

(1953) 01 BOM CK 0006
In the Bombay High Court

Shaik kasamali and Another

APPELLANT

Vs

Labour Appellate Tribunal of India and Others

RESPONDENT

Date of Decision : 05-01-1953

Acts Referred:

Citation : (1953) 2 LLJ 332

Hon'ble Judges : Coyajee, J

Bench : Single Bench

Judgement

Coyajee, J.—This is a petition asking for interference with the decision of the Labour Appellate Tribunal, being Appeal No. 317 of 1951 from the decision of the industrial tribunal. The matter has been argued at considerable length, but the position can be set out very shortly. The petitioners who are employees of the Western India Match Company, Ltd., by their letter of 12 April 1950 through their union made certain demands on the second respondent company. Those demands are set out in paragraph 6 of the petition. It must be remembered that prior to this there was a decision of the industrial tribunal being award No. AJ. IT. 4 of 1949 and the demand made on this application to the tribunal was that all piece-rated and daily rated employees be given 25 per cent increase in their existing wages subject to a minimum wage of Rs. 35 per month of 26 days with effect from 1 January 1950 and secondly the workers as are daily-rated employees may be fixed on monthly-rate scales as are in force on the same categories mentioned in the award. The whole dispute concerns the latter part of the demand made. At the hearing this contention was opposed by the second respondent stating that as the said demand was for wages for these daily-rated workers to be put on monthly-rated scale the industrial tribunal could not under the reference to it proceed with that claim and if it did so it would be in excess of the jurisdiction of the tribunal. The tribunal came to the conclusion as it is apparent from its decision that it had power to do so and made a certain award and that is set out in the petition. This decision was published in the Government Gazette of 21 August 1952. The company aggrieved, by this decision of the adjudicator appealed to the Appellate Tribunal on the ground that the adjudicator

had no jurisdiction to decide the question of classification of the scales of the daily-rated workmen inasmuch as that was not within the ambit of the reference and such a classification was not asked for by, the workmen themselves. The contention was that such an award not only was in excess of the reference but that on merits it was in fact an award which altered the wage structure and that it was clear as originally made out by the workmen that they were satisfied with the existing wage structure but that the same should be stepped up 25 per cent, that being the only demand before the tribunal. The Appellate Tribunal in a considered and detailed judgment set out the finding of the adjudicator which was this:

I am, therefore, providing the daily-rated workmen with daily wage scales according to their classification into skilled, semi-skilled and unskilled categories.

The Appellate Tribunal considered this position and they in paragraph 10 of their judgment discussed the contention of the company and they observed as follows:--

It is clear from the claim as originally made by the workmen, and as referred to the tribunal, that they were satisfied with their existing" wage structure but wished it to be stepped up by 25 per cent; alternatively they desired all daily-rated to be made monthly-rated. Moreover, at no time did they indicate that they wanted the wage structure to be so altered as to give a scale to the daily-rated, nor had they asked for classification and grades. The effect of giving scales to the daily-rated vis-a-vis the piece-rated workers would be to throw out of balance the wage structure of the factory.

The Appellate Tribunal, therefore, came to the conclusion both on the question of jurisdiction and on the question of merits that the adjudicator was wrong as he had no jurisdiction to make this award and such award would throw out of gear the wage structure, which wage structure had not been disputed by the workmen.

2. The question before me is not to be approached by me as if I were sitting in appeal on the judgment of the Appellate Tribunal. I have only got to see whether the Appellate Tribunal exercised jurisdiction not vested in it or whether they have failed to exercise the jurisdiction vested in them. The powers of the Appellate Tribunal are defined u/s 9 of Act XLVIII of 1950, being the Industrial Disputes (Appellate Tribunal) Act of 1950 and under that section the Appellate Tribunal has the same powers as are vested in a civil court when hearing an appeal under the Code of Civil Procedure, and under Sub-section (7) the Appellate Tribunal may confirm, vary or reverse an award or decision appealed from and may pass such orders as it may deem fit. In other words, the Appellate Tribunal has power to set aside an award of the adjudicator on merits, and may substitute its own award in place of the award of the "adjudicator. In these circumstances it is difficult to find any excess of jurisdiction or failure to exercise the jurisdiction vested in it and therefore the petition in those circumstances fails. But Mr. Buch, on behalf of the petitioners, has referred to the fact that the Tribunal allowed the

employers, viz., the company, to submit to it certain figures and therefore their judgment is vitiated as they relied on those statements placed before them. That contention, if examined, does not seem to be substantial, first of all, because on examination of the record there does not appear to be any fresh evidence called for from the company. All that was done was that the figures set out in the award AJ. IT. referred to by me which is not disputed were worked out with the present undisputed figures. In other words, two sets of figures were placed in a tabular form before the Tribunal and therefore to my mind there is no fresh evidence recorded which the petitioners had not the opportunity to challenge. But apart from that, u/s 9 to my mind the Appellate Tribunal has the power to record further evidence, if necessary, as they have to follow the provisions of the Code of Civil Procedure, but in the present instance I am of the opinion that no further evidence has been in fact recorded.

3. That is in short the position argued before me and it is not necessary for me to go into detail as regards the judgment of the Appellate Tribunal. They had the jurisdiction which they exercised, viz., in entertaining the appeal and in coming to the decision that the adjudicator had travelled beyond the scope of the reference and they also decided on merits with which this Court would never interfere, viz., that even apart from travelling beyond the scope of the reference, even if that had not been so, according to the Appellate Tribunal the award would have been bad as affecting the wage structure and which was a wage structure not disputed by the parties. The Appellate Tribunal was fully entitled to come to that conclusion on the materials before them and it is not for this Court to decide whether the conclusion arrived at by them on such materials was right or wrong.

4. In these circumstances the petition, in my opinion, is not maintainable and therefore must be dismissed. Rule discharged. Costs must follow the event. Therefore, the company will get the costs from the petitioners.