

**(1959) 03 MAD CK 0013**  
**In the Madras High Court**  
**Case No : Writ Petition No. 30 of 1957**

Moosa Kazimi

APPELLANT

Vs

K.M. Sheriff and Another

RESPONDENT

**Date of Decision : 23-03-1959**

**Acts Referred:**

Factories (Amendment) Act, 1948 — Section 2  
General Clauses Act, 1897 — Section 8, 8(1)  
Payment of Wages Act, 1936 — Section 2, 2(1)

**Citation : AIR 1959 Mad 542 : (1959) 2 LLJ 344 : (1959) 72 LW 483**

**Hon'ble Judges : Ramachandra Iyer, J**

**Bench : Single Bench**

**Advocate : T. Venkatadri, for the Appellant; Addl. Govt. Pleader and B. Lakshminarayana Reddi, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

Ramachandra Iyer, J.—This is an application for the issue of a writ of certiorari, calling for the records in P. W. case No. 174 at 1950 on

the file of the Commissioner for Workmen's Compensation, Madras, and quashing the order of the Commissioner, for Workmen's

Compensation, dated 7th December 1956, whereby a sum of Rs. 253 towards arrears of wages and a further sum of Rs. 12 as costs were

awarded to the first respondent as against the petitioner. The petitioner, who was running a restaurant called Lucky Cafe in Avanashi Road,

Coimbatore, purchased, on 1-11-1955, the goodwill and all other rights in a hotel. Davey and Co. near the railway station, which included a

bakery as well. The first respondent was one of the employees in Davey and Co. According to the first respondent, his services were continued by

the petitioner. The former was, however, discharged from service on 10-2-1956.

Claiming that he was entitled to arrears of wages on the foot of a monthly salary of Rs. 175, the first respondent filed an application before the second respondent for an order, directing the payment of the amount claimed u/s 15 of the Payment of Wages Act. The claim was contested by the petitioner both on the grounds that the second respondent had no jurisdiction and that the first respondent was not entitled to the relief prayed for. The second respondent substantially upheld the claim of the first respondent, and, after making a deduction of Rs. 272 already advanced by the petitioner, directed him to pay the first respondent the amounts aforesaid., The petitioner has come forward with this petition under Article 226 of the Constitution to quash the order of the second respondent.

2. On behalf of the petitioner it is urged that Davey and Co., was not a factory, and, that, therefore, there was no jurisdiction in the second respondent to entertain an application u/s 15 of the Payment of Wages Act at the instance of an employee or ex-employee therein. There was some contest before second respondent as to the exact number of persons that were employed in Davey and Co. The finding of the fact arrived by the second respondent was that ten persons were working in that company. Therefore, the only question that was argued in this court was as to whether the Payment of Wages Act, 1938, could properly be invoked by the first respondent to obtain relief against the petitioner.

3. Section 1(4) of the Payment of Wages Act (Act IV of 1936) states that it applies in the first instance to the payment of wages to the persons employed in any factory and to certain other persons specified in that Sub-section, Section 3 of the Act declares that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Act. Section 15 of the Act states that the State Government may, by notification, appoint any Commissioner for Workmen's compensation or other officer having judicial experience 10 be the authority to hear and decide for any specified area all claims arising out of deduction from the wages, or delay in payment of the wages, of persons employed or paid in that area. u/s 2(1) of the Act the word "factory" is defined as follows:--.

"factory" means a factory as defined in Clause (j) of Section 2 of the Factories Act, 1934.

Clause (j) of Section 2 of the Factories Act of 1934, defines "factory" thus:--

"factory" means" any premises including the precincts thereof whereon twenty or more workers are working, or were working on any day of the

preceding twelve months, and in any part of which a manufacturing process being carried on with the aid of power, or is ordinarily so carried on.

It is necessary for the purpose of appreciating the contention in the present case to ascertain the meaning of the terms "power" and "manufacturing

process". "Manufacturing process" is defined in Section 2(g) of the Act thus:

(2) (g). "Manufacturing process" means any process -

(i) for making, altering, repairing, ornamenting, finishing or packing, or otherwise treating any article or substance with a view to its use, sale,

transport, delivery or disposal, or

(ii) for pumping oil, water or sewage, or

(iii) for generating, transforming or transmitting power,

4. The term "power" is defined in Section 2(f) of the Act as follows;--

"power" means electrical energy, and any other form of energy which is mechanically transmitted and is not generated by human or animal

agency.

5. As a result of the incorporation by virtue of the definition in Section 2(i) of the Payment of Wages Act, the definition of the term factory in the

Factories Act of 1934 should be deemed as it was expressly given in the Payment of Wages Act. The Factories Act of 1934 (Act XXV of 1934)

was repealed and re-enacted by Act 63 of 1948. Section 2(m) of the Act defines the word "factory" thus:

"factory" means any premises including the precincts thereof (i) whereon ten or more workers are working, or were working on any day of the

preceding 12 months and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty- or more workers are working or were working on any day of the preceding twelve months, and in any part of which a

manufacturing process is being carried on without the aid of power, or is ordinarily so carried on but does not include a mine subject to "the

operation of the Indian Mines Act XXXV of 1932 or a railway running shed.

6. The result of this revised definition in the Factories Act is that any premises

wherein manufacturing process was carried on with the aid of power with 10 persons would become a factory for the purpose of that enactment. Prior to the enactment, the number of persons that was necessary to constitute a "factory" was 20. Although the definition of the term "factory" was modified in the Factories Act, 1948, the modified definition, was not incorporated in the Payment of Wages Act till the year 1958. Act 68 of 1957 was passed in the year 1957, to incorporate certain amendments in the Payment of Wages Act, 1936. The amendments came into force by virtue of a notification made by the Central Government on 1-4-1958. By Section 3(1) it was enacted that "the term "factory" in the Payment of Wages Act would mean a factory, as defined in Section 2(m) of the Factories Act 68 of 1948. Therefore till the coming into force of the Payment of Wages Act 68 of 1957, that is, till 1-4-1958, the definition in the Payment of Wages Act in regard to "factory" was "factory" as defined in the Factories Act of 1934 (Act 25 of 1934). Thus the amendment, engrafting the definition of the word "factory" as in the Factories Act of 1948, into the Payment of Wages Act, came into force subsequent to the initiation of the claim by the first respondent.

7. Mr. Venkatadri, the learned advocate for the petitioner, contends that as only ten persons were employed in Davey and Co. in the year 1956, that could not be deemed a factory within the meaning of the Payment of Wages Act, 1936, the definition of the term "factory" in that enactment being as given in the Factories Act of 1934, notwithstanding the fact that the latter enactment had been repealed and re-enacted in the year 1948. That is to say till the enactment of the Payment of Wages Act, the term "factory" in that Act could only mean a place where 20 or more persons were working and that as Davey and Co. did not have so many, the second respondent would have no jurisdiction over the dispute.

8. The principal question in the present case is as to whether the definition of the term "factory" as given in the Factories Act of 1948 should be deemed to have been incorporated in the definition of the term "factory" in Section 2(i) of the Payment of Wages Act even before the amendment of the latter Act in 1957.

9. It sometimes happens that an Act instead of expressly repeating the words of a section contained in an earlier enactment, merely refers to it, and

by relation applies its provisions to some new state of things created by a subsequent enactment. Such an incorporation makes the section so

incorporated a part of the new statute and even the repeal of the statute containing the incorporated section does not have the effect of repealing

that provision in the statute in which it is incorporated. Thus where a statute is incorporated by reference into a second statute the repeal of the first

by a third statute does not affect in any way the operation of the second statute. The principle is that incorporation of that kind by relation to

another Act is only to save the trouble of repeating the same things, but the provisions referred to are made part of the second statute as much as if

they had been expressly incorporated therein in Maxwell's Interpretation of Statutes 10th Edition, page-406, it is stated

Where the provisions of one statute are by reference incorporated in another and the earlier statute is afterwards repealed, the provisions so

incorporated obviously continue in force so "far as they form part of the second enactment." It follows that when the Payment of Wages Act 1936

incorporated the definition of the term "factory" as contained in the Factories Act of 1934, it would be deemed that the entire definition of the term

factory" contained in the Factories Act 1934 was expressly enacted by the Payment of Wages Act of 1936. The result is that even if the Factories

Act of 1934 were repealed, the subsequent enactment, namely, the Payment of Wages Act, would subsist and the definition of the term factory

would continue to remain as before. In 3 Halsbury (2nd Edn.) page 566 it is stated as follows:

Provisions of an earlier statute adopted or incorporated by a later statute will not be repealed by the repeal of the former.

In Craies on Statute Law (5th Edn.) this matter is dealt with at page 385,

Sometimes an Act of Parliament, instead of expressly repeating the words of a section contained in a former Act, merely refers to it, and by

relation applies, its provisions to some new thing created by the subsequent Act, In such a case the rule of construction is that where a statute is

incorporated by reference, into a second statute, the repeal of the first statute by a third does not affect the second.

But this rule would be modified if the first statute (the incorporated one) which is repealed is re-enacted with or without modification. Section 8(1)

of the General Clauses Act, which is based on Section 38(1) of the Interpretation Act, 1889, 52 and 56 Vict. Ch. 63 runs as follows:

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification,

any provision of a former enactment, then references in any other enactments or in any instrument to the provision so repealed shall, unless; a

different intention appears, be construed as references to the provision so re-enacted.

The rule then is that if the provisions of a statute are incorporated by reference to a second statute and the earlier statute is repealed the second

statute would continue to be in force with the incorporated provision of the repealed statute being treated in force as a part of it. But if the earlier

statute had not been merely repealed but repealed and re-enacted, it is the reenacted, provision that would take the place of the corresponding

provision in the repealed enactment, in so far as the incorporation in the second statute is concerned. This is subject of course to a contrary

intention being statutorily expressed. If therefore the Factories Act, 1934, had been simply repealed, "then, notwithstanding the repeal, the

Payment of Wages Act would, operate with the definition of the term "factory" as it occurred in the repealed enactment. But as the Factories Act,

1934 had been repealed and re-enacted, there being no contrary intention expressed in any of the enactments, then by the force of the provisions

of Section 8(1) of the General Clauses Act, the reenacted provision would be deemed to have been incorporated in the Payment of Wages Act,

1936, notwithstanding that reference was made to the Factories Act of 1934 in the definition of the term "factory." Therefore, when Section 2(i), of

the Payment of Wages Act is amended in 1957, so as to define the term "factory" as one defined in the Factories Act, 1948, it was done only by

way of abundant caution and that even before that amendment the definition of the term factory would be that contained in Factories Act 1948, as

soon as that came into force in the place of the 1934 enactment. The result is that if ten persons were employed in a premises in which

manufacturing process was carried on with aid of power, after the Factories Act, 1948, came into force, it should be deemed to have come within

the purview of the Payment of Wages Act, 1936.

10. The next question is whether a hotel to which bakery is attached can be said, to be a place where manufacturing process is carried on. In the present case it is admitted that there is electric motor working for the purposes of providing water for the bakery and the hotel run by the petitioner. It is also stated that there is a frigidaire maintained by the petitioner with the aid of electric energy. Mr. Venkatadri referred me to a decision in *New Taj Mahal Cafe Ltd., Mangalore v. Inspector of Factories, Mangalore*, AIR 1956 Mad 600, for the proposition that the existence of a frigidaire would not convert an establishment into a factory.

It is unnecessary for the purpose of this case to consider that question, as admittedly there is an electric motor for the purpose of lifting water. The definition of the term ""manufacturing process"" to which I have already made a reference, would comprehend such a case. In *Laxmibai Atmaram*

*Vs. Chairman and Trustees, Bombay Port Trust*, , it has been held that the use of electric motor for the purpose of lifting water will be deemed to

be a manufacturing process and it will convert the premises into a factory if more than the required persons are working in the premises.

On the question whether a bakery can be a factory in *P. Laxmanrao and Sons Vs. The Addl. Inspector of Factories and Another*, , it has been

held that establishments which prepare articles of food and drink and cater them to the members of the public who visit them and in which the

number of workmen employed was more than the required minimum, would be factories within the meaning of Section 2(m) of the Factories Act.

As I have already held, the definition of the term ""factory"" in the Payment of Wages Act should be read consistent with the definition of the same

term in the Factories Act, of 1948, the employment of ten workmen would bring the premises in the category of factory and a manufacturing

process would be deemed to have been made there. It, therefore, follows that the second respondent had jurisdiction to entertain the claim, and

that there is no case for the issue of a writ of certiorari. This petition fails and is dismissed with costs. Advocate's fee Rs.50/-.