

(1965) 11 BOM CK 0002

In the Bombay High Court

Case No : Order, in Appeal (I.C.) No. 73 of 1965

Savari Nathu (G.) and Others

APPELLANT

Vs

Subhash Silk Mills, Bombay

RESPONDENT

Date of Decision : 26-11-1965

Acts Referred:

Payment of Wages Act, 1936 — Section 15

Citation : (1966) 2 LLJ 910

Hon'ble Judges : Syed Taki Bilgrami, J

Bench : Single Bench

Judgement

1. The facts which have led to this appeal are briefly as follows : The second labour court at Bombay by its order under appeal dated 12 August, 1965 dismissed twenty application for reinstatement filed on behalf of the appellants who were retrenched. The full bench of this court in Soma Ramjee Varghade v. Sri Madhu Sudden Mills, Ltd., Bombay 1965 I.C.R. 261 has held that a retrenched person is not an employee according to the definition given in the Bombay Industrial Relation Act, and therefore cannot make an application before the labour court. I am bound by this decision but the law has been amended thereafter, so that the present definition in S. 2(13) stands as follows :

"employee" means any person employed to do any skilled or unskilled work for hire or reward in any industry, and includes -

(a) * * *

(b) a person who had been dismissed, discharged or retrenched or whose service have been terminated from employment on account of any dispute relating to change in respect of which a notice is given or an application made under S. 42 whether before or after his dismissal, discharge, retrenchment or, as the case may be, termination, from employment."

2. According to this, a retrenched person is expressly included in the definition of "employee". The result is that in case of a person retrenched after the

amendment (which is dated 1 May, 1965) there can be no doubt that he will be able to make an application that before the labour court. The question that arise in this case decision are :-

(1) Whether a person who has been retrenched before the amendment came in force will come under the definition of "employee" as amended ?

(2) If he dose, what will be the position if the application was filed before the amendment came in force ?

3. As a general rule, retrospective operation is not given to a statute so as to affect any existing rights or duties so far as substantive law is concerned. It can only be given if the statute expressly provides for it. Wright, J., in *Re Athlumney* [(1898) 551 at 552] has observed as follows :

"No rule of construction is more firmly established than this : that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

4. See in this regard Maxwell on the Interpretation of Statutes, 10th Edn., p. 214. But nevertheless, so far as the first question is concerned, I think that the amendment law will be applicable to a person who has been retrenched before the amendment came in force, because the law does not relate to any act of retrenchment, but to the status of the person. For example, if a particular act was not a crime before a certain enactment came in force, but became one by virtue of the provisions of that enactment, then the act committed before the coming in force of that law, would not be a crime; but if the amended law applies to the persons possessing a certain status, then it cannot be insisted on that this status should have been acquired before the law came in force. What was necessary was that when the right came to be enforced that status was there. For example, if the law confers a certain privilege on a married woman, which did not exist before it, then in order to apply that law, it will be not necessary that the status of being married was acquired after the Act, it will be sufficient when the Act was applied the status was that of a married woman. In *Weldon v. Winslow* (1884) 13 Q.B.D. 784 and in certain other cases, it was held that the powers given to a married woman by the Married Women's Property Act, 1882, of suing in all respects, as if she was unmarried, would enable her to sue in respect of torts or breaches of contract committed before the passing of the Act. The statute conferred a certain right on a married woman. The relevant time was that, when she chose to exercise that right, and not the time when she acquired the status of a married woman. So the answer to the question would be that a retrenched person though retrenched before the amendment, can after the Act, make an application before the labour court.

5. So far as the second question is concerned, there can be no doubt that when a

law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action began. It was contended on behalf of the appellants that filing an application before the labour court is something which relates to the enforcement of the right, and not the right itself, and therefore is a matter of procedure, and any change in procedure made by the legislature during the pendency of the proceeding will be applicable to it. I think the right to apply to the labour court is a substantive right and not a procedural right. It has been held, for example, that the right to appeal is a substantive right and once it has accrued, it cannot be taken away by a subsequent amendment. Thus, if an appeal was filed before an amendment which took away the right of appeal, that appeal will remain unaffected by the amendment. [See in this regard *Colonial Sugar Refining Company v. Irving* 1905 A.C. 369. I therefore think the remedy of applying to the labour court will not be open to a person retrenched to has applied before the amendment came in force. What has been held about the right, will also apply to a disability. A disability existing when the proceeding commenced, cannot be taken away by a subsequent amendment, in law.

6. It is contended by the learned counsel for the appellants that the right of the workman to apply existed even before the amendment, but they did not possess the means of enforcement in the labour court. Thus has been conferred by the amendment; no new right was created; therefore the amended section will apply retrospectively. I do not agree there was no right of applying to the labour court. Sri Sanghvi relies on the following case of *Sarin v. B. C. Patil and another* 1951 (II) L.L.J. 188. This decision is not relevant in this it was held that S. 15 of the Payment of Wages Act set up a special tribunal and confers a special jurisdiction on it and therefore the jurisdiction of civil Courts to that extent is ousted. This question does not arise in the instant case. In *Wassiamull Assomull & Co. v. Good luck Pictures*, another decision relied upon by the learned counsel of the company is also totally irrelevant to to the question of retrospective effect of statues under decision in this case.

7. In the result, I agree with the labour court and the appeal is dismissed.