

(1961) 07 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 1285 of 1960

Bombay Chronical Co. Private Ltd.

APPELLANT

Vs

V.B. Potdar and Others

RESPONDENT

Date of Decision : 31-07-1961

Acts Referred:

Payment of Wages Act, 1936 — Section 2, 2(vi)

Citation : AIR 1962 Bom 87 : (1961) 63 BOMLR 812 : (1961) 3 FLR 384 :
(1961) ILR (Bom) 886 : (1961) 2 LLJ 549 : (1961) NLJ 648

Hon'ble Judges : Chainani, C.J.;Chandrachud, J

Bench : Division Bench

Advocate : M.M. Jhaveri and V.J. Tarapore, i.b. Gagrath and Co, for the Appellant;
Y. S. Chitale and H.R. Gokhale, for the Respondent

Judgement

Chainani, C.J.

(1) The petitioners the Bombay Chronicle Co. Private Ltd., were the printers and publishers of the Bombay Chronicle, an English daily which used to be published in Bombay till it discontinued its publication on 5th April 1959. Opponents Nos. 2 to 35, hereinafter referred to as the opponents are the former employees of the petitioners. On 28th September 1949 an award was made by the Industrial Tribunal in a reference made under the Industrial Disputes Act. A gratuity scheme was framed under this award and the award directed the payment of gratuity to workers on the termination of their services. On 29th February 1952 the petitioners terminated the award. After the Bombay Chronicle ceased publication the opponents made applications to the Payment of Wages Authority in July and August, 1959, in which they stated that on the termination of their services they were entitled to receive gratuity under the above award, and that this had not been paid to them. They therefore prayed for directions to the petitioners to pay the gratuity due to them under the award. The petitioners raised a preliminary objection before the payment of Wages Authority that the amounts claimed by the opponents were not wages within the meaning of the

Payment of Wages Act. This contention was negated and the Authority decided to proceed with the applications made by the opponents. The correctness of the view taken by the Authority is challenged in the present petition.

(2) As I have stated the award, which directed the payment of gratuity, was terminated by the petitioners in 1952. It has been held by this court in *Yamuna Mills v. Majoor Mahajan Mandal*, 1946 59 Bom LR : AIR 1948 Bom 74, that even after the termination of an award the rights conferred and obligations imposed by the award continue to exist and that the award continues to govern the relations between the employer and the employees until such time as a change is effected in accordance with law in the terms of employment. The opponents rely on this decision. Their claim of gratuity is based entirely on the award given in 1949. The question which has been argued before us and which we have to decide, therefore, is whether gratuity payable under an award is wages within the meaning of this term given in the Payment of Wages Act.

(3) The word "wages" is defined in Section 2(vi) of the Act. The definition so far as it is material, is as follows:

"Wages means all remuneration which would, if the terms of employment. . . . 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:

.....

(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;

but does not include-

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)."

This sub-clause (6) therefore excludes gratuity, other than gratuity payable in cases referred to in sub-clause (d), from the definition of "wages". Sub-clause (d) refers to any sum, which is payable on the termination of employment under any law, contract or instrument. The effect of these provisions therefore is that only such gratuity, as is payable under any law, contract or instrument, will fall within the definition of "wages". Every other kind of gratuity is excluded from the definition of "wages" by sub-clause (6). The question for consideration, therefore is whether an amount payable under an award, which has been terminated can be said to be an amount payable under any law, contract or instrument.

(4) An award is made under a statute and during the time it is in force, it is binding upon the parties. It can also be enforced in the manner provided by law,

but just as an order of a court is not law an award cannot also be said to be law. An amount payable under an award cannot, therefore, be held to be an amount payable under any law. An award modified or alters the contract of employment, but it is not a contract which is an agreement between the parties. Mr. Chitale, who appears on behalf of the opponents, has referred us to some observations in *Mangaldas Narandas v. Payment of Wages Authority, Ahmedabad*, (1957) 2 LLJ 256 in which it was observed that an award has the effect of imposing a statutory contract governing the relations of the employer and the employees. All that these observations mean is that the award alters the terms of employment agreed upon between the parties. There is nothing in them to support the argument that an award is a contract.

(5) The next question to be considered is whether an award can be said to be an instrument. The word "instrument" in its ordinary meaning means a document of a formal legal kind, which creates some right or liability. It is usually used in this sense of a document executed by or between the parties. An order of a Court cannot be said to be an instrument, see *Jodrell v. Jodrell* (1869) 7 Eq 461. An award is an adjudication by an Industrial Tribunal. In our opinion, therefore, it cannot be said to be an instrument. It may also be noted that the word "instrument" follows the word "contract:" which means an agreement between the parties. It seems to us that the word "instrument" is used in the same sense in sub-clause (d), that is a document executed by the employer or by the employer and his employees.

(6) Sub-clause (a) in the definition of "wages" shows that when the Legislature wanted to treat an amount payable under an award as wages, it has specifically said so. The absence of any reference to an award in sub-clause (d) also indicates that the Legislature did not want to bring within the scope of this sub-clause amounts payable under an award.

(7) The definition of the word "wages" was amended in 1957. Sub-clause (c) in the old definition specifically provided that wages shall not include any gratuity payable on discharge. In 1957 this sub-clause (e) was replaced by new sub-clause (6), which excluded from the definition of wages gratuity, except gratuity payable in cases specified in sub-clause (d), that is, gratuity payable in cases specified contract or instrument, which provides for the payment of such gratuity. It is therefore clear that every gratuity is not made recoverable under the provisions of the Payment of Wages Act. Only gratuity which comes within the scope of sub-clause (d) included in the definition of "wages". If we were to accept the arguments advanced by Mr. Chitale and hold that gratuity payable under an award will also fall within the scope of sub-clause (d), sub-clause (6) in the excluding part of the definition would become almost meaningless, because there would then be practically no case in which gratuity would not fall within the definition of "wages".

(8) We are accordingly of the opinion that gratuity payable under an award is not "wages" within the meaning of this term given in the Payment of Wages Act. The

Payment of Wages Authority had consequently no jurisdiction to entertain the applications made by the opponents.

(9) We set aside the order made by the Payment of Wages Authority and direct that the applications made by the opponents to that Authority should be rejected. No order as to costs.

(10) Order accordingly.