

(1952) 03 BOM CK 0015
In the Bombay High Court

V.B. Godse, Manager, Prabha Mills, Ltd.

APPELLANT

Vs

R.H. Naick, Inspector, Under the Payment of Wages Act

RESPONDENT

Date of Decision : 11-03-1952

Acts Referred:

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

Citation : (1953) 2 LLJ 577

Hon'ble Judges : Chagla, C.J.;Bhaghawati, J

Bench : Division Bench

Judgement

Chagla, C.J.—The Industrial Court made an award on 21 July 1949 fixing the standard of wages of the employees of the Prabha Mills and also fixing their dearness allowance. Both the wages and the dearness allowance which were being paid by the mills to their employees were increased by this award. The Court also directed that these payments should be made from November 1947 and should be made by August 1949. As the mills failed to make these payments, an application was made to the authority under the Payment of Wages Act for an order directing the mills to make the payment, and the order for payment was made by the Additional Resident First Class Magistrate, Viramgam, who is the authority. An appeal was preferred from this order to the Second Assistant Judge, Ahmedabad, and the learned Assistant Judge in a very careful and able judgment reviewing all the authorities came to the conclusion that the mills were liable to pay under the Payment of Wages Act and confirmed the order of the learned Magistrate. It is these orders which are being challenged by this petition, and the contention of Mr. Thakor on behalf of the petitioners is that neither the authority under the Payment of Wages Act nor the learned Assistant Judge had jurisdiction to make the order as what was awarded by the Industrial Court did not constitute "wages" within the meaning of the Payment of Wages Act.

2. The short question therefore that falls for determination is whether the" definition of "wages" given in the Payment of Wages Act is sufficiently wide to

cover an award made by the Industrial Court directing the employer to pay additional wages or additional dearness allowance. "Wages" has been defined in Section 2(6) and it means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable (and I am omitting: the words which are not necessary) and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, and then the definition sets out various payments which are not to be included in the definition of "wages." Therefore it will be noticed that "wages" postulate three conditions. They must be a payment which can be expressed in terms of money; they must be payable by the employer to the employee, in other words, the payment must be due by the employer while the relationship of employer and employee subsists; and they must be payable on the fulfilment of the contract of employment entered into between the employer and employee. The submission made by Mr. Thakor is that what is payable by the employer under an award of the Industrial Court does not constitute a term, express or implied, of the contract that there would be an industrial dispute which would be referred to the industrial tribunal and that an award might be made which might compel the employer to pay certain amounts to the employee, and therefore Mr. Thakor urges that what the award directed to be paid by the employer cannot be "wages" as that payment was not imposed upon the employer by the terms of the contract. Clearly, the fallacy underlying this argument is that "wages" only refer to those payments which are made obligatory upon the employer by the terms of the contract. If that were the intention of the legislature, the legislature would have defined wages as remuneration capable of being expressed in terms of money payable under the terms of the contract. But that is not the language used by the legislature. The legislature has advisedly used the words

if the terms of the contract of employment, express or implied were fulfilled.

Therefore the emphasis laid by the legislature is not upon "the terms of the contract," but upon what liability is imposed upon the employer to pay his employee when the contract has been fulfilled. Therefore, what the court has to consider is whether any amount is payable by the employer by reason of the fact that the employer has fulfilled the contract of employment. In other words, if the employee has served his master, carried out the terms of the contract, fulfilled his obligations, and on that being done certain amount is payable by the employer to the employee, then that sum would be "wages" within the meaning of this definition. Now, when we look at the award from this point of view, it is clear that what the Industrial Court awarded was higher wages and higher dearness allowance to those workers only who had fulfilled their contract with their employers. What the workers were claiming before the Payment of Wages Authority was what was due to them by reason of the fact that they had fulfilled their contract. It was upon the fulfilment of the contract that not only the wages and dearness allowance due to them under the contract was payable to them,

but also the additional amount awarded by the Industrial Court. Therefore, "wages" do not only include the remuneration payable by the employer by reason of the terms of the contract, express or implied; it also includes any amount which the employer legally becomes liable to pay to the employee on the fulfilment of the contract, and there can be no dispute that once the Industrial Court made this award the employer became legally liable to pay the additional wages and dearness allowance to the employees. It is in respect of what was legally due to them by reason of their having served the mills that the employees made a claim before the authority under the Payment of Wages Act, and in our opinion both the courts below were right when they came to the conclusion that they had jurisdiction to adjudicate upon this matter and make an order of payment against the mills.

3. Mr. Thakor has asked us to look at the scheme of the Act, and according to him if we look at the scheme of the Act, it is not possible to take the view that we have taken of the definition of "wages." He draws our attention to Section 4 which provides that every person responsible for the payment of wages u/s 3 shall fix periods in respect of which such wages shall be payable. According to Mr. Thakor this provision cannot possibly apply to the award made by the Industrial Court. Obviously, Section 4 only applies to those wages which are payable by the employer under the terms of the contract. Then Mr. Thakor refers us to Section 15 of the Act and he says that the jurisdiction of the authority under the Payment of Wages Act is to hear and decide all claims arising out of deductions from the wages, or delay in payment of wages, and according to Mr. Thakor the delay in payment referred to in Section 15 is the delay with reference to Section 4. Mr. Thakor argues that when wage periods are fixed and there is delay in payment according to those periods, then the jurisdiction of the authority under the Payment of Wages Act arises to compel the employer to pay according to the wage period fixed. In our opinion, the expression "delay in payment" used in Section 15 need not necessarily be restricted to the wage period fixed u/s 4. If there is delay in payment of any wages as defined by the Act, the jurisdiction of the authority would arise u/s 15. Therefore, if what was directed by the award to be paid was wages, then, if there was delay in payment of those wages as directed by the Industrial Court, the authority under the Payment of Wages Act u/s 15 would have the jurisdiction to direct the employer to pay the wages, in payment of which there was delay as contemplated by the legislature.

4. Our attention has then been drawn by Mr. Thakor to a decision of the Calcutta High Court in *Jogendra Nath Chatterjee and Sons Vs. Chandreswar Singh*, . It is true that the facts which the Calcutta High Court was considering were very similar to the facts which we have before us. There also an award was made by the industrial tribunal and an amount awarded by the tribunal was claimed before the authority under the Payment of Wages Act, and the Calcutta High Court held that an application u/s 15 by an employee to realise his dues awarded by the industrial tribunal was not maintainable as the Act provided for the method of recovery of wages as defined in Section 2(vi), and that his remedy lay

of a suit. With very great respect to the Judges of the Calcutta High Court, they have only considered the definition of "wages" from the point of view of the terms of the contract of employment and the terms being either express or implied, and the whole decision turns on the view taken by the learned Judges that a liability to pay under an award was neither an express nor an implied term of the contract. There is no discussion whatever in the judgment, again with very great respect, on the expression used by the legislature to the effect that the amount is payable on the fulfilment of the contract. We entirely agree with the Calcutta High Court that the liability to pay under the award is neither an express nor an implied term of the contract. But, with respect where we disagree is that the definition of "wages" under the Act is much wider than wages being merely confined to what is payable under the express or implied terms of the contract of employment.

5. Then our attention was drawn to a decision of this Court in *Arvind Mills, Ltd. v. Gadgil* 42 Bombay L.R. 955. That is a judgment of Sir John Beaumont, Chief Justice, and Mr. Justice Wassoodew, and we find that the learned Chief Justice there has put really the same interpretation upon the definition of "wages" as we are doing in this case. There, what was held was that potential wages which are not earned do not fall within the definition of "wages." There the authority under the Payment of Wages Act held that the bonus was payable not only to those who come within the terms of the scheme prepared by the employer, but to all other employees of the applicants, and in coming to this conclusion the learned Chief Justice took the view that the expression remuneration meant no more than remuneration payable on the fulfilment of the contract. Therefore, the learned Chief Justice has taken the same view that whatever is payable or whatever the employer is liable to pay on the fulfilment of the contract constitutes wages within the meaning of the definition. Then there is a recent decision of this Court in *Modern Mills, Ltd. v. Mangalvedhekar* 52 Botti. L.R. 389. In that case there was an award of the Industrial Court and an employee applied to the authority under the Payment of Wages Act alleging that certain payment was due to him under the award. The authority construed the award and came to the conclusion that the employee was entitled to the benefit arising under the award. The decision of the authority was challenged on the ground that the authority had no jurisdiction to construe the award of the Industrial Court. This Court rejected the contention and held that the authority had jurisdiction. Now, it is true that the point that we are considering was not directly considered by the bench of this Court in that case. But when the court held that the authority under the Payment of Wages Act had the jurisdiction to construe the award made by the Industrial Court and ordered payment against the employer under the award, impliedly it did hold that the authority had jurisdiction to order payment due under an award and that that payment constituted "wages" within the meaning of the Payment of Wages Act. Mr. Thakor says that the point was never raised by the petitioners in that case. But the very fact that the point was not raised goes to show that the petitioners felt that it was not possible for them to

urge that contention before the court. Therefore, although this is not a direct decision, by implication it is a decision that the authority under the Payment of Wages Act has the jurisdiction to order payment against an employer in respect of amount made payable under an award of the Industrial Court which necessitated those observations. The employees in that case claimed "bonus under various heads and the claim was referred by the Government of West Bengal to the industrial tribunal. An application was made for a writ of certiorari and prohibition against the tribunal on the ground that it had no jurisdiction to deal with that matter. The writ was refused by the High Court of Calcutta and that decision was confirmed by the Supreme Court. Now it will be borne in mind that the bonus that the workers claimed was neither due to them under any contract of employment nor was it due to them under any award made by the industrial tribunal. The workers merely claimed to be entitled to the bonus and that claim had yet to be adjudicated upon by the industrial tribunal. It is on these facts that the learned Chief Justice at page 24 stated:

The definition of "wages" properly read shows that the amount must be an ascertained sum before it falls under the definition.

And he goes on. to say:

In order to bring a particular payment under the definition of "wages" two things are necessary--1) a definite sum, and (2) a contract indicating when the sum becomes payable.

Further

it is obvious that unless there is an express provision for paying the stipulated sum, the definition will not cover such a payment.

Therefore, what the learned Chief Justice was emphasising was that there must be an ascertained stipulated amount before the payment could be considered to be wages. No question arose before the court as to an amount payable under the award. The contention which the learned Chief Justice rejected was a contention that the mere claim made by the employer can constitute "wages," and the point he had to consider was that if the claim constituted "wages" then the industrial tribunal would have no jurisdiction to adjudicate upon that claim.

6. Therefore, in our opinion, both the courts below were right in the view that they took. The result is that the petition fails and must be dismissed with costs.

7. Civil Revision Application No. 1379 also dismissed for the same reasons.