

(1950) 07 MAD CK 0017

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 9473 of 1949

The Electro Mechanical Industries Ltd.

APPELLANT

Vs

Industrial Tribunal No. 2 for Engineering Firms and Type
Foundaries and Another

RESPONDENT

Date of Decision : 12-07-1950

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11, 14, 2
Payment of Wages Act, 1936 — Section 22, 9

Citation : AIR 1950 Mad 839 : (1950) 2 MLJ 479

Hon'ble Judges : Rajamannar, C.J;Somasundaram, J

Bench : Division Bench

Advocate : T.L. Venkatarama Aiyar and M. Ramachandran, for the Appellant; K. Veerasami, for Government Pleader and I.A. Salam, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This application arises out of a reference dated 27-6-1949 made by the Workers of the Electro Mechanical Industries Ltd. in respect of certain disputes between themselves represented by the Workers' Union and management. There were sixteen items of dispute and the Industrial Tribunal, Madras, after due inquiry made an award on 5-11-1949. The management seeks from this Court a writ of certiorari to quash the award in respect of two of the items of dispute.

2. The first item relates to the deduction of eight days wages from the employees as per the notice of the management dated 19-4-1949. The workers claim a return of the wages deducted. The deduction was made by the management because of a strike by the workmen on 18-4-1949. The Tribunal came to the conclusion that the strike was not legal and therefore the management was not wrong in punishing the men who went on strike. The provision which enables the management to make a deduction of wages in a case of this kind is contained in

Section 9, Payment of Wages Act. Sub-section (2) of that section contains the following proviso which is material:

"Provided that, subject to any rules made in this behalf by the (Provincial Government), if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice."

The Tribunal having held that the management was entitled to punish the men who went on strike, however, considered that the cut of eight days wages was too severe a punishment and that justice would be met if a punishment of one day's cut of wage and dearness allowance is imposed instead. He accordingly directed the difference to be refunded to the workers.

3. Mr. T. L. Venkatarama Aiyar, learned counsel for the management, contended that the Tribunal, having held that the strike was not justified, had no jurisdiction to direct a refund of the pay for seven days. As the workers claimed the refund on the ground that the strike was justified, the only question which the Tribunal was called upon to decide was whether the strike was justified. If it was, there could be no deduction of wages. If it was not, then the deduction made by the management was justified. So his argument ran. He conceded that it was open to the Tribunal to decide the question as to the legality of the strike. In our opinion, the Tribunal was competent to direct a refund of the wages for seven days. It is true that the workers demanded the return of the wages for the entire period of eight days. The management, on the other hand, claimed that the workers were not entitled to any refund at all. In these circumstances, as the dispute regarding the deduction was referred to the Tribunal for decision, it was open to it to hold that the wages for a lesser number of days than claimed by the workers should be returned.

4. Mr. Venkatarama Aiyar next contended that though the Tribunal was competent to decide the question of the legality of the strike, the proper forum to decide any dispute as regards the deduction of the wages was not the Industrial Tribunal but the officer appointed by the "Government u/s 15, Payment of Wages Act. His contention was that the said Act provided for adequate remedy in respect of claims arising out of deduction from wages. Section 17 of that Act provided also an appeal against any direction which might be made u/s 15 and Section 32, prevented a Court from entertaining any suit for recovery of wages or of any deduction from wages. The Industrial Tribunal had therefore no jurisdiction to direct a return of the wages for any period. There appears to us to be considerable force in this contention and if the matter had been *res integra*, we would have spent more thought over it. But our attention has been drawn to the decision of the Federal Court in AIR 1949 150 (Federal Court) on the authority of which we must overrule this contention of Mr. Venkatarama Aiyer. In

the case before the Federal Court, the question was whether the validity of a lock-out and the claim of the workmen to payment of wages during the period of the lock-out were industrial disputes which could be adjudicated upon by the Industrial Tribunal. The learned Chief Justice of India, delivering the judgment of the Full Court said :

"It seems to us clear that the question whether the employers were justified in locking out their workmen would be an industrial dispute covered by the words "dispute which is connected with the employment or non-employment and with the terms of employment of such workmen."

The payment of wages during the period of such lockout would also be clearly an industrial dispute."

The argument addressed to us based upon the provisions of the Payment of Wages Act was also addressed to the Federal Court; but the argument was repelled as being unsound. The learned Chief Justice observed thus in negating the contention :

"The Tribunal contemplated by Section 15, Payment of Wages Act, is not, in our opinion, one which could affect the jurisdiction of the Tribunal set up u/s 7, Industrial Disputes Act and to which a reference could be made u/s 10 of that Act. The Tribunal set up under the Industrial Disputes Act has a much wider jurisdiction. In our opinion the two Acts are not in pari materia and the contention that the jurisdiction of the Tribunal set up under the Industrial Disputes Act is excluded by the provisions of the Payment of Wages Act is unwarranted."

These observations apply to the case before us. Here, instead of a lock-out, there is a strike and the claim is for the return of the wages deducted on account of the strike. We must) therefore uphold the award in this matter.

5. The next objection to the award was in respect of the rate of dearness allowance. The workers claimed dearness allowance calculated on the basis of three annas per point rise in the cost of living index over 100. The management was not willing to pay more than two annas. The Tribunal considered that the rate of dearness allowance should be enhanced from two annas to 2 1/2 annas per point and directed that the enhanced rate should come into force from the date the first wage is drawn after the publication of the award. The complaint of the management is that there was no evidence adduced before the Tribunal by either side to warrant this conclusion. On behalf of the workers it was stated in the counter affidavit that there was evidence adduced by both parties. We have perused the record but we are unable to find any definite evidence adduced on this point. The Tribunal arrived at a finding on the point after taking into consideration certain facts which apparently were within its personal knowledge having been culled from other awards and similar data. The tribunal says that there were several engineering firms in Madras City paying dearness allowance at the rate of 2 1/2 annas a point. It refused to adopt the rate of three annas which

firms like the Beach Engineering Works and Richardson and Cruddas were paying because the firm in question was started only recently and their affairs had not been particularly happy. Though a Court of law is not generally entitled to arrive at a finding in any matter except on the evidence adduced before it, quasi-judicial tribunals like the Industrial Tribunal, not hampered by "the rules of evidence applicable to proceedings in a Court of law, would be entitled to rely on data available to it otherwise than from evidence adduced on behalf of the parties. On an application like this it is not open to us to go into the merits of the conclusion. The only question is whether we can hold that the Tribunal acted without jurisdiction in fixing the rate of 2 1/2 annas. That question must be answered in the negative.

6. As no other ground was pressed before us, this application must be dismissed.