
(1977) 09 KAR CK 0002
In the Karnataka High Court
Case No : WP. 4643 of 1975

Ngef Employees Assn and Others

APPELLANT

Vs

Rpf Commr and Others

RESPONDENT

Date of Decision : 21-09-1977

Acts Referred:

Additional Emoluments (Compulsory Deposit) Act, 1974 — Section 6

Citation : (1977) 2 KarLJ 404

Hon'ble Judges : Lal, J;Malimath, J

Judgement

Malimath, J.-This writ petition is by the NGEF Employees" Association and two employees of respondent-2 the New Government Electric Factory (NGEF), Bangalore filed under Art. 226 of the Constitution for the issue of a writ in the nature of mandamus directing, the first respondent. The Regional Provident Fund Commissioner, Karnataka to refrain from demanding from the second respondent, the employer, deposit of the additional wages payable to the employees of the second respondent factory under the terms of the settlement dt. 1-3-1975 for the period between 6-7-1974 and 30-6-1975. The third respondent, the NGEF Workers" Union, which has got itself impleaded as one of the respondents, supports the case of the petitioners.

The necessary facts for decision of this case may be stated as follows:

On the 1st of March, 1975 a settlement was arrived at between the employees and the employer, the second respondent, the NGEF, Bangalore. Under the terms of the said settlement the employees were accorded the benefit of certain additional wages for the period commencing from 1-4-1974. Cl. (1) of the terms of the settlement expressly provides that the additional wages, as a result of revision of wage structure, will be arranged to be paid during August, 1975. There is also a provision in Cl. (16) of the said settlement to the effect that the settlement is subject to the provisions of Additional Emoluments (Compulsory Deposit) Act, 1974, (hereinafter referred to as "the Act"). By letter dt. 23/24 of July, 1975, produced in the case as Ext."B", the first respondent called upon the

Divisional Manager, (Personal and Administration) of the second respondent to pay the arrears of additional wages payable to the employees of the second respondent in accordance with the settlement dated 1-3-1975 referred to above for the period from 6-7-74 to 30-6-75. It is stated that so far as the additional wages for the period from 1-7-75 to 5-7-75 is concerned, the same has been waived by the Govt. Request has been made in the said letter for the deposit of 80 per cent of additional wages immediately. After the attempts made by the petitioners to persuade the first and the second respondents not to give effect to the demand made in Ext."B" failed, the petitioners have approached this Court for appropriate reliefs.

Sub-sec. (3) of Sec. 1 of the Act provides that the Act shall be deemed to have come into force on the 6th day of July, 1974, except S. 14 which shall come into force at once. The preamble to the Act states that it has been enacted to provide, in the interests of national economic development, for the compulsory deposit of additional emoluments and for the framing of a scheme in relation thereto, and for matters connected therewith or incidental thereto. The expression "appointed day" had been defined in S. 2(a) of the Act, to mean, the 6th day of July, 1974. The expression "additional wages" has been defined in S. 2(c), as follows:

"additional wages" means such wages, over and above the wages payable to an employee in accordance with the rates in force immediately before the appointed day, as may become payable to the employee in respect of any period after the appointed day in pursuance of any wage revision, whether by or under an agreement or settlement between the parties or any award, decree or order of any Court, Tribunal or other authority or otherwise, but does not include-

(i) any increment due to the employee in accordance with the time scale of pay applicable to the post held by him immediately before the appointed day, and any consequent increase in any allowance (not being clearness allowance) admissible under any rule or order in force immediately before the appointed day;

(ii) any higher wages payable to the employee on his-

(a) promotion to a higher post and any increment, being an increment within the prescribed limits, due to the employee in such higher post;

(b) deputation or transfer to an equivalent post or to any post involving higher responsibilities and duties;

(iii) any special pay, honorarium, fee or reward payable for any special work done;

(iv) any remuneration payable for overtime work;

(v) any increase in wages consequent on the revision of the minimum rates of wages fixed under the Minimum Wages Act, 1943 (11 of 1948);

(vi) any increase in wages sanctioned in pursuance of the recommendations made-

(a) by the Third Central Pay Commission;

(b) before the appointed day, by any Pay Commission appointed by a State Government, in relation to the employees of that Government;

(c) by any committee constituted, before the appointed day, by Parliament, Supreme Court or any High Court in relation to any employee of Parliament, Supreme Court or High Court, as the case may be.

Explanation-1: Where any wage revision made after the appointed day is to be effective from a date prior to the appointed day, the wages payable immediately before the appointed day, before such wage revision, shall, for the purpose of computation of additional wages, be deemed to be the wages.

Explanation-2: Any bonus (including incentive and production bonus) paid after the appointed day at a rate over and above the rate at which it was last paid before the appointed day, shall be deemed, for the purpose of this Act, to be additional wages."

The expression "emoluments" has been defined in Section 2(g) of the Act, as follows:

""emoluments" includes wages and dearness allowance."

Sec. 3 of the Act enumerates the persons to whom the Act applies and S. 4 of the Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act or in any instrument having the effect by virtue of any enactment other than the Act. S. 5 provides for opening of two separate accounts, namely, "the additional wages deposit account" and "the additional dearness allowance deposit account". S. 6 of the Act contains provisions requiring the employer or other persons specified therein to make deductions of additional wages and additional dearness allowance from the emoluments payable to the employees. As other portions of S. 6 are not relevant for discussion, it is enough if we extract the provisions of sub-sec. (1) and Cls. (a) and (b) of sub-sec. (2). Sub-sec. (1) of Section 6 of the Act reads:

"For the purposes of this Act, the deductions specified in sub-section (2) shall be made,- (a) in the case of additional wages, for a period of one year from the appointed day; and (b) in the case of additional dearness allowance for a period of three years from the appointed day."

Clauses (a) and (b) of sub-sec. (2) of Sec. 6 of the Act read as follows:

(2) On the commencement of this section,-(a) every other employer, who draws, from the Consolidated Fund of India, or of any State or of any Union Territory having a Legislative Assembly, and disburses after the appointed day, emoluments of an employee to whom this Act applies, shall, as and when emoluments are disbursed by him for any period, deduct from the emoluments so disbursed, the whole of the additional wages and one-half of the additional

dearness allowance and credit the amount so debited, in accordance with the scheme, to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively.

(b) every employer, who disburses, after the appointed day, emoluments to any employee to whom this Act applies, shall, as and when emoluments are disbursed by him for any period, deduct from the emoluments so disbursed, the whole of the additional wages and one-half of the additional dearness allowance, and shall remit, in accordance with the scheme, the amounts so deducted to the nominated authority and on receipt of such amounts the nominated authority shall credit the amounts so received to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively."

Sec. 7 of the Act provides that the deposit to be made u/S.6 carries interest as specified in the said section. S. 9 of the Act provides for re-payment of the deposits made as per S. 6 of the Act. It is enough for the purpose of this case to extract the provisions of sub-sec. (2) of S. 9 of the Act, which reads as follows:

"The aggregate amount credited to any additional wages deposit account by or in relation to an employee shall be repaid to the employee in five equal annual instalments commencing from the expiry of one year from the appointed day, together with interest due on the whole, or as the case may be, part of the amount of compulsory deposit which remains unpaid."

Sec. 10 of the Act empowers the Central Govt to frame schemes. S. 14 provides for imposition of penalties for avoiding making any deduction of additional wages and additional dearness allowance and crediting them in the respective accounts and for aiding or abetting any other person to avoid making any such deduction or credit and also against the employer who omits or fails to credit to any Deposit Account or remit any amount to the nominated authority, as and when such credit or remittance becomes due under the Act or any scheme framed there under. Persons who are held guilty under Sec. 14 of the Act are liable to be punished, with imprisonment for a term which shall not be less than 3 months, but may extend, in the case of first offence to six months, and in the case of any second or subsequent offence to one year.

Section 23 of the Act provides:

"Without prejudice to the provisions of S. 14, any amount which ought to have been credited under this Act to a Deposit Account or remitted to the nominated authority but has not been so credited or remitted in accordance with the provisions of this Act or scheme or order made thereunder, shall be payable by the employer, together with interest due thereon calculated at twice the rate at which interest is payable under sub-sec. (1) of S. 7, and in default of such payment, such amount, together with interest due thereon at the aforesaid rate, shall be recoverable as an arrears of land revenue:

Provided that where any such amount has been recovered by the Court under

sub-sec. (2) of S. 14, the said amount shall not be recoverable under this section."

Though the Act provides for crediting the additional dearness allowance and additional wages, we are concerned in this case only with the crediting of additional wages. The Act contains clear provisions in regard to the persons to whom the Act applies and the liability of the employer or other persons to make deduction of additional wages, which amount after deduction has to be credited with the appropriate authority in the appropriate account. The Act also provides for repayment of the amounts so credited in a phased manner as contemplated in S. 9(2) of the Act. There are safeguards to ensure that the provisions of the Act are not defeated. In that respect, specific provisions have been made in S. 14 of the Act for imposition of penalty on persons who commit default and provision has been made for recovery of arrears under Section 23 of the Act.

The controversy between the parties in this case is a limited one. The question for consideration is as to whether the provisions of S. 6 of the Act are attracted to the facts of the present case so as to impose liability on the employer the second respondent, to deduct and credit the additional wages payable to the employees under the terms of the settlement dt. 1-3-75 for the period from 6-7-74 to 30-6-75 as stated by the first respondent in his letter Exhibit "B".

The contention of Sri R.N. Narasimha Murthy, learned Counsel for the petitioners, is that S. 6 of the Act is not attracted to the payment of additional wages under the settlement for the period from 6-7-74 to 30-6-75 on the ground that the additional wages for the said period are not required to be disbursed to the employees within a period of one year from the appointed day; but are required to be disbursed after the expiry of the said period of one year. The contention of Sri S.A. Hakeem, learned Counsel appearing for the first respondent is, that the date of actual payment of the additional wages for the period from 6-7-74 to 30-6-75 is not relevant for the purpose of attracting liability under S. 6 of the Act but what is relevant is as to whether the additional wages payable to the employees are in respect of the entire period of one year from the appointed day, i.e. 6-7-74, or any portion thereof.

The decision on the question raised before us necessarily rests on proper construction of S. 6 of the Act. Sub-sec. (1) of S. 6 of the Act provides that the deductions specified in sub-sec. (2) shall be made in the case of additional wages for a period of one year from the appointed day, viz., 6-7-74. Cl. (b) of sub-sec. (2) of S. 6 which is relevant provides that every other employer, who disburses, after the appointed day, emoluments to any employee to whom this Act applies, shall, as and on emoluments are disbursed by him for any period, deduct, from the emoluments so disbursed, the whole of the additional wages and one-half of the additional dearness allowance. The amount so deducted is required to be credited to the appropriate account in accordance with the scheme framed in this behalf. What is clear from Cl. (b) of sub-sec. (2) of S. 6 is that there is a duty cast on the employer to deduct the additional wages payable to the employees at

the time of disbursement of the emoluments after the appointed day. "Additional wages" means any wages over and above the wages payable to an employer in accordance with the rates in force immediately before the appointed day, as may become payable to the employee in respect of any period after the appointed day in pursuance of any wage revision, whether by or under an agreement or settlement between the parties or any award, decree or order of any Court, Tribunal or other authority or otherwise. The additional wages with which we are concerned in this case do not come within the exempted categories as specified in Cl. (c) of S. 2 of the Act. The definition of expression "additional wages" though provides a starting point, it does not provide for any terminus. If Cl. (b) of sub-sec. (2) of S. 6 of the Act is construed by itself with the aid of the definition of the expression "additional wages", it would follow that the employer has to deduct the additional wages payable to the employee after the appointed day. A limitation is, however, to be found in Cl. (a) of sub-sec. (1) of S. 6 of the Act. which prescribes that in the case of additional wages, deduction has to be made for a period of one year from the appointed day. The clear effect of Cl.(a) of sub-sec. (1) of S. 6 is to restrict the period of deduction to one year from the appointed day. As already stated, the point of time when deduction has to be made is when the employer has to disburse the emoluments after the appointed day. The contention of Sri Hakeem is that the expression "for a period of one year from the appointed day" employed in Cl. (a) of sub-sec. (1) of S. 6 means in respect of a period of one year from the appointee day viz., 6-7-74. If that clause is interpreted in that way, it was maintained that to attract liability what is relevant is as to whether the additional wages are in respect of a period of one year from the appointed day or the portion of that period, and not when actually the amount gets disbursed to the employees. Grammatical construction is the normal construction which the Courts have to put unless such a construction leads to absurdity or manifest unreasonableness. In our considered view, by the application of the rule of grammatical construction, it is impossible in the context to understand the expression "for a period of one year from the appointed day" to mean in respect of a period of one year from the appointed day. The interpretation contended for by Sri Hakeem cannot be put without doing violence to the language of Cl. (a) of sub-sec. (1) of Section 6 of the Act.

In support of his contention Sri Hakeem relied upon a Bench decision of the Bombay High Court in *Ahmednagar Dist Co-op Bank Employees' Union v. Union of India*, Spl Civ Appn 2606/75 dt. 16-12-75 (Bom.H.C.). The said decision no doubt supports the contention of Sri Hakeem. Their Lordships of the Bombay High Court have held that whenever payment in the nature of additional wages is made within one year from the appointed day, deductions have got to be made irrespective of the date of actual disbursement after the appointed day. Their Lordships have laid considerable emphasis on the object of the Act and held that a contrary view would defeat the entire object of the Act. Though, with some straining of the language of the section, it may be possible to put the interpretation as has been done by the High Court of Bombay, we find it

impossible to agree with that view, having regard to the provisions of sub-sec. (2) of Sec. 9 of the Act and Ss. 14 and 23. sub-sec. (2) of S. 9 provides for repayment of additional wages and it states in express terms that the aggregate amount credited to any Deposit Account shall be repaid to the employee in five equal annual instalments commencing from the expiry of one year from the appointed day. It is clear from the language of sub-sec. (2) of S. 9 that the entire amount credited has to be repaid in five equal annual instalments commencing from the expiry of one year from the appointed day. The appointed day under the Act is 6-7-74. The first instalment becomes payable after the 7th of July, 1975. The entire amount credited under S. 6 has to be repaid in five equal annual instalments, the last instalment falling due in the month of July, 1979. There is no provision either for adjustment of the amount of instalments or in regard to the adjustment of the number of years for repayment. The proportionate amount as well as the number of instalments have been statutorily fixed. So far as the deduction of the additional wages by the employer is concerned, there is no ambiguity in Cl. (a) of sub-sec. (2) of S. 6 which provides that such deduction has to be made only at the time of disbursement of the emoluments. If it is held that it is possible to make deduction under S. 6 of the Act after the expiry of the period of one year from the appointed day, it would mean in the present case itself that even though the additional wages are payable under the settlement in August 1975, the first instalment would have become payable even before the said date in July, 1975. This leads to a very anomalous situation. It is also possible to conceive of cases where either by the process of settlement or adjudication, retrospective fixation of additional wages is made making a provision for payment of the arrears of additional wages at a future date. If in a particular case an agreement is reached or a decision is rendered in August, 1979 according sanction for the payment of additional wages for the period subsequent to 6-7-74, the additional wages for a period of one year from the appointed day, if they are payable after such agreement or decision, it will become impossible to give effect to sub-sec. (2) of S. 9 of the Act. The last instalment has to be paid in July, 1979, If the amount of additional wages is deducted after one year from the appointed day under S. 6 of the Act at the time of disbursement, it will be impossible to give effect to the scheme of repayment as contemplated by sub-sec. (2) of S. 9 of the Act. If the interpretation put forward by the High Court of Bombay in the aforesaid decision is accepted as correct, it becomes impossible to give effect to sub-sec. (2) of S. 9 of the Act. No provision in the Act should be so construed as to render the other provisions in the Act nugatory. The Act has laid down a composite scheme regarding deduction of additional wages and repayment. It is, therefore, impossible to give preference to one part of the Act and ignore the other part of it. The attention of their Lordships of the Bombay High Court does not seem to have been invited to the provisions of sub-sec. (2) of S. 9 of the Act. Their Lordships have not considered the effect of their interpretation of S. 6 on the working of the scheme of repayment contemplated by S. 9(2) of the Act. If the interpretation which we are inclined to give is correct the additional wages

payable in respect of a period of one year from the appointed day cannot be deducted under S. 6 of the Act if the same are required to be disbursed by the employer after the expiry of one year from the appointed day. It cannot be said that our interpretation leads to defeating the object of the Act, inasmuch as it cannot be said that the object of the Act is to deduct the additional wages that are disbursed beyond a period of one year from the appointed day. If the intention of the Act is to deduct the additional wages only if the same are required to be disbursed within a period of one year from the appointed day, the quasi ion of defeating the object of the Act does not arise. Besides, if the parties arrange their activities in such a manner as to defeat the object of the Act, there are provisions in S. 14 of the Act for imposition of penalties. Sec. 23 of the Act also provides for recovery of arrears if the amount required to ascredited is not credited to the appropriate accounts. These provisions have been made to deter persons from defeating the object of the Act. As the High Court of Bombay has not considered the effect of sub-sec. (2) of S. 9 of the Act and the provisions of Ss. 14 and 23, we find it difficult to persuade ourselves to agree with the view taken by their Lordships of the Bombay High Court.

Coming to the facts of this case, it is not disputed that the settlement Ext."A" dt. 1-3-75 is a bona fide and genuine agreement. It is also not disputed that under the agreement additional wages for the period from 6-7-74 are payable to the employees only in August, 1975 and not earlier. As the liability to deduct under S. 8 of the Act is not attracted in this case, deductions cannot be insisted upon merely on the ground that the settlement provides that additional wages are payable subject to the Act. It cannot be said that the parties are bound to comply with the provisions of the Act even though the Act does not apply to them. As the additional wages accorded under the settlement dt. 1-3-75 for the period subsequent to 6-7-74 are payable only in August 1975, that is, after the expiry of one year from the appointed day, it is clear that there is no obligation on the part of the employer, the second respondent, to make any deduction as directed by the first respondent in his letter, Ext."B" dt. 23/24th July, 1975. As the demand made in Ext."B" is illegal, this writ petition is entitled to succeed.

The other prayer in the writ petition not having been rightly pressed, it is unnecessary to grant the same.

For the reasons stated above, this writ petition is allowed and a writ in the nature of mandamus shall issue directing the first respondent the Regional Provident Fund Commissioner, Karnataka to refrain from demanding from the second respondent the New Government Electric Factory Limited the deposit of the additional wages payable to the employees of the second respondent factory under the terms of the settlement dt. 1-3-75-Ext."A"-for the period from 6-7-74 to 30-6-75 as contemplated in Ext."B" dt. 23/24th July, 1975. No costs.