SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Kothri (Madras) Ltd. Vs. Second Additional Judge-cum-appellate Authority and ors.

Kothri (Madras) Ltd. Vs. Second Additional Judge-cum-appellate Authority and ors.

SooperKanoon Citation : sooperkanoon.com/426255

Court : Andhra Pradesh

Decided On : Jun-05-1989

Reported in : (1991)IILLJ604AP

Judge : K.M. Ramaswamy, J.

Acts : Payment of Wages Act, 1936 - Sections 3, 4, 7, 9 and 15

Appeal No. : W.P. No. 5915/1985

Appellant : Kothri (Madras) Ltd.

Respondent : Second Additional Judge-cum-appellate Authority and ors.

Judgement :

1. The petitioner is a company. On September 24, 1980, as it was 'Andhra Bandh Day' the respondents, 27 workmen, were prevented from attending to their duties, and as a result they did not present themselves for duty for which the petitioner-company, in exercise of its power under Section 7 read with Section 9 of the Payment of Wages Act, 1936 (Act 4 of 1936) (for short 'the Act'), deducted the wages of the workmen. Assailing the legality thereof, an application under Section 15 of the Act was filed before the competent authority. The competent authority directed by its order dated July 31, 1982, to make payment of wages for the said day and also directed to pay a sum of Rs. 25 to each of the workmen as

compensation and costs. On appeal, it was confirmed by the learned Second Additional District Judge, Kurnoor. As against the said appellate order, this writ petition has been filed.

2. The contention of the learned counsel for the petitioner is that the finding recorded by both the courts below is that the workmen did not voluntarily absent themselves from duty. Under Section 7(2)(b), if a workman is absent from duty, the management is entitled to deduct his wages for the period of absence. In exercise thereof, deduction was made and the Tribunals are devoid of jurisdiction to go into the reasons for their absence from duty. Once it is admitted that the employees were absent from duty, the management is justified in law to deduct wages. Therefore, the orders passed by the Tribunals below are vitiated by error of law warranting interference.

3. The question, therefore, is whether the Tribunals below can go into the question whether the workmen were absent from duty and, if so, under what circumstances, and whether the management is justified in deducting wages for the period of their absence from duty

4. To appreciate the above contention, it is necessary to adumbrate the relevant provisions of the Act. The Act posits that the employer shall be responsible for payment to persons employed by him, or to pay all the wages require to be said under the Act. Section 3 imposes responsibility in that regard and Section 4 obligates to fix the period for payment of wages. Section 5 gives right to payment of wages and Section 7 gives power to the management to make deduction from the wages. Sub-section (2) of Section 7 is relevant which reads thus :

'Deduction from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely :-

(b) deductions for absence from duty ...'

Section 9 reads as follows :

'9. Deductions for absence from duty :- (1) 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 ...'

5. Section 15 gives a right to claim wages deducted by the employer or for delay in payment of wages or penalty etc., against which a right of appeal has been provided under Section 17. Thus it is seen that the management is obligated to pay wages for the period during which the employee has been present himself for duty at the place or places in terms of his contract of employment for work. If he is absent from presenting himself for duty for the whole or any part of the period during which he is required to work, the management is entitled by operation of Section 7(2)(b), to deduct wages for the period of absence from duty. It is a historic fact that during the period of agitation of 'Andhra Bandh', the entire administration in the State was paralysed and came to a grinding halt. The absence from duty by 27 workmen of the petitioner-company was only in that connection. It is an admitted fact that the said workmen were present at the entrance of the gate but were prevented from attending to their duties by the organisers of the agitation. It is also found by both the Tribunal as a fact that though some of the workmen's cards have been punched, payment was not made. It is further found that for some of the workmen whose cards have been punched, wages have also been paid, though they did not work. On these findings, the Tribunals below held that the workmen did not voluntarily absent themselves from attending duty. They were ready and willing to present themselves for duty, but they were physically prevented from entering the gate by the irganisers of the agitation. The question thereby is whether the Tribunals can go into the question whether the workmen have voluntarily absented themselves from duty or whether they were prevented from attending to their duties and that, under those circumstances, whether the management was justified in deducting the wages It may be true, as contended by the learned counsel for the petitioner, that if the workmen absented themselves voluntarily, certainly they are not entitled to claim wages for the period of their absence. Equally, when the management has prevented the workmen from attending duty, on their own action, the management

also cannot take any shelter under Section 7(2)(b) for deduction of wages. But curiously when the workmen were, in fact, present and were attempting to attend duty in terms of the contract of employment and when they were physically prevented from attending duty by the organisers of Bandh, the question is whether they had voluntarily absented from duty The finding recorded by both the Tribunal below is that they did not voluntarily absent themselves from attending duty.

6. In Mechanical Superintendent, Visakhapatnam Port Trust v. Payment of Wages Authority 1970 37 FJR 143 (AP), Chinnappa Reddy, J. (as he then was), considered the jurisdiction of the Tribunal to go into the same question under Section 7 of the Act and stated as follows (at page 146) :

'They were not prevented from presenting themselves for duty by any lock-out or lay-off declared by the employer or by any order of dismissal or other overt act of the employer. They absented themselves from duty in pursuance of a notice of strike issued by them. The action was by the workers and, however unreasonable the attitude of the management may have been, the workers cannot contend that they did not absent themselves from duty. If they absented themselves from duty, the management was, in terms of Section 9(2), clearly entitled to make the normal or ordinary deduction from wages for the period of their absence from duty. Such deduction was not contrary to the provisions of the Act even if such deduction was unjustified by reason of some other principle of industrial law'.

7. From the above decision, it is seen that if a workman has volunteered to be absent from duty with his volition, it is implicit that the management would be justified in making deduction of wages for the period of absence from duty. In other words, it is implicit that if the absence from duty is due to coercion and the workman is not a consenting party, then the management has no power to deduct wages. In that case, since the workmen voluntarily absented themselves from duty pursuant to the notice of strike given by them, the learned Judge has held that the workmen voluntarily absented themselves from attending duty and that, therefore, the management was justified in deducting the normal wages under Section 9(2) read with Section 7(2) of the Act. That principle is not applicable to the facts of the present case. In Union of India v. Chhagan (1974) LIC 497, a similar question as

to the jurisdiction has been considered. In that case, the contention was that the Tribunal had no jurisdiction to go into th merits of the reasons for absence from duty. However, it was found by the Tribunal that the workmen absented themselves from attending duty and that the deduction of wages under Section 7(2) must be upheld. In that context, it was held in Divisional Accounts Officer v. Dal Singar (177) All L.J. 56, thus :

'In this case, the contention of the employee was that he had been prohibited from attending duty although he reported for duty. In the circumstances, this Court held that the authority will have jurisdiction to enquire into the matter. This would be so because Section 7(2)(b) of the Act provides that deduction could be made only for absence from duty. The authority will, therefore, have to decide whether, in the circumstances of the case, an employee could be deemed to be absent from duty. This would be a matter ancillary to the exercise of jurisdiction to award the amount. The amount could be required to be paid to the employee only if he had in fact not absented himself from duty and not otherwise'.

8. The same ratio would apply to the facts of this case also. Then the authority constituted under Section 15 of the Act is empowered to investigate into the question of deduction of wages for absence from duty and it has got jurisdiction to go into the reasons for absence and under what circumstances an employee was absent from attending duty. If the absence of an employee is not justified in terms of either the contract of employment or reasons unconnected with or the employee or reasons unconnected with or the employee voluntarily absented himself from duty certainly the Tribunal would record a finding to that effect and uphold deduction as the employer is empowered in terms of Section 7(2)(b) read with Section 9(2) to deduct the normal wages to which the employee is not entitled for the period of absence from duty. If it finds that an employee was not responsible for absence from duty or he was prevented from attending duty, then the management is not entitled to deduct wages. The Tribunal also is empowered to go into the reasons and record a finding in that regard. In this case, the Tribunals below concurrently found that the workmen were willing to work and also went to the gate to present themselves for duty. In fact, some of the workmen's cards have been punched but they were prevented from attending duty by the organisers of

the bandh. Therefore, I have no hesitation in holding that the Tribunals have jurisdiction to go into the question. The judgment relied upon by learned counsel for the petitioner in Hyderabad Usha Works v. Industrial Tribunal (1970- II-LLJ-315), is of little assistance on the facts of this case. In that case, the question was whether the imposition of penalty was justified or was it illegal for the absence from duty In those circumstances, the Division Bench held that there is no defect in the conduct of the enquiry or irregularity in the punishment which the management had inflicted. It was also held that the Tribunal had no jurisdiction to interfere with the punishment inflicted by the management. That case does not concern itself with deduction of wages for absence from duty under Section 7(2)(b) read with Section 9(2) of the Act.

9. Accordingly, I hold that the Tribunals below are well justified in recording the finding that the workmen were prevented from attending duty. I see no error of jurisdiction in this case warranting interference. The writ petition is accordingly dismissed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com