REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.20 OF 2018
(Arising out of S.L.P.(C) No.18413 of 2015)

National Kamgar Union ....Appellant(s)

VERSUS

Kran Rader Pvt. Ltd. & Ors. ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is filed by the appellant-Trade Union against the final judgment and order dated 12.09.2014 passed by the High Court of Judicature at Bombay in Writ Petition No.5241 of 2003 whereby the High Court allowed the writ petition filed by respondent No.1-Kran Rader Pvt. Ltd. and set aside the award dated 08.04.2003 passed by the

Industrial Court, Pune in a Complaint (ULP) No.544 of 1990 and, in consequence, dismissed the complaint filed by the appellant herein.

3. In order to appreciate the short issue involved in the appeal, it is necessary to set out few relevant facts infra.

4. The appellant is the Trade Union registered under the Trade Union Act, 1926 having several members working in Factories. Respondent No.1 owned a factory (manufacturing unit) at Pune. This Unit was originally owned by respondent Nos. 2 and 3 who, in turn, sold it to respondent No.4 in 1991 and then it was owned by respondent No.1. The Unit was engaged in the manufacture of several components like Traction Gears for supply to Railways, forging for oil industries and other manufacturing units etc. The members of the appellant-Union were working in respondent No.1's factory at all relevant time.

5. In 1990, respondent No.1 suffered business loss in running the said manufacturing unit and, therefore, decided to close down the said unit permanently. With that end in view, respondent No.1 served a notice of closure to the State Government (Maharashtra) under Section 25 FFA of the Industrial Disputes Act, 1947 (in short, "ID Act") on 29.08.1990 with a copy to the appellant-Union expressing therein their intention to close the operation of the Unit on expiry of 60 days with effect from 29.10.1990.

6. The appellant-Union, felt aggrieved of the closure notice issued by respondent No.1, filed complaint against respondent No.1 under Section 28 read with Items 9 and 10 of the Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act") in the Industrial Court at Pune in October 1990 being Complaint(ULP) No.544/1990.

7. In substance, the grievance of the appellant in their complaint was that since respondent No.1 had employed more than 100 workers on an average per working day for preceding 12 months in their manufacturing unit, the provisions of Chapter VB (Section 25-K) of the ID Act and, in turn, all the relevant provisions contained therein were applicable to respondent No.1. It was alleged that due to this reason, it was obligatory upon respondent No.1 to have ensured compliance of all the relevant provisions applicable for closure of the Unit. It was alleged that since admittedly the relevant provisions applicable to closure were not complied with by respondent No.1, a case was made out under the ID Act read with the Act to seek a declaration that the intended closure declared by respondent No.1, vide their notice dated 29.08.1990, is illegal under the ID Act read with the Act with a further grant of all consequential reliefs to each worker arising out of grant of such

declaration sought by the appellant in the Complaint in their favour.

8. Respondent No.1 (employer) filed a reply and denied therein the allegations made by the appellant-Union in their complaint. According to Respondent No.1 they never employed more than 100 workers in their Unit so as to attract the rigor of Chapter VB and other related provisions of the ID Act to give effect to the closure. In other words, according to respondent No.1, the strength of workers working in their Unit was always less than 100 in number, therefore, the provisions of Chapter VB and the related provisions of the I.D. Act had no application to respondent No.1. It was, therefore, contended that the decision taken by respondent No.1 to close the Unit with effect from 29.10.1990 was legal, proper and in accordance with law and hence could not be faulted with.

9. The parties adduced evidence (documentary/oral) in support of their respective

contentions. The Industrial Court, by its award dated 08.04.2003, allowed the appellant's complaint. It was held that respondent No.1 had employed 115 workers at all relevant time in their Unit, therefore, the provisions of Chapter VB of the ID Act were required to be followed while effecting the closure of the Unit. It was held that since the relevant provisions were not complied with by respondent No.1, the closure in question was bad in law entitling the members of the appellant-Union to claim all consequential benefits arising therefrom as if there was no closure of the Unit.

10. Respondent No.1 felt aggrieved and filed a writ petition before the Bombay High Court. By impugned judgment, the Single Judge allowed the writ petition and while setting aside of the award of the Industrial Court dismissed the appellant's complaint. The High Court held that the total strength of the workers working at all relevant time in respondent No.1's Unit was 99 and not 115 as

held by the Industrial Court. It was held that due to this reason, it was not necessary for respondent No.1 to ensure compliance of the provisions of Chapter VB of the ID Act while declaring the closure of their Unit.

11. The appellant-Union felt aggrieved and filed the present appeal by way of special leave in this Court.

12. Heard Mr. B.H. Marlapalle, learned senior counsel for appellant and Mr. D.J. Bhanage and Mr. Sanjay R. Hegde, learned senior counsel for respondents.

13. Having heard the learned counsel for the parties at length and on perusal of the record of the case, we find no good ground to interfere in the impugned judgment of the High Court. In other words, the reasoning assigned by the High Court appears to be just and reasonable calling no interference for the reasons mentioned hereinbelow.

14. The main question, which arises for consideration in this appeal, is only one, viz., how many workers were working in the Unit of respondent No.1 at all relevant time, whether the strength of the workers was above 100 or below 100. In other words, the question, which arises for consideration, is whether the provisions of Section 25-K of Chapter VB of the ID Act were applicable to respondent No. 1-Unit at the relevant time.

15. If the strength of the workers was above 100 at the relevant time, in that event, the provisions of Section 25-K were applicable to respondent No.1 whereas if the strength was below 100, in such event, the provisions of Section 25K had no application. In the case of former, the appellant-Union succeeds and in the case of later, respondent No.1 succeeds.

16. As mentioned above, the Industrial Court held that 115 workers were found working at the relevant time whereas the High Court held that 99

workers were found working in the Unit of respondent No.1 at the relevant time.

17. There can be no dispute to the proposition that the question as to what is the total strength of the workers employed in the Unit or, in other words, how many workers were working in a particular unit is essentially a question of fact. Such question is required to be decided by the Courts on appreciation of evidence adduced by the parties.

18. Once the Courts record a finding on such question, be that of concurrence or reversal, the finding is usually held binding on this Court while hearing the appeal under Article 136 of the Constitution.

19. It is only when such finding is found to be against any provision of law or evidence or is found to be wholly perverse to the extent that no average judicial person could ever record such finding, it would not be held binding on the superior Court.

20. When the question arises as to what is the status of a "workman", this Court has held that it has to be inferred as a matter of law from facts found and if the question involved is one of drawing a legal inference as to the status of a party from facts found, it is not a pure question of fact. It is held that if the inference drawn by the Tribunal in regard to the status of the workman involved the application of certain legal tests, it necessarily becomes a mixed question of fact and law.

21. This Court has, however, cautioned that it must be remembered that even if the question raised is one of the mixed question of fact and law, this Court would not readily interfere with the conclusion of the Tribunal unless it is satisfied that said conclusion is manifestly or obviously erroneous. (See AIR 1967 SC 428)

22. With a view to examine the question from both angels which is taken note of above, we perused the evidence and also called upon the parties to file

additional evidence before this Court and it was filed.

23. Having perused the record, we are not inclined to interfere in the finding recorded by the High Court though of reversal. In other words, we are inclined to agree with the reasoning of the High Court and accordingly hold that the total strength of workers employed at the relevant time in respondent No.1's Unit was 99 and that the status of 16 disputed employees could not be conclusively proved to be that of a "workman" for the reasons stated *infra*.

24. First, the High Court assigned the reasons as to why the finding of the Industrial Court holding the strength of workers as 115 is not factually and legally sustainable. Second, the reasons assigned are neither arbitrary nor against the record and nor perverse to that event so as to call for any interference by this Court. Third, in these circumstances, this Court would be slow to

appreciate the entire evidence afresh on this question in this appeal and lastly, such being a question of fact or a mixed question of law and fact, it is binding on this Court.

25. Inspite of this, we have gone through the evidence with a view to find out as to whether the High Court has committed any jurisdictional error in reaching to its conclusion. In our view it is not. We notice that the Industrial Court held that there was no dispute regarding the status of 79 workers. The dispute of status of an employee was confined only to 36 employees, namely, whether their status was that of the "worker" or "supervisor". The Industrial Court, however, held that the status of all the 36 employees was that of "worker" and accordingly recorded a finding that 79+36 = 115 employees were working as "worker" in the Unit at the relevant time.

26. The High Court, however, while reversing the aforementioned finding of the Industrial Court came

to a conclusion that out of 36 employees, only 20 employees could be regarded as "worker" and, therefore, the total strength of workers at all relevant time was 79+20 = 99. In our opinion, the High Court rightly held that there was no cogent evidence adduced by the appellant to prove the status of remaining 16 employees as to whether they also could be regarded as "worker" employed in the Unit and, therefore, it was not possible to hold that the total strength of the workers at the relevant time was more than 100, i.e., 115.

27. We, while concurring with the reasoning of the High Court, also find that since the Industrial Court did not elaborately discuss the issue regarding the status of 16 employees while holding the strength of workers at 115 except clubbing 36(20+16) with 79, the High Court was right in going into the evidence to the extent permissible and reversed the finding of Industrial Court. In our view, the Industrial Court should have examined the status of each such

disputed employee independently for holding whether they could also be regarded as “worker”. It was, however, not done so.

28. Mr. B.H. Marlapalle, learned senior counsel for the appellant-Union, strenuously argued with the help of the entire evidence and the relevant provisions of the Factories Act, 1948 and the Payment of Wages Act including the statutory forms prescribed in the two Acts for filing the details of workers working in the Unit that the finding of the Industrial Court appears to be more plausible and reasonable as compared to the finding recorded by the High Court on this question and hence the finding of the Industrial Court deserves to be restored.

29. We cannot accept this submission of learned counsel for the appellant in the light of what we have held above. In our view, the appellant, in order to prove the status of 16 employees, did not adduce any cogent evidence as against the evidence of the

respondent No.1. It is, therefore, not possible for this Court to hold that the finding of the High Court is wholly arbitrary or illegal or against the evidence. We do not wish to go into this factual question any more.

30. Learned counsel for the appellant then urged that the High Court has committed a jurisdictional error when it went on to re-appreciate the evidence and then reversed the finding of the Industrial Court under Article 227 of the Constitution. In our view, it does not appear to be so.

31. It is the duty of the High Court while exercising the supervisory jurisdiction to see that the subordinate Court has exercised its powers in accordance with law and did not commit any illegality or perversity in reaching to its conclusion.

32. While recording a finding, if it is noticed by the High Court that the subordinate Court has failed to take into consideration the material evidence or recorded a finding without there being any evidence,

then the High Court would be entitled to interfere in such finding in exercise of its supervisory jurisdiction under Article 227 of the Constitution. Such is the case here.

33. In the light of foregoing discussion, we do not consider proper to disturb the findings recorded by the High Court which are more plausible and reasonable rather than that of the Industrial Court.

34. In view of the foregoing discussion, we also hold that respondent No.1 had employed 99 workers in their manufacturing Unit at the time of declaring the closure of the Unit in 1990. Since the strength of workers was below 100, it was not necessary for respondent No.1 to ensure compliance of Chapter VB. In other words, in such circumstances, the provisions of Section 25-K had no application to respondent No.1.

35. This takes us to examine the next question as to how much compensation and under which heads

the workers are entitled to receive from respondent No.1 (Company).

36. Learned counsel for respondent No.1, however, stated that out of total workers, most of the workers have settled their claims by accepting the compensation offered by respondent No.1 voluntarily. Learned counsel stated that the compensation paid to each worker consisted of (i) amount of Gratuity payable under the Payment of Gratuity Act, (ii) closure compensation payable under the I.D. Act, and over and above these two statutory payments of compensation, the respondent No.1 also paid 30 days' wages for each completed year of service as *ex gratia* payment to each worker. It was also stated that now hardly 16 workers or so remain unpaid because they did not accept the compensation when offered to them and preferred to prosecute the present litigation.

37. Learned counsel for respondent No.1 stated that the total compensation paid to every worker in 1990-1991 varies between Rs.1 lakh to Rs.2 lakhs.

38. Taking into consideration the aforementioned background facts and circumstances of the case, we consider it just and proper to award in lump sum a compensation of Rs.2,50,000/- (Rs.Two Lakhs and Fifty Thousand) to each worker who did not accept the compensation.

39. Let Rs.2,50,000/- (Rs.Two Lakhs and Fifty Thousand) be paid to each such worker after making proper verification. If any worker is not available for any reason, the amount payable to such worker be paid to his legal representatives or nearest relatives, as the case may be, after making proper verification.

40. Respondent No.1 will, accordingly, deposit the entire compensation payable to all such workers with details in the Industrial Court, Pune. A notice will then be served to each worker or his legal

representatives, as the case may be, by the Industrial Court to enable the workers to withdraw the amount from the Industrial Court.

41. The amount will be paid to every worker or his nominee as the case may be by the demand draft issued in his/her name or in the name of legal representatives, as the case may be. It will be duly deposited in his/her Bank account to enable him/her to withdraw the same.

42. The appellant would submit necessary details of each such worker before the Industrial Court. The Industrial Court would ensure compliance of the directions of this Court and complete all formalities within three months from the date of this order.

43. We make it clear that this order is applicable only to those workers who did not accept the compensation from respondent No.1.

44. In other words, those workers who already accepted the compensation will not be entitled to get any benefit of this order.

45. With these directions, the appeal stands disposed of finally.

.....J.
[R.K. AGRAWAL]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
January 5, 2018