(1999) 08 AP CK 0066

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7137 of 1992

Tyre Retreading Shop Committee APPELLANT

Vs

APSRTC and others RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Payment of Wages Act, 1936 — Section 1(6), 7(2), 9, 9(2)

Citation : (1999) 5 ALD 619 : (1999) 5 ALT 122 : (2000) 1 LLJ 438

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : M/s. A.K. Jayaprakasha Rao and v. Narasimha Goud, for the Appellant; Ms. Nanda R. Rao, for the Respondent

Judgement

1. The petitioner-Committee, which is stated to be affiliated to National Mazdoor Union, represents the work-men in Tyre Retracing Unit of the Andhra Pradesh State Road Transport Corporation (APSRTC). It is aggrieved by the proceedings of the third respondent dated 4-5-1992 and 25-5-1992 proposing to recover the wages from the workmen on the ground that they absented, themselves, from work without any reasonable or justifiable cause. The third respondent, however, issued a show-cause notice on 24-4-1992 requiring the workmen to submit their explanations within seven days from the date of exhibition of the notice as to why a penal wage cut of eight days in addition to the wage cut for the days of absence should not be imposed and recovered from their salaries for April, 1992, payable in May, 1992. It is alleged in the said show-cause notice that a section of the workers of Tyre Retrading Shop, Golconda Region have absented themselves from work enmass on 13th and 14th of April, 1992 in concert and the concerted action by the workers on the said date has resulted in loss of production which has its effect on the operation of bus services to the travelling public. The third respondent is purported to have issued the said notice u/s 9 of the Payment of Wages Act, 1936, (for short ''the Act''). Each of the workmen have submitted their explanation individually, which is similar in its contents.

2. The workmen have denied the allegations made against them. According to them, they have applied for leave in advance and there was no concerted action on their behalf to abstain from duty. Be that as it may, the workmen have questioned the decision of the third respondent to issue such a notice contending that the provisions of the Act are not applicable in their case, as each one of them draw the wages over and above Rs.1,600/- per month. The third respondent having considered the explanations submitted to the show-cause notice, passed the impugned order on 4-5-1992 declaring that all the workmen have absented suddenly for duties enmass without any reasonable cause and without prior intimation. It is held that the mere fact that they have applied for leave is no ground to abstain from duty without knowing as to whether the leave applied for by them has been sanctioned or otherwise as per the Leave Regulations, 1963.

3. With regard to the objection raised by the workmen as to the applicability of the provisions of the Act, the third respondent held that all the employees are workmen. It is observed by the third respondent that if they are not covered by the provisions of the Payment of Wages Act, they are also not covered by all other Legislative Enactments like, the Factories Act etc. Hence, it is clear from the above fact that they will come under the purview of the Payment of Wages Act". It is also observed by the third respondent that some of the employees have not submitted any explanation to the notice and, therefore, it shall be deemed that they have accepted the allegations levelled against them in the show-cause notice. The third respondent, accordingly ordered for the recovery of the amounts towards penal wage cut from the salary for the month of April, 1992.

4. Sri A.K. Jayaprakash Rao, learned Counsel for the petitioners submits that the impugned order suffers from incurable legal infirmities and jurisdictional errors. It is submitted that the respondents have no jurisdiction or authority in law to impose any penal wage cut in purported exercise of their power under the provisions of the Payment of Wages Act, 1936, in respect of the employees who are receiving wages over and above Rs.1,600/-per month.

5. Therefore, the short question that arises for consideration is - whether the respondents have any authority in law or jurisdiction to impose penal wage cut in respect of its employees who are drawing wages more than Rs.1,600/- per month.

6. It is evident that the respondents have acted in the matter in exercise of the power u/s 9 of the Act which says that deductions may be made under clause (b) of sub-section (2) of Section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work. The proviso to Section 9 says that 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.

7. The respondents have evidently acted in purported exercise of power u/s 9(2) of the Act. Section 7 of the Act in turn declares that wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act; deductions from the wages of the employed persons shall be made only in accordance with the provisions of the Act and declares as to under what kind of circumstances such deductions can be made. A bare reading of the provisions would show that an employer is entitled to impose deductions from the wages, apart from other grounds, on the ground of absence from duty. But the question as to the applicability of the provisions of the Act, sub-section (6) of Section 1 of the Act, in categorical terms, declares that nothing in the Act shall apply to the wages payable in respect of wage period which, over such wage-period, average one thousand six hundred rupees a month or more. Evidently, the Act shall not apply in respect of an employee, in any establishment, drawing in an average more than Rs. 1,600-00 a month or more. The question that falls for consideration is no more res integra. Similar question came up for consideration before a learned single Judge of this Court in WP No. 4346 of 1992 and by judgment dated 13-11-1992, this Court held that:

"It is obvious that the provisions of the Act have no application in the instant case for more than one reason. Firstly it is an admitted fact that the workmen against whom the penal wage cut has been imposed are drawing wages of more than Rs.1,600/- p.m., and, therefore, by reason of Section 1(6) of the Act, the provisions of the said Act cannot be applied to such workmen. It is stated by the learned Counsel for the petitioner that in the Annexures to the impugned orders, the daily wage employees are not there and that the workmen mentioned in Annexures ''A'' and ''B'' are drivers and contractors on regular service who are drawing more than Rs.1,600/- and this tact is not denied."

8. Similar is the view taken by another learned single Judge of this Court in WP No.3878/96, dated 14-8-1996.

9. A Division Bench of this Court in WA No.3 of 1995 and Batch, dated 8-4-1996, observed that:

"..... imposition of penal wage cut on the workmen amounts to disciplinary action or penal action because it has imposed penalty, which is in consequence of disciplinary action."

10. Another Division Bench of this Court in WP No.12017 of 1992 and batch, dated 2-5-1997 observed that the question of deduction of penal wages as such should not arise, if the provisions of the Payment of Wages Act, itself, are not applicable. The Division Bench speaking through my learned brother, Justice N. Y. Hanumanthappa, after adverting to Section 1(6) of the Payment of Wages Act, observed that:

"There is no satisfactory explanation from the respondent side to the above contentions. To attract the provisions of the Payment of Wages Act, one should satisfy that the provisions are going to be applied against a workman whose salary is less than Rs.1,600/- per month. When the order is going to affect the service conditions of a workman such a workman shall be heard in the matter. When the Payment of Wages Act, itself, has no application to the case of the petitioners, the question of paying penal wages is incorrect. Hence, those writ petitions are allowed and the order under challenge is quashed. However, the authorities will be at liberty to initiate proceedings against the petitioners if they are so advised."

11. It is, therefore, clear that this Court took consistent view that the respondent-Andhra Pradesh State Road Transport Corporation has no authority in law to proceed against such of its employees, who are drawing monthly wages of Rs.1,600/- and more, under the provisions of the Act. The legal position is so obvious and there is no scope for taking any other view other than the one taken by this Court. However, it would be entirely a different matter altogether, where the dispute centres around quantum of wage cut. In such a case, the matter may have to be required to be adjudicated in a properly constituted Forum before the Industrial Tribunal, under the provisions of the Industrial Disputes Act, 1947.

12. However, the learned Standing Counsel for the respondent-Andhra Pradesh State Road Transport Corporation would place reliance upon a Division Bench decision of this Court in APSRTC National Mazdoor Union, Sangareddy Vs. APSRTC, , in support of her submission that the respondent-Corporation is entitled to impose such deduction and penal wage cut on the ground of stoppage of work by the employees in an organisation, which is meant for public utility, will cause lot of inconvenience resulting in paralysing the and causing inconvenience to the public. Once again, my learned brother-Justice N.Y. Hanumanthappa, speaking for the Division Bench, accepted the plea put forth by the respondent-Corporation and observed that:

"We find that the Corporation is justified in imposing penal wage cut for eight days as the stoppage of work by the employees of the petitioner-Union caused great inconvenience to the public. The members of the Petitioner-Union should have noticed that they are working in an organisation which is meant for public utility. Stoppage of their work will definitely cause lot of inconvenience resulting in paralysing the entire day''s" activities and causing inconvenience to the public which cannot be compensated. Having undertaken to serve the organisation, which is of public utility in nature, stoppage of work without reasonable cause amounts to indiscipline. In such an event, the authority which has right to hold disciplinary enquiry will have definitely right to impose a punishment in the nature of panel wage cut. Even if the provisions of Payment of Wages Act have no application to the case of the members of the Petitioner-Union, still the authority, who passed the order, imposing penal wage cut, has got right and jurisdiction to impose such penalty. Such an action cannot be said to be illegal or without jurisdiction. The points now raised in this writ petition might not have been brought to the notice of their lordships at the time of disposal of WA No.3 of 1995. If that was done, the finding would have been otherwise. Therefore, that judgment is not of any help to the petitioners."

13. It is also true that the decision of his Court in WP No.4346 of 1992 dated 13-11-1992 and the decision in WA No.3 of 1995 and batch, dated 8-4-1996 were brought to the notice of the Division Bench. But it is required to notice that the Division Bench having referred to the said judgment has not expressed any opinion taking any different view other than the one taken by the learned single Judge and the Divison Bench in WP No.4346 of 1992 and WA No.3 of 1995 and Batch, respectively. It is also required to notice that the judgment of the Division Bench in WP No. 12017 of 1992 and batch, dated 2-5-1997, was not at all brought to the notice of the Division Bench in Divisional Secretary''s case (supra). There is not even a reference to Section 1(6) of the Act, in the said judgment. Therefore, it cannot be said that the Division Bench in Divisional Secretary''s case (supra), has taken a different view other than the one taken by a learned single Judge and two Division Benches of this Court. The observations made in Divisional Secretary''s case that "the points now raised in this writ petition might not have been brought to the notice of their Lordships at the time of disposal of WA No.3 of 1995. If that was done, the finding would have been otherwise", is required to be understood in the contextual facts of that case. The judgment in Divisional Secretary''s case (supra) is required to be understood in the background of its own facts. That apart, it is brought to my notice that the Mazdoor Union has preferred a SLP against the said judgment and the same is stated to have been admitted and pending consideration by the Apex Court.

14. For all the aforesaid reasons, I do not find any merit in the submissions made by the learned Standing Counsel for the respondent-Andhra Pradesh State Road Transport Corporation. The judgment in Divisional Secretary''s case (supra) lends no support to the contentions put-forth by the learned Standing Counsel. The law on the subject is very clear. A bare reading of sub-section (6) of Section 1 of the Payment of Wages Act, 1936, itself, makes the legal position abundantly clear.

15. For all the aforesaid reasons, the impugned proceedings dated 4-5-1992 and 25-5-1992 are declared non est. The respondents have no authority in law to act against its own employees, who are drawing wages of Rs. 1,600.00 or more per month under the Payment of Wages Act, 1936. The respondents have no authority or jurisdiction to act under the Payment of Wages Act, 1936, against such of those employees, who are drawing wages of Rs.1,600.00 or more per month.

16. Accordingly the writ petition is allowed with costs quantified at Rs. 1,000-00 (One thousand rupees). Let there be a mandamus accordingly. "

