B.D. Shetty And Others vs M/S. Ceat Ltd. And Another on 30 October, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2953, 2002 (1) SCC 193, 2001 AIR SCW 4422, 2001 LAB. I. C. 4000, 2002 LAB LR 2, (2002) 1 JCR 10 (SC), 2002 (1) UJ (SC) 401, 2001 (7) SCALE 513, (2001) 2 LABLJ 1552, (2002) 1 ANDHLD 11, 2002 SCC (L&S) 131, (2001) 99 FJR 662, (2002) 93 FACLR 785, (2002) 1 LAB LN 610, (2002) 3 SCT 699, (2001) 8 SUPREME 56, (2001) 7 SCALE 513, (2002) 2 GCD 1517 (SC), (2002) 1 CURLR 69, (2002) 2 BOM CR 601

Author: Shivaraj V. Patil

Bench: D.P. Mohapatra, Shivaraj V. Patil

CASE NO.:
Appeal (civil) 7382 of 2001

PETITIONER:
B.D. SHETTY AND OTHERS

Vs.

RESPONDENT:
M/S. CEAT LTD. AND ANOTHER

DATE OF JUDGMENT: 30/10/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

Shivaraj V. Patil, J.

Leave granted.

The question whether the `delay in completion of disciplinary proceedings directly attributable to the conduct of a workman under Section 10-A(1)(b) of Industrial Employment (Standing Orders) Act, 1946 also covers delay occasioned on account of such workman succeeding in getting stay of

disciplinary proceedings at the hands of competent judicial authority pending trial of a criminal case in a bona fide effort to protect him from the prejudice that may be caused by simultaneous proceedings has come up for consideration and decision in this appeal.

In brief, the facts giving rise to this appeal are:

> The appellants are employees of the respondent-company. They resigned from the membership of the Mumbai Shramik Sangh Union, which till then had been the only trade union in the respondent-company and accepted membership of Shramik Utkarsha Sabha. One Mr. Sayeed Admed, an employee of respondent and Vice-President of Mumbai Sharamik Sangh made a false complaint on 23.4.1996 on account of union rivalry against the appellants alleging that they had assaulted him; they were arrested and subsequently released on bail; on 8.5.1996, suspension orders were issued to the appellants on account of criminal cases; the appellants replied to the order of suspension denying allegations made against them. on 7.10.1996, the respondent issued charge-

sheets to the appellants alleging misconduct under the Model Standing Orders 24(K) and 24(I); the appellants gave replies to the charge-sheets denying the allegations; the domestic inquiry commenced on 25.1.1997; the appellants requested the respondent as well as Inquiry Officer not to proceed with the domestic inquiry till the conclusion of criminal trial pending before the Sessions Court; since the said request was not accepted, the appellants filed complaints before the Labour Court, Thane under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short the MRTU & PULP Act). In the said complaint cases, the Labour Court granted interim order on 23.7.1997 staying the domestic inquiry. In the final order passed on 11.12.1997, the Labour Court confirmed the said interim order restraining the respondent from conducting the domestic inquiry till the completion of the criminal trial. Against this order, the respondent has filed Revision Application (ULP) Nos. 34, 35 and 36 of 1998 before the Industrial Tribunal, Thane, which are pending.

On 19.12.1997, the respondent reduced the subsistence wages of the appellant from 75% to 50% on account of delay caused by the appellants in the completion of the domestic inquiry. The appellants, in the reply denied that the delay in the domestic proceedings is directly attributable to them and that as per the long standing practice, they were entitled to full wages after 180 days of suspension which was not paid to them. Thereafter, aggrieved by the rate of reduction of subsistence wages, the appellants filed complaint on 29.12.1997 in the Industrial Court invoking the provisions of the MRTU & PULP Act and claimed 100% subsistence wages. The said complaint was dismissed. The appellants filed Writ Petition No. 6208/1998 in the High Court challenging the said order passed by the Industrial Court dismissing the complaint. The same was dismissed by the learned Single Judge of the High Court. The Letters Patent appeal filed by the appellants against the said order of the learned Single Judge was also dismissed in limine. Hence, this appeal.

Mr. Sanjay Parikh, learned counsel for the appellants contended that (1) the delay in completion of domestic inquiry is not directly attributable to the appellants when a competent judicial authority

has granted stay of the proceedings in domestic inquiry pending trial in criminal proceedings on being satisfied of bonafide efforts of the appellants to protect themselves from the prejudice that would be caused if the domestic inquiry was to be continued affecting their fair trial in criminal proceedings; if the domestic inquiry was not stayed the appellants would have been compelled to disclose their defence which would have prejudiced their valuable legal right to free and fair trial in criminal proceedings. (2) The labour court granted stay of domestic inquiry in the light of various decisions of this Court, satisfied on facts of the case that continuance of domestic inquiry pending criminal trial would be prejudicial to the appellants; merely because the appellants succeeded in getting stay order to protect their rights, it cannot be considered as a delay caused by them covered by Section 10-A(1)(b) of the Industrial Employment (Standing Orders) Act, 1946 (for short the Act). (3) the appellants are entitled for 100% subsistence allowance after 180 days of suspension under Clause 25(5-A) of the Model Standing Order Rules framed under the Bombay Industrial Employment (Standing Orders) Rules, 1959; clause 25(5-A) of the Model Standing Order Rules being more beneficial prevails over Section 10-A(3) of the Act; the High Court has failed to see this aspect of the matter. (3) The High Court also failed to appreciate that the exercise of their legal rights by the appellants for a fair and free trial before the Sessions Court did not attract the mischief of Section 10-A(1)(b) of the Act.

On the other hand, Mr. S. Ganesh, learned senior counsel for the respondents, supporting the impugned order, contended that if the delay is attributable to workman, it is enough to attract the application of Section 10-A(A)(b) of the Act; when the language of the Section is plain and clear it is not permissible to exclude delay attributable to workman on the ground that delay is caused on account of stay granted by the court; it is not permissible to add or exclude any words to the provision; the labour court as well as the High Court were right in accepting the case of the respondent-company reducing subsistence allowance of appellants to 50% having due regard to clear provision contained in Section 10-A(1)(b). He also added that the appellants caused delay at every stage even before the labour court as well as before the revisional authority. The further submission of the learned counsel was that in Mumbai completion of a sessions trial takes number of years, particularly, the cases where the accused are on bail; in this case the appellants are on bail; in cases where trial takes long time there would be no justification to stay domestic inquiry or payment of subsistence allowance at higher rate. According to him no prejudice would be caused to the appellants as they have already disclosed their defence by denying the charge of their involvement in criminal acts; even the revision petition filed by the respondents challenging the order of stay, granted by the labour court, is pending consideration and decision; in those proceedings also the appellants are causing delay on one or the other ground; the benefit of clause 25(5A) of the Model Standing Order Rules is not available to the appellants in terms of Section 10-A(3) of the Act, they not being `any other law.

We have carefully considered the submissions made by the learned counsel for the parties. Section 10-A of the Industrial Employment (Standing Orders) Act, 1946, to the extent relevant, reads:-

> 10-A Payment of subsistence allowance (1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance

> (a) at the rate of fifty per cent of wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and
>
> (b) at the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.
>
> (2) .....
>
> (3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.

It is clear from Section 10-A, extracted above, that the employer is required to pay subsistence allowance to a workman suspended pending inquiry at the rate of 50% of wages for the first 90 days and at the rate of 75% of wages for the remaining period of suspension, if delay in completion of disciplinary proceedings is not directly attributable to the conduct of the workman concerned. If a workman is entitled to more beneficial provisions regarding subsistence allowance under any other law in force in any State, then the provisions of such other law shall prevail.

Where a workman is suspended by the employer, pending investigation or inquiry into a complaint or charges of misconduct against such workman, a statutory obligation is cast on the employer under the said provision to pay subsistence allowance at the rate mentioned and such a workman has a statutory right to get subsistence allowance. However, as an exception a workman can be denied payment of subsistence allowance at the rate of 75% after expiry of 90 days of suspension, if the delay in the completion of disciplinary proceedings is directly attributable to the conduct of such workman.

In the light of the question set out above we have to examine whether delay of any kind is covered by mischief of Section 10-A(1)(b) of the Act, as sought to be made out on behalf of the respondent. The work attribute means to ascribe to as belonging or pertaining as stated in Words and Phrases Permanent Edition. According to P. Ramanatha Aiyars Law Lexicon attributable is a plain Engligh word involving some casual connection between the loss of employment and that to which the loss is said to be attributable. This connection need not be that of a sole, dominant, direct or proximate cause and effect. A contributory casual connection is quite sufficient. The expression attributable to is wider in import than the expression derived from and so it follows that the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.

If under Section 10-A(1)(b) of the Act only the words attributable to were used, the position would have been different but the words used directly attributable to prefixing the word directly to the

words attributable to makes a drastic difference to emphasis that in order to deny a workman subsistence allowance at the rate of 75%, the delay should be directly attributable to the conduct of such workman in completion of disciplinary proceedings and not that every kind of delay is covered by the said provision. If that was the intention of the legislature there was no need for emphasis by adding the word directly and instead they would have simply used the words attributable to. In the field of interpretation of statutes the courts always presume that the legislature inserted every part thereof with a purpose and the legislative intention is that every part of the statute should have effect. Further, it cannot be said that a word or words used in a statute are either unnecessary or superfluous unless there are compelling reasons to say so looking to the scheme of the statute having regard to the object and purpose sought to be achieved by it. In this view, the use of the word directly in the provision has to be given meaning and effect in the context of the said provision under the scheme of the Act.

When a workman approaches a competent court bonafidely to protect himself from prejudice likely to be caused by continuing proceedings simultaneously in domestic inquiry as also in the criminal case grounded on the same set of facts and succeeds in getting order from a competent judicial authority staying further proceedings in the disciplinary proceedings till the disposal of the criminal case, it cannot be said that delay on that account in completion of disciplinary proceedings is directly attributable to the conduct of such workman. It cannot be denied that a workman is also entitled for a free and fair trial in the criminal case. Hence, if a workman, in order to protect himself from the prejudice that may be caused by simultaneous proceedings, approaches a competent judicial authority and that authority, on being satisfied, taking into consideration the facts and circumstances of the case, stays further proceedings in a domestic inquiry pending a criminal trial, delay caused on that account in completion of domestic inquiry cannot be directly attributable to the conduct of such workman because granting stay of further proceedings in a domestic inquiry does not depend on the pleasure or mere wish of a workman himself. May be, in a given case the court may refuse to stay disciplinary proceedings. It is open to the employer to oppose granting order by a competent court staying disciplinary proceedings on all the grounds available to him. If a workman is to be denied subsistence allowance at the rate of 75% under Section 10- A(1)(b), even in a case where he may have a legal right and a good case on merit to get order from a competent court staying domestic inquiry pending criminal trial, he may be forced to suffer in silence. During the period of suspension he has to support his family and survive to fight or defend his case. It appears, reference to the delay directly attributable to the conduct of the workman in the said provision is obviously to the one where the workman unjustifiably, deliberately or designedly drags on or prolongs the domestic inquiry. To put it in other way, a workman cannot be permitted to take advantage of delay caused by himself in the absence of any order passed by a court. If such a delay is also to be taken as covered by Section 10- A(1)(b) it may amount to in a way putting restraint or clog on the exercise of legal right of a workman to approach a court of law out of fear of losing subsistence allowance at the rate of 75%. It is one thing to say that in a given case there should be no stay of disciplinary proceedings. It is another thing to say that in case stay is granted there will be delay in completion of disciplinary proceedings, which is directly attributable to the conduct of a workman. Merely because legal proceedings will be pending in a court or before other authority and they take sometime for disposal, may be inevitably, that itself cannot be the ground to deny subsistence allowance to a workman against a statutory obligation created on the employer under

Section 10- A(1)(b). One must not lose site of the fact that the Act is a beneficial piece of legislation and the provision of subsistence allowance made is intended to serve a definite purpose of sustaining the workman and his family members during the bad time when he is under suspension pending inquiry. This provision is enacted with a view to ensure social welfare and security. Hence, such a beneficial piece of legislation has to be understood and construed in its proper and correct perspective so as to advance the legislative intention underlying its enactment rather than abolish it. Assuming two views are possible, the one, which is in tune with the legislative intention and furthers the same, should be preferred to the one which would frustrate it.

It is open to the employer to resist granting of interim order by a court staying the disciplinary proceedings or getting the stay order vacated, as the case may be, satisfying the court that on facts and circumstances of the case, there is no justification to stay the disciplinary proceedings pending criminal trial. In the present case, as already stated, the competent court has granted stay order staying the disciplinary proceedings and the matter is pending in revision filed by the respondent challenging the same before the Industrial Tribunal. It may be stated here itself that during the course of the arguments both the learned counsel stated that in order to avoid further delay, a direction may be given to Industrial Tribunal to dispose of the revision petition within a given time frame. Whether there is justification for continuation of the stay order or not is pending consideration before the Industrial Tribunal. Hence, we do not express any opinion on merit although some submissions were made before us by the learned counsel for the parties in this regard. The learned senior counsel for the respondent submitted that even before the Tribunal in the revision petition, the delay is caused by the appellants. As can be seen from Rozname (order sheet) of the proceedings before the Tribunal, the delay is not entirely attributable to the appellants although few adjournments were sought by them. Sometimes court was vacant, sometimes the proceedings were adjourned by the consent of the parties and sometimes for other reasons. The learned counsel for the appellants complained that there was delay on the part of the respondent also after issuing suspension orders to the appellants on 8.5.1996; the appellants replied to the suspension orders on 6.9.1996; no action was taken upto 7.10.1996 on which date charge-sheets were received by the appellants; the appellants filed reply to the charge-sheets on 15.10.1996 and the domestic inquiry commenced only on 25.1.1997.

We are not impressed by the submission of the learned counsel for the respondent that once there is delay on account of the conduct of the workman, whatever may be the reason for delay, it is good enough to attract Section 10-A(1)(b) to deny the workman subsistence allowance at 75% after 90 days of suspension. According to him, no distinction can be made to exclude delay caused on account of stay order granted by a court at the instance of workman. He contended that no words can be added or excluded to the said provision to avoid the mischief of it. In our view, a plain reading and clear understanding of Section 10- A(1)(b), as already discussed above, excludes the delay in completion of disciplinary proceedings caused on account of order granted by a competent court from the mischief of the said provision. It is only the delay that is directly attributable to the workman is covered by the said provision. For what is stated above, the question raised in the beginning is answered in the negative.

The argument of the learned counsel for the appellants that looking to the Model Standing Orders appearing in Schedule I appended to the Bombay Industrial Employment (Standing Orders) Rules, 1959, which are more beneficial, the appellants are entitled for 100% subsistence allowance equivalent to their wages, dearness allowance and other compensatory allowance in case inquiry is not completed within the period of 180 days is based on Section 10-A(3) is untenable. The learned senior counsel for the respondent pointed out that Model Standing Orders contained in Schedule I, are the part of Bombay Industrial Employment (Standing Orders) Rules, 1959 and these rules are framed in exercise of the powers conferred by Section 15 of the Act. Hence, it cannot be said that the said Model Standing Orders come within the meaning of such `other law covered by Section 10-A(3). He drew our attention to a Division Bench judgment of Bombay High Court in May & Baker Ltd. vs. Kishore Jaikishandas Icchaporia (1991 Lab.I.C. 2066) in which it is clearly held that Model Standing Orders were not other laws. Para 9 of the said judgment reads thus:-

> There is no dispute that the payment that was made by the appellant to the 1st respondent was in accord not only with the provisions of the Certified Standing Orders applicable to their industrial establishment but also with those of Section 10-A. It was urged by Mrs. Dsouza, leaned counsel for the 1st respondent that the 1st respondent was entitled to subsistence allowance as provided by the Model Standing Orders by reason of sub-section (3) of Section 10-A because the Model Standing Orders were other laws within the meaning of sub-section (3). We find this argument difficult to accept. The Model Standing Orders, as also Certified Standing Orders, are laws no doubt, but they are laws made under the provisions of the Act. They are not provisions under any other law. In our view, therefore, the provisions of Section 10-A supervene in relation to the payment of subsistence allowance over the provisions of the Model Standing Orders.

We have every good reason to accept the said view. It is plain from the very language of Section 10-A(3) that the words `provisions of such other law necessarily refer to the law other than one covered by the very Act and Rules made thereunder. In this view, we reject the contention of the learned counsel for the appellants. Similarly, his argument that there is a practice with the respondent to make 100% subsistence allowance if inquiry is not completed within 180 days, and as such the appellants are also entitled accordingly, cannot be accepted in view of the specific provision contained in Section 10-A of the Act.

In view of submissions made by both learned counsel that the revisional authority may be directed to dispose of the revision petitions pending before the Industrial Tribunal within the given time frame and looking to the facts and circumstances of the case, we also think it just and appropriate to direct the Industrial Tribunal, Thane, to dispose of the revisions pending before it within two months from the date of receipt of copy of this order. It is open to both the parties to urge all the contentions available to them including that there is no need to continue the stay order at this length of time and that no prejudice will be caused to appellants when they have already disclosed their defence in the domestic inquiry.

The learned senior counsel for the respondent submitted that in the event we hold against the respondent and reverse the impugned order, the payment of subsistence allowance at the rate of 75% may be ordered prospectively. Having regard to the facts and circumstances of the case and the view we have taken, it is not possible to accept the request made on behalf of the respondent that payment of subsistence allowance at the rate of 75% may be ordered prospectively.

In view of the interpretation we have placed on Section 10- A(1)(b) in regard to delay and answered the question in the negative, the impugned order does call for interference.

For what is stated above, the impugned order cannot be sustained. We set aside the same and hold that the appellants are entitled for subsistence allowance at the rate of 75%. The appeal is allowed accordingly. The Industrial Tribunal, Thane, shall dispose of the Revision Application (ULP) Nos. 34, 35 and 36 of 1998 within a period of two months from the date of receipt of copy of this order. No costs.

.....J. (D.P. MOHAPATRA) .....J. (SHIVARAJ V. PATIL) October 30, 2001.