

(1958) 06 BOM CK 0024

In the Bombay High Court

Case No : Civil Application for Review No. 2249 of 1956

S.P. Awate

APPELLANT

Vs

C.P. Fernandes and Another

RESPONDENT

Date of Decision : 17-06-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226, 313, 372
Government of India Act, 1919 — Section 36

Citation : AIR 1959 Bom 466 : (1958) 60 BOMLR 1354 : (1959) ILR (Bom) 334

Hon'ble Judges : Chagla, C.J

Bench : Single Bench

Advocate : K.K. Singhvi, for the Appellant; Advocate General and Crawford Bayley and Co., for the Respondent

Judgement

Chagla, C.J.—This is an application for review of a decision of this Court on a writ application directed against the decision of the Payment of Wages Authority, and the decision which is sought to be reviewed followed an earlier decision in Thillai Natarajan v. Fernandes, Special Civil Appln. No. 950 of 1956 which was decided on 3-7-1956 (Bom). It is hardly necessary to state that the powers of review enjoyed by this Court are very limited powers and we have had occasions to point out that when a decision is challenged on the ground that there is an error apparent on the face of the record, the error contemplated is an error so manifest, so clear, that no Court would permit such an error to remain on the record. The error is not an error which could be demonstrated by a process of ratiocination, nor would it be correct to say that when two views on a question of law are possible and the Court has taken one view, the fact that the other view is a more acceptable view would render the first view an error apparent on the face of the record. It is with these reservations and limitations that was must approach the point of view put forward before me by Mr. Singhvi.

2. The facts briefly are that the petitioner in this case was a ticket collector employed by the railway authorities on the 14th January 1948 on wages which

amounted with all the allowances to Rs. 150-8-0, and on the 27th August 1955 he was served with a charge-sheet and suspended and during the period of suspension he was paid only Rs. 104, and the petitioner thereupon filed an application before the Payment of Wages Authority claiming the difference between his contractual wages and the wages which he was being paid by the railway authorities. It was not disputed before us in that case that the payment made by the railway authorities was according to the rules. The rules dealt with a case of suspension and what a railway servant was entitled to when he was under suspension. Nor was it disputed that these rules formed part of the Railway Code which was enacted under the authority of the Governor General. What was argued before us was that the Payment of Wages Act should prevail over the rules framed by the railway authorities and that if the Payment of Wages Act prohibited the deduction of any amount from the wages of an employee, then the railway authorities could not deduct any part of the wages even if the rules in the Railway Code permitted then to do so. This argument was considered and rejected by us and both the argument and the reason for its rejection appear in the reported judgment of 58 Bom LT 821. In rejecting the argument we considered the scheme of the Government of India Act and we pointed out that u/s 241(2) power was conferred upon the Governor General to make rules with regard to the conditions of service of persons serving His Majesty in a civil capacity in India, and we also took the view that under Sub-section (4) of Section 241 power was given to the Legislature to regulate the conditions of service, but looking to the language of Sub-section (4) that power was intended to be exercised after the Government of India Act came into force and it did not deal with any law passed by the Legislature prior to the coming into force of the Government of India Act. Having taken that view we pointed out that the Payment of Wages Act came into force on the 28th March 1937 and the Government of India Act came into force on the 1st April 1937. Therefore, as far as the Government of India Act was concerned, the rules which were to be framed by the Governor General were to prevail over any legislation prior to the passing of the Government of India Act, even assuming that legislation dealt with the subject of regulation of service of railway employees. Having come to that conclusion, we turned to the Indian Constitution to point out that the provisions of law in the Government of India Act and the Indian Constitution were not parallel and we referred to Article 313 of the Constitution. The Article provided:

"Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all India Service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution."

Then we proceeded to draw attention to the fact that there was no similar provision in the Government of India Act.

3. Now, the main attack made by Mr. Singhvi against the judgment is that in saying that there was no provision to the Government of India Act corresponding to Article 313 of the Constitution we had overlooked an obvious provision in the Government of India Act and in overlooking this provisions we were guilty of an error which should not be permitted to remain on the record, and what is pointed out is that there is Section 276 of the Government of India Act which corresponds to Article 313. Turning to Section 276 it provides:

"Until other provision is made under the appropriate provisions of this Part of this Act, any rules made under the Government of India Act relating to the Civil services of, or civil posts under the Crown in India which were in force immediately before the commencement of Part III of this Act, shall, notwithstanding the repeal of that Act, continue in force so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of this Act."

It is true that we have not referred to Section 276 in the judgment, but when our attention is now drawn to that section far from undermining the reasoning of that judgment, it goes considerably to fortify it because what Section 276 says is "rules framed regulating the conditions of service which were in force before the Government of India Act 1935 was passed", and it is not disputed and it cannot be disputed that rules regulating civil services in India including the railway services were regulated by rules framed u/s 36 of the Government of India Act, 1919 and those rules were framed by the secretary of State in Council. Therefore, the scheme which clearly emerges is that under the old Government of India Act, the Act of 1919, rules with regard to civil services were to be framed by the Secretary of State in Council. A power of delegation under certain circumstances was given, but no power was given to the Indian Legislature to modify those rules. Then came the Government of India Act 1935. The rules framed by the Secretary of State in Council were preserved, the scheme was altered in the sense that in future the rules were to be framed by the Governor General in Council instead of by the Secretary of State in Council, and the reason for this is historical and constitutional into which we need not go. A further change was brought about in the Government of India Act and that was that u/s 241(4) for the first time power was given to the Indian Legislature to modify or alter the rules. Therefore, when the Government of India Act was passed, there were rules regulating the conduct of railway servants. These rules were preserved until new rules were framed by the Governor General in Council which now constituted the Railway Code.

4. Now, there is no provision in the Constitution corresponding to Section 276, or, putting it in the other way, there is no provision in the Government of India Act corresponding to Article 313, because Article 313 saves all laws in force before the Constitution which were applicable to any public service and the question that arises is: What were the laws in force immediately before the commencement of the Constitution which were applicable to any public service.

Clearly, the expression "laws" in Article 313 includes statutory rules and therefore before the Constitution came into force we have a Railway Code, a self-sufficient Code, which was applicable to the railway service which was saved by this provision until rules were altered by the machinery laid down in the Indian Constitution. Mr. Singhvi says that not only these rules were saved, but also the Payment of Wages Act. Nobody disputes that proposition. The Payment of Wages Act was saved both by the Government of India Act and by the Indian Constitution. But we are now dealing with the special subject of services, with regard to the law which regulates the conditions of those services, and both under the Government of India Act and under the Constitution we have rules which regulate those services. The Government of India Act saves those rules which were framed by the Secretary of State in Council and the Constitution saves those rules which were framed by the Governor General in Council. Reference has also been made to the provision of Section 292 which corresponds to Article 372 of the Constitution. That is a general section and a general Article which saves all pre-Constitution laws. That does not seem to have much bearing on the question of the rules regulating the conditions of service in the railways. That can only be requisitioned for the purpose of contending that the Payment of Wages Act, both under the Government of India Act and under the Constitution, was continued. As I have just said nobody disputes that proposition.

5. Mr. Singhvi wanted to argue and in fairness to him, I want to incorporate the argument in this judgment, that after the Constitution the Court must consider the conflict between the Payment of Wages Act and the rules embodied in the Railway Code and the Court should take the view that the payment of Wages Act constitutes social legislation and that legislation must prevail even over a special legislation dealing with a special class of citizens. There may be force in Mr. Singhvi's argument. It may be that we were wrong in the view that we took that we must determine the wages to which the railway servant was entitled according to the rules in the Railway Code and not according to the provisions of the Payment of Wages Act. But that is a criticism which should be advanced not before this Court on a review application but before a higher Court in appeal. It is always wrong for any Judge to assume infallibility for his judgment and every Judge must be prepared to consider that his judgment is erroneous. This is exactly why higher Courts of appeal exist in a country, and it may be that possibly or rather probably, if the matter had gone to the Supreme Court, that Court would have taken a different view with regard to the law than the one we laid down in the decision just referred to. As I said before, it would be wrong on my part, whatever view I might take as to the merits of Mr. Singhvi's argument, to extend the jurisdiction of this Court on a review application. Question of jurisdiction must not be determined from the point of view of the merits of the particular case which is being argued before a Court. Whether a Court has or has not jurisdiction does not depend upon how strong or how meritorious the case of a party is, and however meritorious the case of Mr. Singhvi's client may be, this Court is helpless and unable to give him relief because in my opinion the points

that Mr. Singhvi wishes to urge are points which cannot be urged on a review application.

6. The result is that the application fails and must be dismissed. No order as to costs.

7. Application dismissed.