

(1956) 01 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 781 of 1955

Lakshmi Devi Sugar Mills Ltd.

APPELLANT

Vs

Labour Appellate Tribunal and Others

RESPONDENT

Date of Decision : 16-01-1956

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Factories Act, 1948 — Section 78, 78(1), 79
Government of India Act, 1935 — Section 107
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 2, 7(1)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 3

Citation : AIR 1956 All 401

Hon'ble Judges : M.L. Chaturvedi, J

Bench : Single Bench

Advocate : V.P. Misra, for the Appellant; N.D. Pant, J.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

M.L. Chaturvedi, J.—This is a petition under Article 226 of the Constitution.

2. The petitioner is a limited company and carries on the business of manufacture and sale of sugar. In September 1948, the U. P. Government passed an order u/s 3(b), U. P. Industrial Disputes Act of 1947 laying down the standing orders to be followed by the petitioner and other sugar factories.

During the period that these standing orders were in force the Central Legislature passed the Factories Act of 1948, which came into force in April 1949. One of the questions that arises for consideration is the interpretation of Sections 78 and 79, Factories Act. After the Factories Act had been passed, the State Government issued an order on 1-10-1951 again laying down certain standing orders mentioned in the annexure.

Under Clause 9(12) of this standing order, the employers had been directed to pay wages for un-availed portion of leave to the workmen. Relying on the above clause, the workmen of the petitioner claimed wages in lieu of unavailed leave in

the year 1951-52. In the subsequent year 1952-53, they claimed wages for the period 11-12-1952 to 16-12-1952 as the mills had not worked on those days and the case of the workmen was that the management had improperly stopped its working on the said days.

3. The U. P. Government referred the said two disputes for adjudication by its order dated 3 8-9-1953. The Adjudicator went through the proceedings and gave his award on 27-6-1953. He held against the petitioner on both the points and directed that wages have to be paid to the workmen for both the periods. His finding on the points raised was that Section 79, Factories Act did not apply to orders issued under the Industrial Disputes Act.

These orders had the force of law and the application of Section 79 to the orders was excepted by the provisions of Section 78, Factories Act. He thus held that the order of the Government dated 1-10-1951 providing for payment of wages for unavailed portion of casual and privilege leaves was valid. On the second point he held that the working of the mills was not stopped on 11-12-1952 because of any sabotage and the workmen were entitled to the wages of that period.

The petitioner then went up in appeal to the Labour Appellate Tribunal against this award and the Labour Appellate Tribunal dismissed the appeal on 15-4-1955 on the ground that no substantial question of law arose in the cases; It agreed with the view of the Adjudicator that Section 79, Factories Act did not render the Government order dated 1-10-1949 invalid and as regards the second point it held that the question whether there was a sabotage or not was a question of fact and the judgment of the Adjudicator on that point was not shown to be perverse.

The present petition was filed on 26-8-1955, praying for the issue of a writ of certiorari quashing the order of the Labour Appellate Tribunal dated 15-4-1955 and for the issue of a writ of mandamus directing the Tribunal to hear and dispose of the appeal in accordance with law.

4. The learned counsel has urged that the decision of the Labour Appellate Tribunal that no substantial question of law arose in the case was not correct inasmuch as at least one substantial question of law arose and that was whether Section 79, Factories Act invalidated the Government order issued by the U. P. Government on 1-10-1951.

It is further argued, that in any case, both the questions that were referred to the Adjudicator and which were decided by him were questions in respect of the payment of wages and the award of the Adjudicator was appealable u/s 7(I)(b) (i). The above provision of law lays down that an appeal shall lie to the Appellate Tribunal from any award or decision of an Industrial Tribunal if the award or decision is in respect of any of the matters enumerated in Clause (b) of Sub-section (1). One of these matters is "wages".

The learned counsel for the petitioner argued that no question of reinstatement or other relief arose in the case and the two points that arose were only with respect to the question whether the workmen were entitled to the wages for the un-availed portion of the leave in 1951-52 and for the five days in December 1952 when the mill was not worked. I think there is force in the contention. The word "wages" has been defined in Section 2 as follows:

"wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed or otherwise to a person employed in respect of his employment or of work done in such employment and includes"

5. According to the above definition, remuneration capable of being expressed in terms of money, which would be payable to a person employed, in respect of his employment, would be wages if the same would be payable if the terms of employment express or implied, were fulfilled.

In case of payment for unavailed portion of privilege and casual leave, there was a term of employment of the workmen contained in the standing order issued by the Government on 1-10-1951 and therefore the amount would be payable to the workmen as they had fulfilled the terms of employment.

The amount was payable to the workmen in respect of their employment and all the requirements of the definition have been fulfilled. The claim therefore for this amount came within the definition of the word wages. So also I think was the case of payment for the period 11th December to 16th December 1952.

The case of the workmen was that they were entitled to their wages for these days as they were prepared to work on those days and according to the terms of their employment they were entitled to wages for these days also. An appeal therefore lay to the Appellate Tribunal u/s 7(I)(b)(i), Industrial Disputes (Appellate Tribunal) Act of 1950.

6. This point was not argued before the Labour Appellate Tribunal but I think it is a point which arises on the admitted and proved facts of the case and by omitting to consider the point, the Labour Appellate Tribunal has failed to exercise its jurisdiction of deciding the appeal on merits.

The view that I have taken on this point would show that the Labour Appellate Tribunal should have heard and decided the appeal of the petitioner on merits and in omitting to do so, it has failed to exercise its jurisdiction which it possessed. The petitioner is therefore entitled to urge the point before me and his omission to urge it before the Appellate Tribunal should not be a bar to his taking the point in this petition.

7. I now come to the other point raised by the learned counsel for the petitioner which is to the effect that the order issued by the Government on 1-10-1951 is

invalid as it is in conflict with Section 79, Factories Act. The argument of the learned counsel is that u/s 107, Government of India Act, the provisions of a Central Act, namely, the Factories Act have to be given effect to and they would render void the provisions of any Act passed by the State Legislature which are repugnant to the provisions of the Central Act.

It is said that Section 79, Indian Factories Act says that every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year leave with wages for a number of days calculated at a certain rate.

In Sub-section (2) there is a provision that if a worker does not in any one calendar year take the whole of the leave allowed to him under Sub-section (1) or Sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year. It is said that these provisions go to show that the workmen shall be entitled to leave but not to wages for the unavailed portion of leave.

It is said that the Factories Act came into force in 1949 and the Government Order was issued in 1951 and Section 79, Factories Act should prevail over the Government Order.

8. This argument is negated by the wordings of Section 78, Factories Act Sub-section (1) which is as follows:

"The provisions of this Chapter shall not operate to the prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement or contract of service."

There is a proviso which need not be mentioned. According to Section 78(1), quoted above, the whole of the chapter in which it occurs is not to operate to the prejudice of any right to which a worker might be entitled under any other law or under the terms of any award, agreement or contract of service. The provisions of Section 79 thus have been made subject to any other law and to the terms of an award, agreement or contract. The notification issued by the Government in 1948 was under Section 3, U. P. Industrial Disputes Act.

In my opinion that notification, having been issued u/s 3, had the force of law. In Clause (12) under the heading "H-leave" it was said that in case of unavailed privilege or casual leave --- totally or a part thereof -- the workmen should get wages in lieu of the unavailed period. This provision is the same as laid down in the notification of 1951.

There was thus on the date that the Factories Act came into force, a law which provided for the payment of such wages and that law was excepted from the operation of Section 79 by Section 78, Factories Act. There thus appears to be no substantial question of law arising on this point; but, as I have already stated, even though there was no substantial question of law, the appeal lay because the points arising in it were with respect to wages.

9. The next question that arises & what order should be passed by me in the case. The decision on the point last discussed by me is to the effect that the Government order of 1951 is valid and enforceable with the result that the petitioner is bound to pay wages for the unavailed portion of casual and privilege leave to the workmen.

If this were the only point to be decided, I would not have remanded the case to the Labour Appellate Tribunal; but there is one more point. That point raises a question of fact, namely whether the working of the mills was stopped from the 11th to 16th December 1952 because of any sabotage on the part of the workmen or the working was stopped by the management for certain reasons of their own.

The Adjudicator decided this point in favour of the workmen and the petitioner is entitled to show to the Labour Appellate Tribunal that that decision is wrong on facts because an appeal lies, the decision being one in respect of wages. I do not think it proper to quash a half portion "of the judgment and let the other half stand.

10. For the above reasons, I allow this petition and direct the issue of a writ of certiorari quashing the judgment of the Labour Appellate Tribunal, Lucknow dated 15-4-1953 given in appeal No. 111-337 of 1953. A direction shall also issue to the said Tribunal to hear and dispose of this appeal according to law.

11. In the circumstances of the case, I direct the parties to bear their own costs.

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