

Trustees of the Port Vs. Authority Under the Payment of Wages Act and ors.

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Court : Mumbai

Decided On : Nov-20-1956

Reported in : (1957)ILLJ626Bom

Judge : Gajendragadakar and ;Chainani, JJ.

Appellant : Trustees of the Port

Respondent : Authority Under the Payment of Wages Act and ors.

Judgement :

Gajendragadakar, J.

1. These two special civil applications have been preferred against two orders passed by the learned authority under the Payment of Wages Act, Bombay, directing the petitioners, who are trustees of the Port of Bombay, to pay to the two opponents respectively an amount of Rs. 18-7-0 each as illegal deductions. The two opponents were employed in the Bombay Port Trust Docks as 'B' category casual workmen in accordance with the terms of the decasualization scheme for the direct employment of dock labourers who had previously been employed through labour contractors known as toliwalas. Both of them claimed that illegal deduction had been made in respect of their wages for five Sundays in July 1955 at the rate of Rs. 3-11-0 per Sunday. That is how they claimed to recover Rs. 18-7-0 each which had been, illegally deducted. The case made out by the two employees was that, under the rules framed by the Central Government under the

Minimum Wages Act, 1948, they were entitled to claim their wages for Sundays even though they were not permitted or required to work on the said days. This claim was resisted by the petitioners. The petitioners urged that the material rules did not justify the claim. The authority has, however, construed Rule 23 of the Minimum Wages Rules against the petitioners and in favour of the employees. That is why the claims made by the employees in their respective applications have been decreed. In the present petitions it is urged by Mr. Seervai on behalf of the petitioners that the view taken by the authority is plainly inconsistent with Rule 23. Thus it is the construction of Rule 23 which is the main point which arises for our decision in the present applications. The amounts involved in these two petitions are no doubt small. But it is common ground that the construction of Rule 23 which has been accepted by the authority would involve a very large financial obligation for the petitioners and a correspondingly large amount of benefit to workmen as a whole. That is why the question of law raised in these two petitions is of substantial importance to the parties.

2. Before construing Rule 23, it may be relevant to refer to the material provisions of the Act itself. The Minimum Wages Act (XI of 1948) has been passed in order to provide for fixing minimum rates of wages in certain employments. It is no doubt a welfare measure intended to confer certain benefits on employees engaged in the specified employments. Mr. Gokhale for the opponents has emphasized the fact that, in construing the material rule, we ought to bear in mind the policy underlying the Act, and he says that the rule must receive beneficent construction at our hands. The argument about the policy of the Act is based particularly on the provisions of Section 13 of the Act. In regard to scheduled employments in respect of which minimum wages have been fixed under the Act, the appropriate Government is empowered under Section 13 to make certain provisions. One of these provisions is mentioned in Section 13, Clause (c): the appropriate Government may provide for payment for work on a day of rest at a rate not less than the overtime rate. It must, therefore, be conceded that, under this section, it would be open to the appropriate Government to make provision for the payment of work even on a day of rest and that the rate must be not less than the overtime rate. Mr. Gokhale has also invited our attention to the provisions of Section 30 in support his argument as out the policy of the Act. This section confers on the

appropriate Government authority to make rules. Sub-section (1) of Section 30 empowers that appropriate Government, subject to the condition of previous publication, by notification in the official gazette, to make rules for carrying out the purposes of this Act; this is a general power to make rules. Sub-section (2) of Section 30 provides that the rules may deal with matters and topics mentioned in Clauses (a) to (n) of this sub-section. This provision is made without prejudice to the generality of the power conferred on the appropriate Government under Sub-section (1). One of the objects for which rules can be framed is mentioned in Section 30(2)(f): the object is to provide for a day of rest in every period of seven days and for the payment of remuneration in respect of such a day. This is clearly consistent with the provisions of Section 13(c). Mr. Gokhale is, therefore, right that it is open to the appropriate Government to make rules for the fixation of a day of rest in every period of seven days and for the payment of wages in respect of that day. Mr. Gokhale's argument is that Rule 23, on which the employee's claim is based, has been made in pursuance to Section 30(2)(f). It would be convenient to examine this argument before dealing with the rule itself.

3. The notification by which the rules have been published shows that the rules have been framed in the exercise of the powers conferred by Section 30 of the Act. In other words, the rules do not purport to have been framed under Section 30(2)(f). If it had appeared that the rule had been specifically framed under Section 30(2)(f), it may have provided Mr. Gokhale with a very strong argument in support of his construction of Rule 23. Even if the rule in question is not referable to the power conferred under Section 30(2)(f), that would not defeat the employees' claim if otherwise the material rule is capable of the construction which has been adopted by the authority in this case. But if the rule had been framed under Section 30(2)(f) that would have been a consideration of a compelling character: that is about all. It is not argued before us by Mr. Gokhale that the rule has become ultra vires because it is not framed under Section 30(2)(f), but it purports to be framed under Section 30. Indeed, such a argument would be wholly untenable in view of the decision of the Privy Council in *Emperor v. Sibnath Banerji* (1945) 48 Bom. L.R. 1. Where power to make rules is conferred on an appropriate authority, first in general and broad terms and then in specific terms and for specified objects, without prejudice to the generality of the earlier power, it

would not be a valid argument to urge that a rule which could have been framed under the specific power and for a specified object must be made under that power and for that object and cannot be made under the general power. It is a matter of judicial history that the view taken in *Keshav Talpade v. King-Emperor* 1943 F.C.R. 49 has been expressly overruled by the Privy Council in *Sibnath Banerji* case. In *Sibnath Banerji* case the rule-making power had been conferred on the Central Government in Sub-sections (1) and (2) of Section 2 of the Defence of India Act, 1939. The first was a general rules whilst the second was a power to make rules for specified matters. This latter power had been conferred without prejudice to the generality of powers conferred by Sub-section (1). Rule 26 of the Defence of India Rules which had been impugned in the said proceedings, had been framed by the Central Government under Section 2(1) of the Defence of India Act, and its validity was challenged on the ground that it had been made under the general powers conferred under Section 2(1) and not under the special powers which had been conferred under Sub-section (2) of Section 2. The Federal Court had, upheld this challenge. Lord Thankerton, who delivered the judgment of the Privy Council, however, refused to accept this view because he observed that there can be no doubt-as the learned Judge himself appears to have thought-that the general language of Sub-section (1) amply justifies the terms of Rule 26, and avoids any of the criticisms which the learned Judge expressed in relation to Sub-section (2).' Besides, It would not assist Mr. Gokhale to contend that the rules framed under Section 30(1) are invalid because it is under one of these rules that the employees have made their claims.

We would now consider Rule 23 itself. This rule reads as follows:

23: Weekly holidays--(1) Unless otherwise permitted by the Central Government no worker shall be required or allowed to work in a scheduled employment, on the first day of the week (hereinafter referred to as the said day) except when he has or will have a holiday for the whole day on one of the five days immediately before or after the said day for which he shall receive payment equal to his average daily wages during the preceding week:

Provided that the weekly holidays may be substituted by another date.

Provided further that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

* * *Explanation.--For the purposes of this rule 'week' shall mean a period of seven days beginning at midnight on Saturday night.

This rule provides that no worker shall be required or allowed to work in a scheduled employment on the first day of the week. In other words, the object of the rule is to allow the employment of a worker on a Sunday, which is described as the first day of the week, only if two conditions are satisfied:

(1) the Central Government must permit such a course; and

(2) if a worker is asked to work on a Sunday then he must have a holiday for a whole day on one of the five days immediately before or after the said day, for which he shall receive payment equal to his average daily wages during the preceding week.

This second condition involves that, whenever a workman is required to work on a Sunday, within the specified period he must be granted a holiday and he must receive his wages as prescribed. The first proviso permits that the weekly holiday may be substituted by another day; and the second proviso provides a valuable safeguard to the worker by directing that no substitution shall be made which would lead to the result that the worker would work more than ten days consecutively without a holiday. The usual rule appears to be that every Sunday should be a day of weekly rest. Rule 23 provides for an exception: it allows the employer to require or permit his workman to work on a Sunday, but since this course amounts to depriving workman of his legitimate and usual day of weekly rest, the employer is required to obtain the consent of the Central Government requiring the workman to work on a Sunday and he is also required to give the workman a holiday within the period mentioned and pay wages to him as prescribed. We have carefully considered Mr. Gokhale's arguments on the question of the construction of this rule; but we are unable to appreciate how this rule can be pressed into service by the employees in the present cases when it is common ground that they were neither required nor allowed to work on any of the

Sundays in question.

4. Mr. Gokhale contends that, where the rule requires payment equal to his average daily wages during the preceding week to be made to the workman, it really means that, if a workman is required to work on a Sunday, he must receive payment as directed both for the Sunday on which he works and for the holiday which he is entitled to receive. The argument is that the words 'for which' with which the last clause of Sub-rule (1) opens must mean 'for which days,' that is to say for the first day of the week which is a Sunday on which the workman is required or permitted to work and for the holiday which he is entitled to receive. In our opinion, on a construction of the words in their plain grammatical meaning, such a construction is not at all possible. 'For which' must, in our opinion, refer to the holiday mentioned in the earlier clause. Even if it is assumed to refer to Sunday, that would not make the employee's case any better, because on this construction the employee would be entitled to obtain wages on a Sunday when he is required or permitted to work. We have, however, no doubt that the words 'for which' do not refer to the first day of the week, but that they refer to the holiday in the preceding clause. Mr. Gokhale contends that on this construction the workman gets no additional benefit or advantage for working on a Sunday. The world at large enjoys a weekly holiday on Sundays, and if the workman is denied the pleasure of enjoying rest with the rest of the world on a Sunday and is made to work, he must be given some additional benefit, and it is this additional benefit which Rule 23 is purported to secure for the workman-that is the main argument which Mr. Gokhale has urged before us. There may be some force in this argument. We are free to confess that? Having regard to the provisions of Section 13, Sub-clause (c), it may perhaps have been intended by the rule-making authority to give some additional benefit to a workman if he is denied the privilege of the usual weekly rest on Sunday. But there can be no doubt that considerations of policy would be irrelevant where the words used in the statute or the statutory rule admit of only one construction. If the words used are capable of two constructions, it may be permissible to the court to prefer the construction which may be more consistent with the avowed policy of the statute. Rule 23, in our opinion, is really not capable of two constructions, and so there is no occasion to prefer one construction to the other on beneficent grounds. Even if the result

flowing from the construction, of which alone the rule seems to be capable, leads to an unreasonable consequence, that cannot alter the plain meaning of the words. It may perhaps lead to the examination of the rule afresh by the rule-making power. The rule-making power may then consider whether the intention which it had in mind in making the rule had been properly expressed by the words used in the rule. But these considerations cannot help the employees in a court of law. We must construe the rule as it stands, and we have no difficulty in holding that the construction which has been accepted by the learned authority in this case is wholly untenable.

5. Mr. Gokhale realised the weakness of his case on this question of construction. He, therefore, sought to derive assistance from Rule 22 and form IXA to which it refers. It is somewhat unfortunate that, though Mr. Gokhale relied upon this rule before the authority, the authority does not appear to have considered the rule at all. Indeed, both Mr. Seervai and Mr. Gokhale have complained before us that some of the points urged by them have not been noticed in the judgment delivered by the authority. Mr. Seervai had pleaded before the authority that the construction for which he contended should not be rejected on the ground that it is unjust or unreasonable, because his case was that, as a matter of fact, the workmen in question are in substance paid for Sundays. The daily wage paid to the present employees is first determined on the basis of thirty days of the month and this amount is divided by 26, which shows the daily wage actually paid to the worker. In support of this case Mr. Seervai had examined the Port Trust Officer Mr. Shaikh. Neither the pleading filed by the petitioners nor the evidence led by the petitioners in support of this plea has been considered by the authority in his judgment. Similarly, the argument raised by Mr. Gokhale on Rule 22 and form IXA mentioned in the rule has also not been mentioned in the judgment. This infirmity in the Judgment is probably due to the fact that the case was argued before the learned authority on 22 February 1956 and the judgment was delivered much later on 30 June 1956. The result is that the judgment does not give much assistance in deciding¹ the point of construction of Rule 23. The only argument by which the learned authority was apparently impressed was that there was no reason in principle why workers should be paid wages for a holiday which is given on any day of the week, except a Sunday, but should not be paid wages for a holiday

which is given on a Sunday. This argument may be good or bad. But the merits of this argument cannot have a material bearing on the question of the construction of the rule itself. The right to claim the amount in, question set up by the employees had to be decided, not on general considerations of reasonableness or otherwise, but strictly on the construction of Rule 23 which was the basis of the claim; and the judgment does not indicate how the learned authority construed the rule as justifying the employees' claim.

6. Let us then examine the argument based on Rule 22. Rule 22 provides for publicity to the minimum wage fixed under the Act. It requires that notices in form IXA containing the minimum rates of wages fixed together with extracts from the Act, the rules made thereunder and the name and address of the Inspector shall be displayed in English and in a language understood by the majority of the workers in the employment at such place as may be selected by the Inspector and shall be maintained in a clean and legible condition. Such notices shall also be displayed on the notice boards of all sub divisional and district offices. It would be noticed that this rule refers to form IXA and it is on two sentences occurring in Para. IV of form IXA that Mr. Gokhale bases his argument. Paragraph IV inter alia provides that the employer shall allow a day of rest with pay in every period of seven days and that ordinarily Sunday the first day of the week, shall be the holiday. It is true that, if this provision amounts to a valid rule, Mr. Gokhale would have a very strong case. This provision requires that a day of rest must be provided to the employer in every period of seven days and for this day of rest the employer has to pay wages to the workman. But the difficulty in accepting Mr. Gokhale's argument is that this statement in Para. IV of the form seems to be ultra vires. Form IXA ought to contain the minimum rates of wages fixed together with extracts from the Act. Form IXA is not expected to provide for independent rules in regard to any matter. Indeed, form IXA is mentioned in one of the rules itself. It is difficult to understand how the two statements on which Mr. Gokhale relies can be regarded as amounting to an extract from the Act. Form IXA cannot contain anything in addition to the particulars specified in Rule 22. Payment for weekly holidays is provided specifically by Rule 23, and the material statement in Para. IV of form IXA is plainly inconsistent with Rule 23. Therefore, we do not see how we can derive any assistance from this statement in judging the validity of the claim

made by the employees. This claim must be judged in the light of Rule 23 and not this particular statement in form IXA. It may be that the draftsman of form IXA had in mind the provisions of Section 13 (c). But whoever drafted form IXA has clearly exceeded his authority because form IXA had nothing to do with the framing of rules under Section 30 of the Act. Its limitation was clearly specified in Rule 22 and the limitation was that it had to contain the specified particulars and nothing else. The statement itself, however, gives some support to the argument of policy on which Mr. Gokhale has relied. But, as I have already observed, with questions of policy we would not be concerned where the material rule is clear, unambiguous and leads to one construction only. If necessary, this question of policy may have to be considered by the rule-making authority itself.

7. Since we hold that the construction placed by the authority on Rule 23 is plainly erroneous, it is really not necessary for us to consider the argument that no injustice would be done to the employees by rejecting their claim for wages on the Sundays in question. It is true that Mr. Shaikh's evidence supplies the basis for the argument that constructively the workmen can be said to have received wages for Sunday. But Mr. Gokhale contends that this aspect of the dispute would be beyond the jurisdiction of the authority under Section 15 of the Payment of Wages Act. Prima facie there is some force in this contention. But apart from this consideration, since we uphold the petitioners' case on the construction of the rule itself, it is unnecessary to pursue this matter any further.

8. In the result, the applications must be allowed, the order passed by the authority in both the cases must be set aside, and the rules made absolute. There will be no order as to costs.