Supreme Court of India
Balvantrai Chimanlal Trivedi, ... vs M.N. Nagrashna And Ors. on 29 October, 1959
Equivalent citations: AIR 1960 SC 407, (1959) IILLJ 837 SC
Author: K Wanchoo
Bench: B Sinha, P Gajendragadkar, K Wanchoo
JUDGMENT K.N. Wanchoo, J.

1. This is an appeal by special leave against the judgment of the Bombay High Court by which the writ petition filed by the appellant was summarily dismissed. The brief facts necessary for the purpose of this appeal are these: The appellant is a cotton mill in Ahmedabad. Respondents Nos. 2(a) to 2(n) are the fourteen employees of the appellant designated as grey-folders. Under the Bombay Industrial Disputes Act, 1938, (since repealed by the Bombay Industrial Relations Act, No. XI of 1947, which came into force on April 15, 1947), the Registrar had made a notification recognising various occupations in cotton textile mills. Folders were put in group 'F' of this notification while clerks were put in group 'H'. In December 1946, the Textile Labour Association of Ahmedabad gave a notice of change to the Mill-owners' Association for standardisation of wages of the various occupations in the cotton textile industry. Thereupon a reference was made by the State Government in June 1947 to the industrial court, which, by the first part of its award, fixed wages for grey-folders doing cut-looking work at Rs. 42-4-0 per mensem. Later the same court gave the second part of its award relating to clerks in October 1948. In April 1949, the Textile Labour Association gave a notice terminating the award under Section 116 of the Bombay Industrial Relations Act and the award came to an end in June 1949. Thereafter under Section 42(2) of thy Bombay Industrial Relations Act, there was a notice of change by the Textile Labour Association for revision of pay scales. In pursuance of this notice there was an agreement between the Ahmedabad Mill-owners' Association and the Textile Labour Association on June 22, 1949. This agreement was to apply to all the cotton mills in Ahmedabad. CJ. (4) of this agreement provided pay scales for clerks who were divided into three categories. Then came Clause (5) with which we are concerned in this appeal. It runs as under:

"A separate scale for those of the employees who occupy the position lower than that of a full-fledged clerk but higher than of an operative will be provided as under:

40-3-70/EB-4-90-5-105 "This scale will be applicable in case of ticket boys, ticket checkers, coupon sellers, tally boys, production checkers, thread counters, cloth measurers, department store-men, cut lookers, and those who have not been included above but who can properly fall under the above category."

Grey-folders, however, not being specifically mentioned in Clause (5) continued to be paid Rs. 42-4-0 per month as fixed by the first part of the award of the industrial court referred to above. Consequently in January 1950, the fourteen respondents who are grey-folders, applied under Section 79 of the Bombay Industrial Relations Act to the labour court that they were not being paid the grade fixed by Clause (5) of the agreement and this amounted to an unlawful change by the employer and that it should be ordered to withdraw such an illegal change. This application was dismissed by the labour court in April 1952. It. was of opinion that the evidence showed beyond all

doubt that the applicants before it were operatives and could not be considered as clerks who were doing routine work of writing, copying or making calculations. There was an obvious error in this view of the labour court for the grey-folders had not claimed before it that they were clerks, for in that case they would have claimed wages under Clause (4) of the agreement; their case was that they held an intermediate position between clerks and operatives and were thus covered by Clause (5) which provided for such an intermediate grade. However, no further steps were taken by the grey-folders against this order of the labour court, by way of appeal or otherwise. In the meantime, the grey-folders applied under Section 116A of the Bombay Industrial Relations Act for modification of the award of the industrial court relating to folders. This application was withdrawn on April 22, 1953, as the parties had decided that the dispute would be settled through private arbitration and was in consequence dismissed. This was followed by private arbitration and the arbitrators rejected the demand for enhancement of wages of grey-folders on November 27, 1953. Having failed before the arbitrators also, the grey-folders made an application before the Authority under the Payment of Wages Act (hereinafter called the Authority) in April 1954. In that application they claimed that they were governed by Clause (5) of the agreement and were entitled, in view of their duties, to a properly adjusted wage in the scale mentioned in that clause, but in spite of this they were only being paid wages at the rate of Rs. 42-4-0 per mensem which were less than they were entitled to. They therefore prayed that they might be allowed Rs. 1,863 as wages withheld for the period from September 1953 to February 1954. The application was opposed by the appellant and it raised all kinds of objections, technical and otherwise. The main objections, however, were two, namely :

(1) that the Authority had no jurisdiction to entertain such an application; and (2) that in view of the earlier decisions of the industrial court in 1948 and the labour court in 1952, the folders were estopped from making a claim for wages under Clause (5) of the agreement.

The Authority held that it had jurisdiction to decide the application and that there was no question of any estoppel. It then went into die merits and came to the conclusion, looking to the duties performed by the folders, that they were clearly covered by Clause (5) of the agreement. It further held that the claim for withheld wages for September 1953 was barred by limitation and therefore ordered payment of Rs, 1,552-8-0 as delayed wages from October 1953 to February 1954.

2. Aggrieved by this decision, the appellant filed a writ petition in the High Court in April 1955. The High Court dismissed the petition summarily and also dismissed the application for a certificate to appeal to this Court. Thereupon the appellant applied to this Court for special leave to appeal which was granted; and that is how the matter has come up before us.

3. Learned counsel for the appellant has urged the same two points before us. In the first place he urges that in view of Section 42(2) of the Bombay Industrial Relations Act read with item (5) of Schedule III, the question raised in the application was about the construction and interpretation of the agreement and it could only be raised in the manner provided therein and not before the Authority. In the second place, he urges that in view of the decisions of the industrial court in 1948 and the labour court in 1952, the folders are estopped from raising this question in any case. Reliance in this connection is also placed on a decision of this Court in A.V. D'Costa v. B.C. Patel, , as to the extent of the powers of the Authority.

4. We have heard the learned counsel for the parties at length, and there appears to be some force in the contention of the appellant so far as the jurisdiction of the Authority is concerned; but we do not propose to decide this question of jurisdiction in the instant case because we have in addition to the determination of the Authority the fact that the appellant went to the High Court by a writ petition against the decision of the Authority and its petition was dismissed by the High Court. The present appeal is not directly from the judgment of the Authority but is from the order of the High Court dismissing the writ petition. Whatever infirmities might have attached to the order of the Authority, there would in our opinion be no reason to interfere with the order of the High Court dismissing the writ petition, if we come to the conclusion that the order passed by the Authority in this case has not resulted in any failure of justice. As we have pointed out above, the contention of the grey-folders in this case has all along been that they were entitled to a wage scale in accordance with Clause (5) of the agreement. They never claimed that they were clerks. As such their claim was for the intermediate grade between clerks and operatives, which was specifically provided for in Clause (5) of the agreement. The agreement came after the decision of the industrial court in 1948 and must be deemed to have varied that decision by mutual consent to the extent to which it did so. Thus there is no question of estoppel. When therefore the grey-folders applied to the labour court to be placed in the grade fixed by Clause (5) of the agreement, they were entitled to expect that the labour court would consider the question whether they could be placed, in view of the nature of their duties, in the intermediate grade; but the labour court's judgment of April 1952 seems to have gone on a misapprehension of the demand of the grey-folders. It seems to have thought that the grey-folders were claiming to be treated as clerks which they were not. Their claim was for the intermediate grade between clerks and operatives and this aspect of the matter was not fully appreciated by the labour court, though it felt that there appeared to be some conflict between the award of the industrial court and the agreement. The matter was considered at length on merits by the Authority and it came to the conclusion, after examining the nature of the work done by the grey-folders, that though they might not be full-fledged clerks they were entitled to the intermediate grade. We are of opinion that this view of the Authority is correct.

5. The question then arises whether we should interfere in our jurisdiction under Article 136 of the Constitution, when we are satisfied that there was no failure of justice. In similar circumstances this court refused to interfere and did not go into the question of jurisdiction on the ground that this Court could refuse interference unless it was satisfied that the justice of the case required it: see A.M. Allison v. B.L. Sen, . On a parity of reasoning we are of opinion that as we are not satisfied that the justice of the case requires interference in the circumstances, we should refuse to interfere with the order of the High Court dismissing the writ petition of the appellant. We accordingly dismiss the appeal, but having regard to the peculiar circumstances of the case which we have referred to above we order that each party will bear its own costs of this appeal.