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Court : Mumbai

Decided On : Feb-25-1957

Reported in : (1957)IILLJ256Bom

Judge : Shah and ;Gokhale, JJ.

Appellant : Mangaldas Narandas

Respondent : Payment of Wages Authority and ors.

Judgement :
ORDER

Shah, J.

1. This is a group of special civil applications in which certain orders passed by the Payment of Wages Authority, Ahmedabad, are challenged. The authority has by his order directed payments to be made by the employer to employees found due as delayed wages for the period from 1 July 1955 to 7 July 1955. The order has been challenged by these applications under Articles 226 and 227 of the Constitution.

2. A few facts which give rise to these applications may be stated. The petitioner is the employer and the respondents, except the first respondent in all the applications, are the employees. The petitioner is a manufacturer of bidis. A dispute relating to wages payable to the workmen employed in the manufacture of

bidis was, it appears, referred to the industrial court and by an award, made on 8 July 1952, the rate was settled at Rs. 3-6-0 per 1,000 bidis. On 5 January 1955 the employer served a notice of change upon the employees intimating that as from 10 March 1955 the rate will be altered. The notice stated that all persons covered by the award in reference I.T.A. No. 19 of 1951 of the industrial tribunal dated 8 July 1952 were informed that the said award is terminated with effect from 10 March 1955 in so far as it has fixed the rate of Rs. 3-6-0 per 1,000 bidis. It is the case of the employer that from and after 10 March 1955 he paid to the employees at the rate of Rs. 3-2-0 per 1,000 bidis On 16 June 1955 the employer informed the employees that the current rate of wages of Rs. 3-2-0 per 1,000 bidis could not be maintained and the same was revised on and from 1 July 1955 and the new rate will apply from 1 July 1955. The employees were asked to take note that the rate as from 1 July 1955 will be Rs. 2-8-0 per 1,000 bidis. Even after this notice, it appears, the employees continued to work under the employer but for the wage period from 1 July 1955 to 14 July 1955 when remuneration was tendered to them at the rate of Rs. 2-8-0 per 1,000 bidis they declined to accept it and they submitted an application on 14 July 1955 for payment of delayed wages on the plea that they were entitled to wages at the rate of Rs. 3-6-0 per 1,000 bidis.

3. The application filed by the employees was resisted by the employer. He contended inter alia that the applicants were not governed by the Payment of Wages Act, that the award of the industrial tribunal made in reference No. 19 of 1951 was terminated with effect from 10 March 1955 by due notice and that by notice dated 16 June 1955 the employer had reduced the rate to Rs. 2-8-0 per 1,000 bidis and that the revised rate had come into effect from 1 July 1955. He submitted that the applicants were entitled to receive wages at the rate of Rs. 2-8-0 per 1,000 bidis as from 1 July 1955 and the claim made by the applicants for wages in excess of Rs. 2-8-0 per 1,000 bidis was not maintainable.

4. At the trial it was urged on behalf of the employer that the award made by the industrial tribunal in reference No. 19 of 1651 having been lawfully terminated by notice under Section 19(6) of the Industrial Disputes Act, the employees were not entitled to claim remuneration on the assumption that the award was still binding, and enforceable against the employer. It was urged that the award was

determined by notice and the relations between the parties were, after the expiry of the notice, not governed by the award and it was open to the employer to offer the remuneration he thought was proper, and if the employees did not accept the same they can stay away from work. The Payment of Wages Authority refused to accept this contention observing:

No doubt during the month of July 1955 for which the wages are claimed in this application there was no award of the industrial tribunal in force. However, the termination of the award did not ipso facto restore the wage rates which were in force before the award came into operation. The only effect of the termination of the award was that it was open to the opposite party to revise the terms of the contract with the applicants. So long as the contract of service was not revised, the opposite party was under an obligation to pay the wage rate that was in force immediately prior to the termination of the award. The opposite party could not by a unilateral act revise the wage rate to the prejudice of the applicants. The revised wage rate is not a rate fixed under a contract between the parties. If the opposite party was not prepared to pay the applicants at the rate of Rs. 3-6-0 per thousand bidis it was open to the opposite party to terminate the services of the applicants who were not willing to work at a lower rate; but it was not open to the opposite party to continue the applicants in service and at the same time to pay them the lower rate of wages. Since the wage rate was not revised by mutual agreement, the applicants were justified in demanding payment at the rate of Rs. 3-6-0 per thousand bidis.

In these applications which have been filed by the employer this method of approach to the problem has been challenged.

5. Section 19 of the Industrial Disputes Act, by Sub-section (3), provides that an award made under Section 15 shall be in operation for a period of one year. By the first proviso authority is given to the appropriate Government to reduce the said period and fix such period as it thinks fit. By the second proviso the appropriate Government, before the expiry of the period, is authorized to extend the period of operation by any period not exceeding one, year at a time as it thinks fit, but the total period of operation of any award cannot in any event exceed three years from

the date on which it came into operation. By Sub-section (6) it is provided:

Notwithstanding the expiry of the period of operation under Sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

Evidently the award remains in operation at least for one year unless the appropriate Government has reduced the period of one year under the first proviso to Sub-section (3), The period of one year may also be extended under the second proviso to Sub-section (3), but such extension in any event cannot exceed three years in the aggregate operating from the date on which the award came into operation. But at any time after the expiry of the original period of one year or the period as altered under the provisos, it is open to either the employer or the employee to terminate the award by notice intimating his or their intention to terminate the award. The notice must be a notice of two months' duration and during the period of the notice the award remains binding. The effect of Sub-sections (3) and (6) is, therefore, to provide that an award shall not be terminated for the initial period fixed under Sub-section (3), and thereafter it may be terminated after notice of two months' duration.

6. Mr. Bhabha, relying upon Sub-section (6) of Section 19, contends that when notice is served by the employer upon the employees the effect of the termination of the award is to relegate the parties to the original contract on which the award was superimposed by the industrial court. In any event, it is contended by Mr. Bhabha, the parties are relegated to enter into a fresh contract, and so long as no fresh contract is entered into the employer is entitled to offer any remuneration which he thinks proper, and if the employees do not desire to accept the offer they may terminate the employment. The contention substantially is that the termination of the award puts an end to all the rights and obligations created thereby and as a result of termination of the award the obligation to pay remuneration at the rate prescribed thereby ceases. We are unable to accept these contentions.

7. When an award is delivered by the industrial tribunal it has the effect of imposing a statutory contract governing the relations of the employer and the

employee. It is true that statutory contract may be terminated in the manner prescribed toy Sub-section (6) of Section 19. After the statutory contract is terminated by notice the employer by failing to abide by the terms of the award does not incur the penalties provided by the Industrial Disputes Act, nor can the award be enforced in the manner prescribed by Section 20 of Industrial Disputes (Appellate Tribunal) Act, 1950. But the termination of the award has, in bur judgment, not the effect of extinguishing the rights flowing therefrom. Evidently by the termination of the award the contract of employment is not terminated. The employer and the employee remain master and servant in the industry in which they are engaged, unless by notice the employer has also simultaneously with the termination of the award terminated the employment of the employee. If the employment is not terminated, it is difficult to hold that the rights which had been granted under the award automatically cease to be effective from the date on which notice of termination of the award becomes effective. In our judgment, the effect of termination of the award is only to prevent enforcement of the obligations under the award in the manner prescribed, but the rights and obligations which flow from the award are not wiped out. In taking that view we are supported by a judgment of the Calcutta High Court in Judhisthir Chandra v. Mukherjee : AIR1950 Cal577 . That was a case in which an award was made under the Industrial Disputes Act, 1947, on 25 May 1948, under the provisions of Sub-section (3) of Section 19. As it then stood, the award was to remain in operation for one year. A subsequent award was made on 20 May 1949 and by that award the previous award was modified retrospectively. An application was made to set aside the subsequent award and it was contended that the modification did not affect the interests of the workers as the original award had ceased to be effective after 25 May 1949. Mr. Justice Banerjee, in rejecting the contention, observed that the contention raised by the employer was not correct as it overlooked the fact that though the previous award had become ineffective by the passage of time, the rights flowing therefrom had not been wiped out. The award directed payment of certain dearness allowance which, if not paid, created a debt in favour of the workmen and it was a binding debt which could be enforced by a civil suit and that the penalty clause in the Act did not bar such a suit. This case is evidently an authority for the proposition that the termination of the award or the lapsing of the

award has not the effect of wiping out the liabilities flowing from the award. Mr. Bhabha, on behalf of the employer, contended that this case was decided under the Industrial Disputes Act, 1947, under Sub-sections (3) and (4) of Section 19, before those Sub-sections were amended. It is undoubtedly true that by Act 48 of 1950, Sub-sections (3) and (4) have been amended and Sub-sections (5), (6) and (7) have been added. Under the Act, as it originally stood, every award lapsed at the expiry of one year; by amended Act every award becomes quasi-permanent, subject to termination by either party by giving notice of two months' duration. But whether the award lapses at the expiry of the period provided under the Act or is terminated by notice served by the employer or the employee, the consequence of termination must in our judgment be the same. If the rights flowing from the award are not wiped out even after it has lapsed, it is difficult to appreciate why they are wiped out when the award is terminated by notice under Sub-section (6) of Section 19.

8. Reliance was sought to be placed by Mr. Bhabha upon the expression used in Sub-section (6) of Section 19, 'shall continue to be binding on the parties until a period of two months has elapsed,' and it was argued that it was intended thereby to provide that the binding nature of the award was to enure only till the expiry of the period of the notice and not thereafter. There can be no dispute that the award remains binding only for the period of the notice, but we are unable to infer therefrom that the rights and obligations which have come into existence lapse or terminate because the award lapses or is determined. An award has the effect of imposing fresh terms upon the contract of employment between the employer and employees, to which they have not assented. The termination of such an award does not, in our judgment, terminate the contract. Even after the award is determined in the manner provided by Sub-section (6), the obligations created by the award can in our judgment be altered by a fresh contract or a fresh adjudication under the Industrial Disputes Act and not otherwise. The Industrial Disputes Act has been enacted with the object of securing harmonious relations in the working of the industry between the employer and the employees by providing a machinery for adjudication of disputes between them; and the object of the legislature would be frustrated if after every few months by unilateral action, the employer or the employees may be entitled to reopen the dispute and ignore the

obligations declared to be binding by the process of adjudication. We are therefore of the view that the termination of an award by notice has not the effect of terminating the obligations flowing from the award.

9. Mr. Bhabha also contended that in this case the rights and obligations of the parties under the award had, after its termination under Sub-section (6) of Section 19, been substituted by a valid agreement between the employer and the employees; and in support of that contention he relied upon the circumstance that between 10 March 1955 and 30 June 1955 the employees had been paid wages at the rate of Rs. 3-2-0 per 1,000 bidis and those wages had been accepted. It was urged that from that circumstance an inference should be raised that there had been a fresh contract between the employer and the employees which had taken the place of the rights flowing under the original award. It is true that even according to the statement made in the application for an order for recovering delayed wages, it does not appear to have been suggested that wages at the rate of Rs. 3-2-0 per 1,000 bidis was not accepted by the employees. But the argument, which Mr. Bhabha has advanced for the first time in this Court, was never advanced before the Payment of Wages Authority. It was not urged before the authority that there was a binding and enforceable contract between the employer and the employees. If such a contention had been raised, the Payment of Wages Authority would have considered the same and given its decision thereon. Prom the order by the authority it is clear that the attempt made by the employer to alter the rate provided by the award was by a unilateral act. In this application we will not be justified in allowing Mr. Bhabha to raise a new contention which he has sought to raise in this application.

10. On the view we have taken, the rule in all the applications must stand discharged with costs.