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Court : Kerala

Decided On : Oct-25-1960

Reported in : (1961)IILLJ573Ker

Judge : C.A. Vaidialingam, J.

Appellant : Nilgiris Tea Estates, Ltd.

Respondent : Workmen of Stagbrook Estate and ors.

Advocate for Pet/Ap. : Sri. K.P. Abraham

Judgement :

C.A. Vaidialingam, J.

1. In this application under Article 226, Sri K.P. Abraham, learned Counsel for the petitioner, challenges the award passed by Industrial tribunal, Alleppey, namely, Ex.P. 14, dated 12 December 1957 and published in the State Gazette on 14 January 1958.

2. The short attack that is made on this award by the learned Counsel is that the tribunal has exceeded its jurisdiction in making a scheme for gratuity payable to the workers in this estate.

3. Sri Abraham also contended that there was really no industrial dispute as such which could form the subject of an award regarding gratuity payable to the

workers, because all along and right through, the workers have been claiming from the vendor company only what could be retrenchment compensation payable under Section 25F of the Industrial Disputes Act, which is the relevant provision of law applicable on the material date.

4. The circumstances under which this award came to be passed can be mentioned briefly. The estate, which was originally owned by the Stagbrook Rubber and Tea Estates Limited, London. entered into negotiations for purposes of sale with the present petitioner, namely, the Nilgiris Tea Estates Limited. It is seen that the Stagbrook Estates consisting of the Stagbrook, Manimala and Hope estates were ultimately purchased by the petitioner as per the sale deed, dated 20 April 1955 and the transfer of possession of the estate was also effected in favour of the petitioner on 12 May 1955.

5. The workers in the estate during the management by Stagbrook Rubber and Tea Estates Limited, naturally had apprehensions about the recognition of their due rights and claims. Therefore, they started correspondence with the Stagbrook Rubber and Tea Estates Limited, which I will call hereafter as the vendor company. The earliest of the correspondence starts under Ex.P. 1, dated 9 February 1955. That is a letter addressed by the labourers and kanganies of the Stagbrook Estate to the vendor company. The particular aspect in this communication that has to be noted is where the workers state that they are quite uncertain about their future and they beg the vendor company to be so good as to make proper arrangements regarding their future and past claims before the property is handed over to the petitioner company. In particular they place for the' kind consideration of the vendor company certain points. Point 2 requested the vendor company to pay them gratuity at the rate of one month's wages for every year of service and they requested the vendor company to be pleased to see that this amount is paid in cash before the property passes into the possession of the petitioner.

6. There is a reply by the vendor company to the workers under Ex. P. dated 4 April 1953. Therein, the vendor company assures the workers in the following terms:

We are glad to inform you that it is one of the conditions of the sale that in case the sale is completed by Mr. George, he shall take over into his service and continue the employment of all the labourers of the estate including kanganies and shall perform and discharge all liabilities and obligations towards them relating to their employment under this company.

7. This was followed again by a letter by the labour union under Ex. P. 4 to the vendor company on 9 April 1955. In the said communication the union appreciates the attitude of the vendor company that their claims will be properly looked after and attended to by the petitioner but they express their concern in making the buyers responsible for those claims. Therefore, they state:

As we have long and meritorious service with the company, we demand that our gratuity and other claims should be paid to us in cash before you hand over the estate.

8. On behalf of the vendor company their attorneys sent a communication on 2 May 1955 under Ex. P. 5. Therein, it is stated that incase the sale is completed, it has been arranged that the purchaser shall take over into the purchaser's service and continue the employment of all the labourers (including kanganies) and shall perform and discharge all liabilities and obligations relating to their employment including their employment under the vendor company. The workers also were assured that these conditions have been duly incorporated and provided for in the sale agreement as between the vendor company and the vendee and it informs the labour union that there is absolutely no cause for anxiety on the part of the labour that their just claims would not be met in the event of the sale being completed and there is no justification for any dispute or agitation in this matter.

9. There was a notice put up by the vendor company on 4 August 1955, Ex. P. 6, wherein it is stated that the Stagbrook Estate has sold and delivered possession of the Stagbrook, Manimala and Hope estates to the Nilgiris Tea Estates, Ltd., managed by A.V. George and Company, Ltd., Kottayam. It la also stated that they are glad to inform that the purchasers have undertaken to take into their service and continue the employment of all labour (including kanganies) on the said estate and to accept all employer's liabilities and obligations towards them relating to their

employment including employment under the vendor company.

10. There was a notice again put up on 27 May 1955 under Ex. P. 7 by the Stagbrook Estate stating that the workers should call at the place mentioned therein and receive the various dues stated in the said notice. On this notice, the union again sends a communication, Ex. P. 8, on 28 May 1955 to the Superintendent of the Stagbrook Estate. It is stated that an industrial dispute is already pending before toe Assistant Labour Commissioner, Kottayam, between the management of the Stagbrook Rubber and Tea Estates, Ltd., and their workmen regarding the gratuity and other claims of the workers for the termination of their service under the vendor company due to the orange of ownership. Therefore, in view of this, the latter requests the management to delay the payment mentioned in the said notice.

11. There was a communication sent by the union to the Assistant Labour Commissioner, Kottayam, on 1 June 1955, Ex.P. 9. The union informs the Assistant Labour Commissioner that the vendor company has not settled all their legitimate dues due to the termination of the services of the workman from their company consequent on the change of the ownership of the estate. The letter further says that such an attitude on the part of the company in not giving the workers their retrenchment benefits have created much anxiety and unrest. Therefore the letter requests the Assistant Labour Commissioner to resume the conciliation proceedings which had already commenced on 10 May 1955. There was a reply from the Assistant Labour Commissioner to the union under Ex. P. 10 dated 3 June 1966. The Assistant Labour Commissioner advises the union to receive the amounts as desired by the management and which are enumerated in the said letter and he assures the workmen:

The claim for gratuity now pending conciliation is an entirely independent one which has no bearing on the above.

After observing as above, the Assistant Labour Commissioner requests the union to advise its workers to receive the various amounts which the management are prepared to pay and it is specifically stated that the receipt of these amounts will in no way prejudice the claims of the workers. If any, for gratuity.

12. This is the correspondence that has passed between the vendor company on the one hand, and the union and the Assistant Labour Commissioner on the other. It will be dearly seen that though here and there the workmen are loosely referring to a claim due to them from the vendor company due to the termination of their services from the Company, in essence and in substance they also make the claim for gratuity payable for their past service in the vendor company. This assumes some importance because of the contention raised by Sri K.P. Abraham to the effect that there was absolutely no industrial dispute as regards the workmen and the management regarding the payment of gratuity. In particular, the last letter that I referred to, namely, Ex. P. 10, dated 3 June 1955, the communication from the Assistant Labour Commissioner puts the matter beyond all doubt that the claim for gratuity is pending conciliation with him and that is entirely independent of the various other payments sought to be made by the management. Therefore, he clearly informs the union that the amounts, If received from the management, will not in any way prejudice their claims for gratuity, which is pending in a totally different proceeding.

13. In fact, I have already mentioned that in the very first communication, namely, Ex. P. 1, one of the claims made by the labour union on behalf of the workers is that the vendor company should pay gratuity at the rate of one month's wages for every year of service and that they should be pleased to see that this amount is paid in cash before the property is given possession of to the present petitioner.

14. It is in these circumstances that the State Government decided to refer the dispute for arbitration. Originally the questions that were referred under Ex. P. 11 were as follows:

(1) Whether there was termination of service of labour employed in Stagbrook Estate, Peermade, by reason of the transfer of the estate to the purchaser company?

(2) If so, what relief or reliefs incidental to termination of service are the said labour entitled to?

(3) Who is liable for payment of such reliefs to the labour, the vendor company or the purchaser?

15. I may state quite frankly that if the reference incorporating these questions for decision has stood as it was originally 'framed, there could be no dispute that the question that was directly referred for decision by the industrial tribunal was only relating to the termination of service in the Stagbrook Estate. But it will be seen that there were some modifications effected by a later order of the Government and the question that was actually referred, and which had to be considered by the industrial tribunal, is the one that I will give presently.

16. Under Ex. P. 12, the State Government effected certain changes in the original order of reference and it will also be seen that under Ex. P. 12 the original questions referred for arbitration were withdrawn and substituted by the following:

Whether the workmen employed in the Stagbrook Estates, viz., Stagbrook, Manimala and Hope estates, are entitled to any gratuity or compensation for the past services. If so, at what rate and who is liable to pay the same.

17. As rightly pointed out by the learned Government Pleader appearing for the State and by Sri Kalathil Velayudhan Nair, learned Counsel appearing for the union, after the correspondence that has been referred to by me and in view of the specific question that has been referred for arbitration, the contention that the question of gratuity should not have been considered by the tribunal raised by Sri K.P. Abraham is one which cannot be accepted in the circum stances of this case. The question of gratuity was looming large in the minds of the labour unions when they have been making several attempts in respect of the same as will be clear by the correspondence that I have already adverted to. Whatever may have been the reasons for making the original order of reference under Ex. P. 11 posing the question as one arising out of termination of service of labour employed under the Stagbrook Estate, that question has been withdrawn and the modification effected by Ex. P. 12 clearly shows that the industrial tribunal was called upon to decide the question as to whether the workmen are entitled to gratuity or compensation for the past service and if so at what rate and who is liable to pay the same.

18. Sri K.P. Abraham; learned Counsel, contended that the jurisdiction to decide such matters by the industrial tribunal is based upon the actual terms of reference and that it has no power to travel beyond the terms of reference. As a proposition of law, this contention of the learned Counsel is unexceptionable. In particular, Sri Abraham referred to Sub-section (4) of Section 10 to the effect that the labour court or the tribunal or national tribunal, as the case may be, shall confine its jurisdiction to those points and matters incidental thereto. According to Sri Abraham, even assuming that the reference in this case was in order, the tribunal's duty in these circumstances was only to consider whether the workmen in this case are entitled to any gratuity or compensation for the past service. It has no jurisdiction, according to Sri Abraham, to frame a scheme of gratuity which can come into force only at a future date.

19. It is not possible for me to accept this contention of Sri Abraham. If the position is that the question that was referred to was a claim for gratuity made by the workmen, In my opinion, the jurisdiction of the tribunal to frame a scheme of gratuity will be a matter incidental to the adjudication and it will come well within the scope of Sub-section 4 of Section 10 which gives jurisdiction to the tribunal to adjudicate on the points 'and matters incidental thereto.' In this connexion, it is worthy to consider what exactly is gratuity, because some emphasis had been laid by Sri Abraham in the demand made by the workmen to the effect .that they must be given compensation for the termination of their services in consequence of retrenchment because of the change of ownership. I have already indicated that no doubt here and there these loose expressions are also made by the union but it should not be forgotten and it should not be missed that they were also at the same time pressing their claim for payment of gratuity. In Indian Hume Pipe Co. v. its workmen 1969--II L.L.J. 830, their lordships of the Supreme Court observe at p. 832 as follows:

The principal point which calls for our decision is whether a scheme of gratuity can be framed by industrial tribunals for workmen who are entitled to the benefits of Section 25P of the Act. This question has been subsequently raised before industrial tribunals and has generally been answered in favour of the employees. In dealing with this question, it is Important to bear in mind the true character of

gratuity as distinguished from retrenchment compensation. Gratuity is a kind of retrenchment benefit like the provident fund or pension. At one time it was treated as payment gratuitously made by the employer to his employee at his pleasure, but as a result of a long series of decisions of industrial tribunals gratuity has now come to be regarded as legitimate claim which workmen can make and which, in a proper case, can give rise to an industrial dispute. Gratuity paid to workmen is intended to help them after retirement, whether the retirement is the result of the rules of superannuation or physical disability. The general principle underlying such gratuity schemes is that by their length of service, workmen are entitled to claim a certain amount as a retiral benefit.

20. After having observed thus regarding the true connotation of the expression 'Gratuity' their lordships consider also the expression 'retrenchment compensation.' It is not necessary for me to advert to those observations.

21. Their lordships further observe:

Whenever industrial tribunals deal with the employees' claim for gratuity, they consider the financial position of the employer before granting the employees' demand for framing a gratuity scheme; it is only if they are satisfied that the financial condition of the employer is satisfactory and the burden of the gratuity scheme can be borne by him that they proceed to frame schemes of gratuity and thereby secure for the employees the retirement benefit in the form of gratuity.

22. Their lordships consider a scheme which is a model gratuity scheme in their lordships' judgment. It will be seen that the claim in the present case made by the employees was both compensation for past service under the vendor company as well as for payment of gratuity.

23. It will be seen that before the tribunal the union appears to have abandoned their claim for compensation for past services. That will be seen from the order of the tribunal to the effect that at the time of arguments, the learned Counsel appearing for the union as well as the learned Counsel appearing for the representative of the kanganies' federation, conceded that the question of compensation for past service of the workmen does arise and therefore they are

not pressing it. Therefore, on this concession the tribunal has stated that the workmen of the Stag-brook Estates are not entitled to any compensation for their past services. The tribunal further observes that the only remaining claim is that of gratuity. It is also seen that before the tribunal the union had filed a draft of the scheme which, if accepted by the tribunal, will be beneficial to the workers. On the other hand, the attitude adopted by the petitioner company, will be evident from the nature of the written statement filed before the tribunal. The management took up the position that the claim of the worker was for compensation for termination of their employment under the vendor company. This, according to the management, is not available to them because the only provision or law under which the workmen can claim relief is under Section 25F of the Industrial Disputes Act. In this case, in view of the fact that there has been no retrenchment of the workmen, Section 25F has no application.

24. The petitioner further took up the plea that the claim for retrenchment relief or compensation is also not warranted by the reference in the dispute. The petitioner further 'stated that there was no claim for retrenchment compensation but only for gratuity. So far as the claim for gratuity itself is concerned, the petitioner further states that in the plantation Industry there has been no custom or practice of paying gratuity to the workers and that it is a question which is being considered by the tripartite labour committee constituted by the Government. Then the petitioner also took up the position that the concern has not the capacity to bear the burden of a gratuity scheme for the workmen. I am only adverting to some of these points because Sri K.P. Abraham contended that the management always understood the claim of the workmen as being one for compensation consequent on a retrenchment being effected and therefore their claim can only be co-related to the provisions of Section 25F of the Act. She particular statement that I have already referred to made by the management does not support the learned Counsel in his contention because it clearly shows that the management understood the claim of the workers as one for payment of gratuity also.

25. The further attack that is made on this award by Sri K.P. Abraham is that it may be that as an industrial dispute, as such arising between the management and the workers regarding the framing of a gratuity scheme or the manner in which

such a scheme can be framed, that itself can be the subject of an Industrial dispute and that must be specifically referred to the Industrial tribunal for decision. In this case, the question of framing the scheme has not been referred to by the Government even under Ex. P. 12. Sri Abraham contended that the framing of a scheme in the circumstances is beyond the jurisdiction of the industrial tribunal. Here again, I am not able to accept the contention of this learned Counsel. I have already referred to the provisions of Sub-section 4 of Section 10 which gives jurisdiction to the tribunal to adjudicate on the points referred to in the Industrial dispute and matters incidental thereto. The main and substantial matter that was referred to in this case for adjudication by the tribunal is that contained in Ex. P. 12 and it leaves no room for doubt that the parties were in acute controversy as regards the claim made by the workmen for gratuity for their past services. Nor am I impressed with the contention of Sri K.P. Abraham, that the framing of a gratuity scheme which itself has to come into force at a future date is not either justified or warranted.

26. I have already referred to the decision of their lordships of the Supreme Court Regarding the exact connotation of the term 'gratuity.' Therefore, when that expression is used in the order of reference, Ex. P. 12, it clearly shows that anything incidental for the purpose of payment of this gratuity for past servicers a thing which can be done and is within the jurisdiction of toe Industrial tribunal. Sri Abraham contended that the petitioner company had undertaken to honour all the liabilities of the previous owners, namely, the vendor company. Therefore, Sri Abraham contended that there was absolutely no necessity for the Industrial tribunal to thrust a scheme like this on the petitioner. I am not able to appreciate this line of argument. I have not been shown any material from which it can be categorically stated that the petitioner company has unequivocally undertaken or agreed to take over the liability for payment of gratuity which the vendor company was bound in law to provide for. On the other hand, it has been brought to my notice by the learned Government Pleader and also by Sri Velayudhan Nair, that far from agreeing to bear this gratuity obligation, the present management's attempt has been only to wriggle out of the same, if possible, and they went even to the extent of contending that the gratuity scheme is one which could not have been made even against the vendor company. It is unnecessary for me to go into

all these points excepting to note that, in the circumstances, the scope of the reference clearly justified the Industrial tribunal incorporating in its award the gratuity scheme which admittedly will come into existence only on the contingencies referred to and provided for therein. Even otherwise, when the vendee company is prepared to continue the services of the former employees under the Stagbrook Estate without any break, it stands to reason that their past service will have to be taken into account for the purpose of calculating the amount of gratuity that a particular worker may be entitled to be paid under the conditions mentioned therein.

27. Therefore, I am not inclined to accept the contention of Sri K. P. Abraham that the order of reference does not contemplate an adjudication on the question of gratuity which by its nature is payable only in future. Nor am I able to accept the contention of Sri K. P. Abraham that in considering this question, the industrial tribunal has in any way acted without jurisdiction or exceeded its jurisdiction vested in its by law when it provided a scheme of gratuity which would be binding on the management and the workers. I am inclined to consider that that question is really incidental to the adjudication on the main point. Even otherwise, the reference itself can be understood to contemplate such a provision being made because after stating whether the workmen employed in the Stagbrook Estates are entitled to any gratuity or compensation for the past service, the question further proceeds to say, If so at what rate and who is liable to pay the same. If the petitioner company has taken over all the liabilities of the vendor company in respect of their workman, it is needless to say that the direction by the tribunal that it is really the petitioner who is liable to pay is perfectly correct and justified in the circumstances. The question of rate decided by the tribunal is also well within its jurisdiction.

28. Therefore, the main contention of Sri K.P. Abraham that the award of the Industrial tribunal is one passed without jurisdiction, when it provided for a scheme of gratuity, cannot be accepted and has to be rejected.

29. I may state at this stage that though the unions placed before the industrial tribunal certain schemes for acceptance, it is rather unfortunate that the petitioner

company never cared to co-operate with the tribunal in that matter. The result was, the scheme that has now been framed by the industrial tribunal. Even in this Court apart, from the question of jurisdiction to frame a scheme, the learned Counsel has not attacked the particular clauses of the scheme. I am mentioning this because, if otherwise open to me, I would be inclined to interfere, at any rate, with Clause 7 of the scheme which restricts the non-liability of the company to pay gratuity to a workman only in cases when he is dismissed for misconduct involving financial loss to the estate. It will he worthy of note that in the decision of the Supreme Court, that I have adverted to earlier, and in which their lordships of the Supreme Court called it a model scheme, there was no provision for payment of gratuity to an employee who is dismissed for misconduct. I would have vary much liked a clause similar to that to be incorporated in the present one; but as Sri Abraham has not attacked the scheme, as such either, before the tribunal or in this Court, that question does not really arise and therefore the scheme as framed by the tribunal will have to stand. In the result, this application fails and is dismissed with costs of the respondents, one set.

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