

P. Joseph and ors. Vs. the Management of Gopal Textile Mills and anr.

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SooperKanoon Citation : sooperkanoon.com/801000

Court : Chennai

Decided On : Aug-21-1974

Reported in : (1975)ILLJ136Mad

Judge : K. Veeraswami, C.J. and ;Natarajan, J.

Appellant : P. Joseph and ors.

Respondent : The Management of Gopal Textile Mills and anr.

Judgement :

K. Veeraswami, C.J.

1. The Correctness of the view taken in Sri Meenakshi Mills Ltd. v. Labour Court, Madurai 1971 11 L.L.J. 215, and S.M. Mills v. Labour Court, Madurai : (1971)ILLJ215Mad , is in question. That view appears to receive support from Girdharlal Laljibhai v. Nagraashna 1964 11 L.L.J. 235, decided by Shelat, C.J., and Mehta, J., of the Gujarat High Court. The 43 workmen had completed 240 days of continuous work in the establishment. That is the finding which is now concluded. Because to start with they were all badlis, the question is whether in view of the lay-off, they are entitled to lay-off compensation. Section 25C starts by referring to a workman and excluding from its purview badlis who are temporary workers or substitutes for permanent workmen. But the section contains an explanation the effect of which is that, if a badli had put in 240 days of continuous work, he shall cease to be regarded as such. That means that in that event he will be a workman

for the purposes of S. 25C. So far, no controversy arises. In *Sri Meenakshi Mills Ltd. v. Labour Court, Madurai* 1971 L.L.J. 215, Kailasam, J., was of the view that a badli could not get lay-off compensation, because of the very nature of his employment. Alagiriswamy, J., in *S.M. Mills v. Labour Court, Madurai* : (1971) ILLJ 215 Mad, was of opinion that because a badli was but a substitute and casual workman, he had no right to employment and it followed that, when no employment was given to him, no question of compensation would be involved. A similar view had been expressed by a Division Bench of Gujarat High Court in *Girdharlal Laljibhai v. Nagrahsna* 1964 L.L.J. 235.

2. With due respect we are unable to share that view. The definition of 'workman' does not exclude even a casual employee or a substitute like a badli. Unless the context requires otherwise or it would be repugnant, the normal definition of 'workman' will have to govern the sections in the Act for the purpose of that interpretation. There is nothing in S. 2(kkk) which would allow by-passing of the definition. The provision applies to a workman whose name is borne on the muster roll of the industrial establishment and who has not been retrenched. It cannot be implied into this provision that only a man who has got a right to employment would come within the purview of S. 2(kkk). To assume so, will be begging the question and bypassing the definition of 'workman'. The only conditions laid down are that, in order to come within the purview of that provision, as we have already indicated, his name should be borne on the muster roll of the industrial establishment and he should not have been retrenched. In fact, this is made clear by the explanation which follows the provision. That is to say, every workman whose name is borne on the muster roll of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of the clause. The Presiding Officer, Labour Court, in the instant case assumed and proceeded on the basis that the workmen with whom we are concerned, were borne on the muster roll of the establishment and had put in continuous service for 240 days. There was power shortage on account of which the establishment could not reach full production. Nevertheless it employed all the permanent workmen. But at the same

time these 43 workmen were without work.

3. Section 25C by itself creates no difficulty. The meaning is plain, with reference to that section, that if badlis have completed continuous service for 240 days they will cease to be regarded as such. As workmen, therefore, they would be entitled to compensation under S. 25C, provided it was a case of lay-off. In our opinion, there is no justification to exclude from the purview of the definition of 'lay-off' badlis who had completed 240 days of continuous service or for that matter any badli who had not even completed that amount of service, because it speaks of only a workman and not in terms of a permanent or temporary workmen. A workman is one as defined and applying that definition S. 2(kkk) attracts all sorts of workmen, temporary or permanent, provided their names are borne on the muster roll of the establishment and they have not been retrenched.

4. Reading the definition of 'workman' and that of 'lay-off' in S. 2(kkk) and considering the scope of S. 25C as well as S. 25F it seems to us the policy of law is that, though a badli who has not put in 240 days of continuous service and who has not been retrenched may be laid-off within the meaning of S. 2(kkk), he will not be entitled to any compensation under S. 25C or even retrenchment compensation under S. 25F because he has not qualified himself to be a workman first under S. 25C by attracting the Explanation and, therefore, nullifying the exclusion provided by S. 25C and for the purpose of S. 25F by putting in the requisite amount of service, that is to say, continuous service for one year. That being so, there is really no hardship for any establishment. Only if a workman who is temporary one like badli has put in more than 240 days of continuous service, the question of paying compensation arises for lay-off for retrenchment. Even there, the law provides for relief of the hardship, if the establishment wants to get rid of him. The question is not one of right to get employment but one of the badli having completed 240 days of continuous service and having qualified himself as a workman under S. 2(kkk) and 25C.

5. The appeal is, therefore, allowed with costs. Counsel's fee Rs. 100.