(1960) 01 BOM CK 0002

In the Bombay High Court

Dattatraya Shankar Joshi APPELLANT

Vs

Deore (R.M.) and Others RESPONDENT

Date of Decision : 25-01-1960

Acts Referred:

Citation : (1961) 2 LLJ 4

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

Bench : Division Bench

Judgement

Chainani, C.J.—The petitioner is the proprietor of a printing press, in Ahmednagar. Respondents 2 to 6, to whom we will hereafter refer as respondents, were employed in this press in 1956. On 18 January 1956, a notification under the Minimum Wages Act was issued by Government, by which the minimum rates of wages were fixed for certain classes of workers employed in the printing industry. Different rates were fixed for different zones. Ahmednagar, in which the petitioner''s press is situated, is in Zone IV. This notification came into force from 1 July 1956. On 18 June 1956, another notification was issued in exercise of the powers conferred by Sub-section (2) of Section 28 of the Act, directing that for a period of 5 years with effect from 1 July 1956, the provisions of the Act shall not apply to compositors, cylinder pressmen and treadle-pressmen or platemen, who did not fulfil the tests specified in this notification. On 26 December 1956, an application was made on behalf of the five respondents, in which, they stated that they were entitled to the rates of pay specified in the notification issued by Government on 18 January 1956, and that the wages which had been paid to them were lower than those specified in the notification. They, therefore, claimed the difference between what according to them should have been paid and what had been actually paid to them by the petitioner. The petitioner disputed the respondents'' claim. He contended that the respondents were not entitled to the minimum wages claimed by them as they did not do the work of the categories of workers to which, according to the respondents, they belonged. The authority however accepted the case of the respondents and passed orders in their favour directing the petitioner to pay them the amounts specified in its order. That order has been challenged in this application.

2. In order to deal with the points, which have been urged in this application, It will be necessary to consider the case of each of the respondents separately. Respondents 2, 3 and 4, contended that they were compositors, and they claimed the minimum wages fixed for compositors in Nagri pica type by the notification issued by Government on 18 January 1956. By the second notification issued by Government on 18 June 1956, such compositors were taken out of the purview of the Act, If they did not fulfil the test of being able to compose 2,000 corrected ems In a day. In February 1957, the petitioner held a test. Respondent 2, Misal, completed more than 2,000 ems in 8 hours, but he did not carry out the corrections. There were also several misprints. Misal, therefore, failed in the test held by the petitioner. Respondent 3, Namalapurkar, also failed in this test. Respondent 4 did not appear for the test. The authority has stated that the teats held by the petitioners were difficult tests, as the respondents were asked to compose passages from a difficult philosophical work known as Shankar Bhashya. He has also stated that if the respondents had been asked to compose usual ordinary matter there would have been fewer mistakes, and they could have easily completed the job pf 2,000 corrected ems. All this Is mere speculation. Moreover, it is not for the authority in such proceedings to decide in what manner a test should be held. The mere fact that the test held by the employer is a difficult one, would not justify the conclusion that if the test had been an easy one, the employee would have passed it. The notification issued by Government does not also say that the test should always be an easy one. Even in an ordinary composition difficult words or passages have sometimes to be composed. The fact that some of the words, which the respondents were asked to compose were difficult, would not, therefore, lead to the inference that they had fulfilled the test laid down by the notification. The only evidence on the points is that in the test held by the petitioner the respondents had failed. Consequently, it cannot be said that respondents 2 and 3 had fulfilled the test laid down by Government notification. They cannot, therefore, claim minimum wages fixed by Government for compositors. The orders in respect of respondents 2 and 3, must, therefore, be set aside.

3. Respondent 4 Aadep, also claimed minimum wages fixed for a compositor. He did not appear for the test and there is no evidence to show that he had fulfilled the test specified in the Government notification dated 18 June 1956. The authority, however, took into consideration the work which this respondent had done on three dates, 28 January 1958, 29 January 1958 and 1 October 1958, On those dates, this respondent had done considerable distribution work. The authority, therefore, held, that he was a distributor and was entitled to the minimum wages fixed for this class of workers. The authority lost sight of the fact that it was neither the case of the petitioner nor that of respondent 4 that he was working as a distributor. No doubt, if the authority finds that the worker has actually been doing the work of the kind done by a particular category of

workers, it may hold that he belongs to that category. In this case, there is no evidence to show that, during the material period, 1 July 1956 to 31 December 1956, for which period alone the application had been made, respondent 4 had worked as a distributor. The evidence relied upon by the authority relates to some period in 1958. In the absence of any evidence to show that principal work of respondent 4 during the relevant period 1 July 1956 to 31 July 1956, was that of a distributor, the authority could not award to him the wages fixed for a distributor. The order made by the authority in respect of this respondent 4 must, therefore, be set aside.

4. So far as respondent 6, Kalaskar, is concerned, be claimed to be a binder. The authority has also found that his principal work was that of a binder. The wages fixed in his case are those fixed for binders. The order made by the authority in respect of this respondent is therefore correct.

5. With regard to respondent 6, Kadar, he claimed to be a printer, which, we are informed, is the description in common language of what in the Government notification are referred to as treadle-pressmen or platemen. The notification issued by Government on 18 June 1956, requires that in order to be entitled to claim minimum wages, the printers must fulfil the test of being able to make ready a job and give 5,000 prints on a treadle run by foot and 6,000 prints on a treadle or platen run by power in a day. This respondent, however, could give only 4,000 prints a day. He had, therefore, not fulfilled the test laid down in the notification. The authority, therefore, rightly held that he was not entitled to the minimum rate of wages fixed for a printer. The authority, however, held that the respondent could be described as an assistant transfer printer, which is one of the categories of workers Included by the Government notification in the semi-skilled classes of employees, Sri Gokhale, who appears on behalf of the petitioner, stated that the work of an assistant transfer printer is quite different from that of a printer. He has also pointed out that the authority has not found that the work which this respondent was doing was that of an assistant transfer printer. There is also no evidence on record to indicate what the nature of work of an assistant transfer printer Is. In the absence of this evidence, the authority could not properly hold this respondent to be an assistant transfer printer. He himself did not claim to belong to this category of workers. The order made in respect of respondent 6 must, therefore, be set aside.

6. We, therefore, sat aside the orders made by the authority in respect of respondents 2, 3, 4 and 6. The order made by the authority in respect of respondent 5, Kalaskar, is confirmed. No order as to costs.