J. C. Jain vs R. A. Pathak And Others on 12 January, 1960

Equivalent citations: 1960 AIR 619, 1960 SCR (2) 701, AIR 1960 SUPREME COURT 619, 1960 2 SCR 701, 1960 SCJ 958, 1960 -61 18 FJR 70, 1960 2 LABLJ 16, 1962 BOM LR 456

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, K.C. Das Gupta

PETITIONER:
J. C. JAIN

Vs.

RESPONDENT:
R. A. PATHAK AND OTHERS

DATE OF JUDGMENT:
12/01/1960

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
SUBBARAO, K.
GUPTA, K.C. DAS

CITATION:
1960 AIR 619 1960 SCR (2) 701

ACT:
Payment of Wages-Employer's right of appeal--When accrues -Payment of Wages Act, 1936 (4 of 1936), ss. 15(3), 16, 17(1) (a).

HEADNOTE:
The expression " the total sum directed to be paid " used in s. 17(1) (a) of the Payment of Wages Act, 1936, properly construed, does not mean the total sum directed to be paid to each individual applicant. Consequently, an employer against whom a direction for payment is made under s. 15(3) of the Act has a right of appeal under S. 17(1) (a) not only when a single applicant is awarded a sum exceeding Rs. 300 but also when an award of a like amount is made on a single application made under s. 16(2) of the Act on behalf of several employees belonging to the same unpaid group or on

several applications consolidated into one under s. 16(3) thereof. Section 17(1) (a) does not contemplate that before the right to appeal can accrue to the employer in the latter case each individual applicant must be awarded Rs. 300 or more.
Since the language of the statute is clear and unambiguous no consideration of any possible hypothetical anomaly can be allowed to affect its plain meaning.
Laxman Pandu and Others v. Chief Mechanical Engineer, Western Railway (B. B. and C. I. Railway), Lower Parel, Bombay. (1957) 57 B.L.R. 399, overruled.
Union of India, Owning the South Indian Railway by General Manager v. S. P. Nataraja Sastrigal & Ors. A.I.K. 1952 Mad. 808; A. C. Arumugam & Ors. v. Manager, Jawahar Mills Ltd., Salem junction, A.I.R. 1956 Mad. 79; Promod Ranjan Sarkar v. R. N. Mullick, A.I.R. 1959 Cal. 318 and Cachar Cha Sramik Union v. Manager, Martycherra Tea Estate & Anr. A.I.R. 1959 Assam 13, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal'. No.75 of 1956. Appeal by special leave from judgment and order dated March 17, 1955, of the Small Causes Court, Bombay, in Appeal No. 1 of 1955.

M.C. Setalvad, Attorney-General for India, S. N. Andley, J. B. Dadachanji and Rameshwar Nath, for the appellant. K. B. Choudhuri, for the respondents.

1960. January 12. The Judgment of the Court was delivered by GAJENDRAGADKAR J.-When does an employer get a right to prefer an appeal against a direction made under sub-s. (3) of s. 15 of the Payment of Wages Act, 1936 (4 of 1936) (hereinafter called the Act)? That is the short question which arises for our decision in the present group of four appeals. The decision of this question depends on the construction of s. 17 (1)(a) of the Act. In dealing with the question thus posed by the present group of appeals we will refer to the facts in Civil Appeal No. 75 of 1956, and our decision in it would govern the three remaining appeals. Civil Appeal No.75 of 1956 which has been brought to this Court by special leave arises from a dispute between the General Manager of the Times of India Press., Bombay, owned by Benett Coleman & Co, Ltd., (hereinafter called the appellant) and some of the employees in his service (hereinafter called the respondents). In November 1953, 1,066 applications were made by the Vice-President of the Times of India Indian Employees Union on behalf of some of the respondents before Mr. C. P. Fernandes, the authority appointed under the Act in which a claim was made for arrears of increments alleged to have been withheld by the appellant from July 1, 1951, to September 30, 1953, as also for increased dearness allowance from January 1, 1953, to August 31, 1953. The authority dealt with the whole group of the said applications as a single application under s. 16(3) of the Act, and held that the claim made by the respondents for increased dearness allowance was not justified.- In regard to the claim of arrears of increments alleged to have been withheld the authority rejected the claim made by 761 employees and allowed

the same in respect of 305 employees. In the result the order passed by the authority on 31-12-1954 directed the appellant to deposit Rs. 22,698 for payment to the said 305 employees. The direction thus issued by the authority gave rise to two appeals before the Small Causes Court at Bombay, which is the appellate authority appointed under the Act. Appeal No. 11 of 1955 was filed by the appellant while Appeal No. 187 of 1954 was filed by the respondents. Meanwhile the question about the extent of the right conferred on the employer to prefer an appeal by s. 17(1)(a) of the Act had been considered by the Bombay High Court in Laxman Pandu & Ors. v. Chief Mechanical Engineer, Western Railway (B.B. & C.I. Railway), Lower Parel, Bombay (1); and it had been held that under the said section the employer gets a right of appeal only if the order of the authority under the Act awards payment of an amount of Rs. 300 or more in respect of a single individual worker; the right does not exist if the order awards a sum exceeding Rs. 300 collectively to an unpaid group of workers every one of whom gets an amount under Rs. 300. Following this decision the appellate authority held that the appeal preferred by the appellant was incompetent and so dismissed it. The appellant then applied for and obtained special leave from this Court to prefer an appeal against the said appellate decision; and so the main point raised by the appeal is about the construction of s. 17(1)(a) of the Act. The Act has been passed in 1936 with a view to regulate the payment of wages to certain classes of persons employed in industry. Section 15(1) of the Act authorises the State Government by notification in the official Gazette to appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of wages of persons employed or paid in that area. Section 7 has provided for deductions which may be made from wages. Any deductions made not in accordance with the said section and contrary to the provisions of the Act as well as wages the payment of which has been delayed can be brought before the authority under sub-s- (2) of s. 15. Sub-section (3) of s. 15 empowers the authority to deal with the applications made under sub-s. (2) and to direct a refund to (1) (1953) 57 B.L.R. 399, the employed person of the amount deducted or the payment of 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 Rs. 10 in the latter. Sub-section (4) provides that in cases where the authority is satisfied that the application made by the employee was either malicious or vexatious it may direct that a penalty not exceeding Rs. 50 be paid to the employer or other persons responsible for the payment of wages by the applicant. It would thus be seen that s. 15 provides for the making of applications by the employees and for their decision in accordance with the provisions of the Act. It is necessary to refer to s. 16 as well before dealing with the question of the construction of s. 17(1)(a). Section 16 provides for the making of a single application in respect of claims from unpaid group. Section 16(1) provides that employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same period or periods have remained unpaid after the day fixed by s. 5. Sub-section (2) provides for the making of a single application under s. 15 on behalf of or in respect of any number of employed persons belonging to the same unpaid group, and prescribes that in such a case the maximum compensation that may be awarded under sub-s. (3) of s. 15 shall be Rs. 10 per head. Subsection (3) then provides that the authority may deal with any number of separate pending applications presented under s. 15 in respect of persons belonging to the same unpaid group as a single application presented under sub-s. (2) of the said section, and the provisions of that sub-section shall apply accordingly. Thus the effect of s. 16 is that a single

application may be made on behalf of any number of employed persons belonging to the same unpaid group, or if separate applications are made by employed persons belonging to the same unpaid group they may be consolidated and tried as a single application.

Let us now read s. 17 which provides for appeals. Section 17(1) provides that an appeal against a direction made under sub-s. (3) or sub-s. (4) of s 15 may be preferred within thirty days of the date on which the direction was made, in a Presidency-town before the Court of Small Causes and elsewhere before the District Court-(a) by the employer or other person responsible for the payment of wages under s. 3, if the total sum directed to be paid by way of wages and compensation exceeds Rs. 300, or (b) by 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 Rs. 50, or (c) by any person directed to pay a penalty under sub.s. (4) of s. 15. Sub- section (2) of s. 17 makes the directions made under sub-s. (3) -and sub-s. (4) of s. 15 final save as provided in sub- s. (1).

On a plain reading of s. 17(1)(a) it seems fairly clear that the only test which has to be satisfied by the appellant before preferring an appeal against a direction issued under s. 15(3) is that the total sum directed to be paid by him should exceed Rs. 300. Where a single application has been made on behalf of a number of employed persons belonging to the same unpaid group under s. 16, sub-s. (2), and a direction has been issued for the payment of the specified amount, it is the said specified amount that must be considered in deciding whether the test prescribed by s. 17(1)(a) is satisfied or not. The view taken by the Bombay High Court, however, is that s. 17(1)(a) is applicable only where the amount directed to be paid to each single applicant exceeds Rs. 300. In other words, on this view the expression " the total sum directed to be paid " used in s. 17(1)(a) is construed to mean the total sum directed to be paid to each individual applicant, and that clearly involves the addition of certain words in the section. If the application is made by a single employee an appeal can be preferred by the employer against the direction issued in such an application if the total sum directed to be paid to the applicant exceeds Rs. 300; but if a single application is made on behalf of several employees belonging to the same unpaid group the test to be applied is not whether a direction has been issued that the employer should pay Rs. 300 or more to each one of the applicants; the test clearly is whether a direction has been issued on the said single application calling upon the employer to pay to the applicants Rs. 300 or more. Reading s. 17(1)(a) by itself we feel no difficulty in reaching this conclusion. It is, however, urged that in construing s. 17(1)(a) it would be relevant and material to compare and contrast its provisions with those of cl. (b) of s. 17, sub-s. (1). Providing for the right of an employee to make an appeal this clause requires that the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged should exceed Rs. 50. It is emphasised that this clause refers expressly to the case of an individual employee as well as the cases of employees belonging to an unpaid group; and the argument is that since cl. (a) does not use the words " unpaid group " it indicates that the direction about the payment of the amount prescribed by the said clause has reference to each individual employee. We are not impressed by this argument. Since the Act has provided for the making of a single application on behalf of a number of employed persons belonging to the same unpaid group as well as separate applications made by individual workmen it was unnecessary to refer to the persons employed in the unpaid group while providing for appeals against directions made under s. 15(3). On the other hand, if the Legislature had intended that the right to prefer an appeal should accrue to the employer only if Rs.

300 or more are directed to be paid to each individual employee it would have used appropriate additional words in cl. (a). Therefore the argument based upon the use of the words " unpaid group " in cl. (b) is not of any assistance in construing cl. (a).

We are also inclined to think that it could not have been the intention of the Legislature to confer on the employer the right to prefer an appeal only if Rs. 300 or more are ordered to be paid to each one of the applicants. It is true that the policy of the Act is to provide for speedy remedy to the employees in respect of unauthorised deductions made by the employer or in respect of delayed wages; and with that object the Act provides for the appointment of the authority and prescribes the summary procedure for the decision of the claims;butitseemsveryunlikelythatwhereas an appeal by the employee has been permitted by cl. (b) whenever the amount in dispute happens to be Rs. 50 or more in respect of an individual applicant or in respect of the unpaid group the Legislature could have intended that the employer should have no right of appeal against a direction made on a; single consolidated application, even though the total liability flowing from the said direction may exceed the specified amount of Rs. 300 by several thousands. In the present case the amount directed to be paid is more than Rs. 22,000 but it has been held that since each one of the employees is not ordered to be paid Rs. 300 or more there is no right of appeal. On general considerations, therefore, the conclusion which we have reached on a fair and reasonable construction of cl. (a) appears to be well- founded.

There is another point to which reference must be made. Section 16(3) empowers the authority to consolidate several applications made by individual employees and bear them as a single application as though it was presented under- s. 16, sub-s. (2); and it is urged that this procedural provision cannot and should not have a decisive effect on the employer's right to prefer an appeal under s. 17(1)(a). If several applications made by individual employees are not consolidated and heard as a single application under s. 16(3) and separate directions are issued, then the employer would have the right to prefer an appeal only where the total amount directed to be paid exceeds Rs. 300. On the other hand, if the authority consolidates the said applications and makes a direction in respect of the total amount to be paid to the employees belonging to the unpaid group the employer may be entitled to make an appeal even though each one of the employees receives less than Rs. 300. It would be anomalous, it is said, that the right to appeal should depend upon the exercise of discretion vested in the authority under s. 16(3). We are unable to see the force of this argument. We apprehend that ordinarily when several applications are made by the employees belonging to the same unpaid group the authority would prefer to treat the said applications as a single application under s. 16(3); but apart from this practical aspect of the matter, if s. 16(3) permits the consolidation of the several applications and in consequence of consolidation they are assimilated to the position of a single application contemplated by s. 16(2), the only question which has to be considered in dealing with the competence of the appeal is to see whether the direction appealed against satisfies the test of s. 17(1)(a), and on that point we feel no hesitation in holding that the test prescribed by s. 17(1)(a) is that the direction should be for the payment of an amount exceeding Rs. 300. Besides, we think it would not be right to assume that it is anomalous if different consequences follow from the adoption of different procedures in trying employees' claims and an appeal does not lie where several applications are tried separately while it lies where similar applications are heard as a single application under s. 16(3). This difference is clearly intended by the Legislature. A similar different

consequence is prescribed in the matter of the award of compensation by s. 15, sub-s. (3) and s. 16,sub-s. (2) respectively. Therefore, the argument based on the alleged anomaly cannot have any validity inconstruing s. 17(1)(a).

Incidentally, if one or more employees in the same unpaid group are paid an amount exceeding Rs. 300 and the rest are paid less than Rs. 300, on the alternative construction, the employer would be entitled to make an appeal only in respect of a workman to whom more than Rs. 300 is ordered to be paid and not against the others though the total amount directed to be paid to them may exceed by far the amount of Rs. 300. In such a case, if the appeal preferred by the employer in respect of the amount ordered to be paid to some of the workmen succeeds that would leave outstanding two conflicting decisions, with the result that a large number of employees in the same unpaid group may get the amount under the direction of the authority while those who were awarded more than Rs. 300 by the authority would get a smaller amount under the decision of the appellate authority. We are referring to this anomalous aspect of the matter only for the purpose of showing that where the words used in the relevant clause are clear and unambiguous considerations of a possible hypothetical anomaly cannot affect its plain meaning. That is why we prefer to leave anomalies on both sides out of account and confine ourselves to the construction of the words used in s. 17(1)(a). If the said words had been reasonably capable of two constructions it would have been relevant to consider which of the two constructions would avoid any possible anomalies. We would, therefore, hold that the appellate authority was in error in dismissing the appeal preferred before it by the appellant on the ground that it was incompetent under s. 17(1)(a). We would like to add that the question about the construction of s. 17(1)(a) has been considered by the Madras High Court (Union of India, owning the South Indian Railway by the General Manager v. S. P. Nataraja Sastrigal & Ors. (1) and A. C. Arumugam & Ors. v. Manager, Jawahar Mills Ltd., Salem Junction (2), the Calcutta High Court (Promod Ranjan Sarkar v. R.N. Munllick (3) and Assam High Court (Cachar Cha Sramik Union v. Manager, Martycherra Tea Estate & Anr. (4) and they have all differed from the view taken by the Bombay High Court and have construed s. 17(1)(a) in the same manner as we have done.

The result is the appeal is allowed, the order of dismissal passed by the appellate authority is set aside and the appeal sent back to it for disposal in accordance with law. Since the hearing of the appeal has been thus delayed we would direct that the appellate authority should dispose of the appeal as expeditiously as possible. Under the circumstances of this case we would direct that the parties should bear their own costs.

Appeal allowed.

(1) A.I.R. 1952 Mad. 808. (3) A.I.R. 1959 Cal. 318 S.C.; 63 C.W.N. 6.

(2) A.I.R. 1956 Mad. 79. (4) A.I.R. 1959 Assam 13.