

(1960) 11 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 1022 of 1958

Proprietor, Murugan Transports, Cuddalore

APPELLANT

Vs

P. Rathakrishnan and Others

RESPONDENT

Date of Decision : 24-11-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Minimum Wages Act, 1948 — Section 2, 20(2)

Citation : AIR 1961 Mad 310 : (1961) ILR (Mad) 523 : (1961) 1 LLJ 283 :
(1961) 74 LW 134

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Advocate : K.K. Venugopal, for the Appellant; A.G. and B. Lakshminarayana Reddi, Amicus Curiae, for the Respondent

Judgement

Ramachandra Iyer, J.—The employer of Murugan Transports, Cuddalore, has filed this petition challenging the order of the Authority

appointed u/s 20(2) of the Minimum Wages Act (Central Act XI of 1948) directing payment of Rs. 693 and Rs. 422 respectively to respondents

1 and 2 who were employed in the transport service conducted by the former. Rathakrishnan and Chinnathambi were taken from July 1954 and

November 1955 as cleaner and learner apprentices by the employer.

Their services were terminated in July 1957. On 19-7-1958, respondents 1 and 2 along with one other employee applied to the authority

appointed u/s 20(2) of the Minimum Wages Act for payment of certain sums of money as representing the difference between the minimum wages

payable under the notification of the Government contained in G. O. Ms. 1247 (Industries, Labour and Co-operation) dated 30-3-1957, and the

actual wages paid to them.

2. The employer contested the claim on three grounds, namely, (1) that a petition u/s 20(2) of the Minimum Wages Act could not be entertained

by the authority at the instance of a discharged employee; (2) that the claim was barred by limitation and (3) that the claim was excessive.

Overruling the objections the authority appointed under the Minimum Wages Act allowed the claim of respondents 1 and 2 for the sums mentioned

above and directed the employer to pay the same. The validity of that order is questioned in this petition on the identical grounds that were taken

before the authority.

3. It is contended on behalf of the employer that an employee who seeks relief u/s 20 of the Minimum Wages Act, must be one coming within the

definition contained in Section 2(i) of the Act, namely, one who is in actual employment, and that a discharged employee would have no right to

take advantage of the summary procedure prescribed u/s 20 of the Act albeit he might have a remedy under the general law.

4. Section 20(2) enables an employee to apply to the authority appointed under Sub-section 1 for a direction as to payment to the employee of the

amount by which the minimum wages fixed under the Act exceeded the amount actually paid. The term "employee" is defined in Section 2(i) "as

any person who is employed for hire or reward to do any work" (the rest of the section is omitted as unnecessary). The contention urged on behalf

of the employer is that on a strict application of the definition of the term contained in Section 2(i) the employee who would be entitled to apply to

the authority appointed u/s 20 should be one who is actually employed at the time the application was filed and not one who had ceased to be

employed.

5. This contention is supported by the decision in *Wakefield Estate v. Peruma* 1959 1 M.L.J. 213, of Balakrishna Aiyar J. wherein the learned

Judge held that having regard to the definition of the term "employee" u/s 2(i) of the Minimum Wages Act, past employees would not be entitled to

obtain the benefit of the summary remedy provided by Section 20 of the Minimum Wages Act. This view of the learned Judge was mainly based

on the circumstances that Section 2(i) while defining the term "employee" described him as a person "who is employed". The learned Judge also

adverted to the fact that wherever a statute intended to include past employees suitable words were used, and from the omission of those words,

the legitimate conclusion should be that past employees were not intended to be benefited by the terms of that section.

6. The interpretation of Section 20 which commended itself to the learned Judge will have the effect of excluding a large class of employees from

the remedy provided by that section. Section 3 of the Act empowers the appropriate Government to fix the minimum rate of wages in regard to

employments specified in the schedule to the Act. A reference to the schedule would show that minimum wages were intended to be fixed not

merely for permanent workers but to casual workers as well. For example Part II of the schedule refers to the employees in agriculture.

It will be anomalous that the legislature while empowering the appropriate Government to fix the minimum wages in respect of even casual or

temporary workers should in providing the machinery for enforcement of the minimum wage omit a large body of workers whose employment

would have by its very nature ceased at the time when they make the application. The learned Judge himself realised this difficulty. But he observed

that as any such sum of money payable to the past worker would be a debt, he could resort to the ordinary courts for realising the same.

7. It is obvious that Section 20 was intended to give a summary remedy to any person who having been an employee complains that he had not

been paid the minimum wage. Apart from the terms of the definition to which I shall advert to presently, what all appears to be necessary is that the

applicant should have been an employee at the time when he earned the minimum wage. If full effect were to be given to the intention with which

the section was enacted, it would be necessary to bring within its scope not merely the present but also past employees.

Section 2(i) no doubt would suggest that an employee should be one who is in service; but the application of the definition contained in that section

should conform to the context in which the term "employee" is used, in the relevant portions of the Act. Section 2 says that the definition of the term

contained therein was to prevail "unless there is anything repugnant in the subject or context".

In *Vanguard Fire and General Insurance Co. Ltd. Vs. Fraser and Ross, Chartered Accountants, Madras and Another*, a Bench of this court was

concerned with the question whether Section 33 of the Insurance Act would apply to a company which had ceased to carry on business. The

definition of the term "insurer" in the enactment as a body corporate carrying on business of insurance, which would (sic) imply a present activity.

An argument similar to the one which found favour with Balakrishna Aiyar, J. was advanced in that case. The learned Chief Justice rejected the

contention and observed in the course of his judgment:

Undoubtedly when a term is defined in an enactment, wherever that term occurs, the definition would ordinarily apply; but there is a well-known

canon of construction that in certain circumstances when a strict adherence to the rule would lead to an anomaly or repugnance, the rule would

apply only when there is nothing repugnant to it in the context. Section 2 of the Act, which is the definition section, opens with the words "unless

there is anything repugnant to the subject or context". Blackburn J. said in *R v. Ramasgate*, (1827) 108 ER 613, "It is, I apprehend, in accordance

with the general rule of construction that you are not only to look at the words, but you are to look at the context, the collocation and the object of

such words relating to such matter, and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the

use of the words under the circumstances". Craies draws from this rule the following inference: "It follows from the rule thus variously stated that all

statutory definitions or abbreviations must be read subject to the qualification, variously expressed, in the definition clauses which create them, such

as "unless the context otherwise requires or unless a contrary intention appears" or "if not inconsistent with, the context or subject matter". The

word "insurer" occurs in several sections of the Act, but it is obvious that in every place where it is used it would be anomalous to import the

definition contained in Section 2(9)(b) in its entirety..... In our opinion, the term insurer in Section 2(D) must in certain circumstances be also

understood as a body corporate which had been carrying on insurance business.

8. This view is in conformity, if I may say so with respect, with the decision of the Privy Council in *Karnani Industrial Bank Ltd v. Satya*

Niranjan Shaw, 1928 55 M.L.J. 464 : (A.I.R. 1928 P.C. 227). In that case a question arose as to whether an ex-tenant can take advantage of the

summary remedy provided u/s 15 of the Calcutta Rent Act, 1920. The Privy

Council held that the provision in the statute giving a summary remedy to a tenant was intended to give relief to any person who having been a tenant came within the period of limitation to assert his claim to recover the excessive rent paid whether at the time he made the claim he was actually a tenant or not. Adverting to the inconvenience of a contrary construction, their Lordships observed :

If it were otherwise, the exorbitant landlord who had succeeded in obtaining the excessive rent could relieve himself of his liability by determining the tenancy, which in the case of poor tenants holding on a month's tenancy could easily be done.

9. In that case the High Court had held that Section 15 of the Calcutta Rent Act only provided for the Controller granting a certificate on the application of a tenant whose tenancy had not expired. Rejecting that view, as one proceeding upon too narrow a Construction of the words, their Lordships observed.

In order to give any working effect to the Act it is necessary that the words landlord and tenant must include, as they often do in ordinary parlance, ex-landlord ex-tenant. An action by ex-landlord against ex-tenant might ordinarily be described as an action of landlord against tenant.....

Their Lordships would further observe that though, for the reasons they have given, in the Act the word tenant must include in its proper context as

ex-tenant the ft definition of Clause 2(g) which defines tenant as any person by whom or on whose account rent is payable for any purpose, would

in its strictest sense cover the case of the present appellants, by whom in fact arrears of rent were payable at the date of the application.

10. Applying the foregoing observations to the instant case, it will be seen that there being a sum of money due and payable by the employer to

(the employee as representing the difference between the Minimum Wages Act and the actual wages paid, the claimant must be an employee

within the provisions of Section 20.

11. Recently I had to consider a similar question in Management of the Tiruchi-Srirangam Transport Co. Private Ltd. Vs. Labour Court, Madurai

and Another, a case arising u/s 33-C(2) of the Industrial Disputes Act. There was a claim by a discharged worker. It was contended that the claim

being not an industrial dispute the definition of the term ""workman"" contained

in Section 2 of that Act contemplated only a workman in actual employment and that a discharged workman could not apply to the labour court under the provisions of Section 33(c)(2).

I held that although the definition of the term "workman" if strictly construed would only cover a case of a person in actual employment, the claim

of a discharged worker could be entertained u/s 33(c)(2). I am therefore unable though with regret, to agree with the view of Balkrishna Aiyar J.

in 1959 1 M.L.J. 213. In my opinion a claim u/s 20(2) of the Minimum Wages Act by a discharged worker would be cognisable by the authority

under Sub-section (1) of that provision.

12. It was next contended that the application having been filed nearly 216 years after the minimum wage accrued due and payable was barred by

limitation. This question was considered by the authority who found that there was a sufficient reason for excusing the delay in making the

application. In my opinion that is not a matter for interference in these proceedings. Mr. Venugopal, for the petitioner, contended that the authority

had no jurisdiction in the circumstances of the case to excuse the delay as the original case with which the petitioner came forward was that he did

not file the application as he was hoping that the employer would do his duty by paying the minimum wages, whereas at the time of an enquiry it

was stated that the employee did not know that under the law he had to file the application within a prescribed period of time.

It is no doubt true that there has been a change of case, but that does not mean that the employee admitted that he was aware of the rule of law in

regard to the time within which the application before the authority had to be filed. The two employees had given evidence in the matter and there

had been no serious cross-examination or the question of their ignorance of law. Whether in a particular case a bona fide ignorance of law could

be excused or not is one for the authority to decide and not a matter for interference in these proceedings.

13. There was a contest before the authority as to the capacity in which the two employees worked under the petitioner. On behalf of the

employer it was said that throughout their service the employees remained as cleaner and learner apprentices, On the other hand, the employees

contended that after a period of one year they were given regular jobs. The

authority did not accept the case of the employers but held that the two employees continued to be apprentices only during the entire period of their service.

Having given this finding, the authority held that the first year of their service as apprentice should be treated as service as an apprentice and

thereafter they should be treated as unskilled workers. I can see no warrant for this conclusion. It is not the case of any party that after the period

of one year the employees were treated as unskilled workers by the employer. It would not be open to the authority to treat them as unskilled

workers and calculate minimum wages on that basis.

The finding of the authority itself is that throughout the entire period of service the two employees had been working only as apprentices. Under G.

O. No. 1247 dated 20-3-1957 the minimum wage for apprentices in a public motor transport was specified at Rs. 20 all inclusive ""up to a period

of one year"". That would show that no minimum wage was fixed for apprentices who did duties as apprentices beyond a period of one year. Any

service beyond the period of one year, would be governed only by the contractual rate of wages stipulated between the parties. Respondents 1

and 2 would therefore be entitled to only the difference between the minimum wage and the actual wage paid up to a period of one year of their

service.

The order of the authority appointed u/s 20 of the Minimum Wages Act directing the employer to pay the difference between the actual amount

already paid and the minimum wage fixed on the footing of the employees being apprentices for one year and unskilled workers for the rest of the

period, cannot be sustained. It is quashed. The result is that the authority has to take up the matter afresh and fix the difference between the

minimum wage payable and the actual wage paid for a period of one year when respondents 1 and 2 were doing duties as apprentices in the

transport service belonging to the petitioner.

14. Before concluding I must express my obligations to the learned Advocate General and to Mr. B. Lakshminarayana Reddi. Respondents 1 and

2 were not represented. I requested Mr. B. Lakshminarayana Reddi to appear amicus curiae and safeguard the interests of the employees. The

learned Advocate General generously offered to assist the court as to the

correctness of the view taken by Balakrishna Aiyar J. in 1959 1 M.L.J.

213, I express my thanks to both of them for assisting me in the case and for representing the case of the employees. Rule nisi is made absolute.

There will be no order as to costs.