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PURSHOTAM H. JADYE AND OTHERS

v.

V. B. POTDAR

October 26, 1965

B [P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH AND V. RAMASWAMI, JJ.]

Payment of Wages Act (4 *of* 1936), *s.* 2(*vi*)(*d*)—*Wages—If includes gratuity payable under award—'Instrument' meaning of.*

The 2nd respondent was the printer and publisher of a newspaper and was the employer of the appellants. The Industrial Tribunal had made
C an award framing a scheme of gratuity payable by the 2nd respondent to the appellants on terms and conditions prescribed in the award. After the newspaper ceased publication, the appellants applied to the 1st respondent, the Authority appointed under the payment of Wages Act, 1936, for payment of the gratuity due to them. The 2nd respondent raised a preliminary objection that the amounts claimed were not wages within the meaning of s. 2(vi) (d) of the Act and that therefore the applications, were incompetent. The 1st respondent rejected the contention, but the
D High Court, in an application under Arts. 226 and 227 of the Constitution upheld it.

In the appeal to this Court, the question was : Did the claim made by the appellants for payment of gratuity due to them under the award fall within s. 2(vi)(d) of the Act ?

HELD : Section 2(vi)(d) which provides for the exclusion of certain categories of gratuity from the definition of "wages" necessarily assumes
E that the categories of gratuity other than those specified by it would fall under s. 2(vi) (d). Section 2(vi)(d) refers to any sum which by reason of the termination of employment is payable to the employee. Since the expression "by reason of the termination of employment" must mean in the context "payable on the termination of employment," gratuity, which may be payable to an employee by reason of the termination of his employment, would fall under sub-cl. (d) provided it is shown that it is payable under any law, contract or instrument. Though it could not be
F said that the gratuity in the present case was payable under any law, and it could not be held that the award which framed a scheme for payment of gratuity would amount to a contract, the scheme of the definition of "wages", and the context of sub-cl. (d) suggest that the word "instrument" would include awards made by Industrial Courts of competent jurisdiction. [357 D-E, G-B, G-H; 358 E]

The scope of the denotation of the word "instrument" has to be judged
G in the light of the general object which the definition of "wages" is intended to achieve. Ordinarily, the word "instrument" would refer to documents executed by the parties. But if the context clearly indicates that the word "instrument" is used in a much larger sense, that context must be taken into account and a comprehensive interpretation must be placed upon the word. When the legislature amended the definition of "wages" by Act 68 of 1957 it obviously intended to widen the scope of that expression. Remunerations and bonus payable under awards have
H been included within the definition. Therefore, having regard to the object which the legislature had in mind in widening the scope of the definition, it would not be unreasonable to hold that the word "instrument" has a wider denotation in the context and cannot be confined only to documents

executed as between the parties. Besides, if the intention of the legislature was to confine the word "instrument" to such documents alone, it would have said "under any law, contract or other instrument". [358 G-H; 359 B-C, F-G] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 464 of 1963.

Appeal from the judgment and order dated June 14, 1961 of the Bombay High Court in Special Civil Application No. 1285 of 1960. B

S. B. Naik, Rajendra Chaudhury and *K. R. Chaudhury*, for the appellants Nos. 1, 2, 4-7, 9-13, 15-17 and 19-34.

S. V. Gupte, Solicitor-General, B. K. Agarwala, H. K. Puri for respondent No. 2. C

The Judgment of the Court was delivered by

Gajendragadkar, C.J. The short question of law which arises in this appeal is whether workmen are entitled to apply to the Authority appointed under the Payment of Wages Act, 1936 (No. 4 of 1936) (hereinafter called 'the Act') for the recovery of the amount of gratuity due to them under an award passed between them and their employer. This question has been answered by the Bombay High Court in the negative and the appellants, Purshotam H. Jadye and 34 others, who have come to this Court with a certificate granted by the said High Court, contend that the view taken by the High Court is not justified on a fair and reasonable construction of s. 2(vi)(d) of the Act. Respondent No. 1 is Mr. V. B. Potdar, the Authority appointed under the Act, whereas respondent No. 2, the Bombay Chronicle Co. Private Ltd., is the employer of the appellants. D E F

Respondent No. 2, a company having its registered office at Red House, Horniman Circle, Fort, Bombay, were the printers and publishers of the 'Bombay Chronicle', an English Daily, which used to be published in Bombay until the 5th April, 1959. On that day, the paper discontinued its publication. The appellants are the former employees of respondent No. 2. In a reference made to the Industrial Tribunal, Bombay under the Industrial Disputes Act, an award was pronounced by the said Tribunal on the 28th September, 1949, framing a scheme of gratuity payable to the appellants. This award directed respondent No. 2, to pay gratuity to the appellants on terms and conditions prescribed by it. It appears that respondent No. 2 terminated this award on the 29th February, 1952. After the 'Bombay Chronicle' ceased publication, the appellants moved respondent No. 1 under the Act G H

A by several applications for payment of the gratuity due to them. These applications were made in July and August, 1959.

Respondent No. 2 raised a preliminary objection against the competence of the appellants' applications. It was urged on its behalf that the amounts claimed by the appellants were not wages B within the meaning of s. 2(vi)(d) of the Act and as such the applications were incompetent. Respondent No. 1 has rejected the contention raised by respondent No. 2, and has held that the applications made by the appellants were competent and he had jurisdiction to deal with them on the merits.

C Respondent No. 2 then moved the Bombay High Court by a special civil application No. 1285/1960 under Arts. 226 and 227 of the Constitution. It was urged before the High Court by respondent No. 2 that the view taken by respondent No. 1 about the competence of the applications made by the appellants before him was contrary to law. This plea has been upheld by the High D Court with the result that the finding recorded by respondent No. 1 on the question about the competence of the applications made by the appellants has been reversed and the applications themselves have been ordered to be dismissed. It is this finding which is challenged before us by Mr. Naik on behalf of the appellants. The question thus raised for our decision lies within E a very narrow compass. Does the claim made by the appellants for payment of gratuity due to them under an award fall within s. 2(vi)(d) of the Act ?

It is well-known that the Act was passed in 1936 to regulate the payment of wages to certain classes of persons employed in F industry. The object of the Act obviously was to provide a cheap and speedy remedy for employees to whom the Act applied, *inter alia*, to recover wages due to them, and for that purpose, a Special Tribunal has been created. Section 15 provides for making such applications and it prescribes the manner and method in which the applications have to be tried. Section 2(vi) defines G 'wages' thus :—

> "wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were H fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes—

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e) any sum which the person employed is entitled under any scheme framed under any law for the time being in force."

The said section further provides that certain categories of payment made to the employees will not be included in the definition of "wages" prescribed by s. 2(vi). Sub-clauses (1) and (6) are relevant for our purpose. They read thus :—

"(1) Any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court."

. . . . . .

(6) Any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)."

It will be noticed that the definition of "wages" is an inclusive definition. It includes within its purview categories of payments prescribed by cls. (a) to (e) and excludes from its purview categories of payments prescribed by sub-cls. (1) to (6). It is plain that remuneration payable to an employee under an award or settlement amounts to wages within the meaning of this definition. Similarly, bonus paid to the employees under an award amounts to wages. That is the effect of sub-cl. (1). Any additional remuneration payable under the terms of employment is

A covered by sub-cl. (c) and it is made clear by this sub-clause that it would be treated as such additional remuneration even if it is called a bonus or by any other name. Sub-cl. (1) refers to bonus which is not such additional remuneration; it is bonus to which the employees are entitled under the principles evolved by industrial adjudication. This bonus may be under a scheme B of profit sharing or otherwise. If such a bonus forms part of the remuneration payable under the terms of the employment, it is included in the definition. Similarly, if such bonus is payable under any award or settlement between the parties or order of the court, it is included within the definition. Thus, it is clear that remuneration which may have been prescribed by an award C amounts to wages under s. 2(vi). Likewise, bonus properly so-called, which is payable under the award, is also included within the definition prescribed by s. 2(vi). That is one aspect of the matter which it is necessary to bear in mind in dealing with the question raised before us.

D The other consideration which is relevant is that sub-cl. (6) which provides for the exclusion of certain categories of gratuity necessarily assumes that the categories of gratuity other than those specified by it would fall under s. 2(vi)(d). This sub-clause clearly says that it applies to categories of gratuity other than those specified in sub-cl. (d), and that clearly means that certain E categories of gratuity are included in sub-cl. (d).

While considering the relevance and significance of this sub-clause, it may be relevant to point out that under the original definition contained in s. 2(vi) any gratuity payable on discharge was expressly excluded from its purview. The present definition F which has been introduced in the Act by Act 68 of 1957 is obviously intended to widen the scope of the definition; and one of the features of this comprehensive definition is that it does take within its purview certain categories of gratuity payable to the employees.

Bearing in mind these considerations, let us now revert to G sub-cl. (d) which has to be construed for deciding the point raised before us by the appellants. This sub-clause refers to any sum which by reason of termination of employment is payable to the employee. The expression "by reason of the termination of employment" must, in the context, have the same meaning as the expression "payable on the termination of employment" which is H used in sub-cl. (6). In other words, gratuity which may be payable to an employee by reason of the termination of his employment would fall under sub-cl. (d), provided it is shown that

it is payable under any law, contract, or instrument. It is true that an award made by industrial adjudication framing a scheme of gratuity, becomes enforceable under ss. 18 and 19 of the Industrial Disputes Act 14 of 1947; and in that sense, it is a scheme which is enforceable by virtue of the operation of law. But that would not justify the conclusion that the gratuity itself is payable under any law. It is payable under an award which is made enforceable by s. 18 of the Industrial Disputes Act. Therefore, it cannot be said that the gratuity in the present case is payable under any law.

Can it be said to be payable under a contract is the next question to consider. Here again, though it is well-settled that awards have, on many occasions, the effect of altering or modifying the contractual terms of employment between an industrial employer and his employees, it would be difficult to hold that the award as such is a contract. It is true that sometimes, the terms prescribed by industrial awards are treated as terms of a statutory contract which govern the relationship between the employer and the employees. But the description of the award as a statutory contract is merely intended to emphasise the fact that the terms prescribed by the award are enforceable as though they were terms of employment evolved by industrial adjudication for the parties. Therefore, we do not think it would be reasonably possible to hold that the award which frames a scheme for payment of gratuity can be said to amount to a contract within the meaning of the relevant sub-clause.

That takes us to the question as to whether an award can be appropriately described as an instrument which provided for the payment of gratuity. It is true that an instrument normally indicates a document executed as between the parties to it. But if the intention of the Legislature was to confine the word "instrument" to such documents alone, it would have said "under any law, contract or other instrument". The use of the word "other" would have justified the contention that the instrument should be of the same category as a contract, and cannot take in a document which evidences adjudication by an Industrial Court. The scope of the denotation of the word "instrument" has to be judged in the light of the general object which the amended definition of "wages" is intended to achieve. As we have already indicated, when the Legislature amended the definition of "wages" in 1957, it obviously intended to widen the scope of that expression. Remunerations payable under the awards have been included within the definition; bonus payable under the awards also falls within

A the definition; and some categories of gratuity also fall within sub-cl. (d). That is the obvious implication of sub-cl. (6). Having regard to the object which the Legislature had in mind in widening the scope of the definition, we think it would not be unreasonable to hold that the word "instrument" has a wider denotation in the context and cannot be confined only to docu-
B ments executed as between the parties. The scheme of the definition and the context of sub-cl. (d) read with sub-cl. (6) seem to suggest that the word "instrument" would include awards made by Industrial Courts of competent jurisdiction. On principle, it is difficult to imagine that whereas a bonus claimable under an award can be recovered by employees by moving the authority
C under s. 15, a gratuity claimable under an award cannot be so recovered.

In construing the word "instrument" in a narrow sense, the High Court has referred to the decision in *Jodrell* v. *Jodrell*(1). In that case, Lord Romilly, M.R., has observed that an order of
D Court is not an instrument within the meaning of the Apportionment Act, 4 & 5 Will. 4, cl. 22. This decision undoubtedly shows that the word "instrument" can have a narrow meaning if the context of the statutory provision in which it occurs indicates that way. On the other hand, under the Conveyancing Act, 1881 (44 & 45 Vict., c. 41), s. 2(xiii), "instrument" includes
E deed, will, inclosure, award, and Act of Parliament, (*vide Stroud's Judicial Dictionary*, p. 1473) It is thus clear that in construing the word "instrument", we must have regard to the context in which the word occurs. No one can suggest that the word "instrument" can always and in every case include an award or an order of adjudication. On the contrary, as we have already
F indicated, ordinarily, the word "instrument" would refer to documents executed by the parties. But if the context clearly indicates that the word "instrument" is used in a much larger sense, that context must be taken into account and a comprehensive interpretation must be placed upon that word. We are, therefore, satisfied that the High Court was in error in coming to the
G conclusion that the word "instrument" did not include an award and that made the applications made by the appellants before respondent No. 1 incompetent.

In the result, the decision of the High Court on this point is reversed and that of respondent No. 1 restored with costs throughH out. Respondent No. 1 should now proceed to deal with the appellants' applications in accordance with law.

(1))1868-69) 7 E. C. 461.

Before we part with this appeal, we ought to add that the High Court has found that though the award has been terminated by respondent No. 2, it still continues to exist and is binding on the parties. This finding of the High Court has not been challenged before us by the learned Solicitor-General who appeared for respondent No. 2, and we think rightly.

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Appeal allowed.