HIGH COURT OF GUJARAT

RASIKLAL CHUNILAL DHRUVA
V/S
MAHESHWARI MILLS LIMITED

Date of Decision: 09 October 1973

Citation: 1973 LawSuit(Guj) 82

Hon'ble Judges: C V Rane

Eq. Citations: 1974 GLR 863

Case Type: First Appeal

Case No: 386 of 1967

Head Note:

Tom. Industrial Relation Act (XI of 1947) S.3(13),S.66(1) Award given under the Act. Date for application of the award is the date of submission of dispute Employee within the meaning of S.3(13) at the time of submissions entitled to the benefit of the award.

The relevant date for the purpose of the application of award under the Bombay Industrial Relations Act is the date of submission under sec. 66(1) of the Act. The purpose of arbitration proceeding would not be served if only the meaning of the employee as given in sec. 3(13) of the Act is taken into consideration for the purpose of deciding the question as to which categories of workers are covered by the award. Held that in the instant case it was obvious that the award is applicable to the plaintiff irrespective of the fact whether he was an employee or otherwise on the date of the award. The award was made more than 18 months after the date of submission that the salaries of some of the employees had increased during the interval as a result of increments earned by them during the period from the date of the submission to the date of the award. Under these

circumstances if it is held that the award is applicable only to the employees whose basic pay was less than Rs. 350/- per month on the date of the award it should lead to absurd results as would be evident from the fact that the persons who were employees within the meaning of sec. 3(13) of the Act on the date of the submission would not be able to get the benefit of the award because of the delay in making the award. This would mean that the industrial dispute concerning such employees would remain unsolved even though such a dispute was submitted to the arbitration on the basis of the submission to which they were parties. (Paras 7 and 9)

Acts Referred:

Bombay Industrial Relations Act, 1946 Sec 3(13), Sec 66(1)

Final Decision: Appeal allowed

Advocates: C T Daru,K S Nanavati

Judgement Text:-

Rane, J

[1] This appeal arises out of the judgment and decree of the learned Judge City Civil Court, Ahmedabad in Civil Suit No. 88 of 1964 which was dismissed by him with costs on 20th June 1966. The facts of the above suit were in brief as under. The appellant-plaintiff joined the defendant company on 17th March 1948. He was working as an Assistant Spinning Master in the above Company. His services were terminated on 6th Februaiy 1961. According to the plaintiff, as he had completed 13 years of service in the defendant company be was entitled to the payment of gratuity on the basis of the award referred to in the suit. He was entitled to receive gratuity at the rate of 3/4th of his pay per year. He sought to recover Rs. 4750/- as gratuity and Rs. 900/- in lieu of leave for two months. The total amount claimed by him came to Rs. 5650/-.

[2] The defendant by its written statement Ex. 23 denied the suit. It was its contention that, during the period from 1st December 1956 to March 31, 1958 he was not serving with it. As he had not completed 13 years of service he was not entitled Jo claim any amount from it. It had further contended that, as the plaintiff was not an employee within

the meaning of sec. 3(13) of the Bombay Industrial Relations Act, 1946, he was not eligible to claim the benefit of the award in question; that the suit was barred by limitation and that the civil court had no jurisdiction to hear the suit.

[3] The learned trial Judge has dismissed the suit and being aggrieved by his decision the plaintiff has come in appeal.

[4] According to the plaintiff, he is entitled to take the benefit of the provisions of the above award; whereas according to the defendant, as the plaintiff was not an employee within the meaning of sec. 3(13) of the Act, the provisions of the award are not applicable to him. Thus, the main question to be decided in this appeal is, whether the plaintiff is entitled to take the advantage of the award Ex. 28. The relevant part of clause (13) of sec. 3 of the Act before it was amended by Gujarat Acts Nos. 8/62 and 22/66 was as under

> "(13)- 'employee' means any person employed to do any skilled or unskilled work for hire or reward in any industry, and includes-
>
> (a).....
>
> (b).....
>
> but does not include-
>
> (i) a person employed primarily in a managerial, administrative, supervisory or technical capacity drawing basic pay (excluding allowance) of three hundred and fifty rupees or more per month;
>
> (ii) .....
>
> Clause (13) as it stands at present reads as under :
>
> "(13). 'employee' means any person (including apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or

clerical work for hire or reward, whether the terms of employment be express or implied and includes-

(a).....

(b).....

but does not include-

(i).....

(ii) a person, who being employed primarily in a managerial, administrative or supervisory capacity draws basic pay (excluding allowances) exceeding five hundred rupees per month, and

(iii).....

It is argued by the learned advocate for the plaintiff that, on the date of the submission the salary of the plaintiff was Rs. 300/- and hence, he was an employee within the meaning of sec. 3(13) of the Act. On the date of the award which is 21st April 1958 his salary was Rs. 450/- per month and hence, he was not an employee within the meaning of that section. On the basis of the above circumstance, it is vehemently argued by the learned advocate for the respondent that, the provisions of the award which relates to an industrial dispute between employers and employees, do not apply to the case of the plaintiff as, he was not an employee on the date of the award. The above argument found favour with the learned trial Judge. Looking to the circumstances of the case, it appears that, the question as to whether, the plaintiff is entitled to the benefits of the award, cannot be decided merely on the basis of the definition of the word 'employee' as given in the Act.

[5] Section 66(1) of the Act provides that :

"Any employer and a Representative Union or any other registered union which is a representative of employees may, by a written agreement, agree to submit any present or future industrial dispute or class of such disputes to the arbitration of any person whether such arbitrator is named in such agreement or not. Such agreement shall be called a submission."

It is in pursuance of the submission as contemplated by sec. 66(1) of the Act that, the arbitrators made their award on 21-4-1958. It is not disputed that, it was an industrial dispute that, was submitted to the arbitration under sec. 66(1) of the Act. According to sec. 3(17) of the Act, "Industrial dispute" means "any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter." As observed above, the plaintiff was an employee within the meaning of sec. 3(13) of the Act on the date of the submission. This shows that, he was a party to the industrial dispute that was submitted to the arbitration and the award in question relates to that dispute. Under these circumstances, it is obvious that, the award Is applicable to the plaintiff irrespective of the fact whether, he was an employee or otherwise on the date of the award. The award was made more than 18 months after the date of submission. It is likely that, the salaries of some of the employees had increased during the interval as a result of increments earned by them during the period from the date of the submission to the date of the award. Under these circumstances, if it is held that, the award is applicable only to the employees whose basic pay was less than Rs. 350/-per month on the date of the award, it would lead to absurd results as would be evident from the fact that, the persons who were employees within the meaning of sec. 3(13) of the Act on the date of the submission, would not be able to get the benefit of the award because of the delay in making the award. This would mean that, the industrial dispute concerning such employees would remain unsolved even though, such a dispute was submitted to arbitration on the basis of the submission to which they were parties. It cannot be conceived that, the Legislature intended such an absurd result while enacting the relevant provisions of the Act as regards arbitration.

[6] In this connection, it is pertinent to note that, according to the award the maximum pay of several categories of employees as stated in the award would be more than Rs. 349/-. Under these circumstances, if the submission of the learned advocate for the respondent is accepted, it would always be open to the employers to contend that, the recommendation of the arbitrators prescribing the pay scales exceeding Rs. 349/- would not be binding to them on the ground that, the persons whose pay happened to be more than Rs. 349/- could not be considered as employees within the meaning of sec. 3(13) of the Act and this would preclude employees whose salaries have been raised above Rs. 349/- under the award, from taking the advantage of the award. The result would be that the award would not serve any useful purpose. It cannot be imagined that, such an absurd result was ever intended by the relevant provisions of the Act relating to arbitration. Considering all these circumstances, I feel that, the relevant date for the purpose of deciding the question as to which of the employees are covered by the award, would be the date of submission. In clarification of the above point, I may point out that, for certain categories of employees the pay scale of Rs. 300-25-450 is prescribed. Now, according to sec. 3(13) of the Act, before it was amended, persons whose salaries are Rs. 350/- would not be considered as employees. Inspite of the above position, according to the prescribed pay scale, they are entitled to reach the maximum of Rs. 450/- after putting in certain years of service. If the above submission of the learned advocate for the respondent is accepted, it is obvious that, such employees would not be able to take the advantage of the revised pay scales under the award.

[7] The above view is supported by certain observations in the award. According to sub-clause (v) of clause III of the Award :

> "If the salary as on 1st January 1958 is higher than maximum of the prescribed, then there would be no cut, and a Technician or an officer would continue to receive the then existing salary."

> Now, the maximum salary prescribed under the award is Rs. 450-/. Inspite of the above position, the arbitrators have specifically provided in the award that, the persons who are drawing the maximum pay of the scale on 1st January 1958 would continue to draw the same pay and there would not be any cut in their salary. It cannot be disputed that, the arbitrators were aware of the definition of the term 'employee' as given in sec. 3(13) of the Act and yet they have deliberately prescribed the salary above Rs. 349/- for certain

categories of employees. This shows that, it was their intention to make the award applicable to all the categories of employees mentioned in the award irrespective of the fact whether, they were employees or not within the meaning of sec. 3(13) of the Act. The provision in the award as to the payment of dearness allowance to persons drawing the salary up to Rs. 400/ -also supports the above view. For the reasons stated above, I am of the view that, the relevant date for the purpose of application of the award is tha date of submission. As observed above, the salary of the plaintiff on the date of the submission was less than Rs. 350/-. This shows that, the award is applicable to him. The learned trial Judge has not considered the above aspect of the case in its proper perspective. He seems to have laid undue emphasis on the meaning of the word 'employee as defined in sec. 3(13) of the Act and also on the meaning of the term 'industrial dispute' as given in sec. 3(17) of the Act for the purpose of deciding the question of applicability of the award. For the reasons already mentioned, it becomes evident that, the purpose of arbitration proceedings would not be served if, only the meaning of the term 'employee' as given in sec. 3(13) of the Act is taken into consideration for the purpose of deciding the question as to which categories of workers are covered by the award. Considering all these circumstances, I feel, with respect to the learned trial Judge, that his above view cannot be sutsained.

[8] The only point that now remains to be considered is whether, the civil 'court had jurisdiction to hear the suit. The learned trial Judge was of the view that, the civil court had jurisdiction to hear the suit. It is argued by the learned advocate for the respondent that, as there are adequate remedies provided in the Act to obtain proper redress in the matter, the civil court had no jurisdiction to hear the suit. In this connection, he has referred to Secs. 3(15), 46(5) and 78(1)A(c) of the Act. According to sec. 46(5), failure to carry out the terms of the award shall be deemed to be an illegal change. According to sec. 3(15), 'illegal change' means an illegal change within the meaning of sub-sec. (4) or (5) of sec. 46. Sec. 78 relates to the powers of the Labour Court. According to sec. 78 (1)A(c), a labour court shall have power to decide whether a strike, lockout, closure, stoppage or any change is illegal under this Act. As according to sec. 46(5) of the Act, failure to carry out the terms of the award is to be deemed to be an illegal change, it is argued by the learned advocate for the respondent that, the plaintiff should have approached the labour court to obtain a decision on the point. In the present case,

however, the plaintiff seeks to recover the amount as detailed above from the defendant. There is no provision in the Act under which the labour court can direct the defendant to pay the above amount to the plaintiff and that position is not disputed by the learned advocate for the respondent. It is however, submitted by him that, after obtaining the decision on the question whether, there has been any illegal change as contemplated by sec. 46(5) of the Act from the labour court under sec. 78 of the Act, it would be open to the plaintiff either to file a suit or to proceed under sec. 33-C of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947). Sec. 33-C(1) of the Act of 1947 provides :-

> "(1) Where any money is due to a workman from an employer under a settlement of an award or under the provisions of Chapter V-A, the workman himself or ny other person authorised by him in writing in this behalf or in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue :
>
> Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:
>
> Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period."

It has been specifically provided in the above section that, the remedy provided in that section is available to the party concerned without prejudice to any other mode of recovery. This shows that, the provisions of sec. 33C of the Act of 1947 do not operate as a bar to a civil suit, and that position is not disputed by the learned advocate for the respondent. It is however, argued by the learned advocate for the respondent that, even if a decree is passed by the civil court in favour of the plaintiff, he will have to approach the executing court for the purpose of execution. On the basis of the above

position he submits that, it would not be unusual if the plaintiff first approaches the labour court under sec. 78 of the Act and then proceeds under sec. 33C of the Act of 1947 for the purpose of roeovering the amount due from the defendant. The above procedure seems to be cumbrous. Moreover, according to the proviso to sec. 33C, the person concerned is expected to make the application within one year from the date on which the money becomes due to the workman from the employer. On the basis of the above proviso a question may arise as to whether, the money became due to the plaintiff on the date on which he was discharged from the service, or whether they would be due on the date on which, the order would be passed under sec. 78 of the Act. It is easy to understand that, the above question is likely to complicate the matter. Moreover, as observed above, sec. 33C of the Act of 1947 does not operate as a bar to the jurisdiction of the civil court. Under these circumstances, there is no reason as to why, the plaintiff should be asked to approach the Labour Court as suggested by the learned advocate for the respondent. In this connection, I have already pointed out that even after the decision of the labour court under sec. 78 of the Act, the plaintiff will have to proceed under sec. 33C of the Act of 1947 and when the implications of the proceeding under the aforesaid section are taken into consideration, it cannot be said that, the plaintiff has adequate remedy either under the Act or the Act of 1947. Under these circumstances, it is difficult to hold that, in view of the aforesaid provisions of the Acts, the jurisdiction of the civil court is barred.

[9] The appeal is therefore allowed. The decree of the trial court is set aside and the defendant is directed to pay Rs. 5287. 50 with interest at the rate of 6% per annum from the date of the suit till payment together with proportionate costs of the suit to the plaintiff. The rest of the suit is dismissed. The respondent to pay the proportionate costs of the appeal to the appellant and bear its own.

Appeal allowed.