1963

April 4

BASTI SUGAR MILLS LTD.

v.

RAM UJAGAR AND OTHERS

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH and N. RAJAGOPALA AYYANGAR JJ.)

Industrial Dispute—Termination of Service—'Employer' and 'workman' meaning of—Infringement of fundamental right to carry on trade—Uttar Pradesh Industrial Disputes Act, 1947 (U.P. XXVIII of 1947). ss. 2 (i) (iv). s. 2 (Z).

An Industrial Dispute arose between the appellant and the respondents in respect of two matters, namely (1) for terminating the services of the respondents (2) and for paying the respondents at a rate lower than Rs. 55/- per month which was the minimum prescribed wage for workmen of Vacuum Pan Sugar Factories of Uttar Pradesh under the Standing Orders dated October 3, 1958, issued by the Government of Uttar Pradesh. The dispute was referred to the Labour Court.

The appellant's case was that the work of removal of press mud had been given by the company to a contractor and these respondents were employed by that contractor to do that work. Their services were terminated by the contractor and the management had nothing to do with these workmen.

Therefore the appellant contended that the management company did not come within the definition of "employer" under the provisions of Uttar Pradesh Industrial Disputes Act, 1947. The respondents succeeded in the Labour Court and hence this appeal.

Held (1) that the respondents are workmen within the meaning of s. 2 (Z), being persons employed in the industry to do manual work for reward, and the appellant is the employer within the meaning of sub-cl. (IV) of s. 2 (i) as the workman was employed by a contactor with whom the appellant company had contracted in the course of conducting the industry for the execution by the said contractor of the work of removal of press mud which is ordinarily a part of the industry.

(2) that the imposition of restrictions on the appellant's right to carry on trade under the definition of employer in sub-cl. (iv) of s. 2 (i) of the Act is in the interests of the General public and as such the appellant's fundamental right under Art. 19 (1) (g) of the Constitution has not been contravened.

(3) that in the ordinary grammatical sense the words "employed by a factory" which occur in the definition of the word "workmen" in the Standing Orders include every person who is employed to do the work of the factory and they are wide enough to include workmen employed by the contractors of the factory also.

The appellant was not allowed to raise a new plea for the first time in this Court.

Mahalakshmi Sugar Mills Company v. *Their Workmen*, 1961 (II) L. L. J. 623, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 225 of 1963.

Appeal by special leave from the award dated November 26, 1962 of the Labour Court, Lucknow, in Adjudication Case No. 68 of 1962.

C.S. Pathak and *D.N. Mukherjee* for the appellant. *M. Rajagopalan* and *K. R. Chaudhuri* for the respondents.

1963. April 4. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA J.—The twenty-one persons who are the respondents in this appeal were engaged from November 21, 1958, to February 5, 1959, in the work of removal of press-mud in the sugar factory belonging to the appellant. On February 6, 1959, their services were terminated. It also appears that for the period of work of November 21, 1959, to February 5, 1959, they were paid wages at rates lower than Rs. 55/- per month which was

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the minimum prescribed wage for workmen of vacuum pan sugar factories of Uttar Pradesh under the Standing Orders dated October 3, 1958, issued by the Government of Uttar Pradesh. On July 31, 1962, the Governor of Uttar Pradesh referred to the Labour Court, Lucknow, a dispute between these respondents and the Basti Sugar Mills Ltd. In this the Basti Sugar Mills Ltd., was described as the employers and the respondents as their workmen. The matters in dispute were thus mentioned in the order of reference :—

> "(1) Whether the employers have terminated the services of their workmen, named in the Annexure, will effect from February 6, 1959 legally and/or Justifiably ? If not, to what relief are the workmen concerned entitled ?
>
> (2) Whether the action of the employers in paying to the workmen, named in the Annexure to issue No. 1, at rates lower than the minimum prescribed wage of Rs. 55 per month, for the period from November 21, 1958 to February 5, 1959 is legal and/or justified. If not, to what relief are the workmen concerned entitled and with what details."

The appellant contended that these 21 workmen were not employed by the management of the sugar mills. The appellant's case was that the work of removal of press-mud had been given by the Company to a contractor, Banarsi Das, and that these 21 men were employed by that contractor to do the work. The management of the Company, it was said, had nothing to do with these men. Banarsi Das left the work on February 6, 1959, and the termination of the services of these workmen was made by him. The respondents through their

Union contended, on the contrary, that they had been employed directly by the management of the Company.

On a consideration of the evidence the Labour Court accepted the appellant's case that the work of removal of press-mud was being done through the contractor Banarsi Das and it was Banarsi Das under whom these 21 persons were employed. It further held that in view of the definition of "employer" in sub-cl. (iv) of s. 2 (i) of the Uttar Pradesh Industrial Disputes Act, 1947, the appellant was in law the employer of these 21 persons. It held accordingly that they were entitled to the benefit of the Standing Orders regarding minimum wages and were also entitled to reinstatement. In that view the Labour Court ordered, (a) payment to the workmen at the rate of Rs. 55/- per month from February 6, 1959 upto the end of the crushing season of 1958 59; (b) reinstatement of the workmen if not already employed by the Company in the crushing season of 1962-63; and (c) payment of difference of wages computed at the rate of Rs. 55/- per month and Re. 1/- per day in the case of Ram Ujagar and 14 annas per day in the case of other workmen for the period November 21, 1958 to February 5, 1959.

Against this order of the Labour Court the present appeal has been filed by the Company with the special leave of this Court.

Three points are raised by Mr. Pathak in support of the appeal. The first is that the definition of "employer" in sub-cl. (iv) of s. 2 (i) of the Act does not make the appellant, the employer of these workmen. The second point, urged rather faintly, is that if the above definition be so construed as to make the contractor's labourers, workmen of the company the definition should be held to violate the provisions of Art. 19 (1) (g) of the Constitution.

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The third point urged is that, in any case, the respondents are not entitled to the benefit of the Standing Orders which fixed the minimum wage for the workmen of the Vacuum Pan Sugar Factories of Uttar Pradesh.

Section 2 (i) of the Act contains an inclusive definition of employer. The effect of sub-cl. (iv) of s. 2 (i) is that where the owner of any industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under such person of the whole or any part of any work which is ordinarily a part of the industry, the owner of such industry is an employer within the meaning of the Act. Mr. Pathak's suggestion that the effect of this definition is that the owner of the industry becomes the employer of the contractor is wholly untenable and can even be described as fantastic to deserve serious consideration. The obvious purpose of this extended definition of the word "employer" is to make the owner of the industry, in the circumstances mentioned in the sub-clause, the employer of the workmen engaged in the work which is done through contract. The words used in the sub-clause are clearly sufficient to achieve this purpose.

It is true, as pointed out by Mr. Pathak, that the definition of the word "workmen" did not contain any words to show that the contract labour was included. That however does not affect the position. The words of the definition of workmen in s. 2 (z) to mean "any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied" are by themselves sufficiently wide to bring in persons doing work in an industry whether the employment was by the management or by the contractor of the

management. Unless however the definition of the word "employer" included the management of the industry even when the employment was by the contractor the workmen employed by the contractor could not get the benefit of the Act since a dispute between them and the management would not be an industrial dispute between "employer" and workmen. It was with a view to remove this difficulty in the way of workmen employed by contractors that the definition of employer has been extended by sub-cl. (iv) of s. 2 (i). The position thus is: (a) that the respondents are workmen within the meaning of s. 2 (z), being persons employed in the industry to do manual work for reward, and (b) they were employed by a contractor with whom the appellant company had contracted in the course of conducting the industry for the execution by the said contractor of the work of removal of press-mud which is ordinarily a part of the industry. It follows therefore from s. 2 (z) read with sub-cl. (iv) of s. 2 (i) of the Act that they are workmen of the appellant company and the appellant company is their employer. There is no substance therefore in the first point raised by the learned counsel for the appellant.

The second point, *viz.*, that this definition contravenes the appellant's fundamental rights under Art. 19 (1) (g) is equally devoid of substance. Assuming that the result of this definition of employer in sub-cl. (iv) of s. 2 (i) is the imposition of some restrictions on the appellant's right to carry on trade or business, it cannot be doubted for a moment that the imposition of such restrictions is in the insterest of the general public. For, the interests of the general public require that the device of the engagement of a contractor for doing work which is ordinarily part of the industry should not be allowed to be availed of by owners of industry for evading the provisions of the Industrial Disputes Act. That these provisions are in the interests of the general

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public cannot be and has not been disputed. That being the position, the impugned definition which gives the benefit of the provision of the Act to the workmen engaged under a contract in doing work which is ordinarily part of the industry cannot but be held to be also in the interests of the general public.

This brings us to Mr. Pathak's main contention that in any case the respondents are not 'workmen' within the meaning of the Standing Orders and so cannot get the benefit of the minimum wage prescribed thereby. In the standing Orders the word "workmen" is defined to mean "any person (including an apprentice) employed by a factory, to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward whether the terms of employment be express or implied" but does not include any person mentioned in cls. (i) and (ii). We are not concerned in this case with these clauses. Mr. Pathak argues that on a reasonable construction, the words "employed by a factory" in this definition can only mean "employed by the management of the factory" and can not include persons employed by a contractor of the factory. He points out that this definition of 'workmen' in the Standing Orders uses the words "employed by a factory" though the definition of 'workmen' in the Act itself uses the words "employed in any industry" and contends that the words "by a factory" were deliberately used instead of words "in a factory" to exclude persons other than those employed by the management of the factory from the benefit of the Standing Orders. Neither grammar nor reason supports this argument.

On the ordinary grammatical sense of the words "employed by a factory" they include, in our opinion, every person who is employed to do the work of the factory. The use of the word "by" has

nothing to do with the question as to who makes the appointment. The reason why "by" was used instead of "in" appears to be to ensure that if a person has been employed to do the work of the industry, whether the work is done inside the factory or outside the factory, he will get the benefit of the Standing Orders.

We can also see no reason why the Government in making the Standing Orders would think of denying to some of the persons who fall within the definition of workmen under the Act, the benefit of the Standing Orders. The Standing Orders were made under s. 3 (b) of the Act under which the State Government may make provision "for requiring employers, workmen or both to observe for such period as may be specified in the order such terms and conditions of employment as may be determined in accordance with the order." The purpose of the order was thus clearly to require employers to observe certain terms and conditions of employment of their workmen as defined in the Act. It is unthinkable that in doing so the Government would want to exclude from its benefits—particulary, that of the minimum wage—a class of workmen who would otherwise get the benefit under the definitions of workmen and employer in the Act itself. No reason has been suggested and we cannot think of any.

We have therefore come the conclusion that the words "employed by a factory" are wide enough to include workmen employed by the contractors of factory also.

Mr. Pathak wanted to raise a new point based on the provisions of cl. (K) of the Standing Orders. That clause provides that a seasonal workman who has worked or, but for illness or any other unavoidable cause, would have worked under a

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factory during the whole of the second half of the last preceding season will be employed by the factory in the current season. In view of this Mr. Pathak wants to urge that it will be difficult for the appellant to give effect to the order of reinstatement of these 21 workmen as that would mean getting rid of at least some workmen who are entitled to be employed by the factory under the provisions of cl. (K). If the facts were known to be as suggested by the learned Counsel we would have felt obliged to take note of these provisions of cl. (K) and would have thought fit to make an order as was made by this Court in similar circumstances in *Mahalakshmi Sugar Mills Company Ltd.* v. *Their Workmen* (1), making it clear that these 21 workmen should be re-employed in the crushing season of 1962-63 only in so for as it was possible to do so without breach of the provisions of cl. (K) of the Standing Orders. There are no materials on the record however to show how many of the workmen already employed by the Company in the crushing season of 1962-1963 had actully worked in the latter half of 1961-62 season. In the written statement of the Company no such point about the difficulty of reinstatement of any of these 21 workmen because of the provisions of cl. (K) was raised. In these circumstamces, we have not allowed Mr. Pathak to raise this new plea for the first time in this Court.

As all the points raised in the appeal fail, the appeal is dismissed with costs.

Appeal dismissed.

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(1) 1961 (II) L. L. J. 623.