

Kamlapat Vs. Emperor

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Court : Allahabad

Decided On : Nov-25-1929

Reported in : AIR1930All214

Appellant : Kamlapat

Respondent : Emperor

Judgement :

Dalal, J.

1. Mr. Kamlapat, owner of a factory in Cawnpore, has been convicted under Section 41(a), Factories Act. The charge is divided into two heads with respect to four workmen Puran, Gopal Singh, Badri and Bhagwat. The first charge is under Section 26, Factories Act, that the manager employed these four men during hours beyond the time fixed for the employment of each person employed in the factory. The second charge is that three of the men Puran, Gopal Singh and Badri were employed in the same factory for more than eleven hours on the particular day about which a report was made by the Chief Inspector of Factories and Boilers.

2. The argument here was that these four men were piece workers and not regularly employed and that therefore the provisions of the Act did not apply to them. No ruling was quoted on this subject, so that matter has to be decided on the ordinary interpretation of words in Section 2(2)(d):

A person who works in a factory, whether for wages or not, in cleaning or oiling any part of the machinery, or any other kind of work whatsoever, incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process of handicraft therein, shall be deemed to be employed therein.

3. There can be no denying that these four men were winding yarn which was performing a process of handicraft connected with the manufacturing process carried out in the factory and whether they were regular workers per day or according to the work turned out by them they were employed in the factory. The hours of work in the factory as fixed by Mr. Kamlapat were 7 a.m. to noon with a break of one hour and after that from 1 p.m. to 6 p.m. The Chief Inspector found the four men working at 8 minutes past 7 when he went to the factory and presumably because of the astonishing ignorance of law of the men in charge of the factory the work went on till 7-53 p.m. in spite of the presence of the Chief Inspector on the premises. The four men admittedly worked from 6 p.m. to 7-53 p.m., that is during a time which was outside the time fixed by Mr. Kamlapat for the employment of each person employed in his factory. He was guilty under Section 26, with respect to all the four cases.

4. The consideration of Section 28 is rendered difficult by both the subordinate Courts overlooking the provisions of Section 52 of the Act. I have already held that the three men Puran, Gopal Singh and Badri were employed in the factory, but the term of eleven hours is subject to a rider that in computing the hours referred to in Section 28 any interval by which work is interrupted for half an hour or more shall be excluded. The learned Assistant Government Advocate argued that the interruption would connote the cessation of work of all the workers such as by the break-down of the machinery. In this case also no ruling was quoted and one is left to interpret the words of the two Sections 28 and 52 without any indication as to how they have been interpreted in similar cases in any large city where there may be factories. Section 28 describes individual employment and is not worded like Section 26 for general employment. For that reason I am of opinion that the interruption must be taken in connexion with each individual employed and not confined to the general cessation of work as for example the interval between

noon and 1 p.m. It will be noticed from the statement of Puran that he did not take the general interval for rest between noon and 1 p.m. but went on working till 2-30 p.m. as he had work in hand between noon and 1 p.m. In that particular case, therefore, there was no interruption even though there was interruption of work for the entire factory. It seems more reasonable to interpret the section as meaning actual work and not merely residence in the factory for a certain number of hours. The analogy given by the learned Sessions Judge is misleading because if that analogy were applied the employment of every factory hand it would extend for twenty four hours as in general terms a factory-hand would be stated to be employed in the factory just as a gardener is employed for the garden of a house. This analogy does not clear up the doubt as to the interpretation of the word 'interrupted' in Section 52. It is quite true that it would not be an interruption if a worker rests for a minute or two. That is why the period of interruption fixed is half an hour or more. In the three cases it has been accepted that every one of them did not do any work for two and half or three hours. If that period is deducted they had not been employed in the factory having regard to the provisions of Section 52 for more than eleven hours.

5. For these reasons I uphold the conviction in all the four cases under Section 26 and set aside the conviction and sentence under Section 28. It was pleaded that a fine of Rs. 200 was excessive. Personally I think that a very severe fine is necessary where, the proprietor of a factory employs for superintending purposes men who are entirely ignorant of the provisions of the Factories Act. Possibly an expense of Rs. 800 by way of fine, together with payment of counsel in various Courts, will induce Mr. Kamlapat to purchase vernacular copies of the Factories Act for the guidance of the superintendents of his factory. The days of doing everything by rule of thumb without bothering one's head with the written word have long passed. The fine, if any recovered in excess, shall be refunded.