

Ananda Transport Vs. M. Chelliah and ors.

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Court : Chennai

Decided On : Feb-11-1974

Reported in : (1975)IILLJ39Mad

Judge : Ramaprasada Rao and Natarajan, JJ.;

Appellant : Ananda Transport

Respondent : M. Chelliah and ors.

Judgement :

Ramaprasada Rao, J.

1. Common questions arise in these writ appeals. We shall refer to the parties as arrayed in the writ petitions. Thirteen workers in Writ Petition No. 2723 of 1969 and five workers in Writ Petition No. 2724 of 1969, who were the respondents in the writ petitions, claimed before the labour Court functioning under the Industrial Disputes Act, 1947, that they were not given uniform and chappals during the years 1966 and 1967 and also washing charges, providing all of which is obligatory on the part of the management for the different workmen concerned in the two writ petitions, and they sought the assistance of the labour Court in the matter of such benefits which were capable of being computed in terms of money to be so computed. The management was the respondent before the labour Court. The labour Court, after having correctly appreciated the position of law that such benefits were computable in terms of money and they were benefits to which the

workmen were entitled to under the provisions of the Madras Motor Transport Workers' Rules, 1965, framed under the Motor Transport Workers Act of 1961, computed the same and granted it to the workmen. The management, which is a transport undertaking, filed two writ petitions as above in this connection and sought for writs of certiorari to quash the decision of the labour Court in each of those petitions. According to the management, the labour Court did not have the requisite jurisdiction to entertain the application for the computation of the benefits in question and in any event as the benefits ex facie are to be enjoyed but not encashed, no question of computation of such benefits would arise for the exercise of jurisdiction, even if such jurisdiction is available in the labour Court, and pass a decision thereon. Alagiriswamy, J., as he then was, would not entertain these petitions even at the admission stage, but from the records it does not appear that there was any serious argument before the learned Judge about the maintainability of the applications before the labour Court. The learned Judge, however, held that the benefits sought for in the instant case were capable of being computed in terms of money, having regard to its nature and purpose, and he accordingly dismissed the writ petitions. It is as against these, the present appeals have been preferred.

2. Mr. Varadarajulu Naidu, the learned Counsel for the appellant, referred to us the relevant provisions of the Payment of Wages Act, 1936, the Industrial Disputes Act, 1947 and the Motor Transport Workers Act, 1961 and the rule framed thereunder and repeated before us the main contention that the applications filed under Section 33C(2) of the Industrial Disputes Act are not maintainable and hence the decision rendered on such applications should be ignored. He did not, however, contend that the quantifications as made by the labour Court and accepted by the learned Judge are in any way excessive or not proper.

3. We shall now refer to the necessary provisions in the concerned enactments to appreciate the contention of the learned Counsel for the appellant. Under the Payment of Wages Act, 1936, the term 'wages' is defined, in Section 2(vi) therein, as meaning, all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person

employed in respect of his employment or of work done in such employment and proceeds to include some more enumerated items of remuneration set out in Clauses (a) to (e) therein. It is not, however, necessary for the purpose of this case to go into the scope of the other remunerations set out in the sub-Clauses as above. Section 15 of the Act provides the method by which claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims are to be decided or settled. Various Tribunals are mentioned in Section 15 which include the Presiding Officer of any labour Court as well.

4. 'Wages' is also defined in the Industrial Disputes Act under Section 2(rr). The definition may be extracted for ready reference:

'wages' means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes--

(i) such allowance (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles;

(iii) any travelling concession;....

5. Section 33C(2) is a special provision in this Act which confers jurisdiction on the Tribunals constituted under the Act to quantify any benefit to which a workman is entitled to under the conditions and limitations of service and which is capable of being computed in terms of money. The word 'benefit' used in Section 33C(2) has a special significance and obviously stands out as distinct and separate from the term 'wages' which is adopted to denote a particular remuneration to which the worker is entitled to under the contract of service. We shall presently refer to this aspect later.

6. The Motor Transport Workers Act, 1961, is again a special enactment and is indeed a welfare measure to provide for the welfare of the motor transport workers and to regulate the conditions of their work. Section 2(1) adopts the meaning assigned to the word 'wages' in Clause (vi) of Section 2 of the Payment of Wages Act. In Chapter IV dealing with welfare and health of workers in transport undertakings, the Legislature has specifically provided for an obligation which ought to be suffered by an employer in a motor transport undertaking. It says that the State Government may, by notification in the Official Gazette, make rules requiring an employer of a motor transport undertaking to provide for the drivers, conductors and line checking staff employed in that undertaking such number and type of uniforms, raincoats or other like amenities for their protection from rain or cold as may be specified in the rules. In addition it provides that such employer shall pay to his or its drivers, conductors and line checking staff an allowance for washing of uniforms, provided as above, at such rates as may be prescribed, provided that no such additional allowance shall be paid when independent adequate arrangements for the washing of uniforms have been made by the concerned employer. Section 40 enables the State Government to make rules to carry out the purposes of the Act. In furtherance thereto, the Madras Motor Transport Workers' Rules, 1965, have been framed in which it is made clear that those rules should apply to a motor transport undertaking, only. In Rule 23(1) the category of staff, the particulars of the uniforms to be given to them, the quantity of such articles, the period during which such supplies should be made are all enumerated. In the proviso an additional safeguard is contemplated in the case of workmen working in hill areas. Sub-clause (2) of Rule 23 makes a reference to the payment of the washing allowance contemplated in Section 10 of the Act. A rate is prescribed thereunder, and it is said, that such amount shall be paid if in arrears, on the day on which the wages or salary of the drivers, conductors and line checking staff are paid. It is in the above context and the statutory provisions, we have to consider the contention of Mr. Naidu whether the labour Court did have jurisdiction to entertain under Section 33C(2) of the Industrial Disputes Act, an application for the computation in terms of money of the benefits such as the grant of uniforms, chappals and washing allowances which, admittedly in the instance case, were not given during the period in question. We are unable to accept the

general contention of Mr. Varadarajulu Naidu that 'wages' appearing in the Payment of Wages Act and in the Industrial Disputes Act as also in the Motor Transport Workers' Act would include all and every benefits. The term 'wages' is inextricably related to a living wage. The allowance referred to in Section 2, Clause (vi) of the Payment of Wages Act and which definition is also attracted under the provisions of the Motor Transport Workers Act should be interpreted ejusdem generis and ought not to be understood as equivalent to wages or salary. We have referred to Rule 23 in the Madras Motor Transport Workers Rules. While enumerating the manner in which the washing allowance should be paid, the rule making authority has made a distinction between such allowance and wages or salary of the drivers. The last portion of Sub-rule (2) of Rule 23 says that the washing allowance shall be paid in arrears on the day on which the wages or salary of the drivers are paid. The rule, therefore, intrinsically contemplates that there is a distinction between wages or salary on the one hand and washing, allowance on the other. This interpretation is equally applicable even to the grant of benefits such as uniforms and chappals. Wages, allowances and other monetary benefits are components of a living wage to be paid to a worker, which wage or salary cannot obviously in these days be static but expanding. As in a welfare State, the social and ethical implications of the arithmetics and economics of wages cannot be ignored, the term wages is always persuasively understood as living; wages. But apart from the living wage, various beneficial legislations in our country have thought fit to provide certain non-monetary benefits to workers according to the nature, scope and quality of their service with a particular employer. In the instant case, we are concerned with a transport undertaking and for the welfare of workers in a transport undertaking special legislation was undertaken and rules thereunder have been framed. It is in this view, the word 'benefit' appearing in Section 33C(2) of the Industrial Disputes Act has to be understood. If, therefore, under a special welfare legislation for a body of workers working in a motor transport undertaking certain benefits are contemplated, then those benefits if not respected by the employer have to be granted in a manner known to law by statutory authorities functioning for the purpose of settling such disputes between workers and managements. It is to achieve such a sole beneficial purpose Tribunals have been set up under the Industrial Disputes Act of

1947. It, therefore appears to us that if uniforms and chappals are not, granted, which grant is made compulsory under the provisions of the Motor Transport Workers Act and the rules made thereunder, the management cannot escape the award of such a benefit to its workmen by invoking technical problems.

7. The word 'benefit' in Section 33C(2) is not to be understood as monetary benefit alone. It is certainly not equable to wages. If that were so, the definition in the Industrial Disputes Act would have said so. In our view, the word 'benefit' would also take into its fold, non-monetary benefit. Thus understood, the grant of uniforms, chappals, etc., are non-monetary benefits. There is no express bar either in the Payment of Wages Act or in the Industrial Disputes Act which prohibits the labour Court functioning under the Industrial Disputes Act to compute a non-monetary benefit. As a matter of fact, the labour Court also could be nominated as: a statutory Tribunal under Section 15 of the Payment of Wages Act. The Legislature therefore has thought it wise to set up independent but distinct Tribunals to achieve the different purposes of the Act. We are here concerned, as we said, with a non-monetary benefit and the plea of want of jurisdiction in the labour Court to entertain applications for the computation of such benefits in terms of money is, therefore, not sustainable.

8. Mr. Varadarajulu Naidu, however, referred to a decision in *Bombay Gas Company, Ltd. v. R.N. Kulkarni* 1965 L.L.J. 137. That was a case in which the Bombay High Court was concerned with a benefit such as privilege leave. When a claim was made under Section 33C(2) of the Industrial Disputes Act before the labour Court for computing such a benefit, the learned Judges negatived the same and observed:

It is well-known that privilege leave is a sort of benefit granted to an employee so that he may recoup health after a long period of work and return to work refreshed. In short, it is a benefit which would have little meaning if it were not to be actually enjoyed by the worker and instead the worker were to be given a monetary privilege.

In the instant case, it is admitted that the workers provided themselves with the uniforms and the chappals and also incurred expenses for washing the uniforms.

This is a case in which the motor transport undertaking, in the light of the express benefits conferred to their workers under Act 27 of 1961 and the rules framed thereunder, cannot plead that even if the workers provided themselves with that benefit they could go free without providing them the equivalent thereof, namely, money, in order not to make out of pocket for enjoying such benefits. That a uniform or some clothing is necessary for a worker in a motor transport undertaking and that chappals is required by him in the discharge of his duties are matters which are indisputable. In those' circumstances, the principle in *Bombay Gas Co., Ltd. v. R.N. Kulkarni* 1965 1 L.L.J. 137, as set out above, has no application to the facts of the present case.

9. In our Court, Ismail, J., in *Southern Roadways (P.) Ltd. v. Venkateswarlu*. (1969) 37 F.J.R. 316, has said that the Court is primarily guided by the provision of the statute itself in deciding whether the particular remedy indicated by the statute is the exclusive remedy available to an aggrieved party or it is only an alternative or an additional remedy. While dealing with the provisions relating to Section 10(1) and Section 10(2) of the Motor Transport Workers' Act, the learned Judge said that these two items of claims cannot; possibly come under Section 15 of the Payment of Wages Act. He posed the question for himself (at p. 343):.could it have been the intention of the Parliament in enacting the Act that with reference to all the other rights conferred by that Act, on the workers, the only remedy should be under the Payment of Wages Act, simply because the claims with regard to those rights fall within the definition of ' wages' contained in Section 2(vi) of the Payment of Wages Act and could it have been the intention of the Parliament that the workmen with regard to those claims will have to go before the authority under the Payment, of Wages Act and with regard to the claims under Section 10 of the Act they will have to go before the labour Court under Section 33C(2) of the Industrial Disputes Act ?....

After having posed the question, he answered that it could not have been so and said that the Parliament could not, have contemplated driving the workmen on whom certain benefits are conferred by the Act to go before one authority in respect of some benefits and to go before another authority in respect of certain other benefits and that if that were the intention of the Parliament, such intention

would have been expressed in clear and definite language. We agree with the learned Judge. In the light of this decision, we are unable to accede to the contention of Mr. Naidu that the workmen in the instant case should have taken steps for redressal of their grievance under the Payment of Wages Act and ought not to have resorted to an application under Section 33C(2) of the Industrial Disputes Act and approached the labour Court for computing their benefits in terms of money.

10. The subject, viewed in a different angle also provides the same answer. Section 33C(2) creates a Tribunal which has all the trappings of an executing Court as is ordinarily understood in civil law. The executing Court cannot question a decree unless it is fully satisfied that the decree is a nullity. Only in circumstances where contentions are raised before the executing Court that the decree sought to be executed was passed by a Court or Tribunal without jurisdiction then an incidental enquiry can be undertaken and a decision arrived at whether such contentions are right or wrong. Applying these general principles here, the labour Court has been called upon to compute in terms of money the benefits to which the workers are entitled to under the provisions of the Motor Transport Workers' Act, 1961 and the Madras Motor Transport Workers' Rules, 1965. There is, therefore, formidable and legal hypothesis for the labour Court, to proceed with the application. It has initially no jurisdiction to say that it cannot compute such benefits admittedly granted to the workers in a motor transport undertaking by the Legislature under certain defined provisions of law. When this situation is reached, the labour Court cannot entertain any objection as to the computation of such benefits, because, it is obliged to do so under Section 33C(2) of the Industrial Disputes Act. This is what has been done by the labour Court in the instant case. In this view, no writ of certiorari under Article 226 of the Constitution can issue on the assumption that the decision sought to be challenged here is without jurisdiction or it poses any error of law or any other apparent error, which has to be set aside by the issue of a prerogative rule under Article 226 of the Constitution.

11. For all these reasons, while agreeing with Alagiriswami, J., that these writ petitions have no substance, we dismiss these writ appeals with costs. Advocate's

fee Rs. 250 (one set).

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