The Employers' Association Of Northern ... vs The Secretary For Labour, Uttar Pradesh ... on 2 August, 1951

Equivalent citations: AIR1952ALL109, AIR 1952 ALLAHABAD 109

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. In both these writ applications, the petitioners have asked for a writ o mandamus, restraining the Government of Uttar Pradesh and the Labour Commissioner, U. P. Kanpur, from enforcing and promulgating Rules. Nos. 5, 6, 7, 8 and 9 of the Rules framed under the Factories Act, 1948, and published in Government Notification no. 2401 (L(sic))/XVIII.543(L)/47, dated 29-6-1949. The petitioner in Writ Application No. 208 of 1950 is the Employers' Association of Northern India which has moved this application on behalf of seventeen sugar factories which are members of the Association. The other application has been moved by the New Victoria Mills Company, Limited, Kanpur. In both these applications, the validity of Rules 5 to 9 just mentioned has been challenged. It is alleged that though these rules purport to be framed under Sub-section (2) of Section 49, Factories Act, 1948, they do not come within the purview of that Sub-section and are consequently ultra vires of the Government of Uttar Pradesh. An additional ground has been taken in writ Application no. 208 of 1950. It is based on the nature of working of the sugar factories. It was contended by the petitioner in this petition that sugar factories employ 500 or more workers during the crushing season only which usually lasts for about four months. Daring the remaining portion of the year, the number of workers employed by these 17 factories goes down below 500 and consequently it was contended that it cannot be said that these sugar factories ordinarily employ 500 or more workers which is an essential requirement for the applicability of Section 49, Factories Act, 1948, and the rules thereunder.

2. We may first consider the latter ground taken by the Employers' Association in writ Application No. 208 of 1950. It was contended by the learned counsel for the petitioner that because the sugar factories employ 500 or more workers during the crushing season only, it should be held that in the sugar factories 500 or more workers are not ordinarily employed. The contention is based on the interpretation of the word 'ordinarily.' It has been argued that since the working season, when there are 500 or more workers, forma only a minor part of the year, it cannot be said that 500 or more workers are ordinarily employed in the sugar factories. To interpret the word 'ordinarily,' we can get assistance from the same word as used in the definition of the term 'factory' in this very Act. Clause (m) of Section 2, Factories Act, 1948, defines factory as follows :

"(m) '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 twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily as carried on, or

(ii) * * * * *"

It is undisputed that the manufacturing process in a sugar factory is carried on only daring the crushing season which is also the period during which the factory employees 500 or more workers.

Under the first portion defining a 'factory,' the premises would be a 'factory' only for the period during which the manufacturing process is actually being carried on with the aid of power; for the period during which the manufacturing process is not actually carried on, the premises can be a 'factory' only under the second portion of the definition which makes the premises a 'factory' if the manufacturing process is ordinarily carried on with the aid of power in these premises. It cannot be said that merely because no manufacturing process is carried on during the off season, sugar factories cease to be factories within the meaning of this Act. It is obvious that the word 'ordinarily' which was used in the definition was meant to be interpreted with reference to the nature of the factories to which it bad to be applied. Factories, which, in the very nature of things, carry on the manufacturing process for only a limited period during a year and utilise the remaining period for ancillary work, such as the cleaning and repairing of the machinery, purchasing of stocks etc., must be deemed to be factories throughout the year even though they do not carry on the manufacturing process during the off season. The word 'ordinarily' in this definition cannot be interpreted in the sense in which it is used in common parlance. It must be interpreted with reference to the intention and purposes of the Act in which it has been used and with reference to the subject-matter to which the Act has to be applied. The principle that general words are to be construed with reference to the intention of the statute in which they occur and to the subject-matter to which they have to be applied is well recognised and has been fully discussed by Maxwell in his book on The Interpretation of Statutes. When the word 'ordinarily' has to be as interpreted in the definition of 'factory,' a similar interpretation must be put on the word 'ordinarily' used in Section 49 when that section is applied to sugar factories.

We are, therefore, unable to accept the contention of the learned counsel for the petitioner that Section 49 Factories Act, 1948, cannot be applied at all to sugar factories or to other factories which have a limited working season. This question may be looked at from another angle. Even the factories which work throughout the year do not necessarily work for all the 24 hours every day. In fact, there is quite a large number of factories which work for only 8 or 9 hours out of 24 hours every day. This limitation on the working hours may be due to rules prescribed under various statutes or may be due to the exigencies and circumstances in which the factories are working. Even if the factories carry on the manufacturing; process for only 8 or 9 hours a day, there can be no doubt that it will have to be held that the manufacturing is ordinarily carried on in them. This ground for holding that these rules do not apply to seasonal factories like sugar factories, therefore, fails.

3. The second contention which is common to both the applications is that Rules NOS. 5 to 9 are beyond the scope of Sub-section (2) of Section 49 which is the only provision in the Factories Act under which these rules have been framed. Sub-section (2) of Section 49 of the Act lays down that "the Provincial Government may prescribe the duties qualifications and conditions of service of officers employed under Sub-section (1)."

The learned counsel for the petitioners in both these applications has contended that these rules do not merely prescribe the duties, qualifications and conditions of service of officers but go far beyond them and consequently they are beyond the rule-making powers of the Provincial Government. We are unable to accept this contention-so far as Rule 6 is concerned. Rule 6 lays down that there shall be three grades of Welfare Officers, drawing different scales of pay. Grade I which carries the highest scale of pay is meant for Welfare Officers employed in factories ordinarily employing 2500 or more workers per day. Grades II and III relate to factories ordinarily employing from 1,000 to 2,499 workers per day and from 500 to 999 workers per day respectively. It is quite obvious that the prescription of these officers and their scales of pay is nothing except the conditions of service of these officers. It was obviously competent for the Provincial Government, when prescribing the grades of officers, to make a distinction between Welfare Officers employed for factories employing more workers and those employing a smaller number. The prescription of the scales of pay is also quite clearly one relating to the conditions of service of the officers. This rule, therefore, clearly falls within the purview of the rule-making power of the Provincial Government under Sub-section (2) of Section 49, Factories Act 1948, and is therefore, a valid rule.

4. We, however, feel that the contention of the learned counsel for the petitioners with respect to Rules NOS. 5, 7, 8 and 9 is correct and must be accepted. Rule 5 lays down that the Labour Commissioner shall invite applications from amongst candidates qualified under Rule 4 and shall maintain a list of approved candidates for appointment as Welfare Officers in factories. The names shall be arranged in order of merit and with due regard to the qualifications laid down in Rule 4. Rule 7 lays down that, subject to the provisions contained in Rules 8 and 9, appointments to the various grades shall be made as follows :

> "Grade I, By selection from the list prepared under Rule 5 and from amongst certain Welfare Officers of Grades II and III.
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> Grade II. By selection from the list prepared under Rule 5 and from amongst certain Welfare Officers of Grade III.
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> Grade III. By selection from the just prepared under Rule 5.
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> Rule 8 enjoins the factories to send their requisition to the Labour Commissioner, when they require a Welfare Officer of Grade III, who shall send the first ten names of candidates available in the, list and then requires the employer to select and appoint a candidate from amongst the names sent to him within one month. Rule 9 similarly governs the procedure to be adopted by an employer who requires a Welfare Officer of Grade I or Grade II and again the selection has to be made either from the

names requisitioned from the Labour Commissioner in the same manner as under Rule 8 or from amongst eligible officers of the lower grades. It is quite obvious that none of these four rules deals with the duties, qualifications or conditions of service of Welfare Officers. They deal with the method of selection of candidates and their appointments. The learned counsel for the opposite party argued that the conditions embodied in these rules should really be considered to be qualifications of officers for appointment as Welfare Officers and it should, therefore, be held that these rules do not go beyond the scope of the rule-making power of the Provincial Government who can prescribe the qualifications of the Welfare Officers. We are unable to agree with this contention. The word 'qualifications' used in Sub-section (2) of Section 49 of the Act is obviously meant to be qualifications of the officer, such as his academic qualifications, his training and his other accomplishments. The contention that the existence of his name in the list prepared by the Labour Commissioner should be treated as a qualification cannot be accepted as it would give rise to an anomalous position. If this contention were accepted, it would mean that, while prescribing qualifications, the Provincial Government may even go to the extent of so making the rules that the employers are left with no choice at all as to the individual to be appointed by them and have to accept the selection by some other person mentioned in the rules. The procedure prescribed in these rules is really procedure for recruitment; the method of recruitment cannot be considered to be a matter relating to qualifications. As an example of the anomalous position that would arise if such an interpretation is given to the word 'qualifications' we may refer to Article 84 of the Constitution which lays down :

"84. A person shall not be qualified to be chosen to fill a seat in Parliament unless he,

(a) * * * * *

(b) * * * * *

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament."

It would, in our opinion, be absurd to contend that, under this Article, the Parliament has power to make a law laying down that no person shall be qualified to be chosen to fill a seat in Parliament unless his name occurs in a list of persons maintained by such officer as may be nominated in that behalf. If such an interpretation was placed on the word 'qualifications' used in this Article, the Government of the day could ensure that there should be a list which would contain names of only such persons as the Government would desire to be returned to Parliament in future. Conditions of this type cannot be considered as qualifications for election to the membership of the Parliament. On the same analogy, the word 'qualifications' used in Sub-section (2) of Section 49, Factories Act, 1948, cannot be construed to include the procedure for recruitment and appointment which has been prescribed in Rules NOS. 5 7, 8 and 9.

5. The learned counsel for the opposite-party sought to justify these rules by reference to Section 112, Factories Act, 1918, which is to the following effect:

> "112. The Provincial Government may make rules providing for any matter which, under any of the provisions of this Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the purposes of this Act."

The first part of this section only permits the Provincial Government to make rules in respect of matters which are to be or may be prescribed under other provisions of the Act, such as, Sub-section (2) of Section 49. This part of this section, in effect, only reiterates the rule-making power which has been granted under other provisions of it. Under the second portion of this section, this power has been slightly enlarged. The Provincial Government has been, in addition, given the power to make rules which may be considered expedient in order to give effect to the purposes of the Act. Learned counsel for the petitioners contended that this extended power should also not be construed to cover the power of making rules, such as Rules 6, 7, 8 and 9 which are in question in these proceedings. We have also felt doubt whether the scope of this extended power would cover the rules in question but we consider that it is not necessary for as to express any definite opinion on this point. The learned counsel for the petitioners has drawn our attention to the notification in which these rules were promulgated. This notification clearly shows that the Provincial Government, when promulgating these rules, purported to make these rules in exercise of the power conferred by Section 49 and not in exercise of the extended power conferred by Section 112, Factories Act, 1948. Even the further argument that, because further power under Section 112 of the Act rests with the Provincial Government, the rules must be held valid, though the notification does not make a specific reference to that power, has also not found favour with us for the reason that this extended power has to be exercised under special circumstances. Section 112 makes it a condition precedent to the exercise of this power that it should be considered expedient to make rules in order to give effect to the purposes of this Act, This condition obviously requires a conscious exercise of the mind of the person making the rules in order to arrive at the opinion that it is expedient to make the rules in order to give effect to the purposes of this Act. Whenever this power is exercised, the notification issued should make it clear that there was such conscious exercise of mind by the rule making authority. In this case, it is obvious that there was no such exercise of mind by the Provincial Government because the notification makes no mention at all of Section 112. When the rules were framed, this provision of Section 112, Factories Act, 1948, was lost sight of altogether and consequently there could be no question of the Provincial Government making the rules after coming to a finding that it was expedient to make the rules in order to give effect to the provisions of the Act. Section 112 also cannot, therefore, make these rules valid. The rules are obviously ultra vires of the Provincial Government and consequently, in respect of these rules, the petitioners are entitled to the remedy, they have asked for.

6. As a result, we dismiss both the petitions in so far as they relate to Rule 6 and allow them with regard to Rules 5, 7, 8 and 9. A writ of mandamus shall issue to the opposite-party, restraining them from enforcing the latter rules, The petitioners will be entitled to their costs in both the applications which we fix at Rs. 200 in each application.