

(1955) 09 BOM CK 0087

Bombay High Court

Case No: Civil Revision Application No"s. 1984 of 1954 and 249 to 252 of 1955

Sananand Dhanji and Others

APPELLANT

Vs

Manager, Shri Niwas Cotton Mills
Ltd.

RESPONDENT

Date of Decision: Sept. 12, 1955

Acts Referred:

- Industrial Disputes Act, 1947 - Section 18
- Payment of Wages Act, 1936 - Section 17

Citation: AIR 1956 Bom 573 : (1956) 2 LLJ 470

Hon'ble Judges: Shah, J

Bench: Single Bench

Advocate: S.V. Desai, S.V. Kondaskar and G.J. Mane, for the Appellant; B. Narayanaswami, R.A. Jahagirdar and H.B. Datar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This Revision Application raises a question as to the true interpretation of certain awards made by the Industrial Tribunal adjudicating upon certain industrial disputes concerning employees in the Cotton Textile Industry in the town of Bombay.
2. By an award dated 25-10-1948, the Industrial Court had decided in an Industrial Arbitration between the Mill Owners" Association, Bombay, and certain employees in the Cotton Textile Industry, amongst others, the clerks employed in the Industry, that the clerks employed in the Industry should be divided into three categories, viz., junior clerks, senior clerks and Chief clerks; and that other employees who occupy positions lower than that of "full-fledged clerks", but higher than that operatives, should be given a certain scale of wages.

The employees who fall within that class are now described in the Industry as "semi-clerks". The Award provided that the scales of pay fixed by it should take effect from 1-1-1948 and also prescribed machinery for grant of increment or increments according to the number of years of service put in by the employees. Paragraph 14(ii) of the Award provided:

"Where the existing salary of the employee (in occupation "H" in the Cotton Textile Industry employed in the Cotton Textile Mills in Bombay, which are members of the Mill Owners" Association), that is salary as on 1-1-1948, is above the minimum of the prescribed scale, the Increment or increments due to him on the above method, will be added to his existing salary and after so adding the employee shall be stepped up to the nearest increase in the prescribed scale if the amount of the salaries together with the increments as added above falls short of the amount in the graded step".

The dispute in this Revision Application arises as to the meaning of the expression "existing salary of the employee, that is, salary as on 1-1-1948". It was the contention of the petitioners, who are now regarded by an Award of the Industrial Court made in August 1950 as semi-clerks, that in assessing the existing salary under Clause 14(ii) of the award dated 25-10-1948 of the employees as on 1-1-1948, the employer is bound to accept what was actually paid to the employees as existing salary and that such salary was not liable to be re-adjusted by scaling down or by exclusion of the addition made under an earlier award known as the Operatives" Award.

It was the contention of the employer that the expression "existing salary" in the award does not mean the salary which was in fact paid to the employee on 1-1-1943 but the salary which may be found due to him in law under the terms of his employment. As the employers did not accept the contention raised by the petitioners and did not pay the salary, they submitted an application to the Payment of Wages Authority being Application No. 1089 of 1952 for payment of deducted wages.

The application was resisted by the employers, viz., the Shree Niwas Cotton Mills, Ltd. It was urged on behalf of the employers that the employees had already been given the benefit of the Operatives" Award and were getting Rs. 34-2-0 as basic pay as operatives and when they were classified as semi-clerks, they were not entitled to take advantage of the Operatives" Award, and that their basic pay as on 31-12-1946 (1947?) must be accepted for the purpose of adjusting their salary in the "semi-clerks" grade.

That argument was accepted by the Payment of Wages Authority and payment of salary after making adjustment pursuant to para 14(ii) was directed to be made accordingly. Against the order passed by the Authority an appeal was preferred u/s 17. Payment of Wages Act to the Court of Small Causes at Bombay. The learned

"Chief Judge of the Court of Small Causes confirmed the order passed by the Payment of Wages Authority. Against that order this Revision Application has been filed by the employees.

3. Now, it was conceded before the learned Chief Judge of the Court of Small Causes that at the material time there had been no change in the duties or nature of work of any of the petitioners. All that had happened was that although before August 1950, when the Industrial Court finally decided that the petitioners were to be treated as semi-clerks, the employees had regarded them as operatives & had paid them wages accordingly.

The petitioners had therefore been paid bonus payable to operatives on the basis of the decision of the Industrial Court governing operatives. It is undisputed that under the "Operatives" Award, the Petitioners obtained certain benefits to which they may not have been entitled as semi-clerks. But salary inclusive of bonus payable to operatives on the basis that they were operatives was being paid to the petitioners from 1-1-1948.

That the petitioners were working both as operatives and as clerks is also undisputed, and they were entitled to the benefit of the Operatives" Award is also not denied. The learned Chief Judge of the Court of Small Causes thought that the salary of an employee cannot be taken to be what the employer, by mistake or otherwise, actually pays him for a particular period.

But, according to him, it is the salary which, under the terms of his employment, the employee is entitled in law to demand from the employer for that period. Assuming that that is the correct test to apply, it is difficult to see why the petitioners who were admittedly working as operatives were not entitled to receive on 1-1-1948, salary which was actually paid to them. The learned Judge then observed;

"In the present case, therefore, if the employees concerned are not to be regarded as "operatives", but as "semi-clerks", they cannot take advantage of the Operatives" Award also as fixing their salary on a higher scale than the scale in force for non-operatives"; but their salary on 1-1-1948, must be taken to be what they would have been entitled to claim in case they had been regarded by both the parties throughout as non-operatives or "semi-clerks".

Now, there is nothing in the Award which suggests that in ascertaining what is the "existing salary", the employer is entitled to regard the employees as otherwise than carrying out the duties which they were actually, carrying out. If, in carrying out the duties of operatives as well as of semi-clerks, they were being paid a certain salary which was consistent with the Operatives" Award, I see nothing in the Award which justifies the Court in holding that the salary which was paid to the petitioners, who -were subsequently regarded as semi-clerks, was not lawfully due to them.

Mr. Narayanaswami, who appears on behalf of the employers, has suggested that the expression "existing salary" can only mean salary ascertained by ignoring the additional remuneration or bonus paid to the petitioners under the Operatives' Award. But Clause (ii) of para 14 of the Award required the adjustment to be made by reference to the existing salary, i.e., the salary as on 1-1-1948.

The adjustment had, in other words, to be made with, reference to the condition existing on 1-1-1948 and irrespective of the question of liability for the amount which was paid as salary to the employees. There is nothing in the terms of Clause (ii) of para 14 or elsewhere in the Award which fortifies the submission that the expression "existing salary" was to be subject to any limitations or exceptions which are not expressly contained therein and which enabled the employer to re-adjust the salary by ignoring or excluding the additional remuneration paid to the petitioners under the Operatives' Award.

4. Attention was also invited by Mr. Narayanswami to the last but three paragraphs of para 14 of the Award which stated that "the arrears of salaries due to the employees under the Award will be paid to them within three months of the publication of the Award in the Official Gazette".

It is true that there was a dispute between the employer and the petitioners as to their right to be regarded as clerks and to obtain benefit of the Award made by the Industrial Tribunal and that dispute was finally resolved in the year 1950.

But the decision of the Industrial Tribunal declaring that the petitioners in the present case were semi-clerks and were entitled to the benefit of the Award of 1948 can evidently be declaratory and the mere fact that the employer failed to carry out the obligation which he was bound to carry out under the original Award, would, in my Judgment, not deprive the employees who are entitled to the benefit of the Award, from obtaining the benefit thereof by approaching the Payment of Wages Authority.

I am unable therefore to agree with the view taken by the Courts below. They have failed to exercise the jurisdiction vested in them by law, and the rule must therefore be made absolute with costs in this Court.

5. Rule in C. R. AS. Nos. 249 252, 250 and 251 of 1955 is made absolute with costs in this Court.

6. Rule made absolute.