open to criticism after the decision of their Lordships of the Supreme Court in *Bala Subrahmanya Rajaram Vs. B.C. Patil and Others*, in which the question--whether "bonus" payable under an award by an Industrial Tribunal could be said to be wages u/s 2(vi) of the Payment of Wages Act was considered. Their Lordships observed, as follows: --

"Now, we can understand a position where a statute declares that whenever the terms of the contract of employment are fulfilled the bonus shall be payable; equally, we can envisage a situation in which an employer engages to pay a bonus should the terms of the contract of employment be fulfilled, by a separate

and independent agreement that is not part of the contract of employment. In either case, the matter could be said to fall within this part of the definition. But we can see no way in which a bonus can be said to be payable if and when the terms of the contract of employment are fulfilled outside these two cases (namely, legislation, or a. separate contract that is not part of the contract of employment) except, when it is payable by reason of a term, express complied, in the contract of employment itself. In any event, if there are such cases, the present is not one of them, for the bonus here is payable under an award of an Industrial Court and has nothing to do with the fulfilment or otherwise of the terms of the contract of employment, except indirectly"".

It is contended that the aforesaid observations clearly point out that any amount payable under an award of an Industrial Court does not come within the main part of the definition of wages. This contention has some force, though we may point out that the Supreme Court case referred to above related to the bonus and did not relate to the fixing of wages.

10. Learned counsel on behalf of the non-petitioners has relied on the judgment of the Bombay High Court in Balaram Abaji Patil and Others Vs. M.C. Ragojiwalla and Another, where the question for consideration before the Bombay High Court was:

"Whether wages which are required to be paid by statute, over and above the wages stipulated by contract, fall within the definition of "wages" in the Payment of Wages Act."

It was held that the minimum wages fixed under the Minimum Wages Act were recoverable by taking proceedings u/s 15 of the Payment of Wages Act. The case before the Bombay High Court was a case in which the statute declared and fixed the minimum wages and is thus distinguishable.

11. We need not, however, pursue this matter further as, in our opinion, the matter is placed beyond any pale of doubt by the new definition of wages by which Clause 2 (vi) (a) has been inserted which includes any remuneration under an award. In the instant case, it is clear that the amount that is being claimed by the Labour Inspector on behalf of the workmen was for the remuneration payable to the workmen under an award of an Industrial Tribunal. The award of the Labour Appellate Tribunal clearly directed that the workmen of the petitioner were to receive monthly wages at a particular rate and also allowance at a particular rate. In a sense the Labour Appellate Tribunal fixed the remuneration which it was compulsory for the petitioner to pay to its workmen on the fulfilment of the terms of employment in respect of their employment. We have no doubt, in our mind that the amount which is being recovered from the petitioner falls within the definition of wages as given in Section 2(vi) of the Payment of Wages Act after the amendment.

12. Now let us take the second contention urged by the learned, counsel for the petitioner. Learned counsel has referred to Sections 4, 5, 7 and 8 of the Payment

of Wages Act. His contention is that Section 15 can only be attracted if any deduction has been made in the payment of wages, or if there is any delay in the payment of wages. His argument is that Section 4 directs fixation of periods for payment of wages and Section 5 directs time of payment of wages; It is contended that there can be no delay in the payment of wages if wages are paid in accordance with the provisions of Section 5. It is elaborated further by saying that at the relevant time the petitioner was regularly paying remuneration due to the workmen between 1950-53, and, as such, it cannot be said that there has been any default by the petitioner in the matter of payment of wages regularly. On the point of deduction his argument is that the petitioner had paid the wages of his workmen then due without any deduction in the years 1950-53, It is only after 1953 that the Industrial Tribunal declared that some additional sums should have been paid to the workmen. The proper machinery for the recovery of such amount from the workmen was provided u/s 33C of the Industrial Disputes Act or u/s 20 of the Minimum Wages Act and not u/s 15 of the Payment of Wages Act.

13. This takes us to the question how we are to interpret Section 15(2) of the Act. Let us first consider Section 15(2) of the Act from the standpoint of deduction.

14. Section 7 of the Act lays down 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. We have already pointed out that the amount which is sought to be recovered from the petitioner are the wages of the employees of the petitioner. These wages have not been paid in full. This only means that there has been some deduction from the wages.

15. Learned counsel has argued that it is only when there have been deductions of the nature specified in Section 7(2) that the case comes u/s 15 and not otherwise. This argument does not appeal to us because Section 7(1) clearly provides that the workmen must be paid wages without deductions of any kind. All deductions which are not authorised under the provisions of the Act must be deductions whatever be the nature of deductions. In this connection it is also contended that on the relevant dates when payments of wages were made to the workmen of the petitioner between the years 1950-53, there was no question of deduction whatsoever, and as such, Section 15 should not apply. In our opinion, deduction should be construed in the wider sense when applying provisions of Section 15. Deduction has not been defined under the Act. There is no reason why should we not call an amount pertaining to wages which ought to have been paid and which has not been paid a deduction from wages. In this connection we may refer to *The Upper India Coupar Paper Mills Co. Ltd. Vs. J.C. Mathur*,

16. Learned counsel for the petitioner has urged that non-payment of any amount, which is not certain at the time when the employer is required to make payment under the provisions of the Payment of Wages Act, cannot be said to be a deduction from the wages. Here again, he has relied on the following observations contained in *Bala Subrahmanya Rajaram Vs. B.C. Patil and Others*,

"The opening words of the definition make it clear that "wages" means remuneration that is payable when the terms of the contract of employment are fulfilled. Therefore, that is something certain. One knows ahead of time that if the terms of the contract are fulfilled, then the bonus is payable. It may be that the exact amount has yet to be determined but the fact that bonus is payable and can be claimed as soon as the terms of the contract are fulfilled is a matter that can be predicated beforehand, that is to say, even before the terms of the contract are fulfilled, or indeed before the work has started if the contract is made that far ahead. But that is not the case when bonus is awarded by an Industrial Court, for there it is impossible to say ahead of time whether bonus will be awarded or not; indeed, at the time the contract is entered into, it would be impossible to say whether such a claim could be laid at all because a difference of opinion between one worker and his employer about the right to bonus would not necessarily lead to an industrial dispute. When an Industrial Court awards a bonus, independent of any contract, it does only if there is an available surplus for a distribution of bonus and the amount of the award would depend on the extent of the surplus available for that purpose. Therefore, the fulfilment or otherwise of the terms of the contract of employment is not an essential ingredient of an award of an Industrial Court." (p. 520-521):

These observations are not now helpful to the petitioner after the amendment of 1957 as any remuneration payable under any award or settlement between the parties is included in the definition of wages.

17. Now we consider the matter from the standpoint of delay. By the award of the Labour Appellate Tribunal the petitioner was bound to make certain payments which, as we have already said, were part of the wages. The petitioner did not make these payments. Thus, it can be safely said that he had delayed the payment of part of wages. Learned counsel for the petitioner has argued that delay contemplated in Section 15 is the delay in the payment of wages arising out of the circumstances that it has not been paid as laid down in Section 5, This again is giving very limited construction to the word "delay". We are not in favour of construing the words "any payment of wages has been delayed" occurring in Section 15(2) in a restricted manner. The petitioner should have paid its workmen in accordance with the directions contained in the award as soon as the award was made. He has clearly delayed the making of such payment. Understood in this sense, the payment of part of the wages has been delayed by the petitioner in this case. We, therefore, reject the second contention of the learned counsel for the petitioner and the payment shall be ordered to be made only to those entitled to get it.

18. We are of the opinion that the Sub-Divisional Magistrate, Beawar who, it is not disputed, was the competent authority u/s 15 to hear and decide the question about the claims arising out of deduction from wages or delay in payment of wages had jurisdiction to deal with this matter. It cannot be said that he has exercised jurisdiction not vested in him.

19. Learned counsel for the petitioner has urged that under the Payment of Wages Act it is only the workmen who have not been paid their wages who can come forward either themselves or through any official of registered union or legal practitioner or Inspector under the Act, but in this case a lump sum of Rs. 12,63,366.54 has been assessed by the Labour Inspector to be recoverable from the petitioner and it has not been specified to whom this amount is payable. We hope this matter shall be gone into by the Sub-Divisional Magistrate in due course and the payment shall be ordered to be made only to those authorised to get it.

20. The Writ petition has no force and is dismissed with costs.