Laxman Pandu and Others Vs Chief Mechanical Engineer, Western Railway

Court: Bombay High Court

Date of Decision: Oct. 1, 1954

Acts Referred: Constitution of India, 1950 â€" Article 226
Payment of Wages Act, 1936 â€" Section 15, 15(3), 15(4), 16(2), 16(3)

Citation: AIR 1955 Bom 283 : (1955) 57 BOMLR 399 : (1955) 2 LLJ 5

Hon'ble Judges: Chagla, C.J

Bench: Single Bench

Advocate: N.D. Vakharia, for the Appellant; M.M. Majumdar and D.S. Parikh, for the Respondent

Judgement

This Judgment has been overruled by : J.C. Jain Vs. R.A. Pathak and Others, AIR 1960 SC 619 : (1960) 2 SCR 701

@JUDGMENTTAG-ORDER

1. A rather important question arises on this civil revision application as to the right of appeal by an employer u/s 17 of the Payment of Wages Act.

It appears that a joint application of certain employees totalling about 99 of the opponent railway was made to the Authority under the Payment of

Wages Act. Their claim was that they were entitled to house rent as part of their wages, that that part had not been paid, and therefore there was

delay in payment of wages. The Authority upheld the contention of the employees and gave a direction that a sum of Rs. 8,775 plus Rs. 9,165

should be deposited by the railway authority in Court to be paid to the various employees in the amounts mentioned in the schedule to the order.

Against this decision the railway went in appeal to the Small Causes Court at Bombay and the learned Chief Judge reversed the decision of the

Authority, allowed the appeal, and dismissed the application of the workers. It is against that order that this revision application is preferred, and

the first contention urged by Mr. Vakharia on behalf of the employees is that the Small Causes Court had no jurisdiction to entertain the appeal.

2. Now, turning to the relevant provisions of the Act, Section 15 deals with the jurisdiction of the Authority and his authority is to direct the refund

to the employed person of the amount deducted or the payment, of the delayed wages together with the payment of such compensation as the

Authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter. Section 16(2)

enables the employed persons belonging to the same unpaid group if they are borne on the same establishment and if their wages for the same

wage-period or periods have remained unpaid after the day fixed by Section 5, to present a single application instead of each employee belonging

to such a group having to present separate applications. Sub-section (3) authorises the authority to treat as a single application any number of

applications made by various employees if they belong to the same unpaid group. Then we come to Section 17 which deals with the right of

appeal, and the right of appeal is given against a direction made under Sub-section (3) or Sub-section (4) of Section 15, and in this case we are

only concerned with the direction given under Sub-section (3) of Section 15. Clause (a) of Section 17(1) gives the right of appeal to the employer

and"" it provides:

by the employer or other person responsible for payment of wages u/s 3, if the total sum directed to be paid by way of wages and compensation

exceeds three hundred rupees.

And Clause (b) confers the right of appeal upon an employed person if the total amount of wages claimed to have been withheld from him or from

the unpaid group to which he belonged exceeds fifty rupees.

3. Now, the argument of the employer, briefly put, is that inasmuch as the order made by the Authority against the employer for payment of wages

exceeded Rs. 300, the employer had a right of appeal u/s 17(1)(a) , and it is this argument which I have got to consider and examine. In my

opinion, Section 16(2) is purely procedural. Instead of various employed persons who belong to the same unpaid group being compelled to file

separate applications and to pay separate court-fees, the Legislature has conferred upon them the facility of presenting a single application and

paying a single court-fee.

But what must be borne in mind is that although the application is one, the claims are made by various employees and those claims are separate

and distinct, and in my opinion the direction which the authority has to give u/s 15(3) is not in respect of the group as a whole, but it must be in

respect of each individual employee. It is said by Mr. Parikh that in this case the direction of the Authority is that a sum far exceeding Rs. 300

should be paid by the employer to the person in the unpaid group.

I do not look upon the order of the Authority in that light. The order of the Authority in substance is that the employer should pay to each

employee the amount mentioned in the schedule, and the mere fact that the Authority aggregates those amounts and the result is a sum exceeding

Rs. 300 does not lead to the inference that the order made was a composite order against the employer in respect of payment of a composite sum,

but the direction clearly is to the employer to satisfy the separate individual claims of each employee mentioned in the schedule to the order.

If I were to accept Mr. Parikh''s contention, it would result in this curious situation that by the Legislature''s desire to confer a facility upon the

employees the right of appeal given to the employer was expanded. Admittedly, if these employees had made separate applications, the employer

would have had no right of appeal, but merely because they combine in one application in order to save court-fees and to avail themselves of the

facility provided by the Legislature, it is suggested that the employer obtained a right of appeal. In my opinion, such an interpretation of the statute

should he avoided if it is possible.

4. But let us look at it from the point of view of the discretion conferred upon the Authority under Sub-section (3) of Section 16. Several persons

may make an application who may belong to the same unpaid group. The Authority by exercising its discretion and combining those applications in

one application may, by the exercise of that discretion, confer a right of appeal upon the employer if Mr. Parikh''s submission were to be accepted.

If the applications of those employees continued to remain separate, the employer would have no right of appeal, but if for procedural reasons the

Authority thought it more convenient to treat those applications as a single application, straightway the employer would get a right of appeal.

Now, a right of appeal, is both an important right and in certain circumstances it may impose a disability, and I do not think that pure procedural

provisions should be read or construed as either conferring that right or imposing that disability. In this very case all the employees would have

been saved from the legal ingenuity of their employer in the Court of Appeal if they had presented separate applications and they would have been

paid the amount directed by the Authority. But because they chose a procedural facility given to them by statute, a serious disability has been

imposed upon them in that the decision in their favour is subject to challenge by the employer in the Court of Appeal, and in this case the challenge

has been successful.

5. There is one further indication in Section 17 which to my mind clearly shows that with regard to unpaid groups a distinction was deliberately

sought to be made by the Legislature between the right of the employer & the right of the employee. When we turn to Section 17(1)(b) which

deals with the right of appeal by an employed person, a very wide right of appeal is given to him because ho can appeal if the wages withheld from

him individually exceed Rs. 50 and he can also appeal if he is one of the unpaid group and if the total amount of wages withheld with regard to the

whole of that unpaid group exceeds Rs. 50. But when we turn to the provision of the right of the employer in Clause (a) of Section 17(1), the

Legislature advisedly has not referred to an unpaid group in that clause, and in my opinion the absence of the words ""unpaid group"" in Clause (a)

are significant and can only point to one conclusion.

6. Mr. Parikh has drawn my attention to the serious anomaly that may result if my interpretation was to be accepted. He says that in an unpaid

group there may he one employee who may be awarded a sum exceeding Rs. 300. According to my interpretation the employer could only appeal

against the direction in favour of that individual employee, but he could not appeal against the direction in respect of the whole of the unpaid group

if the wages awarded to the other employees did not exceed Rs. 300, and Mr. Parikh says that the Court of Appeal with regard to that particular

employee on the appeal of the employer may reverse the decision of the Authority and the result of such a reversal would be that whereas various

employees forming part of the unpaid group would receive wages according to the direction of the Authority, the one individual whose wages

awarded exceed Rs. 300 would be deprived of the benefit of the direction of the Authority under the Payment of Wages Act.

Now, I see the force of that contention, but the answer is clear. The same anomalous situation would arise if two employees made applications on

an identical ground to the authority under the Act and in one case the employee is awarded a sum of Rs. 300 and in the other case he is awarded a

sum less than Rs. 300. It is not suggested . that the employer could appeal against both because the decision of the authority turned on the same

ground. His right of appeal would only be against the employee who received wages exceeding Rs. 300.

The anomaly which Mr. Parikh apprehends is really no anomaly at all, because when one care-fully considers the principle underlying the Payment

of Wages Act, the principle is that poor employees who are awarded, wages in small amounts should not be further harassed by being dragged to

the appellate Court by the all powerful employer. The intention of the Legislature was that the decision of the authority should become final and

conclusive when it awards small wages to poor humble workers. That is the principle which underlies the whole of the Act and every section of it,

and it is the duty of the Court to give effect to that intention of the Legislature.

7. My attention has been drawn to a decision of the Madras High Court in -- Union of India (UOI) Vs. S.P. Nataraja Sastrigal and Others, ,

which is the judgment of Subbarao J. In that case a petition for a writ was applied for by the employer against the decision of the Authority under

the Payment of Wages Act and the learned Judge refused to grant the writ on the ground that the employer had a right of appeal and he should

exercise that right and not come to Court for a writ under Article 226 of the Constitution. I agree with Mr. Parikh that there the question directly

arose as to whether under the circumstances of that case the employer had a right of appeal and I also agree with him that the circumstances of that

case are similar to the circumstances of this case and on the facts that case is not distinguishable.

But with very great respect to Subbarao J., I am unable to agree with the reasoning which led that Judge to hold that an employer had a right of

appeal u/s 17(1)(a) if the total amount of wages directed to be paid by the Authority to an unpaid group exceeds Rs. 300. The reason which led

the learned Judge to come to the conclusion that ho did was that there was no reason why a distinction should be made in the case of an employed

person u/s 17(1)(b) and in the case of an employer u/s 17(1)(a). The learned Judge says that if an employed person can have a right of appeal if

the amount claimed exceeds Rs. 50 whether individually or collectively in the unpaid group, there was no reason why the employer should not have

a similar right of appeal u/s 17(1)(a).

With respect again to the learned Judge, he has overlooked the principle which I have just adverted to underlying the Act. The Legislature wanted

to make a distinction between the rights of an employer and an employee and therefore it is not a matter of surprise that the employees should be

differently treated u/s 17(1)(b) from the manner in which the employers are treated u/s 17(1)(a), nor is there anything unreasonable in treating the

employer and the employee differently. Again, in my opinion, the learned Judge has failed to attach the importance which he should have attached

to the absence of the words ""unpaid group"" in Section 17(1)(a).

8. For these reasons I have come to the conclusion that the Small Causes Court had no jurisdiction to entertain the appeal which it did. Therefore,

no question arises as to whether the decision of the Small Causes Court Judge was right on merits.

9. The result is that the revision application will be allowed, the order of the learned Chief Judge will be set aside, and the order of the Authority

under the Payment of Wages Act will be restored. Rule absolute with costs.

10. The amount directed by the Authority to be paid should be deposited within two weeks from today in the Court of the Authority under the

Payment of Wages Act. If any further Court-fees are payable they should be paid by the employer.

11. Revision allowed.