

Vimal Printers Vs. Omana

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Court : Kerala

Decided On : Aug-09-1982

Reported in : (1983)ILLJ342Ker

Judge : M.P. Menon, J.

Appellant : Vimal Printers

Respondent : Omana

Judgement :

M.P. Menon, J.

1. Respondents (1) and (2) are compositors of the printing press belonging to the petitioner. In October, 1975 they filed a joint petition before the Labour Court, under Section 33C(2) of the Industrial Disputes Act, claiming difference between wages actually paid and wages payable under the Minimum Wages Act. The 1st respondent's claim was for the period from 1.8.1967 to 30.9.1975 and the 2nd respondent's for the period from 1.2.1969 to 30.9.1975. Overruling the objections of the petitioner-employer, the Labour Court held that the respondents were entitled to get Rs. 3,405 and Rs. 1,596 respectively. This writ petition is directed against Ext. P6 order of the Labour Court.

2. It was contended before the Labour Court that the petitioner was bound to pay wages only at the rates specified in Ext. P5 agreement of 1974. That contention

was rightly rejected by the Court in the light of Section 25 of the Minimum Wages Act, which declares as void all contracts or agreements providing for payment of wages at rates lower than those fixed under the Act. The petitioner may be right in his contention that the belated claims for arrears, for more than 8 years in one case and 6 years in the other, were filed as a measure of retaliation against disciplinary action, and that but for such action, the employees were willing to receive the rates of remuneration fixed in Ext. P5. But that cannot affect the operation of Section 25 of the Act; nor was the Labour Court competent to reject the claims on the basis of Ext. P5.

3. The more important point raised before the Labour Court was that claims enforceable under the Minimum Wages Act could not be agitated in proceedings under Section 33C(2) of the Industrial Disputes Act. The Labour Court observed that even barred claims under the Minimum Wages Act could be advanced in a petition filed under Section 33C(2) of the Industrial Disputes Act. Counsel for the petitioner is apparently justified in contending that the scope of the objection has not been fully examined by the Labour Court. The objection urged in Ext. P2 was in the following terms:

The opposite party submits that the petition is not maintainable under Section 33C(2) of the Industrial Disputes Act. The claims made in the petition are for a computation of wages under the Minimum Wages Act, which is not entertainable under the provisions of the Industrial Disputes Act. The Minimum Wages Act provides the machinery for realising the amounts due to the workmen who are paid less than the minimum. Section 20 of the Minimum Wages Act specifically provides the machinery and the authority is also appointed who alone has got the exclusive authority and power to grant the prayers claimed in the petition. The petition is hence not maintainable.

Clearly, the objection was not to entertainment of barred claims only, but to claims of any kind, on the footing that Section 20 of the Minimum Wages Act provided for a machinery for enforcing claims under it, and that consequently, such claims were outside the scope of Section 33C(2) of the Industrial Disputes Act. In other words, claims enforceable under Section 20 of the Minimum Wages Act could be

enforced only by the authority appointed under that provision, and not by an authority appointed for different purposes under a different enactment.

4. Drawing inspiration from the decision of the Supreme Court in *State of Punjab v. Labour Court* 1981-I L.L.J. 354, counsel now puts his point on a clearer basis by contending that the Minimum Wages Act is a self-contained code incorporating all provisions relating to payment of minimum wages, and that its provisions impliedly exclude recourse to any other forum.

20. Claims.-(1) The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or any Officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of or payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under Clause (b) or (c) of Sections (1) of Section 13 or of wages at the overtime rate under Section 14 to employees in that area.

(2) Where an employee has any claim of the nature referred to in Sections (1), the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the authority appointed under Sections (1), may apply to such Authority for a direction under Sections (3):

Provided that every such application shall be presented within six months from the date of which the minimum wages or other amount became payable:

Provided further that any application may be admitted after the said period of six months when the applicant satisfied the Authority that he had sufficient cause for not making the application within such period.(3) When any application under Sections (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other

penalty to which the employer may be liable under this Act, direct -

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten times and the authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.

(4) If the Authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application,

(5) Any amount directed to be paid under this section may be recovered -

(a) If the authority is a Magistrate, by the authority as if it were a fine imposed by the Authority as a Magistrate, or

(b) if the authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under Sections (1) shall have all the powers of a civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a civil Court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898, (Act V of 1898).

When an employee is paid less than the minimum wages fixed under the Act, he can certainly apply to the authority appointed under Section 20 for adjudicating his

claim. A period of limitation is specified, but the authority can excuse delay if sufficient cause is made out. Besides the difference found due to the employee, the authority can also direct payment of compensation. Amounts so directed to be paid can be recovered through a Magistrate's Court as if it were fine imposed by such Court, The Act which provides for fixation of minimum wages thus provides a forum for adjudicating claims arising thereunder and also for recovery of amounts found due, together with compensation. The question is whether the provisions of the Act as a whole disclose an intention on the part of the Legislature that proceedings for recovery of amounts payable under it can be taken only under Section 20, and not under any other enactment.

6. It appears to me that Section 24 of the Minimum Wages Act furnishes some clue, though not a complete answer. That section reads:

24 Bar of suits. -No Court shall entertain any suit for the recovery of wages in so far as the sum so claimed -

(a) forms the subject of an application under Section 20 which has been presented by or on behalf of the plaintiff, or

(b) has formed the subject of a direction under that section in favour of the plaintiff, or

(c) has been adjudged in any proceeding under that section not to be due to the plaintiff, or

(d) could have been recovered by an application under that section.

The indication is that while enacting the above provision, the Legislature had thought about the question whether other remedies for enforcing claims under the Act should be excluded or not, and that having so thought about it, it had decided that only remedies by way of suit need be excluded, Section 24 prevents a court from entertaining suits for recovery of wages which could be recovered by filing an application under Section 20. It does not bar other methods of recovery. An intention to exclude recourse to remedies other than civil suits, is not disclosed; on the other hand, the specific exclusion of civil suits only implies that the legislature

did not want to exclude other remedies. The scope for invoking the principle laid down in *State of Punjab v. Labour Court* 1981-I L.L.J. 354, thus becomes limited.

7. The aforementioned decision of the Supreme Court dealt with a claim filed under Section 33C(2) of the Industrial Disputes Act, for gratuity payable under the Payment of Gratuity Act, 1972. Section 3 of the Gratuity Act provides for the appointment of a 'controlling authority' responsible for the administration of the Act. Section 4 fixes the rates of gratuity payable and the time within which payment is to be made. Section 7 obliges the employer to notify both the employee concerned and the controlling authority, as soon as gratuity becomes payable. The employer has to pay the amount to the employee if there is no dispute about the quantum; and if there is dispute, he has to deposit the undisputed part with the controlling authority. The authority should then adjudicate the dispute, and Sections (7) of Section 7 also provides for an appeal. Under Section 8, if the amount remains unpaid within the time specified, the controlling authority is authorised to issue a certificate to the Collector for the purposes of recovery, and such recovery should include compound interest at the rate of 9% from the expiry of the time specified. It was after taking into account all these detailed provisions that the Supreme Court had said that:

It is apparent that the Payment of Gratuity Act enacts a complete Code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It creates the right to payment of gratuity, indicates when the right will accrue, and lays down the principles for quantification of the gratuity. It provides further for recovery of the amount, and contains an especial provision that compound interest at nine percent per annum will be payable on delayed payment. For the enforcement of its provisions, the Act provides for the appointment of a controlling authority, who is entrusted with the task of administering the Act. The fulfilment of the rights and obligations of the parties are made his responsibility, and he has been invested with an amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Government or an appellate authority particularly constituted under the Act.

and that proceedings for payment of gratuity under the Act had to be taken under the Act itself, and not under any other enactment.

8. The question then is whether the Minimum Wages Act is complete code regarding fixation and payment of wages or minimum wages. While the Payment of Gratuity Act is

An Act to provide for a scheme for the payment of gratuity to employees...and for matters connected therewith or incidental thereto.

The Minimum Wages Act is only 'An Act to provide for fixing minimum rates of wages in certain employment.'

The preamble of the Minimum Wages Act is thus less ambitious. Section 3 of the Act provides for fixation and revision of minimum rates of wages and Section 4 deals with how such rates could be structured. Sections 5 - 9 deal with the procedure and machinery for fixation and revision. Section 12 imposes an obligation on employers to pay wages at the rates notified. Sections 13 - 17 are concerned with fixation of hours of work, payment when employees work for more or less than the hours so fixed, and payment when remuneration is on piece basis. Section 18 provides for prescription of the registers and records to be maintained, and Section 19 contemplates appointment of Inspectors. Sections 20 and 21 relate to adjudication of claims, and Sections 22 - 22C (and Section 23) relate to penalties and offences. Section 22F provides for the application of the Payment of Wages Act to scheduled employments. Section 24 has already been referred to. Section 25 prohibits 'contracting out', and Section 26 provides for exemptions. Section 27 - 30A confer powers on the Government to add to the Schedule, give directions and make rules.

9. The policy behind the Act is to restrict the powers of employers to enter into contracts as they like with their employees, in the matter of wages. Whatever be the contract, no employer shall be permitted to pay wages at rates lower than what is considered necessary for the subsistence of the employee and his family. Most of the sections are designed to achieve this end, though a machinery for expeditious enforcement of minimum wages claims is also provided. There is no

controlling or other authority to administer the Act, and the employers are not bound to notify the Inspectors or the authority appointed under Section 20. The latter authority can adjudicate only claims brought before it, and the compensation it can award is a matter of discretion, unlike the interest statutorily payable under the Gratuity Act. No doubt, the Minimum Wages Act creates a right in employees for receipt of wages at the notified rates, but the fulfilment of the rights and obligations are not made the responsibility of any particular authority. Reference has already been made to Section 24 which excludes recourse to civil courts only. Section 22F providing for the application of the Payment of Wages Act to scheduled employment is another indication that the Act is not a complete code in the matter of payment of wages or recovery thereof. Construing Section 3(2A) of the Act, the Supreme Court has held, in *J.P. Industries v. Workmen* 1972-I L.L.J. 244, that minimum wages can be fixed by industrial adjudication also, and that too at rates different from those notified by Government. While gratuity is a creation of the statute outside the contract of employment, wages are part of the parties' bargain, payable under the contract itself. The Payment of Wages Act touches some aspects of the contract: it fixes the persons actually responsible for payment, prescribes the time within which payment is to be made, limits permissible deductions and provides a cheap machinery for adjudicating claims arising out of non-payment or delayed payment, and for recovery of amounts quantified by such adjudication. The Minimum Wages Act only prescribes the lowest limit to which wages can go in scheduled employments, under any contract. There are many other enactments dealing with payment of wages during holidays, periods of leave (including maternity leave), involuntary unemployment and the like. The Minimum Wages Act is thus not a self-contained code incorporating all the provisions relating to payment of wages, or even minimum wages; and the Act discloses no intention that proceedings for payment of minimum wages shall be the exclusive preserve of the authority appointed under Section 20.

10. In *Bombay Gas Co. v. Gopal Bhiva* 1962-II L.L.J. 608, a contention was raised before the Supreme Court that claims for payment of wages barred under the Payment of Wages Act, could not be agitated in proceedings under Section 33C(2) of the Industrial Disputes Act. The Court summarised the contention in the following terms:

The argument is that the present claim made by the respondents under Section 33C(2) is a claim for wages within the meaning of the Payment of Wages Act. If the respondents had made such a claim before the authority under the said Act, they could not have got relief for more than a year. It would be anomalous, says Mr. Kolah, that by merely changing the forum, the respondents should be permitted to make a claim for as many as eight years under Section 33C(2). In this connection Mr. Kolah also contends that by virtue of Section 22 of the Payment of Wages Act, a claim for wages cannot be made by an industrial employee in a civil Court after a lapse of one year, because though the period for such a suit may be three years under Article 102, a civil suit is barred by Section 22. The jurisdiction conferred on the payment authority is exclusive and so far as the said Act goes, all claims must be made within one year.

But that was rejected with the following observations:

In dealing with this question, it is necessary to bear in mind that though the legislature knew how the problem of recovery of wages had been tackled by the Payment of Wages Act and how limitation had been prescribed in that behalf, it has omitted to make any provision for limitation in enacting Section 33C(2). The failure of the Legislature to make any provision for limitation cannot, in our opinion, be deemed to be an accidental omission. In the circumstances, it would be legitimate to infer that the legislature deliberately did not provide for any limitation under Section 33C(2). It may have been thought that the employees who are entitled to take the benefit of Section 33C(2) may not always be conscious of their rights and it would not be right to put the restriction of limitation in respect of claim which they may have to make under the said provision.

No doubt, the question considered was one relating to limitation and barred claims, but the employer's plea that 'the jurisdiction conferred on the payment authority is exclusive', was not accepted. The Court noticed that the problem of recovery of wages had been tackled by the legislature in the Payment of Wages Act, and still held that Section 33C(2) of the Industrial Disputes Act could also be used for the same purpose. Section 20 of the Minimum Wages Act is similar to Section 15 of the Payment of Wages Act, and it should, therefore, follow that

claims arising under the former Act could also be tackled under Section 33C(2) of the Industrial Disputes Act.

11. The only other point raised is that the Labour Court erred in refusing to examine the petitioner's case that respondent No. 2 had commenced service only from 1972, and not from 1969 as she had claimed. The Labour Court held that the point was not pleaded, and it is urged that the law of pleadings cannot be strictly applied to proceedings under Section 33C(2). It is true that the 2nd respondent had specifically claimed arrears of wages from 1.2.1969 to 30.9.1975 in Ext. P1, and that the petitioner had not raised any objection regarding the period as such, in Ext. P2 objections. But he had produced the Employment Registers for the period from 1965-66 to 1970-71, and the Attendance Registers for the period from 1.1.1970 to 27.3.1971. Having due regard to the applicability of the law of pleadings to proceedings of this kind, and in view of the circumstance that the claim for wages due from 1969 was raised for the first time only in 1975, I think this was a case where the Labour Court could have scanned the oral evidence adduced, in the light of the registers produced, to render a decision on merits. But the controversy about length of service is confined to the case of the 2nd respondent only. I therefore uphold Ext. P6 order to the extent it computes the value of the benefit due to the 1st respondent at Rs. 3,405. Regarding the 2nd respondent, I direct that the question relating to the length of her service be re-examined by the Labour Court on the basis of material already on record, if the petitioner deposits before it for payment to her, an amount of Rs. 900 within one month from today. If no such deposit is made, Ext. P6 will stand confirmed as regards the 2nd respondent's claim also. All other contentions raised in this Original Petition are overruled.

12. Disposed of as above. No costs.