

Vishwamitra Karyalaya Press vs Authority Appointed Under Payment Of ... on 25 February, 1955

Equivalent citations: AIR1955ALL702, AIR 1955 ALLAHABAD 702

ORDER

M.L. Chaturvedi, J.

1. These are three petitions under Article 226 of the Constitution, which may conveniently be disposed of by the same judgment, because the points that arise in them are common and relate to the same institution namely, the Vishwamitra Karyalaya (Press).

2. The petitioner in these petitions is the Vishwamitra Karyalaya (Press), Mahatma Gandhi Road, Kanpur. The press publishes a Hindi newspaper known as 'Vishwamitra' at Kanpur. The press has been registered as a factory under the Factories Act and there is a licence for the premises No. 965 Mahatma Gandhi Road. The respondents 2 to 14 of petitions Nos. 970 and 971 of 1953, and 2 to 9 of petition No. 987 of 1953, are the employees or were the employees of this Karyalaya.

Some of them were sub-editors, some compositors and one was a Daftari. There were certain disputes between the Karyalaya and respondents 2 to 14 of petition No. 970 of 1953, which were referred for adjudication to some Industrial Tribunal, and the matter went up to the Supreme Court.

After the decision by the Supreme Court, there were certain complaints that the management had not paid the wages of the respondents within the period provided by law, and applications were filed by the Chief Inspector of Factories to the Magistrate, who had been authorised under Section 15, Payment of Wages Act, 1936, to hear and decide all claims arising out of deductions from wages or delay in the payment of wages. Certain preliminary objections were taken to the applicants, and after they had been disposed of, the learned Magistrate framed issues and went into the matter.

After discussing the facts and law of the points raised before him, he came to the conclusion that the respondents had not been paid their wages within the period provided by Section 5, Payment of Wages Act. A number of legal points were also raised before him, but he decided all of them against the petitioner and directed payment of wages, as claimed by the Chief Inspector. The order of the Magistrate is dated 22-10-1953 and petitions Nos. 970 and 971 of 1953 were filed in this Court on 12-11-1953 and petition No. 987 of 1953 on 23-11-1953.

The prayers contained in these petitions are that the order passed by the Magistrate directing the payment of wages be quashed, and that writs of mandamus be issued directing the respondent 1 not to recover from the petitioner the amount awarded under the order aforesaid.

3. The learned counsel for the petitioner has raised a number of points in support of the petitions, and the learned counsel for the Respondents has raised a preliminary objection to the hearing of the petitions, I proceed to decide first the preliminary objection raised by the learned counsel for the respondents. The objection is to the effect that appeals lay against the impugned orders under Section 17, Payment of Wages Act, and the petitioner having omitted to file these appeals, he has disentitled himself to present these petitions.

Sub-section (3) of Section 15, Payment of Wages Act says that where an application under Sub-section (2) by the Inspector is entertained, the authority shall hear the applicant and the employer and, after such enquiry as may be necessary, direct the refund to the employed person of the amount deducted, or may order the payment of the delayed wages together with the payment of such compensation as the authority may think fit, not exceeding a certain figure.

Section 17 says that an appeal against a direction under Sub-section (3) of Section 15 may be preferred within 30 days of the date on which the direction was made before the District Court, if the total sum directed to be paid by way of wages and compensation exceeds Rs. 300/-.

The contention of the learned counsel for the respondents is that applications were made under Sub-section (2) of Section 15 of the said Act by the Chief Inspector of Factories, that they were entertained by the Magistrate appointed to deal with them and in the end the learned Magistrate directed the payment of daily wages to the workers. The order was fully covered by Sub-section (3) of Section 15 and an appeal clearly lay under Section 17 to the District court.

4. The reply of the learned counsel for the petitioner to this argument is that, according to his ease, the premises at Birhana Road, where the respondents were working, do not come within the definition of the word 'factory' and no application could have been filed by the Chief Inspector under Sub-section (2) of Section 15, and if no application could have been filed, the matter could not have been decided and no appeal could have been preferred against the decision.

I do not agree with the contention of the learned counsel. According to the wording of Section 17, an appeal against a direction made under Sub-section (3) of Section 15 lay to the District court and the orders impugned in the present cases were clearly directions given under Sub-section (3) of Section 15. The question whether Section 15 applied to the facts of the cases or not would make no difference to the maintainability of an appeal against an order which was expressly made under the provisions of Sub-section (3) of Section 15.

If there is an order under that provision of law, that is enough, to give a right of appeal to the aggrieved party. The question, whether any payment of wages could have been or should have been ordered, according to the terms of Sub-section (3) of Section 15, could be raised in the appeal, and it could have been contended that the Magistrate had no jurisdiction to deal with this matter, inasmuch as the Payment of Wages Act did not apply to the cases of these employees.

As a matter of fact, the point was raised before the learned Magistrate and he decided it on merits against the petitioner. An appeal, under the circumstances, clearly lay and the petitioner had

another alternative remedy provided to him (Manager) by the statute itself, which he failed to avail himself of. He cannot now come to this court and say that this petition should be heard, because his appeal would now be barred by time.

It is due to his own fault that the appeal has become barred now after the lapse of all this period, and he cannot take advantage of his own fault. I think, therefore, these petitions can be dismissed only on this preliminary objection raised by the learned counsel for the respondents. But I also propose to give my own opinion briefly on the points that have been raised on the merits of the case by the learned counsel for the petitioner.

5. The first submission is that the employees working at Birhana Road cannot be said to have been employed in any factory. The proved facts of the case appear to be that the actual printing was done at the premises on Mahatma Gandhi Road, Kanpur, editing and composing was done at Birhana Road, and the question is whether the premises at Birhana Road can also be said to come within the definition of the word 'factory' as defined in the Payment of Wages Act.

In the Payment of Wages Act it is merely said that 'factory' means a factory, as defined in Clause (m) of Section 2, Factories Act, 1948. Clause (m) of Section 2, Factories Act defines 'factory' as under

"Factory means any premises including the precincts thereof

(i) whereon ten or more workers are working, or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on or

(ii) whereon 20 or more workers are working, or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on but does not include a mine subject to the operation of Indian Mines Act or a Railway running shed."

According to the definition of 'factory' given above there must have been some manufacturing process going on and any premises where such a process was going on would come within the definition of 'factory', if there were ten or more workers in the case of the process being carried on with the aid of power, and where there were 20 or more workers in the case of premises where the process was being carried on without the aid of power. We have, therefore; to see what a manufacturing process means. 'Manufacturing process' is defined in Clause (k) of Section 2, Factories Act as (amongst other things) "(iv) printing by letterpress, lithography, photogravure or other similar work or book binding, which is carried on by way of trade or for purposes of gain, or incidentally to another business so carried on."

6. It is admitted that Vishwamitra paper is printed by letterpress, but the argument is that that printing is going on in the premises at Mahatma Gandhi Road and not in the premises at Birhana Road and, therefore, the premises at Birhana Road did not come within the definition of a factory. The definition, as given in the Factories Act, uses the expression 'manufacturing process' which

means 'any process for printing by letterpress etc.' So that any process for printing by letterpress would be included within the definition of words 'manufacturing process'. Before the paper could be printed at Mahatma Gandhi Road, it was essential that the types should have been set on a block prepared for the purpose, and the composition or preparation of this block, containing the necessary types, is a process essential before the paper could be printed at the printing machine.

The composition, in my opinion, is a necessary part of the process of the printing itself, and is included within the definition of the expression, 'manufacturing process'. I do not think that the definition should be confined to the process by which impression is created on the paper and to no other process preceding or succeeding the marking of the impressions on the paper to be printed. Everything that is necessary before or after to complete the process would be included within the definition of the words 'manufacturing process'.

It is not necessary to consider whether editing is also a part of the printing of a newspaper, because if composing which is admittedly carried on at Birhana Road came within the definition of expression 'manufacturing process', the premises at Birhana Road would also come within the definition of the word 'factory', because Birhana Road, on the above finding, is a place where a part of the process of manufacturing, namely, the composition of the letterpress is being carried on.

The other condition is that there should be 20 or more workers working there, but the question was nowhere raised either before the Magistrate or in the present petition or the affidavit filed in the case, that less than 20 workers were working at Birhana Road.

If an objection had been taken on this score that at Birhana Road less than 20 persons were working and, therefore, it did not come within the definition of 'factory', the matter would have been considered by the magistrate, and the respondents would have been in a position to show that more than 20 persons were actually working there. In the absence of any such ground or assertion in the petition I cannot hold that less than 20 persons were working at Birhana Road.

7. Even supposing that the number of persons working at Birhana Road was less than 20, I do not think that that would make any difference, because the factory, in the present case, would include both the premises, namely, the premises at Birhana Road and that at Mahatma Gandhi Road, and it is admitted that, if the number of workers of both the places is taken into account, it would certainly exceed 20.

This was a factory where the manufacturing process was going on at two different premises. A part of it was being carried on at Birhana Road and the other part at Mahatma Gandhi Road, and it is also admitted that the work at Mahatma Gandhi Road was carried on with the aid of power.

8. For the above reasons, I think that both these premises, jointly as well as separately, come within the definition of the word 'factory', as defined in the Indian Factories Act, and the respondents were the employees in the factory.

9. The learned counsel for the respondents contended that besides this being a factory, the premises at Birhana Road also came within the definition of the expression 'industrial establishment', as defined in Section 2, Sub-section (ii), Payment of Wages Act, where 'Industrial Establishment' is defined as meaning, (amongst other things).

"(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale."

The contention of the learned counsel is that both these premises were workshops in which the processes for the production, adaptation or preparation of the newspaper Vishwamitra were carried on. The types were set in the premises at Birhana Road preliminary to the printing and I think that process would be included within the definition of an 'industrial establishment'.

Under Sub-section (5) of Section 1, the State Government has been given authority to extend the provisions of Payment of Wages Act to any establishment by issuing a notification in the official Gazette, and it appears that a notification was issued by the State Government on 24-3-1939, which was to the effect that the Government was pleased to extend the provisions of Payment of Wages Act to all the printing presses in the United Provinces wherein or within the precincts of which ten or more workers were working on any day in the preceding 12 months.

This notification would include presses not worked by power when only 10 or more persons were working. The result of this provision is that even if less than 20 persons were working in the establishment at Birhana Road, the provisions of Payment of Wages Act would apply to those premises also.

10. I have considered the questions raised by the learned counsel for the parties on their own merits, but it was not necessary to do so in these petitions, because the orders of the learned Magistrate could be quashed only if there was any error apparent on the face of the record in those orders. In my opinion, the decision of the learned Magistrate is correct and, in any case, I do not think it can possibly be said that there is any error apparent on the face of the record as far as the orders of the learned Magistrate are concerned.

11. The result is that these petitions fail and are dismissed with costs.