1956

May 8

M/s. MODI FOOD PRODUCTS CO. LIMITED
v.
SHRI FAQIR CHAND SHARMA & OTHERS.

[JAGANNADHADAS, VENKATARAMA AYYAR and B. P. SINHA JJ.]

Industrial Disputes (Appellate Tribunal) Act, 1950, No. XLVIII of 1950—Ss. 23 and 22(a)—Lay off during pendency of prior dispute—Application under s. 23 alleging breach of s. 22(a)—Tribunal finding lay off justified—Application should be dismissed—Quantum of compensation payable—When proviso (b) to s. 25-C, Industrial Disputes Act applicable.

During the pendency of an appeal before the Labour Appellate Tribunal in respect of a prior industrial dispute between the same parties the management laid off certain workmen and offered to pay compensation equal to half the basic wages and dearness allowance for the first 45 days in accordance with the provisions of proviso (a) to s. 25-C, Industrial Disputes Act. The workmen made an application to the Tribunal under s. 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950 alleging that there was a breach of s. 22(a) of the same Act, and that the lay off was not *bona fide* and claimed full wages for the entire period of the lay off as compensation. The Tribunal held that the lay off was justified but that the workmen were entitled to half the basic wages and dearness allowance not merely for the first 45 days but for the entire period under proviso (b) to s. 25-C.

Held, that on the finding of the Tribunal that the lay off was justified the application under s. 23 was liable to be dismissed.

Proviso (b) to s. 25-C, Industrial Disputes Act, is only applicable in case of a second and distinct lay off and does not apply to a period subsequent to the first 45 days of one continuous lay off.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 353 of 1955.

On appeal by special leave from the judgment and order dated the 22nd August 1955 of the Labour Appellate Tribunal of India at Lucknow in Misc. Case No. 111-C-650 of 1954.

Veda Vyas, (*S. K. Kapur* and *N. H. Hingorani*, with him) for the appellant.

J. N. Bannerji, (*P. C. Agarwalla*, with him) for the respondent.

1956

M/s. Modi Food Products Co. Limited
v.
Shri Faqir Chand Sharma and others

1956. May 8. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—The appellant is a company registered under the Indian Companies Act, and owns a factory called Modi Oil Mills in the district of Meerut. The respondents are workmen employed in the Mills. The business of the Mills consists in the manufacture of oils and paints. On 12-7-1954 the management put up the following notice:

"Notice is hereby given that due to non-availability of groundnut seed and neem seed at the parity with the ruling prices of the groundnut oil and neem oil, the Management is reluctantly compelled to close the Groundnut Crushing Section and Neem Section till the next groundnut season and thus the workers in the attached list are surplus and their services are laid off with effect from 14th July, 1954.

Workers, thus affected, shall be paid compensation according to Industrial Disputes (Amendment) Act, 1953, subject to conditions laid therein. It is further notified that the time of the attendance as provided in Section 25(D) and (E) shall be 10 a.m. for all the laid off workers".

Pursuant to this notice, 142 workmen mentioned therein, being the respondents in this appeal, were laid off from the 14th July 1954. On 26-7-1954 the workmen acting through their Union sent a notice to the management demanding full wages for the period of lay off on the ground that it was unjustified and illegal. The management denied these allegations, and refused the demand. This being an industrial dispute as defined in section 2(k) of the Industrial Disputes Act XIV of 1947, in the ordinary course, proceedings would have been taken with reference thereto under the provisions of that Act. But there was at that time another industrial dispute between the parties pending final adjudication. That dispute had been referred under section 10 of the Industrial Disputes Act for adjudication to the Regional Conciliation Officer, Meerut. He had pronounced his award, and against that, both the parties

1956

M/s. Modi Food Products Co. Limited v. Shri Faqir Chand Sharma and others

Venkatarama Ayyar J.

had preferred appeals to the Labour Appellate Tribunal, and they were pending at the date of the notice. The Industrial Disputes (Appellate Tribunal) Act XLVIII of 1950, hereinafter referred to as the Act, contains special provisions with reference to certain disputes which might arise between parties, when there is already pending adjudication between them another industrial dispute. They are sections 22 and 23, which are as follows:

"22. During the period of thirty days allowed for the filing of an appeal under section 10 or during the pendency of any appeal under this Act no employer shall—

(a) alter, to the prejudice of the workmen concerned in such appeal, the conditions of service applicable to them immediately before the filing of such appeal, or

(b) discharge or punish, whether by dismissal or otherwise, any workmen concerned in such appeal, save with the express permission in writing of the Appellate Tribunal.

23. Where an employer contravenes the provisions of section 22 during the pendency of proceedings before the Appellate Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Appellate Tribunal and on receipt of such complaint, the Appellate Tribunal shall decide the complaint as if it were an appeal pending before it, in accordance with the provisions of this Act and shall pronounce its decision thereon and the provisions of this Act shall apply accordingly".

On 24-8-1954 the respondents filed an application before the Labour Appellate Tribunal under section 23 of the Act. Therein, they alleged that the lay off was not *bona fide*, because the ground given therefor, namely, non-availability of groundnut and neem seeds at parity with ruling prices was not true; that further in view of the pendency before the Labour Appellate Tribunal of an industrial dispute between the parties, the lay-off was in contravention of section 22(a) of the Act, and they accordingly prayed

that they might be awarded by way of compensation full wages for the entire period of the lay off. The appellant contested the claim. It contended that the non-availability of groundnut and neem seeds as mentioned in the notice was true, and that the lay off was *bona fide*. It also claimed that section 22(a) of the Act had no application to the dispute, as the notice distinctly stated that the workmen would be paid compensation as provided in section 25-C of the Industrial Disputes Act as amended by Act XLIII of 1953. It also contended that under that section compensation was payable only for the first 45 days at the rate mentioned in the body of the section and not for any period subsequent thereto. The Tribunal held that the lay off was justified. It further held on a construction of section 25-C that the workmen were entitled to half the basic wages and dearness allowance not merely for the first 45 days but for the entire period, and that as the appellant did "not observe the provisions of that section", there was an alteration of the conditions of service within section 22(a) of the Act. It accordingly awarded compensation for the whole of the period at 50 per cent. of the basic wages and dearness allowance. Against this decision, the management has preferred this appeal by special leave.

On behalf of the appellant, Sri Veda Vyas contended firstly, that on its finding that the lay off was justified, the only order which the Tribunal could have passed was one of dismissal of the petition filed by the respondents, and that the award of compensation was, in consequence, without jurisdiction; and secondly, that on a true construction of section 25-C of the Industrial Disputes Act, the workmen were entitled to compensation only for a period of 45 days as provided in proviso (a) to section 25-C. We are of opinion that both these contentions are well-founded.

On the first question, the jurisdiction of the Tribunal to grant relief under section 23 of the Act arises only if it is made out that there was contravention of section 22 by the management. The respondents understood this position quite correctly, and with

1956

M/s. Modi Food Products Co. Limited
v.
Shri Faqir Chand Sharma and others

Venkatarama Ayyar J.

a view to bring themselves within section 23, they alleged that the lay off was not *bona fide*, inasmuch as, in fact, groundnut and neem seeds were available. This contention rests on the supposition that the conditions under which workmen could be laid off are conditions as to their service, and that when the employer lays off workmen without proper grounds therefor, it is a violation of the conditions of service within section 22(a) of the Act.

There was some argument before us whether lay off, whether justifiable or otherwise, could be brought within section 22(a) of the Act as amounting to breach of the conditions of service. On the one hand, the argument was that the expression "conditions of service" would include only such conditions as would operate when the workmen were actually in service, such as the quantum of wages, hours of work, provision for leave and so forth, and that when there was a lay off, these conditions could by their very nature have no application, and that if the lay off was unjustified, that would give the workmen a right to take proceedings under the provisions of the Industrial Disputes Act, but that they could make no claim under section 23 as for a breach of the provisions of section 22(a). The contention, on the other side, was that the workmen and the management should be deemed to have agreed that there would be lay off only for good and proper reasons and under conditions permitted by law, and that if those conditions were not satisfied, the lay off would be an alteration of the conditions of service within section 22(a). The question is one of some importance, but it is unnecessary to express any opinion on it, as counsel for the appellant conceded after some argument that conditions under which the workmen could be laid off would be conditions of service. On this footing, he contended that as the lay off was, in fact, justified, there was no breach of those conditions, and that, in consequence, section 22(a) of the Act had no application. On behalf of the respondents, it is argued that the lay off must, by its very nature, be temporary and of short duration, and that if it is for

a long or indefinite period as in the present case, it could not be said to be a proper lay off such as could be deemed to have been agreed to by the workmen, and that section 22(a) of the Act would, therefore, be applicable.

It is common ground that there are no statutory rules prescribing the conditions under which there could be a lay off. If there had been, they would operate as conditions of service between the parties, and then the question would simply have been whether there had been a compliance with them. Under the provisions of the Industrial Employment (Standing Orders) Act XX of 1946, certain Standing Orders had been framed with reference to this matter. Counsel on both sides state that after the enactment of the Industrial Disputes (Amendment) Act XLIII of 1953, they are no longer in force, and that there are no statutory provisions applicable to the present dispute. We must, therefore, decide the question on the footing that the only condition which the parties might be taken to have agreed to is that the lay off should be for adequate grounds and for a reasonable period. On this question, there is a clear finding in favour of the appellant. The Tribunal has found that groundnut and neem seeds were not available at parity prices, and that for that reason, the work had to be stopped. It is not likely that businessmen would cut their profits to spite the workmen. The period of the lay off was expressed to be until the next groundnut season, and we have been told that the season for groundnut begins sometime in November-December. In fact, all the respondents have been re-employed in relays from September onwards, and by the first week of December all of them had been absorbed. On the finding of the Tribunal that the lay off was justified, it follows that the application of the respondents under section 23 of the Act was liable to be dismissed on the ground that there had been no contravention of section 22(a).

But, notwithstanding this finding, the Tribunal went on to hold that the application under section 23 of the Act was maintainable. To appreciate the

1956

M/s. Modi Food Products Co. Limited
v.
Shri Faqir Chand Sharma and others

Venkatarama Ayyar J.

reasoning behind this decision, it is necessary to refer to section 25-C of the Industrial Disputes Act, which runs as follows:

"Right of workmen laid-off for compensation: Whenever a workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, he shall be paid by the employer for all days during which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent. of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid off:

Provided that—

(a) the compensation payable to a workman during any period of twelve months shall not be for more than forty-five days except in the case specified in clause (b);

(b) if during any period of twelve months, a workman has been paid compensation for forty-five days and during the same period of twelve months he is again laid off for further continuous periods of more than one week at a time, he shall, unless there is any agreement to the contrary between him and the employer, be paid for all the days during such subsequent periods of lay-off compensation at the rate specified in this section".

The appellant does not dispute the right of the respondents to compensation, and, in fact, they were informed by the very notice dated 12-7-1954 under which they were laid off, that compensation would be paid to them in accordance with section 25-C. It is as regards the quantum of compensation payable nnder that section that the parties are disagreed. It will be remembered that the lay off commenced on 14-7-1954 and was to continue until the next groundnut season, and that the workers were actually absorbed in batches from September, and that by the first week of December, they had all of them been employed. There was thus one continuous lay off

for periods varying from 57 to 121 days. The contention of the appellant is that, on these facts, the workmen were entitled to compensation only in accordance with proviso (a) to section 25-C, and that they would therefore be entitled to 50 per cent. of the basic wages and dearness allowance for the first 45 days and for the rest of the period, no compensation was payable. The respondents agree that proviso (a) to section 25-C applies to the first period of 45 days; but they contend that for the remaining period of the lay off, the governing provision is proviso (b) to section 25-C, and that under that proviso, they would be entitled to compensation as provided in the body of the section, i.e. 50 per cent. of the basic wages and dearness allowance, for the remaining period also. This contention was accepted by the Tribunal, and holding that the compensation awarded by the appellant was not in accordance with section 25-C, it decided, as already mentioned, that there was an alteration of the conditions of service, and accordingly awarded compensation under section 23 of the Act.

It is contended for the appellant that the construction which the Tribunal has put on section 25-C is erroneous, and that the amount of compensation offered by the appellant was the correct amount payable under that section. As already stated, there is no dispute that the compensation payable for the first 45 days has to be determined in accordance with proviso (a) to section 25-C. The dispute is only as to whether for the rest of the period of lay off the workmen are entitled to compensation under proviso (b) to section 25-C. That proviso would apply only if the workmen had been paid compensation for 45 days, and were again laid off for further periods of more than one week at a time. On the wording of the section, it is clear that the lay off which falls within proviso (b) to section 25-C must be distinct from that for which compensation had been paid in accordance with proviso (a) to section 25-C and subsequent thereto in point of time. And as, in the present case, there was one continuous lay off for the entire period, proviso (b) could have no application.

1956

M/s. Modi Food Products Co. Limited v. Shri Faqir Chand Sharma and others

Venkatarama Ayyar J.

Counsel for the respondents contends that though there was only one lay off, it should notionally be split up into two, the first period being the 45 days covered by proviso (a) to the section and the rest of the period, by proviso (b). It is arguable that there could be a second and distinct lay off following the first without a break, as for example, when the management first notifies lay off for a period of 45 days and pays compensation therefor, and again issues a fresh notification at the end of the period declaring a further lay off for a period exceeding 7 days in continuation of the notified lay off, and that that would fall within proviso (b). But, in the present case, there was only one notification, and the period specified therein was up to the next season. By no straining of the language of proviso (b) to section 25-C can such a lay off be brought within its purview. The respondents rely in support of their contention on the decision in *Automobile Products of India Ltd.* v. *Their Workmen*(1). But that decision gives no effect whatever to the words "again laid off", and moreover, if the construction adopted therein is correct, there would be no need for the provisos (a) and (b), as what would be payable under them, according to the respondents, would become payable under the body of the section itself. If, as observed in the above decision, this conclusion leads to an anomalous position, it is for the legislature, if it thinks fit, to amend the section and not for the Tribunal to construe it otherwise than what it plainly means. We are accordingly of opinion that the respondents are entitled to compensation only for the 45 days as provided in proviso (a), and that as the appellant had offered to pay the same by its notice dated 12-7-1954, there was no alteration of the conditions of service within section 22 of the Act, and that, in consequence, the petition of the respondents was liable to be rejected.

We accordingly allow the appeal, set aside the order of the Tribunal, and dismiss the petition of the respondents. The parties will bear their own costs.

(1) [1955] 1 Labour Law Journal 67.