
(1967) 09 AHC CK 0016
In the Allahabad High Court

Jain Glass Works (Private) Ltd.

APPELLANT

Vs

Assistant Labour Commissioner, Agra Region and Others

RESPONDENT

Date of Decision : 21-09-1967

Acts Referred:

Constitution of India, 1950 — Article 223

Citation : (1968) 2 LLJ 160

Hon'ble Judges : S.D. Khare, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.D. Khare, J.—This is a petition under Article 223 of the Constitution of India and the prayer is that the proceedings for recovery of Rs. 4,082-5-8 from the petitioner-company u/s 6H (1) of the Uttar Pradesh Industrial Disputes Act, 1947 (hereinafter referred to as the Act), including the warrant of attachment issued by the Sub-divisional Magistrate, Firozabad be quashed by a writ in the nature of certiorari.

2. The undisputed facts leading to this writ petition briefly stated are that the petitioner is Jain Glass Works (Private), Ltd., Company, Harangau, Agra, incorporated under the Indian Companies Act, 1956, and carries on the business of manufacture and sale of various kinds of glasswares and has its glass factory at Harangau, Firozabad district Agra. During the period between March 1960 and May 1961, the petitioner-company. for one reason or the other, had to lay off some workmen from time to time. One hundred and sixty-nine workmen of the petitioner-company moved the State Government u/s 6H (1) of the Act for the recovery of their lay-off compensation for the period between March 1960 and May 1961. A notice was issued by the Assistant Labour Commissioner [to whom powers has been delegated by the State Government to pass orders u/s 6H (1) of the Act] to the petitioner-company on 7 April 1962 to make payment) of the amount claimed as lay-off compensation within a week of the receipt of the notice of to show cause why a recovery certificate for the recovery of the amount

claimed by the workmen be not issued. The employers were also asked to attend the office on 16 April 1962 along with relevant records for inspection. The petitioner-company failed to appear on the date fixed and the recovery certificate was issued by the Assistant Labour Commissioner, Agra, by his order dated 25 April 1962.

3. The contention of the petitioner is that the claim of the workmen was not admissible due to several reasons, that they had made a representation to the State Government in reply to the notice and the same contained their objections and that after the objections had been raised by them a disputed claim of the workmen could not be proceeded with under Sub-section (1) of Section 6H of the Act but the proper remedy of the workman was to apply u/s 6H (3) to the labour court for the determination of their claim before it could be executed in the manner provided u/s 6H (1) of the Act. Another point raised by the petitioner-company is that no claim had been made by individual workman but the State Government had proceeded merely on the complaint filed by Jain Glass Works Mechanical Worker's Union, Harangun, Agra (opposite party 6). It was for this reason that the petitioner did not make the workmen as parties to this petition.

4. In the counter-affidavit which has been filed, both the questions of fact aversed by the petitioner in their affidavit are denied. It was mentioned in the counter-affidavit that no objection on behalf of the petitioner-company was received by the State Government. It was also averred in the counter-affidavit that the individual workman also lodged his claim for lay-off compensation due to him in the prescribed form before the Regional Assistant Labour Commissioner, Agra.

5. Both the questions of fact must be decided against the petitioner. Had the petitioner filed any objection to the notice received by them, there could be no reason why the Assistant Labour Commissioner, who is an independent person and an officer of the State Government, should have concealed the same and stated in the counter-affidavit that no such objection had been filed. It is significant to note that even a copy of that objection had not been filed by the petitioner to indicate what grounds they had mentioned in that objection.

6. The second contention of the petitioner that the claim had not been filed by the individual workmen is controverted in Para. 10 of the counter-affidavit where it has been mentioned that individual workman filed his claim in the prescribed form. The very opening words of the order passed by the Assistant Labour Commissioner (annexure B) will show that 169 workmen had filed applications u/s 6H of the Act. It leads as follows:

I have the honour to say that 169 workmen of Jain Glass Works (Private), Ltd., Harangau, district Agra, filed applications u/s 6H of the Uttar Pradesh Industrial Disputes Act, 1947, for recovery of their lay-off compensation for the period between March 1960 and May 1961 (as detailed in the annexure) as arrears of land revenue.

7. I am, therefore, not in a position to accept any of the two averments of fact made by the petitioner, as mentioned above.

8. The relevant portion of Section 6K of the Act reads as follows:

6K. Right of workmen laid off for compensation.-(1) Whatever a workman (other than a substitute or a casual workman) whose name is borne on the muster-rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid off, he shall be paid by the employer for all days during which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid off:

Provided that the compensation payable to a workman during any period of twelve months shall not be for more than forty-five days.

9. The provisions of Sections 6H(1) and 6H(2) are as mentioned below:

6H, Recovery of money due from an employer.-(1) Where any money is due to a workman from an employer under the provisions of Sections 6J to 6R or under a settlement or award, or under an award given by an adjudicator or the State industrial tribunal appointed or constituted under this Act, before the commencement of the Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1966, the workman may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government is satisfied that any money is due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same as if it were an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such labour court as may be specified in this behalf by the State Government, and the amount so determined may be recovered as provided for in Sub-section (1).

10. It is, therefore, clear from the provisions of Section 6H(1) that a claim u/s 6K of the Act could be made u/s 6H (1) of the Act.

11. The scope and applicability of Sections 6H(1) and 6H(2) of the Act were considered in the case of Kays Construction Company (Private), Ltd. v. State of Uttar Pradesh 1965-2 L.L.J. 429. Their lordships of the Supreme Court observed:

The contract between "money due" on the one hand and a benefit which is not "money due" but which can become so after the money equivalent is determined, on the other, marks out the areas of the operation of the two sub-sections of Section 6H, Uttar Pradesh Industrial Disputes Act. Where the money due is back-wages of the period of unemployment, the case is covered by the

first sub-section and not the second. No doubt some calculation enters into the determination of the amount for which the certificate will eventually issue but this calculation is not of the type mentioned in the second sub-section and cannot be made to fit in the elaborate phrase "benefit which its capable of being computed in terms of money." The contrast in the two sub-sections between "money due" under Sub-section (1) and the necessity of reckoning the benefit in terms of money before the benefit becomes "money due" under sub-section shows that mere arithmetical calculations of the amount due are not required to be dealt with under the elaborate procedure of Sub-section (a).

The case of Kays Construction Company (Private), Ltd. v. State of Uttar Pradesh 1965-2 L.L.J. 43(sic) (vide supra) was taken into consideration by a Division Bench of this Court in the case of British India Corporation, Ltd., Kanpur v. State of Uttar Pradesh Civil Miscellaneous writ Nos. 2726 of 1961 and 181 of 1960, dated 22 November 1966 (vide supra) and it was observed:

A simple mode of recovery is prescribed by Sub-section (1). If the State Government is satisfied that, any money is due, it issue a certificate therefore and the money is recovered by the Collector as an arrear of land revenue. This can be done directly under Sub-section (1) in three classes of cases, namely, where money is due under a settlement or an award or under Sections 6J to 6R, which provided for compensation for retrenchment or lay-off. Claims of other kinds and categories are dealt with by Sub-section (2). For such claims the workman has to approach the specified labour court and get the amount determined by it. The amount so determined is then recoverable in the mode prescribed in Sub-section (1).

It was further observed:

where the claim is to money under the three classes of cases mentioned in Sub-section (1) and the only genuine dispute is as to its arithmetical verification, it can be dealt with by the State Government under Sub-section (1). All other cases fall under Sub-section (2) and only the labour court is competent to determine the amount.

12. In the present case I find that after the notice was issued by the Assistant Labour Commissioner to the petitioner-company, the latter did not file any objection nor cared to appear on the date fixed. That action of the petitioner-company clearly indicated that the claim of the workman was not disputed. The claim was within one of the three classes of cases mentioned in Sub-section (1) (that is to say, u/s 6K, compensation for lay-off). In the circumstances of the case, it cannot be said that the application could not have been made and disposed of u/s 6H (i) and recovery certificate issued.

13. There is no merit in this writ petition and it is dismissed with costs.