111 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-698-2016 (O&M)
Date of decision : 27.02.2025

Sushma & ors. ..... Appellants

Versus

Pawan Kumar & anr. …... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :- Mr. Chetan Kapur, Advocate for the appellants.

Mr. Ashish Gupta, Advocate for respondent No.1.

Mr. Aseem Aggarwal, Advocate for respondent No.2.

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PANKAJ JAIN, J. (ORA)

1 Issue in the present appeal is regarding quantum of compensation payable to the appellants under the Employees Compensation Act, 1923 (for short 'the 1923 Act'). Date of accident is 23.04.2010. Commissioner relied upon monthly wages notified under the Act on the date of accident. The claimants submit that during the time the claim petition was pending before the Commissioner, Union of India vide notification dated 31.05.2010 exercising powers conferred by Sub Section (1B) of Section 4 of the 1923 Act notified monthly wages for the purpose of quantifying compensation as Rs.8,000/- and thus the claimants are entitled for the compensation accordingly.

2 Learned counsel for the appellants in order to support his contentions relies upon judgment passed by Karnataka High Court in ***The***

Officer Reliance General Insurance Co. Ltd. Vs. Smt. Mumtaz B and ors. Bearing MFA No.8003 of 2019 (ECA) decided on 16.01.2021 and judgment passed by Hyderabad High Court in ***Tavati Srinivas @ Srinu S/o Pullaiah and another Vs. Smt. N.Padmavathi W/o Nageswar Rao and two others, 2015 (1) LLN 448.***

3 Mr. Aggarwal, Advocate for respondent No2, however, submits that the compensation has to be awarded taking into consideration monthly wages notified on the date of accident and not thereafter as the cause of action arose on the date of accident only.

4 I have heard learned counsel for the parties and have gone through records of the case.

5 The precise contention raised by Mr.Aggarwal, Advocate has been dealt by Karnataka High Court in the case of ***Smt. Mumtaz B's case supra*** observing as under :-

> *13. It is the contention of the learned Counsel for the Second Respondent that the benefit under the Gazette Notification No. 1047 dated 31.5.2010 cannot be extended to the cases where the cause of action arose prior thereto. This contention, in the considered opinion of this Court, is neither sustainable nor tenable nor is it reasonable. Creation of such ambiguous situation by any stretch of imagination cannot be inferred as the intention of the legislature. By necessary implication it should be construed harmoniously that the Amendment is applicable to the cases where the accident took place between the date of advent of Amendment Act i.e., 18.1.2010 and the date of Notification issued by the Union of India i.e., 31.5.2010 under Section 4(1-B) of the Act also. This beneficial social legislation shall be interpreted liberally and for the welfare of the beneficiaries and not for the destruction of their rights conferred by the legislature.*

14. In this context, it may appropriate to refer to the Judgments of the Hon'ble Supreme Court in ***Bharat Singh v. Management of New Delhi Tuberculosis Centre, New Delhi, 1986 (2) LLN 4 (SC) : 1986 (2) SCC 614; and Ruston & Hornsby (I) Ltd. v. T.B. Kadam, 1976 (3) SCC 71****, wherein the Hon'ble Supreme Court dealt with the retrospective operation of the provisions of the Industrial Disputes Act.*

15. In Bharat Singh (supra), the Hon'ble Apex Court at Paragraphs 10 & 11, held as follows:

"10. The objects and reasons give an insight into the background why this Section was introduced. Though objects and reasons cannot be the ultimate guide in interpretation of statutes, it often times aids in finding out what really persuaded the legislature to enact a particular provision. The objects and reasons here clearly spell out that delay in the implementation of the Awards is due to the contests by the Employer which consequently cause hardship to the Workmen. If this is the object, then would it be in keeping with this object and consistent with the progressive social philosophy of our laws to deny to the Workmen the benefits of this Section simply because the Award was passed, for example just a day before the Section came into force? In our view it would be not only defeating the rights of the Workman but going against the spirit of the enactment. A rigid interpretation of this Section as is attempted by the learned Counsel for the Respondents would be rendering the Workman worse off after the coming into force of this Section. This Section has in effect only codified the rights of the Workmen to get their wages which they could not get in time because of the long drawn out process caused by the methods employed by the Management. This Section, in other words, gives a mandate to the Courts to Award wages if the conditions in the Section are satisfied.

11. In interpretation of statutes, Courts have steered clear of the rigid stand of looking into the words of the Section alone but have attempted to make the object of the enactment effective and to render its benefits unto the person in whose favour it is made. The legislators are entrusted with the task of only making laws.

Interpretation has to come from the Courts. Section 17-B, on its terms does not say that it would bind Awards passed before the date when it came into force. The Respondents' contention is that a Section which imposes an obligation for the first time, cannot be made retrospective. Such Sections should always be considered prospective. In our view, if this submission is accepted, we will be defeating the very purpose for which this Section has been enacted. It is here that the Court has to evolve the concept of purposive interpretation which has found acceptance whenever a progressive social beneficial legislation is under review. We share the view that where the words of a statute are plain and unambiguous effect must be given to them. Plain words have to be accepted as such but where the intention of the legislature is not clear from the words or where two constructions are possible, it is the Court's duty to discern the intention in the context of the background in which a particular Section is enacted. Once such an intention is ascertained the Courts have necessarily to give the statute a purposeful or a functional interpretation. Now, it is trite to say that acts aimed at social amelioration giving benefits for the have not should receive liberal construction. It is always the duty of the Court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the have not and the underdog and which would lead to injustice should always be avoided. This Section was intended to benefit the Workmen in certain cases. It would be doing injustice to the Section if we were to say that it would not apply to Awards passed a day or two before it came into force."

16. In Ruston & Hornsby (I) Ltd. (supra), the Hon'ble Apex Court at Paragraph 6, held as follows:

"6. The first argument on behalf of the Appellant is that the incident took place in December 1963 and the Order of Dismissal was made on the 7th January, 1964 and as Section 2-A of the Industrial Disputes Act came into force on 1.12.1965 the reference of this dispute under Section 10 of the Industrial Disputes Act read with

Section 2-A, is bad. It is argued that this will amount to giving retrospective effect to the provisions of Section 2-A. We are not able to accept this contention. Section 2-A, is in effect a definition Section. It provides in effect that what would not be an industrial dispute as defined in Section 2(k), as interpreted by this Court would be deemed to be an industrial dispute in certain circumstances. As was pointed out by this Court in ***Chemical & Fibres of India Ltd. v. D.G. Bhoir, C.A. Nos. 1633-1644 of 1973, decided on 2.5.1975*** *the definition could as well have been made part of Clause (k) of Section 2, instead of being put in as a separate section. There is therefore no question of giving retrospective effect to that Section in making the reference which resulted in the Award under consideration. When the Section uses the words "where any Employer discharges, dismisses, retrenches or otherwise terminates the services of an individual Workman" it does not deal with the question as to when that was done. It refers to a situation or a state of affairs. In other words where there is a discharge, dismissal, retrenchment or termination of service otherwise the dispute relating to such discharge, dismissal, retrenchment or termination becomes an industrial dispute. It is no objection to this to say that interpretation would lead to a situation where the disputes would be reopened after the lapse of many years and referred for adjudication under Section 10. The question of creation of new rights by Section 2-A, is also not very relevant. Even before the introduction of Section 2-A, a dispute relating to an individual Workman could become an industrial dispute by its being sponsored by a labour union or a group of Workmen. Any reference under Section 10, would be made only sometime after the dispute itself has arisen. The only relevant factor for consideration in making a reference under Section 10, is whether an industrial dispute exists or is apprehended. There cannot be any doubt that on the day the reference was made in the present case an industrial dispute as defined under Section 2- A, did exist. Normally the dispute regarding an individual Workman is not an industrial dispute unless it is sponsored by the union to which he belongs or a group of Workmen. The change made by Section 2-A, is that in*

certain cases such a dispute need not be so sponsored and it will still be deemed an industrial dispute. Supposing in this very case a labour union or a group of Workmen had sponsored the case of the Respondent before the reference was made, such a reference would have been valid. All that Section 2-A, has done is that by legislative action such a dispute is deemed to be an industrial dispute even where it is not sponsored by a labour union or a group of Workmen. What a Labour Union or a group of Workmen can do the law is competent to do. The only question for consideration in considering the validity of a reference is whether there was or apprehended an industrial dispute when the reference was made. If there was an industrial dispute or an industrial dispute was apprehended, even though the facts giving rise to that dispute might have arisen before the reference was made the reference would still be valid. It is to be borne in mind that every reference would be made only sometime after the dispute has arisen. In ***Birla Brothers Ltd. v. Modak, ILR 1948 (2) Cal. 209*** *it was pointed out that though the Industrial Disputes Act came into force in 1947, reference of an industrial dispute based on the facts which arose before that Act came into force is a valid reference. The same reasoning would apply to a reference of a dispute falling under Section 2-A, even though the facts giving rise to that dispute arose before that Section came into force. The decision in Birla Brothers case (supra), was approved by this Court in its decision* ***in Jahiruddin v. Model Mills Nagpur, 1956 (1) LLJ 430****. These two decisions clearly establish that the test for the validity of a reference under Section 10, is whether there was in existence a dispute on the day the reference was made and there was no question of giving retrospective effect to the Act. We find that that is the view taken by the Delhi High Court in* ***National Productivity Council v. S.N. Kaul, 1969 (2) LLJ 186 Del;*** *by the Punjab & Haryana High Court in* ***Shree Gopal Paper Mills Ltd. v. The State of Haryana, 1968 Lab. I.C. 1259****. The view of the High Court of Mysore* ***in P. Janardhana Shetty v. Union of India, 1970 (2) LLJ 738 Kant.*** *to the contrary is not correct."*

> *17. Therefore, the contention that the benefits conferred under the Gazette Notification dated 31.5.2010 are only prospective and cannot be extended to the cases where the cause arose between the Amendment Act and the Notification dated 31.5.2010 can neither be approved nor sustained and the said contention deserves to be repulsed and rejected.*
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> *18. For the aforesaid reasons and having regard to the nature of controversy and keeping in view the intention of the legislature in enacting the Employees' Compensation Act, 1923, the Revision is allowed and consequently I.A. No. 2 of 2012 in W.C. No. 28 of 2011 on the file of the Commissioner for Employees' Compensation and Assistant Commissioner of Labour at Suryapet, Nalgonda District stands allowed. As a sequel, pending Miscellaneous Petitions, if any, shall stand disposed of. No order as to costs."*

6 In the considered opinion of this Court, the view taken by Karnataka High Court is plausible and advances the very object of enactment which is beneficial in nature. Section 4(1-B) of the 1923 Act was enacted by way of amendment Act dated 18.01.2010 and thereafter notification was issued on 31.05.2010.

7 In view thereof, this Court is of the opinion that notification issued by Union of India dated 31.05.2010 exercising power under Section 4 (1-B) of the 1923 Act notifying minimum wages for all intents and purposes shall relate back to the date on which Section 4(1-B) of the 1923 Act was introduced by way of amending Act.

8 Impugned order passed by Commissioner is modified to the extent that the compensation payable to the claimants shall be as under :-

203.85 x 8000 x 50% = Rs.8,15,280/-

9 Further modification that needs to be made is with respect to the following observations made in the award with respect to interest :-

> *"xxx xxx Therefore, the applicants are also entitled for the simple interest at the rate of 12% per annum on the amount awarded above Rs.4,07,700/- but justice will prevail if they allowed interest only for fixed period of two years out of span of about five years which comes to Rs.97,848/-. Liability to pay interest is hereby fastened upon the insurance company i.e. upon respondent No.2. xxx xxx."*

10 In view of Section 4(A) of the 1923 Act Commissioner had no authority to arrest the time period for which the interest is payable. Resultantly, the same is also modified to the extent that the claimant-appellants shall be entitled for interest @12% p.a. for the period commencing from 30 days after the date of accident i.e. 22.05.2010 till the date of actual realization.

11 Needless to say any amount already paid to the claimants shall be set off and adjusted. Appellants shall also be entitled for penalty i.e. 50% of the amount of compensation. The same shall be borne by the employer.

12 With the aforesaid modification, the present appeal is disposed off.

(PANKAJ JAIN)
JUDGE

27.02.2025
Pooja Sharma-I

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No