Balakrishna Pillai and ors. Vs. Anant Engineering Works Private Limited and anr.

Balakrishna Pillai and ors. Vs. Anant Engineering Works Private Limited and anr.

SooperKanoon Citation : sooperkanoon.com/337486

Court : Mumbai

Decided On : Jan-08-1971

Reported in : (1974)76BOMLR575; (1975)IILLJ391Bom

Judge : Desai and ;P.B. Sawant, JJ.

Acts : Industrial Disputes Act, 1947 - Sections 25A and 25C

Appeal No. : Special Civil Application No. 2670 of 1969

Appellant : Balakrishna Pillai and ors.

Respondent : Anant Engineering Works Private Limited and anr.

Advocate for Pet/Ap. : Mr. Kulkarni

Judgement :

Sawant, J.

1. This is a petition by 34 workmen of the first respondent concern against the decision of the Second Additional Authority under the Payment of Wages Act, in Applications Nos. 229 to 262 of 1967.

2. Briefly the facts leading to the petition are as follows :

3. Sometime in the year 1968 the workers were laid-off for ten days and they were paid wages to the extent of 50% of their normal wages for the said period of ten days. The workers, therefore, filed the aforesaid applications before the Authority under the Payment of Wages Act claiming full wages for the period of ten days on the ground that the Model Standing Orders which enabled the employer to lay-off the workmen did not apply to them, since at the relevant time the workers employed in the first respondent-concern were less than 100. The contention of the workmen before the Authority, therefore, was that under the contract of service they were entitled to full wages for the said period and the payment of half wages only, amounted to deduction of wages.

4. It was an admitted fact that although prior to 1965 the Model Standing Orders applied to the first respondent concern because there were more than 100 workmen employed then, in the years 1967 and 1968, the number of workmen fell below 100 and at the relevant time there were only 34 workmen employed in the concern.

5. The Authority by its decision, dated 11-8-1969 held that (a) the Model Standing Orders continued to govern the service conditions of the workmen in spite of the fall in their number below 100 and the first respondent-company had a right to lay-off the workmen under the said orders, (b) the lay-off compensation claimed by the workmen was not wages within the meaning of the payment of Wages Act and (c) that an employer had an implicit right to lay-off his workmen under S. 25(c) of the Industrial Dispute Act, 1947. The Authority, therefore, dismissed the workers' applications. Hence these petition.

6. Since we are of the view, for reasons stated hereinafter, that the Industrial Employment (Standing Orders) Act, 1946 did not cease to apply to the first respondents-concern, we find it unnecessary to decide the other two questions which the Authority has decided and hence, this decision is confined only to the question as to whether the Standing Orders continued to apply to the concern or not irrespective of the fall in number of the workmen.

7. In order to appreciate the contentions of the parties, on the said point, it is necessary to refer briefly to the relevant provisions of the Industrial Employment

(Standing Orders) Act, 1946 as amended by the Industrial Employment (Standing Orders) Bombay Amendment Act, 1957 and the Bombay Industrial Employment (Standing Orders) Rules 1959, hereinafter referred to as the Act and the Rules, for the sake of brevity.

8. The preamble of the Act declares that the Act has been placed on the statute book to provide for defining with sufficient precision certain conditions of employment in industrial establishments, in the State. By sub-s. (3) of S. 1 of the Act, the Act is made applicable to every industrial establishment wherein 100 or more workmen are employed, or were employed on any day of the preceding 12 months. It also provides that the appropriate Government may after giving not less than two months notice of its intention to do so, by notification in the Official Gazette, apply the provisions of the Act to any Industrial establishment employing such number of persons less than one hundred as may be specified in the notification. Section 2(ee) of the Act defines 'Model Standing Orders' as standing orders prescribed under S. 15 of the Act; and 'Standing Orders' are defined by S. 2(g) of the Act to mean rules relating to matters set out in the schedule to the act. Section 2A of the Act, provides that where the said Act applies to an industrial establishment the Model Standing Orders for every matter set out in the schedule applicable to such establishment shall apply to such establishment from such date as the state Government may by notification in the Official Gazette appoint in this behalf Section 3 enables an employer or any of his workmen to submit draft amendments to the Model Standing Orders within six months from the date on which the model Standing Orders apply to the industrial establishment and S. 5 provides for certification of the draft amendment after hearing the employer and the workmen and their prescribed representatives. Section 6 provides for an appeal against the order of certification and S. 7 specifies the date from which the Standing Orders or the amendments thereof come into operation. Section 8 requires registration of the Standing Orders as finally certified and S. 9 obligates posting of the text of the Standing Orders prominently on special boards to be maintained for the purpose. Section 10 then provides for the duration and modification of the Standing Orders or the amendments thereof and prescribes the period during which they shall not be modified except on agreement between the employer and his employees and lay down the procedure for modification. Section

13 provides for penalties, among others, for modification of the Standing Orders, Model Standing Orders or amendments otherwise than in accordance with the provisions of the act and also makes contravention of the Standing Orders an offence. Section 13A makes a provision for a reference of the question of application and interpretation of a standing order to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947 and specified in that behalf. Section 13B exempts from the application of the Act, establishments governed by other statutory service rules and S. 14 gives power to the appropriate Government to exempt any industrial establishment or class of industrial establishments, conditionally or unconditionally from all or any of the provisions of the Act. Sub-section (1) of S. 15 vests the appropriate Government with Power to make rules and sub-s. (2) thereof specified matters which in particular may be covered by such rules. The matters mentioned therein include, among others, Model Standing Orders for the purpose of the Act and the procedure for modifying standing Orders or amendments. The schedule to the act, referred to in S. 2A, enumerates matters to be provided in Standing Orders, Model Standing Orders and amendments. The said matters relate to service conditions and include, among others, subjects such as classification of workmen into permanent, temporary, etc., attendance and late coming, closing and reopening of sections and of the entire establishment, temporary stoppages thereof and the rights and liabilities of the employers and workmen, termination of employment, disciplinary proceedings, retirement and superannuation age, etc.

9. Rule 3 of the Rules made by the State Government under S. 15 of the Act, states that the Model Standing Orders for the purposes of the Act shall be those set out in schedule I appended to the said Rules. The said Schedule I sets out different Model Standing Orders among others (A) for workmen doing manual or technical work and (B) for workmen employed on clerical or supervisory work. We are concerned in these petition with the former.

10. The Model Standing Orders 18 to 20 give a right to the employer to lay-off his workmen and by virtue of Standing Orders 21, the rights and liabilities of implores and workmen relating to lay-off are determined in accordance with the provisions of Chapter VA of the Industrial Dispute Act, 1947. The only provisions of the said

Chapter VA which are relevant for the purposes of this petition are those contained in Ss. 25A and 25C thereof The said S. 25C, among other things, provides for lay-off compensation to a workmen to the extent of 50% of the total wages for the first forty-five days of lay-off. However, the said S. 25A excludes from the application of all provisions relating to lay-off contained in the said Chapter, including those contained in the said S. 25C, industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month. We are not concerned in this petition with the other provisions either of the said Sections or of the said Chapter VA.

11. If, therefore, the Act, i.e. the Industrial Employment (standing Orders) Act, 1946, continued to apply to the first respondent-concern, the effect of the provisions of Model Standing Order 21 read with S. 25C of the Industrial Dispute Act, 1947, is that the petitioners are not entitled to any lay-off compensation, since admittedly the number of workmen in the concern was 34, i.e., less than 50, at the relevant time. On the other hand, if the Act ceased to apply because the number of workmen fell below 100 at the relevant time the workmen will be entitled to full wages for the lay-off period because the employer had no-right to lay-off the workmen, under the contract of service.

12. It is against this background that we have to consider the validity of the petitioners contention that the Act ceased to apply to the first respondent - concern since at the relevant time the number of workmen fell below one hundred. Mr. Kulkarni appearing for the petitioners, in support of the said contention has relied solely on the provisions of sub-s. (3) of S. 1 of the said Act, which as pointed out earlier, provides that the Act applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed, on any day of the preceding twelve months.

13. There are, however, four main considerations which militate against the interpretation canvassed on behalf of the petitioners. In the first instance, the provisions of sub-s. (3) of S. 1 of the Act evidently relate to the initial application of the Act and the condition precedent, viz., the number of workmen, is laid down therein for the initial application of the Act. There is nothing in the said provisions

to suggest that once the Act is made applicable to an industrial establishment, the continuation of its application depends upon the number of workmen employed in the establishment. Secondly, there is no provision in the Act providing for the cessation or discontinuance of the application of the Act to an establishment on account of a fall in the number of workmen or on any other account. The absence of such a provision is significant since, by S. 13A, the Act has provided for a reference to the Labour Court, of a question as to, among other, of the application of a standing order and by S. 13B, has excluded industrial establishments governed by certain statutory service rules. The power reserved to the appropriate Government under S. 14 of the Act to exempt conditionally or unconditionally any industrial establishment or class of industrial establishment from all or any of the provisions of the Act are also noteworthy in this connection. The provisions in S. 13, further, for penalty for modification of the Standing Orders, otherwise than in accordance with the provisions of the Act, and for contravention of the Standing Orders, also point to the deliberate omission to provide for the cessation of the application of the act to an establishment. If the Legislature had intended that the Act should cease to apply to an industrial establishment when the number of the workmen therein fell below one hundred, there was nothing to prevent it from so providing in explicit terms.

Thirdly, the Act is a beneficial social legislation enacted for the purpose of defining with certainty the terms of contract of employment and thus guaranteeing the workmen their conditions of service. It is common knowledge that before the Act was placed on the statute book the conditions of service of the industrial workmen were underfined, arbitrary, and depended mostly upon the whims and vagaries of the employer. The Act seeks to make a contract of employment for the workmen and a contravention of the terms of such statutory contract, is made an offence and an employer is liable to be prosecuted for the same. A strong reason is, therefore, necessary to deprive the workmen of an establishment, of the benefits of such statutory contract of service, once the same have accrued to them, and a fall in the number of the workmen employed in the establishment can hardly be said to supply such reason. Lastly, an interpretation which promotes the objects and purpose of the Act will have to be preferred to one which will not only defeat the same, but in this case, will verily lead to a chaos. If the interpretation urged by

the petitioners is accepted it will mean that the terms of contract of service will still remain in a fluid condition and fluctuate with the number of workmen employed. It will again be subject to the arbitrary will of the employer, since the number of workmen employed can be varied by him by his unilateral action. A part from creating uncertainties and confusion with regard to the conditions of service such a situation is bound to lead to industrial unrest, and hamper smooth running of the industry. The said interpretation will, therefore defeat the very purpose sought to be achieved by the Act. The Legislature cannot be said to have intended such a situation. We will have, therefore, to place a beneficial interpretation on the provisions of the Act and one which will be in accord with its policy and hold that once the act becomes applicable to an industrial establishment it does not cease to apply on account of a fall in the number of workmen in the establishment, below one hundred.

14. Mr. Kulkarni relied upon a decision of this Court reported in State v. Hathiwala Textile Mills : (1957)IILLJ202Bom . This decision, far from holding Mr. Kulkarni, goes a long way to support the view we have taken. It is a decision under the Employees' Provident Fund Act, 1952 prior to its amendment by Act 46 of 1960. Sub-section (3) of S. 1 of the said Act also made a similar provision for the application of the said Act to establishments and states that it applied to 'every establishment which is a factory engaged in any industry specified in Schedule I and in which fifty or more persons are employed.' It was contended on behalf of the employer-mills in that case that at the relevant time the number of workmen had fallen below fifty and hence the said Act ceased to apply to it. Negativing the said contention, this Court in that case held, that the said provisions of sub-s. (3) of S. 1 of the said Act dealt with the initial application of the Act and they had nothing to do with the continuance of the application of the Act. This Court further held in that case that there was no provision in the said Act which would show that as soon as the factory ceased to employ fifty workers or more but employed less than fifty workers the Act would cease to apply and the workers would cease to get benefits under the provision of the said Act. This Court also held that the several provisions of the said Act showed that the Act was intended for the benefit of the workers. According to us, the ratio of this decision should equally apply to the case before us.

15. Mr. Kulkarni then contended that the Employees' Provident Funds Act. 1952 was amended in 1960 by Act 46 of 1960 and sub-s. (5) was deliberately added to S. 1 thereof specifically providing that the said Act would continue to apply to an establishment notwithstanding the fall in the number of workmen below that laid down in sub-s. (3). According to Mr. Kulkarni the fact that such an added provision was specifically made, shows that but for the addition, the Act would cease to apply when the number of workmen fell below the specified number. Now, in this connection it must be remembered in the first instance that the aforesaid decision of this High Court was prior to the said decision and turned upon the interpretations of the provisions of sub-s. (3) of S. 1 of the said Act as it stood then. Secondly, it appears that by adding sub-s. (5) to S. 1, the Legislature has made expressly clear what was till then implicit. Mr. Kulkarni's contention, therefore, that in the absence of an express provision in the Act with which we are dealing in this petition, similar to the provision in sub-s. (5) of S. 1 of the said Act, i.e., the Emplyoees' Provident Funds Act, 1952. The interpretation which he canvasses should be accepted, does not appeal to us.

16. For the aforesaid reasons we are of the view that the decision of the payment of Wages Authority that the Industrial Employment (Standing Orders) Act, 1946 continued to apply to the first-respondent-concern although the number of workmen was reduced to 34 is valid and proper, and we confirm the said finding.

17. As regards the other two question, viz., as to whether the employer has an inherent right to lay-off his workmen or not and whether the lay-off compensation is wages within the meaning of the Payment of Wages Act, Mr. Kulkarni cited before us decision of the Supreme Court and High Courts including our Court, and there appears much force in Mr. Kulkarni's contentions on the said two question and against the view taken by the authority on the said questions. However, we express no opinion on the said issues since it is not necessary to do so in view of our finding on the first question. We, however, make it abundantly clear that it should not be construed that we approve of the view taken by the Authority on the said two questions.

18. In the result, the petition fails. The Rule granted in this petition is discharged. In the circumstances there will be no order as to costs.