

(1972) 02 BOM CK 0005

In the Bombay High Court

Case No : Special Civil Application No. 195 of 1969

Castophene Mfg. Co.

APPELLANT

Vs

Janaki Gillumal and Others

RESPONDENT

Date of Decision : 10-02-1972

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25A, 25A(1), 25C, 25E

Citation : (1973) 26 FLR 31 : (1972) 2 LLJ 417

Hon'ble Judges : K.K. Desai, J;G.N. Vaidya, J

Bench : Division Bench

Judgement

K.K. Desai, J.—By a notice, dated August 10, 1965, the petitioner-company intimated 13 of its workmen that they would be laid off for 4 days from Wednesday the 11th to Saturday, the August 14, 1965. By another notice, dated August 14, 1965, the petitioner company gave notice to other 12 workmen that they would be laid off for 4 days from Monday the 16th to Thursday the August 19, 1965. In both the notices the cause mentioned for the lay off was "on account of the non-availability of raw materials". The employees mentioned in the two notices made applications before the Payment of Wages Authority claiming wages for the period of four days mentioned in respect of each of the employees in the above notices. In connection with these claims, on behalf of the petitioner-company, the main contention was that during the period of "lay off" the applicants were not on duty and the company was accordingly not liable to pay any wages for that period. The Payment of Wages Authority had no jurisdiction as the claims would be the subject-matter of an industrial dispute only. In respect of the claims, the case of the petitioner-company was that the "lay off" was for the reasons mentioned in S. 2(kkk) of the Industrial Disputes Act. The claims made by the applicants were, therefore, covered by what is described as "compensation for lay off" in S. 25C of that Act read with S. 25A of that Act. The provisions of that exempted industrial establishments in which more than 50 persons were not employed from any liability to pay compensation for "lay off" (period). The petitioner-company admittedly was not employing

more than 50 persons in its establishment. The petitioner-company was in law not liable to pay any amount whatsoever. The claim of the applicants should, therefore, be dismissed. The applications for wages were dismissed by the Payment of Wages Authority by a common judgment and order, dated April 13, 1966. Diverse appeals were filed by each of the different applicants against the dismissal of their applications. In this petition we are only concerned with Appeal No. 98 of 1966, which was instituted by the respondent No. 1 in this petition before the Court of Small Causes as an appellate authority prescribed under the Payment of Wages Act. By the appellate judgment and order dated September 13, 1968, Mr. S. D. Patil, Judge of the Court of Small Causes, allowed the appeal of respondent No. 1 and directed the petitioner company to pay the amount determined as arrears of wages for the period of 4 days mentioned in the application of the first respondent. The learned Judge held in favour of the first respondent that :

"..... In my view S. 2(kkk) of the Industrial Disputes Act does not vest any right in the employer to lay off the worker, but it simply defines lay off there cannot be any inherent right in the employer owning an establishment having less than 50 workers, to lay off his worker ..."

He relied on the observations of the High Court of Allahabad in the case of Kanhaiya Lal Gupta Vs. Ajeet Kumar Dey and Others, . He, therefore, held the Payment of wages Authority had jurisdiction to decide the claim made by the first respondent and reversed the finding of the authority in that connection, and granted the application, for wages.

2. On behalf of the petitioner-company Mr. Ramaswami has submitted that the above findings of the appellate Judge are contrary to the scheme relating to the right to compensation for "lay off" as fixed by S. 25C of the Act. In his submission S. 25C was clear in its provision that an employer in whose establishment more than 50 persons were not employed was not liable to pay compensation for "lay off" at any stage. He particularly relied upon the provisions of paragraph (2) of S. 25J and submitted that awarding of compensation in respect of "lay off" periods must be only in accordance with the provisions in S. 25C and that outside of that provision an employer was not fixed with any liability to pay any compensation for "lay off". He submitted that in every situation mentioned in S. 2(kkk) suspension of services of an employee must be held to be "lay off". The right to lay off an industrial employee need not arise from out of any standing order or any other statutory provision or contract. There was accordingly no justification in the findings made by the appellate authority. In support of these submissions, he relied upon the observations of S. T. Desai and Mudholkar, JJ., in the case of K. T. Rolling Mills v. Meher 64 Bom.L.R. 645 . He also relied on the observations of Chagla, C.J., in the matter of Special Civil Application No. 3051 of 1957, decided on January 16, 1958. In reply, Mr. Menon submitted with certain emphasis that unless and until the power to "lay off" was shown to exist in the standing orders or in the contract between the

parties or any statute an employer cannot have any right to suspend his employee from service. As was evident from the provisions in S. 25C of the Act, to the petitioner-company which was employing less than 50 employees, the scheme of "lay off" and compensation, therefore, was not applicable. The petitioner-company was accordingly not entitled to lay off its employees at any time. What the petitioner-company called "lay off" was really suspension of the services of the first respondent. Under the law of contract there was no right of suspending services of an employee. In respect of the period of suspension of service in accordance with the contract of service the first respondent was entitled to payment of wages. In support of the above submission, he relied on the observations of the Supreme Court in the case of Workmen of Dewan Tea Estate and Others Vs. The Management, . He also relied upon the observation of the High Court of Allahabad in the case of Kanhaiya Lal Gupta Vs. Ajeet Kumar Dey and Others, . He therefore, submitted that the Payment of Wages Authority had jurisdiction to decide the claim made by the 1st respondent and (sic) reversed the finding of the authority in that connection.

3. In connection with these rival submissions, it is first necessary to notice the relevant provisions in S. 2(kkk), S. 25A, S. 25C and 25J of the Act which run as follows :

"2(kkk). "Lay off" (with its grammatical variations and cognate expressions) means 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 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."

"25A. (1) s 25C to 25E inclusive shall not apply -

(a) to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or

(b) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.

(2)"

"25C. Right of workmen laid off for compensation. - 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, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid off, compensation"

"25J. (1) The provisions of this chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law (including standing orders) made under the Industrial Employment (Standing Orders) Act, 1946 :

Provided

(2) For the removal of doubts, it is hereby declared the rights and liabilities of employers and workmen in so far as they relate to lay off and retrenchment shall be determined in accordance with the provisions of this chapter".

4. It requires to be noticed that as the number of the employees of the petitioner company is and was less than 50, the provisions of the Industrial Employments Standing Orders Act are not applicable to the company. Accordingly, there is no standing order in connection with the "lay off" of the employees of the company. There is no dispute between the parties that the right to "lay off" as now available to an industrial employer, did not exist at common law. It is also a fact that Industrial Tribunals began to award compensation when industrial employees were laid off even before the provisions in S. 25C were enacted. Possibly such compensation was awarded even before the standing orders were formulated in regard to "lay off".

5. Now, it appears to us that the definition of "lay off" in S. 2(kkk) suggests and implies that an industrial employer who suffers from shortage of coal, power or raw materials or accumulation of stocks or breakdown of machinery may suspend employment of his workmen. That suspension is defined to be "lay off".

6. The phrase "rights and liabilities of employers and workmen in so far as they relate to lay off and retrenchment shall be determined in accordance with the provisions of this chapter" sub- (2) of S. 25J has the effect of statutorily negating liability of employers to make payment and right of workmen to receive payment when payment laid off or retrenched except when the liability to pay and right to receive are created by the provisions in the chapter. The true effect of the phrase is that in every case where it is ascertained that when an employer fails, refuses or expresses inability to give employment to workmen whose names are borne on the muster roll of his establishment on account of shortage of coal, power or raw material or the accumulation of stocks or the breakdown of machinery or for similar reasons, the consequent rights and liabilities of employers and workmen must be determined only in accordance with the provisions in Chapter VA. In other words, in every case of "lay off" to be able to get cause of action for payment of money on the ground that the employer has failed, refused or expressed inability to give employment to him the workman must base his claim on the provisions in S. 25C. There is corresponding liability imposed on employer under the . In no other case workman will have cause of action and employer will be liable to pay money described as arrears of remuneration or compensation for "lay off". The above discussion makes it evident and obvious that there is no reason, whatsoever, in this connection to find out the source of the power and or the right which enables employer to declare and or impose "lay off" as defined in S. 2(kkk). It may be that at common law employer could not and did not impose "lay off" and right to remuneration continuously continued in spite of employer's inability to provide work to employee. At the same time, it is relevant to notice that at common law

employer was always at liberty to put an end to the service contract of employee, and his liability, if any, for wrongful termination of such a contract was in damages only. The concept of "lay off" arose only because the above unquestioned general right of employer to put an end to the service contract has been almost completely wiped off by reason of the relevant labour legislation. The Tribunals dealing with labour disputes realised the existence of the two simultaneous relevant factors, viz., (1) that employer had no right to terminate the service contract of industrial employees, and (2) that there were certain abnormal but important situations where it was not possible for employer to give to employees any work of any kind. These are the situations mentioned in the definition of "lay off" in S. 2(kkk). The legislation, which prevented termination of service contract of employees, has thought it fit that such employees when legally laid off should not be entitled to salary and remuneration as agreed. The ultimate provision in connection with the right to payment for the period of "lay off" has been well crystallised in S. 25C. In that connection, in the last part of S. 25J it is directed that rights and liabilities of the employee and employer must be determined in accordance with the provisions in the above . Now, there is no dispute between the parties that though under S. 25C rights and liabilities in respect of compensation payable to workmen on account of "lay off" have been fixed, under S. 25A clear exemption from liability to pay compensation for "lay off" is created in favour of industrial establishments particularised in sub-cl. (a) and (b) to S. 25A(1). Upon reading S. 25A, 25C and the last part of S. 25J at the same time it becomes apparent that industrial establishments mentioned in cl. (a) and (b) to S. 25A(1) are altogether exempted from liability to pay compensation to workmen laid off.

7. It requires to be remembered that at no time there was any dispute between the company and the first respondent that the money claim that was made before the Payment of Wages Authority had arisen by reason of the failure of the company to provide her work during the period of 4 days when she was laid off and that the work could not be provided by reason of shortage of raw materials. These admitted facts disclose all the relevant ingredients of "lay off" as defined in S. 2(kkk). The first respondent described the money claim that she made as a claim for delayed wages so that the same could be adjudicated upon by the Payment of Wages Authority. Obviously the description of her claim as "delayed wages" was contrary to and inconsistent with the provisions in S. 2(kkk) read with S. 25C. Her claim was in fact for compensation for having been laid off. The mere description of the claim as above was insufficient to afford jurisdiction to the Payment of Wages Authority to decide that claim. Having regard to the position discussed above the industrial establishment of the petitioner-company was totally exempted from liability to pay any compensation to the first respondent on the ground of her having been off.

8. In the case of Workmen of Dewan Tea Estate and Others Vs. The Management, , the employer had laid off the workmen on the ground of financial difficulties. This ground does not appear in the "lay off" as defined in S. 2(kkk).

In connection with the claim for compensation for the period that the workmen were laid off, the employer had contended that the workmen were not entitled to anything more than the compensation prescribed by S. 25C. The Industrial Tribunal held that under Standing Order No. 8 "lay off" was justified.

9. In connection with contentions made before it the Supreme Court held that :

"..... lay off which primarily gives rise to a claim for compensation under S. 25C must be a lay off as defined by S. 2(kkk) The question which we are concerned with at this stage is whether it can be said that S. 25C recognises a common law right of the industrial employer to lay off his workmen. This question must, in our opinion, be answered in the negative. When the laying off of the workmen is referred to in S. 25C, it is the laying off as defined by S. 2(kkk), and so workmen who can claim the benefit of S. 25C must be workmen who are laid off and laid off for reasons contemplated by S. 2(kkk); that is all that S. 25C means"

We have not been able to appreciate to how these findings and observations of the Supreme Court help the first respondent in this case. We have referred to these observations because Mr. Menon relied upon them. In the case of *Kanhaiya Lal Gupta Vs. Ajeet Kumar Dey and Others*, , the High Court of Allahabad referred to the above decision of the Supreme Court. It also referred to the decision of the Supreme Court in the case of *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers" Union*, . The Court then held that the employer in that case was, having regard to the provisions in the U.P. Industrial Disputes Act, not entitled to lay off his workmen without payment of wages. The learned Judge was of the view that wages must be paid because there was no right under S. 6(k) of the U.P. Industrial Disputes Act in the employer to lay off its workmen. Now, there is no doubt that the findings in this case have the effect of holding that the laid off workmen of an establishment with less than 50 workmen would have a right to payment of wages and the Payment of Wages Authority would have jurisdiction to award the same. We regret that, having regard to our above findings about the true effect of the relevant provisions of law, we are unable to agree with the ratio in the above case. In support of the findings which we have made, reference can be made to the decision in the case of *K. T. Rolling Mills v. Meher* 64 Bom.L.R. 645. In that case, as in the present case, the company employed less than 50 workmen and the question related to the jurisdiction of the Industrial Tribunal to award compensation to the workmen laid off. Before the learned single Judge reference was made to the provisions in S. 25J pointed out above. The learned Judge observed :

"Thus sub- (1) of S. 25J only means that where the provisions of the chapter VA are applicable, effect shall be given thereto"

In appeal before the Division Bench, Mr. Justice J. C. Shah, as he then was in this Court, *inter alia*, observed :

"..... Sub- (1) of S. 25J does not purport to abrogate any law to which S. 25C

does not apply, and overriding effect is given to Chapter VA in those cases only in which under that Chapter lay off or retrenchment compensation is awardable In enacting the second part of S. 25J(2) expressly in the form of an exception, I am unable to attribute to the Legislature an intention to abrogate laws governing establishment to which Chapter VA does not apply"

He explained the above view with elaboration in the subsequent part of his judgment and confirmed the findings made by the learned single Judge. S.T. Desai, J., sitting in the Division Bench with J. C. Shah, J., expressed converse opinion and at page 660 observed :

"Then when it is said in sub-s. (1)(a) of S. 25A that S. 25C "shall not apply to industrial establishments in which less than 50 workmen have been employed" and in sub-s. (1)(b) that S. 25C "shall not apply to industrial establishments which are of a seasonal character or in which work is performed only intermittently, the preferable construction, if the same safe and reliable course of construction be adhered to, seems to me to be that the Legislature has ruled that these categories of workmen should not have the right to claim lay off compensation"

He then elaborated the above finding in a different manner :

"..... 25J has to be read as a whole and the two sub-s of it so read have the effect, inter alia, of laying down that when any dispute is raised as to any matter relating to lay off and retrenchment, the dispute must be decided only in accordance with the provisions of Chapter VA and not by reference to "any other law"..... whether there is any other law or not and irrespective of such law, if there be any, the rights and liabilities of employers and workmen in so far as they relate to lay off and retrenchment shall in all cases be determined in accordance with the provisions of Chapter VA Even so the law-maker has taken care in insert S. 25J and the conclusion seems to me inescapable that the rights and liabilities of employers and workmen in the matter of lay off are now crystallized and to be gathered only from Chapter VA and it is not open to a workman to claim any right relating to lay off de hors the provisions of that chapter on the grounds of social justice and equity."

Since the Division Bench was of two different views, the appeal was placed before Mudholkar, J., who, it is sufficient to state, completely confirmed the findings made by S. T. Desai, J. As regards the findings of S. T. Desai, J., he observed :

"..... The learned Judge has given, if I may say with respect, good and substantial reasons for coming to the conclusion that the right to lay off compensation must be found within the four corners of Chapter VA. Since I am in complete agreement with all that he has said, and said so well, I will content myself by dealing only briefly with the points advanced before me on behalf of the appellants and the respondents."

10. Now, it appears to us that what we have discussed above is in complete conformity with the findings made by S. T. Desai and Mudholkar, JJ., in the above case. The result is that the contentions made on behalf of the petitioner are accepted and all the contentions made on behalf of the first respondent are rejected. The claim made by the first respondent for payment of delayed wages and or arrears of wages for the period during which she was laid off was from its inception entirely misconceived. The Payment of Wages Authority had no jurisdiction to consider such a claim.

11 Rule is made absolute. There will be no order as to costs.

12 Mr. Menon applies for a certificate under Art. 131(1)(c) of the Constitution. This matter involves an important question of law on which there can be genuine difference of opinion and the question is of importance to the workmen employed in diverse industries. Certificate will issue.