

(1955) 11 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No. 1844 of 1955

Gajanand Mahadev

APPELLANT

Vs

David Mills Ltd. and Others

RESPONDENT

Date of Decision : 22-11-1955

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 106(1), 3(39), 42(1)
Constitution of India, 1950 — Article 227

Citation : (1956) 2 LLJ 149

Hon'ble Judges : M.C. Chagla, C.J;P.V. Dixit, J

Bench : Division Bench

Judgement

Chagla, C.J.—The petitioners are the employees of the respondent mills and they are employed in the watch and ward department. They filed an application before the labour court that they were being the dearness allowance on a certain basis from the 1942 to 1951, that in 1951 the mills suddenly reduced the dearness allowance paid to them without following the procedure laid down in S. 42(1) of the Bombay Industrial Relations Act and, therefore, they were guilty of an illegal change, and the relief they sought was that the mills should be compelled to set aside this change and to pay the dearness allowance as before. The labour court and industrial court accepted by the contention of the petitioners and granted them the relief which they sought. The Labour Appellate Tribunal has reversed the decision of the two lower tribunals and the petitioners have come before us under Art. 227 of the Constitution.

2. Now, what is urged by Mr. Vyas is that the only way in which a change could be made by the employer with the regard to matters referred to in Suh. II of the Bombay Industrial Relations Act was by giving a notice of change as required by the S. 42(1) and following the procedure laid down in the Act consequent upon giving such notice. Mr. Vyas says that the admittedly the employer has not followed this procedure and therefore, the change made by him is an illegal change. An award was given with regard to the dispute between the Bombay Textiles mills and their employees and this award was given in 1947 and it is

admitted by the Mr. Vyas that the petitioner before us were affected by the award and their wages were fixed as standardization wages. The industrial tribunal left the question of dearness allowance open, but by a supplementary award they fixed the dearness allowance on a particular basis, and it is also admitted by Mr. Vyas that the dearness allowance paid by the mills after this award was given was more than what had been fixed by the award. The Labour Appellate Tribunal, in coming to the conclusion that it did, follows a decision of the Court in *C.T. Daru and Others Vs. Manager, Ahmedabad Spinning and Manufacturing Co. Ltd.*, . In that case it was decided that if wages have been standardized by an award of an industrial court, it is not open to the employer to pay more than the standardized wages. In that case a contention was urged on behalf of the workers that it was open to an employer to pay contractual wages which may be higher than the wages fixed under the award, and if he wanted to reduce the contractual wages, he could only do so provided that followed the procedure laid down in S. 42(1). We rejected that contention and we pointed out that payment of wages higher than those fixed change in the part of the employer and it would subject him to a penalty under S. 106(1). Mr. Vyas says that even though the payment of the higher dearness allowance might subject the employer to a penalty, even so looking to the language of S. 42(1) it is incumbent upon the employer in every case of a change to give notice as required by that sub-section. We may point out that the result of following the procedure laid down in S. 42(1) is that the employer cannot put into effect of the change unless the whole procedure laid down in the act has been implied with. If the notice is not accepted by the employees, there has got to be conciliation proceedings and other proceedings laid down in the act, and till these proceedings come to an end, the employer is not permitted by law to give effect to the change. In other words, Mr. Vyas's contention comes to this that, although what the employer was doing was illegal, although he was liable to penalty. Still he must go on and doing something which was illegal and comply with the procedure which laid down in the S. 42(1). We are unable to accept that contention. We must not possibly take the view that any party is entitled to compel the other party to do something which is illegal. If in making the change the employer stopped doing something which was illegal and started doing something which alone he could do under the law, then no notice was required to be given by him under S. 42(1). Notice under S. 42(1), need not only be given when what the employer is doing is in accordance with the law and he wishes to bring about a change. Then this continuing to do what laid down in the Act is satisfied will not lead to any serious consequences as far as the employer is concerned. But to construe S. 42(1) as requiring the employer to continued to do something which is illegal till the procedure is complied with, is to put an impossible construction on the rights of the labour and the responsibility of the employer.

3. It is then urged by Mr. Vyas that what the employer was praying to the employee was not wages but a customary concessions or privilege or something

arising out of the usage, Mr. Vyas says that the additional dearness allowance that was paid to the petitioners was in the nature of the privilege, and as it had been paid for a long period of time, it had acquired the characteristics of usage. He draws attention to Sch. II of the Act which makes a distinction between the customary concessions, privileges or change in usage and wages including the period and mode of payment. "wages" has been defined by the S. 3(39) and the definition is :

"Remuneration of all kinds capable of being expressed in terms of the money and payable to an employee in respect of the employment or work in respect of the his employment or work done in the such employment and includes any bonus, allowances (including dearness allowance), reward or additional remuneration."

4. Therefore, expressly the statute has defined "wages" as to include dearness allowance and, therefore, when the award provided that particular wages and particular dearness allowance should be paid, it was really dealing with the question of the wages as understood by the Act. Now, we will assume in favour of Mr. Vyas that dearness allowance also constituted privilege or customary concession or something out of usage. But even so, if the award fixed certain wages to be paid to the employees, then the employer cannot add to those wages on the ground that the additional constituted arising out of the privilege or something arising out of the usage. The employees is not entitled to any customary concessions or privileges or something arising out of the usage which gives to him a higher wage than is permissible under the award. It is also difficult to understand how an illegal payment can possibly constitute a privilege or a right arising out of the usage. Mr. Vyas says that because the employer was paying this amount from 1942 onwards, the payment became a payment as a result of usage. Surely after 1947 as the payment, of we have pointed out, was illegal and an employer by making an illegal payment cannot confer upon an the employee the right to demand that payment as something in the nature of the privilege or something as arising out of the usage, Mr. Vyas rather naively suggests that if the employer could make this payment notwithstanding the award from the 1947 to 1951, there was no reason why he should have given a notice flowing the procedure and in the meanwhile go on making payment. Surely even an employer is entitled to say that "I think that the although I have committed breach of law in the part, I now want to become law-abiding". According to Mr. Vyas, the Bombay Industrial Relations Act, does not permit the employer to follow the law or to become law abiding in the case of payment of additional wages. In our opinion, the Labour Appellate Tribunal was right when it took the view that in view of our decision in Daru v. Ahmedabad Spinning and Manufacturing Company, Ltd., the only conclusion it could come to was that no notice under S. 42(1) was required on the part of the employer and the employer was entitled to make a change in the payment of wages to his employees, if in doing so he was doing what the law required and changing something which the law permitted.

5. The result is that the petition fails. No order as to costs.