
(2009) 02 AHC CK 0037
In the Allahabad High Court

Northern India Textile Research Association	APPELLANT
Vs	
Presiding Officer and Another	RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6E(2)(b)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4)

Citation : (2009) 121 FLR 442 : (2009) 3 LLJ 12 : (2009) 2 UPLBEC 1679

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri Navin Sinha, the learned senior counsel duly assisted by Sri Syed Ali Murtaza, the learned Counsel for the petitioner and Sri Y.K. Sinha, the learned Counsel for the contesting respondent No. 2.

2. The brief facts leading to the filing of the writ petition is, that the workman/ respondent No. 2 was charge sheeted on November 15, 1986 on various misconducts committed by him. An enquiry was made and, the management, by an order dated April 2, 1987, passed an order of dismissal to be made effective from April 27, 1987. The management issued a cheque dated April 24, 1987 for a sum of Rs. 3643/- with instructions to their bankers to credit the cheque, vis-a-vis the amount, in the account of the workman. It has come on record that the bank credited the amount of Rs. 3643/- in the account of the workman on the same date. Since another dispute was pending before the Industrial Tribunal, the management, simultaneously moved an application u/s 6-E(2)(b) of the UP. Industrial Disputes Act (hereinafter referred to as the Act) for the approval of the action of dismissal before the Industrial Tribunal.

3. The workman, respondent No. 2 filed his objections before the Industrial Tribunal after almost two and half years on December 11, 1989 and, apart from other pleas, a plea was taken, that one month's wages, as contemplated under

the provision of Section 6-E(2)(b) of the Act, was not fully paid by the petitioner, and therefore, no approval of the action taken by the management should be granted.

4. Before the Tribunal, the workman also deposed and, in his statement, the workman for the first time, contended that he was entitled to receive wages amounting to Rs. 1214.40 which was equivalent to one month's wages and, that the management had only paid a sum of Rs. 1103.30, and therefore, there was a short fall of Rs. 110/-, in the payment of one month's wages which was fatal to the mandatory requirement u/s 6-E(2)(b) of the Act. The Industrial Tribunal, after considering the evidence on record and, after hearing all the parties, passed an order dated July 24, 2008 declining to grant approval of the order of dismissal passed by the petitioner, on the short ground, that one month's wages, as contemplated under the proviso to Section 6-E(2)(b) of the Act was not fully paid by the petitioner which was mandatory and that the non-compliance of the mandatory provision vitiated the order of dismissal and that no approval could be granted. It transpires, that the petitioner filed a review application, which was also rejected by the Tribunal, by its order dated December 12, 2008. The petitioner has now filed the present writ petition. At the time when the writ petition was presented for admission, the learned Counsel for the respondent workman submitted he did not wish to file a counter affidavit and that the writ petition may be decided at the admission stage itself, without calling for a counter affidavit. Accordingly, the writ petition was posted for admission and for final disposal and, is now being decided finally.

5. It is also necessary to state here that the order of dismissal was passed on April 24, 1987 to be effective from April 27, 1987. The application for approval was also filed before the Tribunal on April 27, 1987. The matter was eventually decided by the Tribunal on July 24, 2008, after almost 21 years and, the reason for this delay was, that the petitioner apparently had filed some writ petition against a miscellaneous order of the Tribunal which was dismissed eventually by a judgment dated April 7, 2004. Subsequently, another writ petition No. 13094/2005 was filed which was also dismissed on March 2, 2005 and, that is, how the proceedings before the Tribunal was delayed, undoubtedly, at the behest of the petitioner- The Tribunal, while refusing to accord approval held that there was a shortfall of Rs. 110/- while paying one month's wages to the workman and that the shortfall of Rs. 110/- was payable towards interim relief which was part of wages as defined u/s 2(y) of the UP. Industrial Disputes Act. The Tribunal held that since one month's wages was not fully paid, the mandatory provision of Section 6-E(2)(b) was not complied with by the petitioner, and therefore, on this short ground, no approval could be granted by the Tribunal.

6. The learned Counsel for the petitioner submitted before this Court, that admittedly, the petitioner had paid a sum of Rs. 3643/- towards wages, etc., which was sufficient to cover the conditions prescribed under the proviso to Section 6-E(2)(b) of the Act. The learned Counsel submitted that a sum of Rs.

3643/- deposited by the petitioner included the wages of the workman for the period which he had worked in April 1987 including increment and, also included one month's wages in lieu of the notice period. Further, an amount of Rs. 1618.30 was paid to the workman towards leave encashment which was not a requirement to pay, at that time, under the proviso to Section 6-E(2)(b) of the Act. The learned senior counsel submitted that the requirement under the proviso at the time of the discharge or dismissal of the workman is, that the employer should pay one month's wages which had been done. The learned Counsel submitted that admittedly more than one month's pay was deposited by the petitioner. Consequently, even if there was a shortfall of Rs. 110/-, the said amount could be adjusted from the leave encashment paid to the workman. The learned Counsel for the petitioner therefore, submitted that there was no default in the compliance of the mandatory provision of Section 6-E(2)(b) of the Act and that the Tribunal committed a manifest error in law in refusing to grant the approval. In support of his submission, the learned Counsel for the petitioner placed reliance upon a decision of the Supreme Court in *Mam Chand Pal Vs. Shanti Agarwal*,

7. On the other hand, the learned Counsel for the respondent submitted that the provision of Section 6-E(2)(b) of the Act is mandatory and that the non-compliance of the proviso of Section 6-E(2)(b) of the Act was fatal to the grant of the approval of the action taken by the management. The learned Counsel submitted that since there was a shortfall of Rs. 110/- towards the payment of one month's wages, no approval could be granted by the Tribunal and that the order of the Tribunal refusing to grant approval, was perfectly justified. The learned Counsel submitted that the ground raised by the petitioner before this Court was neither raised before the Tribunal nor had been raised in the writ petition and therefore, the petitioner could not be permitted to argue such ground which had not been raised by them earlier.

8. Since the arguments raised by the learned Counsel for the petitioner went to the root of the matter, in which, no factual controversy was involved and only a legal issue was raised, this Court permitted the learned Counsel for the petitioner to raise this question. Since the learned Counsel for the respondents was caught unaware, the matter was adjourned to enable the learned Counsel for the respondent to address on this issue. In response, Sri Y.K. Sinha, the learned Counsel for the respondents addressed the Court, on the adjourned date of hearing, that the judgment cited by the learned Counsel for the petitioner in the case of *Mam Chand Pal v. Shanti Agarwal (Smt)*, (*supra*), was not applicable to the present facts and circumstances of the case. The said judgment related to the provision of Section 20(4) of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972, which had no bearing with the provision of Section 6-E(2)(b) of the U.P. Industrial Disputes Act. The learned Counsel submitted that where a provision of the Act was required to be interpreted, it was not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. The learned Counsel further submitted that the

decision rendered with reference to the construction of one Act could not be applied with reference to the provisions of another Act, especially when the two Acts were not in pari materia. In support of his submission, the learned Counsel placed reliance on a decision in Mahavir Sahkari Avas Samiti Ltd. v. State of U.P. and Ors. (2006) 8 ADJ 203. On the question of law of precedents the learned Counsel also placed reliance upon a decision of a Full Bench of this Court in Ajit Singh @ Muraha v. State of U.P. and Ors. (2006) 5 ADJ 280.

9. The learned Counsel for the respondents submitted that the petitioner, before the Tribunal, had clearly demonstrated the heads under which the amount of Rs. 3643.30 was paid which indicated that the petitioner was paid Rs. 1103.40 towards one month's wages, whereas the workman was entitled to Rs. 1214.40 as one month's wages, and therefore, there was a shortfall of Rs. 110.00, which was fatal. The learned Counsel submitted that once the petitioner came out with a stand that an amount of Rs. 1103.40 had been paid and the Tribunal has now given a finding that there was a shortfall of Rs. 110/-, it was no longer open to the petitioner to raise a new plea that since some further amount was also paid by the management for some other purpose, the shortfall towards one month's wages should be adjusted from the excess payment made by the petitioner. The learned Counsel submitted that the petitioner are now estopped from raising a fresh plea and cannot be allowed to deviate from their earlier stand.

10. Having heard the learned Counsel for the parties at some length, and before dealing with the issue raised, it would be appropriate to advert to two provisions of the U.P. Industrial Disputes Act, namely, Section 2(y) and Section 6-E(2)(b) of the U.P. Industrial Disputes Act which are quoted hereunder:

2. Definitions-(a) ...

(y) "Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied/were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes:

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession, but does not include:

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service.

And

Section 6-E. Conditions of service, etc. to remain unchanged in certain circumstances during the pendency of proceedings.:

(1) ...

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute:

(a) ...

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise; that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

11. The definition of the word "Wages" as defined in Section 2(y) is comprehensive and includes such allowances as the workman is, for the time being, entitled to. The proviso to Section 6-E(2)(b) mandates that unless the workman is paid the wages for one month and an application is made for approval of the action, no such workman could be discharged or dismissed. The Supreme Court in *Syndicate Bank Ltd. Vs. K.R.V. Bhat*, and again in the case of *Bharat Electronics Ltd., Bangalore Vs. Industrial Tribunal, Karnatak, Bangalore* and another, while interpreting these two provisions has held that the intention of the legislature in providing such a contingency is "to soften the rigour of unemployment that will face the workman." The same view was again reiterated by the Supreme Court in *S. Ganapathy and others Vs. Air India* and another,

12. In *Bharat Electronics Ltd., Bangalore v. Industrial Tribunal Karnataka, Bangalore and Anr. (supra)*, the Supreme Court, after considering the judgment Of the Supreme Court in *Bennett Coleman and Co. (P) Ltd. Vs. Punya Priya Das Gupta*, and *Dilbagh Rai Jarry Vs. Union of India (UOI) and Others*, held that an allowance contemplated under the definition clause of the word "wages" is an allowance which from the term of employment flows as not contingent on actual working is part of wages for the purposes of Section 33(2)(b) of the Industrial Disputes Act which is *pari materia* to Section 6-E(2)(b) of the U.P. Industrial Disputes Act. The Supreme Court further held that an allowance which is earnable only by active serving is not an allowance which would form part of wages within the meaning of the said provision. The Supreme Court held:

Now confluencing the two legal thoughts expressed in *Bennett Coleman's (supra)* and *Dilbagh Rai Jarry's (supra)*, the stream of thought which inevitably gurgles up is that an allowance which from the term of employment flows as not contingent on actual working is part of wages for the purposes of Section 33(2)

(b) but an allowance which is earnable only by active serving is not an allowance which will form part of wages within the meaning of the said provision.

13. Before proceeding further, it is necessary to state here, that the Supreme Court, in the Constitutional Bench decision in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, has held that the proviso to Section 33(2)(b) of the U.P. Industrial Disputes Acts, is mandatory in nature and is required to be strictly complied with. The Supreme Court held at p. 839 of LLJ:

13. The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of Section 33 invites a punishment u/s 33(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory are to be satisfied if an order of discharge or dismissal passed u/s 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

The same view was again followed by the Supreme Court in Indian Telephone

Industries Ltd. and Another Vs. Prabhakar H. Manjare and Another,

14. In the light of the aforesaid, it would be necessary to advert to some factual aspects. Admittedly, the petitioner had deposited a sum of Rs. 3643.30 in compliance with the provision contemplated under the proviso to Section 6-E(2) (b) of the Act. Before the Tribunal, the breakup of Rs. 3643.30 is as under:

1. Salary for April from April 1, 1987 to April 27, 1987 less 4 days under LWP suspension : 926.70.

2. Increments from November 25, 1986 to March 31, 1987 67.90 : 994.60 Less; PF/FPF deduction 73.00: 921.60

3. Leave encashment for 44 days; 1,618.30

4. One month's notice pay as per provisions of U.P. Industrial Dispute Act Section 6E(2)(b): 1,103.40

3,643.30

The aforesaid indicates that a sum of Rs. 1103.40 had been paid towards one month's notice pay, as per the provision of Section 6-E(2)(b) of the U.P. Industrial Disputes Act. It -also shows that a sum of Rs. 1618.30 had been paid towards leave encashment for 44 days.

15. As stated earlier, as per the provision of Section (2)(y) of the Act, wages means all remuneration capable of being; expressed in terms of money which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such 1 employment, and includes such allowances including dearness allowance as the workman is for the time being entitled to.

16. The Supreme Court, in Bharat Electronics Ltd., Bangalore v. Industrial Tribunal Karnataka, Bangalore and Anr. (supra) has held that allowance which is not contingent on actual working is part of wages for the purposes of Section 33(2)(b) but an-allowance which is earnable only by active serving is not an allowance which will form part of wages within the meaning of Section 33(2)(b) of the Act.

17. In the light of the aforesaid, the question is, whether leave encashment paid by the management to the workman at the time of his dismissal would form part of wages as contemplated u/s 2(y) of the Act or not? From the decision of the Supreme Court in Bharat Electronics Ltd., Bangalore v. Industrial Tribunal Karnataka, Bangalore and Anr. (supra), it is clear, that leave encashment is only earnable after active serving and is not an allowance which will form part of wages.

18. Admittedly, a sum of Rs. 1618.30 was paid towards leave encashment at the time of the dismissal of the workman. Under the proviso to Section 6-E(2)(b), only one month's wages was required to be paid. The petitioner had paid Rs.

1103.40 and, according to the workman, a sum of Rs. 1214.40 was payable and consequently there was a shortfall of Rs. 110/-. The question which now arises for consideration is, whether a sum of Rs. 110/- could be adjusted from the excess payment made by the petitioner towards leave encashment or not?

19. In *Mam Chand Pal v. Shanti Agarwal (Smt.)* (supra), a question arose as to whether the provision of Section 20(4) of the U.P. Urban Building Regulation and Letting Act, 1972 was complied with by the tenant or not, namely, as to whether, the rent notice, interest and cost was deposited on the first date of hearing. Admittedly, in a catena of cases, this provision has been held to be mandatory and if there is a shortfall, the benefit granted under this provision could not be availed of by the tenant. In the case of *Mam Chand Pal v. Shanti Agarwal (Smt.)* (supra), the tenant had not deposited the fee paid by the landlord to its advocate. The Supreme Court found that the tenant had, however, deposited the electricity charges which was not a requirement to be deposited on the first date of hearing, as contemplated u/s 20(4) of the said Act. The Supreme Court held, in paragraph No. 8 of its judgment, that the amount deposited by the tenant towards electricity charges was required to be adjusted towards the advocate fee paid by the landlord to enable the tenant to claim the benefit u/s 20(4) of the said Act. The Supreme Court held as under:

According to the appellant, alternatively the matter can be viewed from another angle as well. As per the respondent, there has been a shortfall of the amount payable on account of counsel's fee, which was deposited only after April 26, 1989. In this connection, it may be observed that under Sub-section (4) of Section 20 arrears of rent, damages for use and occupation, interest, costs of litigation are required to be deposited. There is no requirement of depositing any other amount or electricity charges. Admittedly, the petitioner had deposited a sum of Rs. 358 also as electricity charges. The amount on account of fee of the lawyer was a sum of Rs. 375. The amount of electricity charges could well be adjusted or treated to be as against lawyer's fee. A minor deficiency of Rs. 17 only against the total amount deposited nearabout six thousand or around that would be inconsequential and insignificant to defeat the purpose of enacting the relevant provisions as contained in Sub-section (4) of Section 20 of the Act. It would only be a hypertechnical view of the matter which would in no way serve the ends of justice even where virtually and substantially requirement of the legal provisions stands satisfied.

The principles enunciated by the Supreme Court in the said decision can easily be applied to the present facts and circumstances of the case.

20. In the present case, the petitioner had also paid a sum of Rs. 1618.30 towards leave] encashment which was not a requirement to be paid by the petitioner at the time of seeking approval of their action of the dismissal of the workman u/s 6-E(2)(b) of the Act. As held by me, this leave encashment does not amount to wages u/s 2(y) of the Act. Consequently excess payment was paid by the petitioner which amount was far more in excess than the shortfall of Rs.

110/- . For the sake of repetition, the Supreme Court in the case of Syndicate Bank Ltd. v. K. Ramanath v. Bhat (supra), Bharat Electronics Ltd., Bangalore v. Industrial Tribunal Karnataka, Bangalore and Anr. (supra), etc. has held that the intention of the legislature in providing such a contingency under the proviso is to soften the rigour of unemployment that will face the workman, against whom an order of discharge or dismissal has been passed. The workman in the present case has received much more than one month wages contemplated under the proviso to Section 6-E(2)(b) of the Act.

21. Consequently, in view of the aforesaid, this Court is of the opinion that the Tribunal committed an error in refusing to grant approval on the action taken by the petitioner on the dismissal of the respondent No. 2. Consequently, the impugned orders dated July 24, 2008 and December 12, 2008 cannot be sustained and are quashed. The writ petition is allowed. The matter is remitted to the Industrial Tribunal to pass a consequential order on the application of the petitioner filed u/s 6-E(2)(b) of the Act in the light of the observation made above. In the circumstances of the case, parties will bear their own costs.