Lakshmi Devi Sugar Mills Ltd. vs The State Of Uttar Pradesh And Ors. on 27 April, 1955

Equivalent citations: AIR1955ALL578, (1955)IILLJ1ALL, AIR 1955 ALLAHABAD 578

Author: Raghubar Dayal

Bench: Raghubar Dayal, V. Bhargava

JUDGMENT

Raghubar Dayal, J.

1. This is a petition under Article 226 of the Constitution by the Lakshmi Devi Sugar Mills Ltd. against seven opposite parties in the following circumstances.

2. The original writ application was presented on 28-2-1951. Amendments were made to it subsequently to an appreciable extent and a consolidated petition was subsequently filed on 21-9-1954. The reliefs claimed in this petition relate to the quashing and enforceability of a certain G.O. issued by the U.P. State Government on 11-1-1950, and to the quashing of the orders of the Conciliation Board, Industrial Court and the Labour Appellate Tribunal.

3. The G.O. No. 167 (ST) (II)/XVIII, dated 11-1-1950, was issued by the Governor of the United Provinces in exercise of the powers conferred by Section 3, United Provinces Industrial Disputes Act, 1947 (Act No. 28 of 1947). The directions given are in two paragraphs.

Paragraph 1 enjoins that every vacuum pan sugar factory in the United Provinces shall from the date of the order allow certain festival holidays with wages to its employees notwithstanding anything contained in the standing orders. Paragraph 2 enjoins that if certain employees had not been granted holidays on those festivals during the period between 24-11-1948 and 11-1-1950, the date of the order, the factory will pay to its employees within a certain period one day's additional wage in lieu of and for each one day's holiday not so allowed.

4. On the basis of this G.O. the General Secretary of Chini Mill Mazdoor Sangh, Chitauni, referred certain industrial disputes to the Regional Conciliation Board (Sugar), Gorakhpur. Four matters were referred. We are at present concerned with two of them. They are items 1 and 2 of this reference and relate to the payment of wages to the medical staff and the watch and ward staff for the festival holidays not allowed to them in accordance with para 2 of the aforesaid G.O.

5. The Regional Conciliation Board gave its award on 7-8-1950, and ordered the factory to pay the wages claimed to the medical staff and to the watch and ward staff.

6. Against this award the petitioner went in appeal to the Industrial Court in view of para No. 12 of G.O. No. 781 (L)/XVIII, dated 10-3-1948. The Industrial Court gave its finding against the petitioner on these points on 18-9-1950. The findings were pronounced in open court. Against these findings which the Industrial Court termed as a decision and the petitioner also treated as a decision, the petitioner preferred an appeal to the Labour Appellate Tribunal of India.

The Tribunal dismissed the appeal on 2-12-1950. Thereafter the petitioner filed the present writ petition praying for the quashing of the orders of the Regional Conciliation Board, the Industrial. Court and the Labour Appellate Tribunal of India and also the quashing of the G.O., dated 11-1-1950 and directing the State Government not to enforce this G.O. so far as it concerns the medical and the watch and ward staff.

7. The first question to determine is whether the State Government could issue an order under Section 3(b), U.P. Industrial Disputes Act, 1947, directing the employers to observe for certain period such terms and conditions of employment as may be determined in accordance with the Order with respect to the medical staff and the watch and ward staff.

The contention for the petitioner is that an order under Section 3 (b) of this Act could be with respect to the terms & conditions of employment of workmen only and that the medical and watch and ward staff do not answer the definition of 'workman' in the Industrial Disputes Act, 1947, which definition is adopted by the U.P. Industrial Disputes Act by Section 2, sub-s. (1). 'Workman' is defined in Clause (s) of Section 2, Industrial Disputes Act, 1947, to mean "any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward."

The contention for the petitioner was that this staff cannot be said to do manual or clerical work. The ultimate contention for the petitioner, however, is that the doctor and the compounder cannot be called 'workman' while the coolie and the peon attached to the medical department and the watch and ward staff do come within "workman'. It appears from the award that it was not disputed by the petitioner before the Regional Conciliation Board that watch and ward staff did not come within the definition of 'workman'.

We have, therefore, to consider whether the doctor and the compounder can be said to be workmen for the purposes of the U.P. Industrial Disputes Act. We are of opinion that they cannot be said to be such employees who do manual or clerical work. They can be said to be workmen only if their main work be manual or clerical and not merely because such work is incidental to the carrying out of their main duties.

The doctor's main work is not merely to write prescriptions or to feel the pulse of a patient. His main work is to observe the patient, to hear his complaints, to diagnose his disease with the experience and knowledge at his command and then to prescribe medicine which he considers best for the

patient. Similarly the compounder's work is not merely the taking out of medicines, mixing them in proper proportions as prescribed, and dispensing the prescriptions.

His main work too requires his knowledge of the medicines, the use of his capacity to weigh them, and to dispense them properly and to exercise general vigilance in the proper dispensing of medicines. We do not therefore consider that these two persons of the medical staff, namely the doctor and the compounder, answer the definition of 'workman'.

It follows, therefore, that the State Government could not by an order under Section 3(b), U.P. Industrial Disputes Act, 1947, give directions regarding their treatment and conditions of employment and that, therefore, so much of para I of the aforesaid G.O., dated 11-1-1950, is beyond the competence of the U.P. Government as relates to the doctor and compounder.

8. Paragraph 2 of the aforesaid G.O. gave directions with respect to something which had taken place in the past. It really ordered the application of para 1 of the G.O. from 24-11-1948, instead of from the date of the order, that is, 11-1-1950. It has been held by a Full Bench of this Court in the -- 'Basti Sugar Mills Co. Ltd. v. State of Uttar Pradesh', AIR 1954 All 538 (A) that the State Government cannot make an order under Section 3(b) of this Act to be operative retrospectively. It follows, therefore, that the direction given in para 2 of the G.O. could not be given by the State Government in the exercise of its powers under the Act.

9. The Regional Conciliation Board was established under G.O. No. 781(L)/XVIII, dated 10-3-1948. The reference by the Chini Mill Mazdoor Sangh was made to it under para 5 of this Order. Section 6, Sub-section (2), U.P. Industrial Disputes Act provides that the Provincial Government may enforce all or any of the decisions in the award, or remit it for reconsideration. It appears that the State Government gave a general order for the enforceability of the awards in para 16 of the G.O., dated 10-3-1948, in cases where no appeal was preferred against the award. We are, however, not concerned with these provisions as an appeal was filed against this award in view of para 12 of the same Order. Paragraph 13 of the Order provides what the Industrial Court has to do in the appeal. It has to record its findings and forward copies of the same to the various persons. Paragraph 25 of this Order is:

> "For the purposes of this Order an appeal shall be deemed to have been decided on the date on which the Provincial Government shall notify the orders therein passed by it under Section 3(b), United Provinces Industrial Disputes Act, 1947."

It has been decided by this Court in -- 'Lakshmi Devi Sugar Mills Ltd. v. U.P. Government', AIR 1954 All 705 (B) and in -- 'Krishna Prasad Bhargava v. G. G. Industrial Mazdoor Union, Agra', Writ Petn. No. 54 of 1952, D/- 24-2-1955: (AIR 1955 NUC (All) 3287) (C), that the findings of the Industrial Court under para 15 of the G.O. do not amount to a decision or an award and that they are mere findings which are submitted to the Government, which ultimately passes an order under Section 3(b), U.P. Industrial Disputes Act, and, by passing such an order, puts an end to the appeal, It was further held in the later case that when the Industrial Court gives no decision, no appeal can validly lie to the Labour Appellate Tribunal against its findings and that any order by the Labour Appellate

Tribunal in such an appeal was invalid and deserved to be quashed. According to this view, which we approve, the order of the Labour Appellate Tribunal, dated 2-12-1950, deserves to be quashed. There does not appear to be any necessity for formally quashing the findings arrived at by the Industrial Court both because they are just findings for the use of the Government and because of the reason that we propose to quash the award itself against which the appeal in which these findings were given was filed.

10. In the view of the matter we have taken it is not necessary for us to say anything at the moment about the validity of the provisions of para 12 of the G.O. of 1948 or whether the award is enforceable during the period such an appeal remains pending.

11. The learned counsel for the opposite party, Chini Mill Mazdoor Sangh, has referred us to Section 18, Industrial Disputes (Appellate Tribunal) Act, 1950, and submitted that this award o the Regional Conciliation Board is enforceable when no appeal lay to the Industrial Court in view of no appeal being contemplated by the Act; and that no appeal was filed to the Labour Appellate. Tribunal against the award to which it could be appealable under Section 7, read with Section 2(c), Industrial Disputes (Appellate Tribunal) Act, 1950, and there being no stay order under Section 14 of the Act. This seems to be the position; but we need not finally adjudicate upon it.

12. The last question to determine is whether the award of the Regional Conciliation Board deserves to be quashed because it has taken the view that para 2 of the G.O., dated 11-1-1950, was gpod and applicable to the medical and the watch and ward staff of this Factory. It is contended that there was no error apparent on the face of the record which would justify a writ of certiorari quashing that order. We do not agree with this contention. It is clear from the award that the Regional Conciliation Board felt bound by the terms of the G.O. and consequently held that the medical staff and the watch and ward staff were entitled to the festival holidays and to the wages for such holidays which were not allowed to them in the past. There is nothing in the award to indicate that the Board itself considered the merits of the question, applied its mind to the problem and then thought it just that such staff should be allowed such holidays and compensation independently of the directions given in the Government Order. This indicates that the Board acted in disregard of the law, that is of the provision of Section 3(b), U.P. Industrial Disputes Act that a Government Order under that provision can direct the observance of terms and conditions of employment in the future and not in the past. When an order of the Board is passed in these circumstances, it can be quashed by a writ of certiorari in view of the case reported in --T.C. Basappa v. T. Nagappa', AIR 1954 SC 440 (D). It is said at p. 444 "An error in the decision or determination itself may also be amenable to a writ of 'certiorari', but it must be a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by 'certiorari' but not a mere wrong decision."

13. It was also urged for the opposite party that this legal objection to the validity of the G.O., dated 11-1-1950, had not been taken before the Regional Conciliation Board and that therefore we should not allow this point to be raised here. We again do not agree with this contention. The point is a pure question of law. It is not dependent on any question of fact. When it affects the rights of the petitioner there seems to be no justification for barring it out of consideration. It may also be

mentioned that the occasion for issuing a writ of certiorari when the Tribunal concerned ignores any law must arise only when its attention is not drawn to that law by any of the parties which itself may have thought of it subsequently. It is true as urged for the opposite party that a writ of certiorari will not ordinarily issue merely to correct a wrong decision on a point of law as in that case it would appear that the Court would be acting as an appellate court, and it is a well-known restriction on the exercise of the power of issuing writs in the nature of certiorari that the Court should not constitute itself into a court of appeal.

14. Lastly, it was said that if the Regional Conciliation Board considers the directions given in the Government Order as good directions on equitable principles, there is nothing wrong in its giving effect to them.

It may be so, but the Board must consider freely on the merits of such directions before giving effect to them. In fact the Board is not to give effect, to those directions. The Board should in its own discretion come to the conclusion that a decision on those lines would be just in connection with a particular industrial dispute. Such, as has already been explained, has not been the case with the award under discussion. The Regional Conciliation Board just acted upon the directions given in the G.O., dated the 11-1-1950. Reference may be made to the observations made in the case reported in -- 'Commissioner of Police, Bombay v. Gordhandas Bhanji', AIR 1952 SC 16 at p. 21 (E).

> "We have held that the Commissioner did not in fact exercise his discretion in this case and did not cancel the licence he granted. He merely forwarded to the respondent an order of cancellation which another authority had purported to pass. It is evident from these facts that the Commissioner had before him objections which called for the exercise of the discretion regarding cancellation specifically vested in him by Rule 250. He was therefore bound to exercise it and bring to bear on the matter his own independent and unfettered judgment and decide for himself whether to cancel the licence or reject the objections. That duty he can now be ordered to perform under Section 45".

15. In view of the above we mate the following orders:

> 1. We direct a writ of mandamus to issue to the State Government not to enforce para 1 of G.O. No. 167 (ST)/(II)/XVIII, dated 11-1-1950, with respect to the doctor and compounder. This will not affect its enforcement in respect of the rest of the staff of the medical department and the watch and ward staff.

(2) In exercise of our powers of issuing writs of certiorari we quash the award of the Regional Conciliation Board (Sugar), Gorakhpur dated 7-8-1950, and the order of the Labour Appellate Tribunal of India, dated 2-12-1950:

> (3) A writ of mandamus will issue to the State Government not to enforce para 2 of the aforesaid G. O. of 11-1-1950 at all.

16. We order the State of Uttar Pradesh, opposite party No. 1, to pay the costs of the petitioner, which we assess at Rs. 400.