

(1954) 11 MAD CK 0004
In the Madras High Court

Essor Engineering Works

APPELLANT

Vs

Collector of Madras

RESPONDENT

Date of Decision : 18-11-1954

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 15
Industrial Disputes Act, 1947 — Section 10, 19, 20

Citation : (1955) 1 LLJ 397

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—The petitioner is the proprietor of an engineering firm called the Eссор Engineering Works. In 1950 disputes having

arisen between various engineering businesses in the city on the one hand and the employees on the other, a reference was made to the industrial

tribunal u/s 10(2A) of the Industrial Disputes Act as it then stood. On 18 July 1950 Mr. Ramayya Pantulu who constituted the industrial tribunal,

passed an award in the course of which he dealt with various matters. On the question of minimum wage he stated:

I do not propose to determine the wages of workers other than unskilled workers as there are no adequate materials upon which it can be done.

2. He, therefore, confined his adjudication on this part of the case to this point, namely, the wages that should be paid to the lowest category Of

unskilled worker and he fixed that at Rs. 26 per mensem for 26 days (see Paras. 43 and 53 of the award). Dealing with the question of gratuity

and provident fund, the award stated:

It is however essential that the workers should have at least one retirement benefit scheme and one may choose the provident fund scheme which is

the more necessary and urgent. I would direct that if the Government scheme is not ready to be introduced by 1 January 1951, the management should prepare a provident fund scheme on the basis of an equal contribution of 6 1/4 per cent of basic wage in consultation with the workers or their representatives. Difference of opinion on any point of detail will be settled by the Commissioner of Labour or ultimately by an industrial tribunal.

This award pronounced on 18 July 1950 was actually published in the Fort St. George Gazette on 8 August 1960. One thing that has to be

mentioned here is that the award does not in terms deal with apprentices. On 27 February 1951 the Government issued a memorandum No. 2951

P. 1/51-1, dated 27 February 1951, answering certain points raised by the Madras Provincial Foundry, Smithy and General Engineering

Workers' Union. That memorandum has been described as a clarification by the Government of the award made by Mr. Ramayya Pantulu on 18

July 1950. In Para. 3 of the memorandum the Government stated:

In the absence of any direction in the award, specifying the date from which the minimum wage of Rs. 26 for unskilled labour should be paid, it

should be paid from 8 August 1950, the date of the publication of the award in the Gazette.

By virtue of Section 19(3) of the Industrial Disputes Act, 1947, the award remained in operation by its own force for one year. On 30 October

1952 the union sent a notice to the petitioner terminating the award with effect from two months from the date on which the notice would reach the

petitioner. The date of termination may therefore be taken to be 1 January 1953. After the award was terminated in this manner there was a

second reference to arbitration and on 6 October 1953 Mr. Narasimham, who then constituted the industrial tribunal, pronounced his award. In

that he went separately and specifically into the question of apprentices and gave this direction regarding them:

But the apprentices in the present case shall be paid an allowance of 8 annas per day for the first year and of Re. 1 per day for the second year of

their service, and if they are retained in service beyond the second year, they shall be treated as regular workmen and paid wages as per award in

the Bombay Engineering Works according as they happen to be unskilled,

semiskilled workmen.

3. In the business of the petitioner, 24 persons, who have been impleaded as respondents 3 to 26 to this petition, were working. The case of the

petitioner is that they were only apprentices. The labour officer, however, considered that they were unskilled labourers and on that basis he wrote

on 8 September 1953 to the petitioner telling him that the workers had claimed arrears of wages at the rate specified in the award of Mr. Ramayya

Pantulu, and requiring him to produce his wages register and provident fund register; and warning him that in default it would be assumed that the

claim made by the workers was correct and that a report would be sent to Government for recovery of the amount u/s 20 of the Act.

4. On 15 September 1953 the labour officer wrote again to the petitioner telling him that if he failed to implement the award in spite of the repeated

advice he had given and in spite of the clarification contained in the Government Memorandum of 27 February 1951, he would be required to

show cause why he should not be prosecuted for failure to implement the award.

5. On 1 October 1953, the petitioner wrote to the labour officer telling him:

The 24 persons mentioned by you are only beginners learning work. They were employed as such. They are not regular workers. In any event,

they do not come within the category of unskilled workers dealt with under the award of Mr. Ramayya Pantulu in G.O. No. 2959, Development,

dated 29 July 1950. They are not entitled to the minimum wage of Re. 1 mentioned in the award for an unskilled worker.

The petitioner raised some other points which need not now be gone into. There was some further correspondence and on 5 January 1954 the

labour officer wrote to the petitioner to reclassify the apprentices as unskilled labourers that was apparently not done. As the petitioner did not pay

what according to the labour officer he should have paid, Government issued an order on 20 March 1954 directing the recovery of the amount u/s

20(1) of the Industrial Disputes (Appellate Tribunal) Act, 1950. That sub-section runs as follows:

Any money due from an employer under any award or decision of an industrial tribunal may be recovered as arrears of land revenue or as a public

demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision.

Accordingly, on 14 April 1954 the tahsildar Issued a distress warrant for the collection of a Bum of Rs. 4,354-6-3. The petitioner then

approached the Collector of Madras for time; but that was refused. He has therefore come to this Court for the issue of a writ prohibiting the

State of Madras and the tahsildar, South Madras, from taking any further steps to recover the money from him.

6. Learned Counsel for the petitioner raised numerous contentions, but I shall deal only with the more material ones. The first point was an almost

obvious one. Section 18(3) of the Industrial Disputes (Appellate Tribunal) Act, 1950, runs as follows:

Subject to the provisions of Sub-section (1) the award or decision of any industrial tribunal shall come into operation with effect from such date as

may be specified therein, but where no date is so specified it shall come into operation on the date on which that award or decision becomes

enforceable under Sub-section (1).

Sub-section (1) provides:

Subject to the provisions of this Act, the award or decision of any industrial tribunal shall, notwithstanding anything contained in any law, be

enforceable on the expiry of thirty days-

(1) from the date of the publication of the award or decision, where such publication is provided for by the law under which that award or decision

is made....

Now, that Act came, into force on 20 May 1950. Mr. Ramayya Pantulu made his award on 18 July 1950, that is to say after the Act came into

force. In his award he did not specify the date from which it should take effect and as it was published only on 8 August 1950, it could go into

force only thirty days later, i.e., on and from? September 1950. The sum demanded from the petitioner proceeded on the footing that the award

took effect not on 7 September 1950 but on date 8 August 1950 which is referred to in Government Memorandum No. 3951 Pl/51-1, dated 27

February 1951. Now, Government have no power whatsoever to modify or amend the award which the industrial tribunal had given and the

clarification which they made in answer to the enquiry of the general secretary of the Engineering Workers' Union has no more legal force than the

advice which one householder might give to his neighbour. Even therefore if all

the 24 workers on whose behalf the labour officer and the Government Intervened were unskilled workmen entitled to be paid the minimum wages fixed by Mr. Ramayya Pantulu, and even if it be that they are entitled to the benefits of the provident fund, the claim actually made is plainly in excess of what was due and, therefore, illegal. On that short ground alone, the proceedings Instituted by the Government are liable to be set aside.

7. The next remark I would make is that on the question whether these 24 persons are unskilled workers or apprentices there is a bona fide controversy between the parties, Mr. Mohan Kumaramangalam, on behalf of respondents 3 to 25, very strongly argued that it must be deemed that the award of Mr. Ramayya Pantulu covers these 24 persons also even if it be that they were only apprentices. He observed that apprentices had not been excluded from the terms of reference and that the definition of "workman" in Section 2(a) includes apprentices. He also contended that unless the management expressly raised the point and obtained a classification of apprentices below the category of unskilled workers they would be entitled to at least that wage. Now, I am unable to agree that an apprentice can be put in the same category as an unskilled worker. Normally, there would be no apprentice to an unskilled worker. An apprentice is a person who enters to learn a trade. That necessarily means a trade in which some skill is required, and which has to be acquired. When he is still learning his job, an apprentice may be less useful to the management than an unskilled labourer. On reading the award of Mr. Ramayya Pantulu, it seems to me clear that the question of apprentices was never raised before him and that he did not go into that matter at all. By way of contrast one may read the award made by Mr. Narasimham wherein this category of persons is separately dealt with. If therefore these 24 persons were actually apprentices, they would not be entitled to payment at the rate fixed for unskilled labourer by Mr. Ramayya Pantulu. As already stated, there is a substantial dispute in the present case as regards the status of these 24 persons and the amount of money payable by the petitioner would depend upon the determination of their status. Now, when, there is a substantial dispute in respect of the money claimed by a person, I do not think that it would be proper to describe it as

money due to him. The position would not be different merely because the claim is made by Government, It cannot therefore be said that the

money demanded by the tahsildar was money due within the meaning of Section 20(1) of tag Industrial Disputes (Appellate Tribunal) Act, 1950.

8. The amount claimed in the distraint warrant Includes also Bums claimed on account of provident fund. Now, if these 24 persons were only

apprentices they would not come within the scope of Mr. Ramayya Pantulu's award and would not be entitled to the benefits of any provident

fund and no money would, therefore, be recoverable on that basis.

9. Even on the footing that these 24 persona are entitled to the benefits of the provident fund scheme, there is some difficulty in understanding how

Government can recover the money as arrears of land revenue. Section 15(2) of Act XIX of 1952 (the Employees' Provident Fund Act) does not

apply to the present case because it provides:

the accumulations in any provident fund of the factory standing to the credit of the employees who become members of the fund established under

the scheme shall, notwithstanding anything to the contrary...but subject to the provisions if any, contained in the scheme, be transferred to the fund

established under the scheme, etc.

The word ""accumulation"" here means money actually standing to the credit of the employee. In the present case no amount stands to the credit of

any of respondents 3 to 26. In fact, the contention was that they were not employees, and in consequence not members of the provident fund at

all. It was however argued that even though no money stood to their credit, the money should have been credited to them by the petitioner and

chat money which he should have credited should be deemed to be an accumulation and can be recovered from him. On the question as to by

what process such money can be recovered, I shall not at the moment express any opinion, but of this I am clear. An accumulation is money

actually collected and not what may be collectable. And what has not been accumulated but has yet to be collected or realized cannot be

recovered, as if it were arrears of land revenue u/s 20(1) of the Industrial Disputes (Appellate Tribunal) Act, 1950.

10. There is a further difficulty as already stated; before the section can be applied, money must become due and that means it must be payable.

An examination of the rules of the fund relating to the petitioner's Institution shows that money in the provident fund is payable to an employee only

on his retirement or to his heirs on his death. The money is also payable on the winding up of the fund, or, when the company ceases to exist.

Respondents 3 to 26 have not retired, nor has the firm gone out of business. But it was said that there has been a winding up of the fund because

by virtue of the Employees Provident Fund Act, 1952, all the moneys standing to the credit of the scheme would stand transferred to the fund

created by the statute; and by that process the fund set up by the employer would be wound up. But then, according to the rules of the fund, the

persons who contribute to the fund would be entitled only to a division amongst them of the assets of the fund in proportion to the amount standing

to their credit; they would not be entitled to say that employer should have contributed so much and the whole of it should be paid to them; they

are only entitled to payment in accordance with a certain ratio. In any case this rule does not in terms apply.

11. I would finally remark that when we read the award made by Mr. Ramayya Pantulu carefully it will be noticed that he did not direct the

Introduction of a scheme. What he required the management to do was to prepare a provident fund scheme. I shall quote the exact sentence once

more:

I would direct that if the Government scheme is not ready to be introduced by 1 January 1951, the management should prepare a provident fund

scheme on the basis of an equal contribution of 6 1/4 per cent of basic wage in consultation with the workers or their representatives.

It would therefore seem that the petitioner would have complied in terms with the requirement of the award, if he had merely prepared a scheme.

12. In the circumstances I do not consider that Government are entitled to recover the sum of Rs. 4,354-6-3 in the manner they tried to.

13. The petition is allowed and an appropriate writ will issue prohibiting the Government and the tahsildar from taking any further proceedings

under the Revenue Recovery Act, in respect of the sum of Rs. 4,354-6-3. The petitioner will get his costs from the second respondent, i.e., the

State of Madras. Advocate's fee, Rs. 200.