

(1959) 02 MP CK 0008

In the Madhya Pradesh High Court

Case No : C. Miscellaneous C. No. 14 of 1957

Gokul Singh

APPELLANT

Vs

The Management, Indore Malwa United Mills

RESPONDENT

Date of Decision : 25-02-1959

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1959) JLJ 234

Hon'ble Judges : Shiv Dayal Shrivastava, J

Bench : Single Bench

Advocate : J.D. Patel, for the Appellant; G.M. Chaphekar, for the Respondent

Final Decision : Dismissed

Judgement

Shivdayal, J.—This is a petition under Article 227 of the Constitution of India against the judgment Of the Industrial Court, Madhya Pradesh, Indore. The petitioner was in the employment of the respondent. He was dismissed by the employer on December 9, 1953. The petitioner went to the Labour Court; Indore but did not succeed there. He then filed an appeal to the Industrial Court and that appeal (No. 27 of 1954) was partly allowed and the order of dismissal was converted into that of discharge.

2. The present grievance of the petitioner is that the above order of the Industrial Court passed on September 15, 1955, was not being complied with by the employer inasmuch as (i) the employer was not giving him 14 days' wages (Rs. 44 12-6, (ii) 15 days' leave with pay (Rs. 48), and (iii) gratuity equal to 20 months' pay (Rs. 800): To enforce the order of the Industrial Court dated September 15, 1955, the petitioner made an application u/s 78 (c) of the Bombay Industrial Relations Act to the Industrial Court Indore and prayed that the amount of Rs. 892-12-6 be ordered to be paid by the employer to the employee. This petition which was filed on December 6, 1955, was dismissed by the Labour Court and the petitioner's appeal against that order has also been dismissed by the Industrial Court. The petitioner finding himself without any

remedy, has come to this Court under Article 227 of the Constitution.

3. Shri J.D. Patel, Learned Counsel for the petitioner contends that the Labour Court, as also the Industrial Court, have erred in law in arriving at the conclusion that in the proceedings before them they were not competent to make an order against the employer for paying to the petitioner the sums claimed by him. Having gone through all the provisions to which my attention was invited by the Learned Counsel, I have reached the conclusion that this petition has no substance.

4. According to the petitioner, he is entitled to 14 days' wages under the standing orders because he was discharged. In the reply that was filed by the Company, it was conceded that the petitioner was entitled to 13 days' wages (instead of 14 days) under the standing orders. It was further stated in the reply that the Company was prepared to pay that amount but the petitioner never turned up to receive the payment due to him, Shri Chaphekar, Learned Counsel for the respondent stated before me also that the respondent was prepared to pay that amount. The petitioner has only to go and receive the payment.

5. The sole question before me is, whether the Labour Court is empowered to make an order under the provisions of the Bombay Industrial Relations Act for payment of the aforesaid three items claimed by the petitioner.

6. The petitioners application in the Labour Court was u/s 78 (i) C of the Bombay Industrial Act.

78 (i) A Labour Court shall have power to A.....C require any employer to

(a) withdraw any change which is held by it to be illegal, or

(b) carry out any change provided such change is a matter in issue in any proceeding before it under the Act.

7. u/s 42 (4), application could be made to the Labour Court. That Clause refers to standing orders. Now, according to the standing orders, all that the petitioner was entitled to was 13 days' wages. The standing orders make no provision for 15 days, leave with pay (Item No. 2) or for gratuity (item No. 3). In his application dated December 6, the petitioner claims these amounts under "law and settlement". He has not specified as to which law or which settlement he was referring to. At any rate, I am not concerned with the merits of the case today. Suffice it to say that in the said application itself, he does not claim the second and the third item under standing orders.

8. Moreover, on a perusal of the scheme of the Bombay Industrial Relations Act, it appears that two kinds of proceedings are envisaged--civil proceedings and criminal proceedings. Section 47 of the Act provides that "an employer required under the terms of a decision or order of the Labour Court or the Industrial Court to carry out any change or withdraw any change, shall comply with such requirements...". Now, it is contended by the respondent that compliance has

been made with the order of the Industrial Court inasmuch as the respondent converted the order of dismissal into that of discharge and was prepared to pay the consequential benefits: namely, 13 days' wages.

9. Shri Patel relies on Sections 93, 94, 106 and 110 of the Act in support of his contention that the Labour Court was competent to pass an order against the employer for the payment of the two items.

10. Section 93 deals with execution of order as to costs which is of no relevance here.

11. Section 94 declares that an order, decision or award of an Industrial Court, shall be binding on all parties. This is also not a dispute here. The employer is, and has been ready and willing to obey the decision of the Industrial Court.

12. Section 106 is the penal clause which provides that an employer who makes an illegal change, shall on conviction, be punishable with fine which may extend to Rs. 5000 and in Clause (2) of that section it is provided that any employer who contravenes the provisions of Section 47 shall, on conviction, be punishable with imprisonment which may extend to three months, or for every day on which the contravention continues with fine which may extend to Rs. 5000 or with both. It is obvious enough that Section 106 (2) which is attracted according to Shri Patel, provides for punishment in case there is a "conviction" and this is possible only when criminal proceedings are taken against the respondent. There has been no such prosecution and the application of the petitioner u/s 78 (1) C, Cannot be held to be a complaint for criminal prosecution of the respondent.

13. Section 110 provides for the recovery of fines and compensation as arrears of land revenue. In the present case there has not been any order imposing any fine on the respondent nor is there any order directing any compensation to be paid to the petitioner. The result of the above discussion is that I do not find any provision in the Bombay Industrial Relations Act which empowers the Labour Court on an application u/s 78 (1) C of that Act to grant a sort of decree against the respondent.

14. Shri Patel argued on the analogy of proceedings in execution of a decree and contended that where a decree is passed, the executing Court cannot refuse to execute the decree although it is open to it to hold which claims under the decree are allowable and which not, In my opinion, this analogy does not fit in here in view of the provisions of the Bombay Industrial Relations Act. Moreover, even in the case of a civil decree, the executing Court cannot go behind it and grant relief which are not granted in the decree itself. In the order of the Industrial Court dated September 15, 1955, there is no direction that the employer shall pay to the employee any amount on account of leave with pay or on account of gratuity which are being claimed by the petitioner now. Shri Chaphekar, Learned Counsel for the respondent relies on a decision of the Labour Appellate Tribunal of India reported in 1955 LLJ 619.

15. The case before me is one under Article 227 of the Constitution. I do not find error apparent on the face of the record e impugned orders of the Labour Court the Industrial Court.

16. In the result, the petition is dismissed without any order as to costs.