
(1975) 11 DEL CK 0020
In the Delhi High Court
Case No : C.W. No. 1123 of 1975

Coz and Kings (Agents) Ltd., New Delhi	APPELLANT
Vs	
Their Workmen and Others	RESPONDENT

Date of Decision : 07-11-1975

Acts Referred:

Citation : AIR 1976 Delhi 168

Hon'ble Judges : V.S. Deshpande, J; P.S. Safer, J

Bench : Division Bench

Advocate : G.B. Pai, O.C. Mathur and J.N. Aggarwal, for the Appellant; Madan Mohan, for the Respondent

Judgement

V.S. Deshpande, J.—The main question for decision relates to the construction of sub-section (5) of Section 19 of the Industrial Disputes Act, 1947 which has to be read with sub-section (3) thereof. These are as follows:-

"19 (3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award become enforceable u/s 17-A:

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit Provided further that the appropriate Government may, before the expiry of the, said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

** ** (5) Nothing contained in sub-section (3) shall Apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award."

2. The petitioner employer dismissed three workmen represented by the

respondent union in 1966, The first reference to the Labour Court made in May 1967 as to whether the termination of their services was unlawful and unjustified was rejected by the Labour Court in 1971 on the ground that the reference was incompetent inasmuch as no industrial dispute existed between the parties because the workmen had not made a demand for reinstatement on the employer and the said demand had not been rejected by the employer before the reference was made. Accordingly the demand for reinstatement was made by the workmen in 1972 and a second reference was made by the Government to the Labour Court with the same terms of reference, namely, whether the termination of these workmen was illegal and for unjustified. The reference was answered in the affirmative by the Labour Court by the award dated 1-5-1975 at Annexure A to the writ petition. The Labour Court, however, did not grant the relief of reinstatement to the workmen. Instead it granted 50 per cent of the wages to each of them from his respective date of dismissal till the workman got alternative employment or till the date of the award if he remained unemployed till then.

3. The present writ petition challenges the validity of the award on various grounds but Shri G. B. Pai, learned counsel for the petitioner, in his oral argument urged only the following three grounds of attack, namely:-

(1) Though the award of 1971 did not impose a continuing obligation on the parties, it was an award which could be given effect to within the meaning of subsection (5). It was, Therefore, an award covered by sub-section (3) and had to be in operation for a certain period of time. It could be terminated only by a notice given under sub-section (6). Since no such notice was given, the award continued to be in operation. A second award could not, Therefore, be made. The award of 1975 was, Therefore, illegal and void.

(2) The demand for reinstatement was not made by the workmen till 1972 and the Labour Court was not justified in awarding them compensation for back wages from 1966 onwards; and

(3) The onus to show that the workmen had not obtained alternative employment was on the workmen which they did not discharge. Further the employer was not allowed to adduce additional evidence to show that the workmen had obtained alternative employment and they are, Therefore, not entitled to back wages.

Let us consider these contentions, Serially.

Contention No. 1:-

3-A. Sub-section (5) begins with the words "nothing contained in sub-section (3) shall apply" etc. It is common to use these words to preface a proviso or an exception to a statutory provision. But a careful reading of sub-sections (5) and (3) together would show that sub-section (5) is more by way of Explanation to sub-section (3) rather than by way of an exception to it. Sub-section (3) applies

only when an award remains operative after becoming enforceable under Sec. 17-A. This does not mean that sub-section (3) by itself makes every award operative after becoming enforceable. As justice Frankfurter once observed, statutes must be read with the gloss of the experience of those who framed them (*United States v. Rabinowitz*, (1950) 339 Us 56. Similarly the rule in *Heydon's* case tells us that a statute is to be understood in the light of the mischief which it was intended to cure.

Experience tells us that there are two kinds of awards. On the one hand, there are awards the effect of which ends with their pronouncement. For instance, an award may decide as to whether an act or an order is valid or invalid. It may uphold or quash the discharge or dismissal of a workman. If the discharge is upheld it remains valid. Nothing more is to be done. If the discharge is quashed, the effect is as if the workman was never discharged but remained in employment. He has, Therefore, to be reinstated. These consequences flow out of the mere pronouncement of the award. On the other hand, there are awards which are not exhausted by being delivered. Subsequent action for their continuous implementation is required. It is in respect of this second type of award that the question arises how long they should continue in operation.

4. The object of sub-section (3) of Section 19 was to provide as to how long an award would continue to operate. Such a provision was required only in respect of those awards which imposed binding obligation on the parties which is to continue for some time after the award was delivered. Therefore, even though subsection (3) does not expressly refer to these two kinds of awards and does not say that it is to apply to only to the second type, it has to be so understood in the light of the previous experience and the rule in *Heydon's* case. We are of the view, Therefore, that sub-section (3) was not intended to apply to those awards which do not impose a continuing obligation on the parties which is to subsist for a certain period of time after the award is delivered. This meaning would have been given to sub-section (3) even if subsection (5) had not been enacted. The legislature, however, made this meaning clear by enacting sub-section (5) by way of clarification.

5. Shri Pai laid stress on the words "after it has been given effect to" in subsection (5) and argued that every award which is given effect to has to continue in operation for a certain period of time under sub-section (3). Of course, every award is effective. The effects may be of two types according as the award belongs to the first or the second type discussed above. Therefore, the words "the award becomes enforceable" in sub-section (3) and the words "it has been given effect to" in sub-section (5) have been used. But these words do not mean that every effective or enforceable award must continue to operate for certain period of time and its operation must be ended by a notice under sub-section (6). According to the distinction stated above, it is only awards imposing continuing obligations which continue in operation after they are delivered and which have to be terminated by notice. It is clear that the award of 1971 was an

award of the first type. Its effect ended with its pronouncement. It merely bound the parties to the decision that the reference of 1967 was invalid. It imposed no continuing obligations on them and do not have, Therefore, to be terminated by any notice.

6. The words "subject to the provisions of this section" used in subsection (3) mean that sub-section (3) is to be qualified by the other provisions of Section 19. One qualification made explicit in sub-section (5) but which was already implicit in sub-section (3) is that it is to apply only to those awards which imposed a continuing obligation on the parties. The continuance of the obligation would naturally be after the award has become effective, that is to say, after the award is delivered and published. It does not mean that merely because the award has become effective it must continue to be in operation. We are of the view, Therefore, that sub-section (5) has to be read with sub-section (3) and so read, it becomes clear that these two provisions apply only to an award which, after pronouncement and publication, continues to impose obligations on the parties making it necessary to know for what period it would be in operation under sub-section (3). As the award of 1971 was not such an award, it did not have to be terminated by any notice under sub-section (6). The award of 1975 is not, Therefore, vitiated by being delivered during the currency of the previous award. The award of 1975 is, Therefore, valid.

Contention No. 2:-

7. The reference of 1967 before the Labour Court was opposed by the employer on the ground that it was invalid not having been preceded by a demand by the workmen and its rejection by the employer. The proceeding before the Labour Court went on till 1971 when the employer's contention was accepted by the Labour Court. It is because of the employer's opposition to the reference that the Labour Court had to consider the question of the validity of the reference. Before the decision of the Supreme Court in *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, ; it was not quite clear as to whether an industrial dispute could not arise before workmen made a demand and the employer rejected it and also whether the conciliation proceedings would not satisfy the requirement of the demand and its rejection.

This was why the reference was made by the Government in 1967 even though the workmen had, not made a demand prior to the conciliation proceedings and such demand had not been rejected by the employer. Neither the Government nor the workmen, can, Therefore, be blamed for the reference of 1967. Nor can they be blamed for the time taken by the Labour Court till 1971 to decide upon the validity of the reference. The workmen could not, Therefore, make a demand on the employer till 1972. They had to wait for the decision of the Labour Court which was given in 1971. Once the Labour Court held the dismissal of the workmen as illegal, the award of the compensation to the workmen for illegal dismissal was inevitable. Such compensation had, Therefore, to be paid from the dates of dismissal till the workmen found alternative employment or till the date

of the award as the case may be. There was nothing illegal in respect of this part of the impugned award.

Contention No. 3:-

8. The question of burden of proof as to who is to prove whether the workmen did not get alternative employment for the period for which back wages have been awarded to them could arise only if no evidence was given by either party or if the evidence given by them was evenly balanced. Neither of these two circumstances was present before the Labour Court which gave the award of 1975. After consideration of the evidence before it, the Labour Court came to the conclusion that the workmen could not find alternative employment for a certain period and held so as a finding of fact. It was a month after the evidence was closed that the employer made an application for permission to adduce additional evidence.

In this application, the employer did not give any reason why the application was made after the case was closed. Nor did the employer say that it had come to know that the workmen had found alternative employment with any particular employer. It was apparent, Therefore, that the employer did not have any definite information in this respect. The employer did not, Therefore, make out any case for a permission to adduce additional evidence. The discretion exercised by the Labour Court not to allow additional evidence at a late stage without any Explanation for delay was, Therefore, soundly exercised. It cannot be interfered with under Article 226 of the Constitution.

9. No other contention was urged in the oral argument.

10. For the above reasons, the writ petition is dismissed in limine after hearing both the parties but before admission. No order as to costs.

11. Petition dismissed.