KAYS CONSTRUCTION CO. (P) LTD.

v.

STATE OF UTTAR PRADESH AND OTHERS

November 26, 1964

[P. B. GAJENDRAGADKAR, C.J., M. HIDAYATULLAH, J. C. SHAH, S. M. SIKRI AND R. S. BACHAWAT, JJ.]

U.P. Industrial Disputes Act, 1947, *sub-ss.* (1) *and* (2) *of s.* 6-*H—Back wages of workmen—Exact amount not calculated but amendable to arithmetical calculation—Such amount whether 'money due' under first clause or 'benefit capable of being computed in terms of money' under second clause.*

The appellant company had to pay under an award of the Labour Tribunal the back wages of some workmen. The Labour Commissioner issued a recovery certificate in respect of part of these wages to the Collector under s. 6-H(1) of the U.P. Industrial Disputes Act, 1927, and stated that for the rest of the amount due he would issue another certificate later when the exact amount had been worked out. The appellant company challenged the certificate before the High Court, contending that it was not in respect of 'money due' for which proceedings under sub.s. (1) of s. 6-H could be taken, but was a 'benefit' to be computed in terms of money for which the appropriate proceedings could be only under sub-s. (2) of that section. A single Judge of the High Court accepted the contention of the appellant company, but his judgment was reversed by a Division Bench of the High Court. The company appealed to the Supreme Court by special leave.

HELD : The Division Bench had correctly confined the term 'benefits' under the second clause to benefits like rent free quarters, free electricity etc. which were not things which a man earned through his labour. In the present case what was required was not computation of money-value of 'benefits' but only an arithmetical calculation of total money wages over a certain period. The elaborate procedure under sub-s. (2) of s. 6-H was not mean for cases where only arithmetical calculation was required. The appeal therefore could not succeed. [281 C-G]

M.S.N.S. Transports, Tiruchirapalli v. *Rajaram and another*, [1960] 1 L.L.J. 336, *Seshmusa Sugar Works Ltd.* v. *State of Bihar*, A.I.R. 1955 Patna 49, *S. S. Shetty* v. *Bharat Nidhi Ltd.*, [1958] S.C.R. 442, *Kasturi & Sons (P) Ltd.* v. *N. Salivatesaram*, [1959] S.C.R. 1, *Punjab National Bank Ltd.* v. *Kharbunda*, [1962] Supp. 2 S.C.R. 977 and *Shri Amarsinghji Mills Ltd.* v. *Nagarashua (M.P.)*, [1961] 1 L.L.J. 581, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1108 and 1109 of 1963.

Appeals by special leave from the judgment and order, dated March, 15, 1962 of the Allahabad High Court in Special Appeal No. 574 of 1960 and Supreme Court Appeal No. 53 of 1962 respectively.

Sir Iqbal Ahmad, K. Rajendra Chaudhuri and *K. R. Chaudhuri* for the appellant (in both the appeals).

A *C. B. Agarwala* and *O. P. Rana*, for respondents Nos. 1 to 4 (in both the appeals).

The Judgment of the Court was delivered by

Hidayatullah, J. These are two appeals by special leave in
B which Kays Construction Co. (P) Ltd. is the appellant. Civil Appeal No. 1108 of 1963 is against a judgment of the Allahabad High Court, dated March 15, 1962 and Civil Appeal No. 1109 of 1963 is against an order of the same High Court, dated May 9, 1962 declining to certify the case under Art. 133 of the Constitution as in the opinion of the High Court the proceedings from
C which the appeal arose before the High Court was not a civil proceeding within Art. 133. As special leave has been granted against the judgment of the High Court and we are of opinion that the appeal against that judgment must be dismissed, we do not think it necessary to decide the other appeal.

D The facts of the case may now be stated briefly. The appellant Company is the successor of a private concern which went under the name of Kays Construction Company and was owned by one Mr. H. M. Khosla who is now Managing Director of the appellant Company. It appears that Mr. Khosla found it unprofitable to continue the business as his own and he stopped it for a while
E before Kays Construction Co. (Private) Ltd. came into existence. The appellant Company took over the business and with it, some of the workmen of the former concern but not all. This led to an Industrial dispute before the Allahabad Industrial Tribunal (Sugar) and an award was made on January 31, 1958. One of the questions in dispute before the Tribunal was the reinstatement and back wages
F of the workmen who were not re-employed by the appellant Company. The Tribunal delivered an award. The parties to this appeal have not cared to produce the award but an extract from it relevant to this part of the controversy is on the record and it runs as follows :—

G "As a result of my findings above, I hold that management of Messrs. Kays Construction Co. (Private) Limited, Allahabad, are required to reinstate the old workmen given in the Annexure of Messrs. Kays Construction Co., Allahabad. They will be restored in their old or equivalent jobs and given continuity of service.
H In view of the somewhat peculiar features of this case and in the largest interest of the Industry, I would, however, order that the workmen be paid only 50 per cent, of their

back wages for the period they were forcibly kept out of employment." A

After this award a large number of the workmen preferred claims for their back wages purporting to do so under the first sub-section of s. 6-H of the U.P. Industrial Disputes Act, 1947. That section, shorn of provisions which do not concern us, reads as follows :— B

"6-H(1) Where any money is due to the workmen from an employer under the provisions of Section 6-H to 6-R under a settlement or award, or under an award given by an adjudicator or the State Industrial Tribunal appointed or constituted under this Act, before the commencement of the Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the workman may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government is satisfied that any money is so due, it shall issue a certificate for the amount to the collector who shall proceed to recover the same as if it were an arrear of land revenue. C D

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may subject to any rule that may be made under this Act be determined by such Labour Court as may be specified in this behalf by the State Government, and the amount so determined may be recovered as provided for in sub-section (1). E F

(3) . . . . .".

The appellant Company made a large number of objections to this demand before the Labour Commissioner, U.P. to whom the powers of the State Government under the first sub-section of s. 6-H had been delegated. These objections, briefly stated, were that some of the workmen had already accepted employment either with the appellant Company or elsewhere and that some of them were either not parties to the original dispute or had died subsequent to the award. The appellant Company also contended that as the exact number of days for which different workmen had been forcibly kept out of employment was not determined an order G H

A under s. 6-H(1) could not be passed. There were some other contentions into which it is not necessary to go because the case now lies within a narrow compass.

On July 21, 1958 the Labour Commissioner, purporting to act under the first sub-section of s. 6-H issued a certificate to the B Collector, Allahabad for the recovery of Rs. 1,06,588-6-6. Certain objections having been filed by the appellant Company before the State Government, the Regional Conciliation Officer, Allahabad was ordered to verify the claims. In the meantime, the Labour Commissioner issued another certificate on September 9, 1959 by which the sum to be recovered was reduced to C Rs. 50,654-9-6. This was said to be certainly due and it was stated that for the balance another certificate would issue after the claims were fully verified. On September 10, 1959, the Collector passed an order which was communicated telegraphically to the Chief Mechanical Engineer, North-East Railway, Gorukhpur demanding the said sum for payment to the workmen, from the security depo- D sited by the appellant Company with the Chief Mechanical Engineer. On November 2, 1959 the appellant Company filed a petition under Art. 226 of the Constitution to have the orders dated September 9 and 10, 1959 quashed by a writ of *certiorari* or by any other suitable order or direction and for release of some E property which, it may be mentioned, was under attachment after the first certificate was issued. The petition was heard by Mr. Justice Broome of the Allahabad High Court and was allowed by him. He quashed the two orders of the Labour Commissioner and the attachment of the property on condition that the Company furnished adequate security to the satisfaction of the District F Magistrate of Allahabad.

The dispute was considerably narrowed before Broom J. The only question that was considered was whether the claim of the workmen before the Labour Commissioner fell to be considered under the first or the second sub-section of s. 6-H. Mr. Justice G Broome relying upon the analogy of *M. S. N. S. Transports, Tiruchirapalli* v. *Rajaram and Another*(1) decided under s. 33-C of the Industrial Disputes Act and *Sesamusa Sugar Works Ltd.* v. *State of Bihar and Others*(2) decided under s. 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, held that as the exact amount was required to be determined, proceedings had to be taken before H the Labour Court under the second sub-section to determine the money equivalent of the "benefit" to which the workmen were

(1) [1960] 1 L.L.J. 336. (2) A.I.R. 1955 Patna 49.

entitled before the certificate could issue. In other words, Broome J. was of opinion that the application of the first sub-section of s. 6-H was premature and thus erroneous. A

Against this decision an appeal was filed under the Letters Patent of the High Court and by the order, now under appeal, the judgment of Broome J. was reversed. The Division Bench held that the words of the second sub-section "any benefit which is capable of being computed in terms of money" indicated benefits like free quarters or free electricity and not something which a workman earned through his labour. Reliance was placed upon a decision of this Court in *S. S. Shetty* v. *Bharat Nidhi Ltd.*(1) where Bhagwati J. has pointed out that if any benefit awarded by the Tribunal was not expressed in terms of money it was necessary to have it computed in terms of money before the appropriate Government could be asked to help in the recovery under s. 20(2) of the Industrial Disputes (Appellate Tribunal) Act 1950. In the opinion of the Division Bench this decision supported their conclusion that the computation in terms of money of a 'benefit' was something different from mere arithmetical calculation of the amount of back wages. The Divisional Bench distinguished *Kasturi & Sons (P) Ltd.* v. *N. Salivatesaram & Anr.*(2) on the ground that s. 17 of the Working Journalists (Conditions of Service & Miscellaneous Provisions) Act, 1955 referred expressly to money due by way of compensation, gratuity and wages. The case in *Punjab National Bank Ltd.* v. *Kharbunda,*(3) where it was held that monetary advantage or profit was not necessarily outside the word 'benefit' as used in s. 33C of the Industrial Disputes Act 1947, was also distinguished. In view of these cases the Division Bench did not follow the two rulings of the High Courts cited earlier and another reported in *Shri Amarsinghji Mills Ltd.* v. *Nagarashua (M.P.) & Ors.*(4). B C D E F

It is contended before us that the judgment of the Divisional Bench is erroneous in its interpretation of s. 6-H(1) and (2). The question thus is how are the two sub-sections to be read? This section is analogous to s. 33C of the Industrial Disputes Act, 1947 and s. 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950. It is significant that in all the three statutes the cognate section is divided into two parts and the first part deals with recovery of 'money due' to a workman under an award and the second deals with a 'benefit' computable in terms of money. Under the first sub-section the State Government (or its delegate), if G H

(1) [1958] S.C.R. 442.
(2) [1959] S.C.R. 1.
(3) [1962] Supp. 2 S.C.R. 977.
(4) [1961] 1 L.L.J. 581.

A satisfied that any money is due, is enabled to issue a certificate to the collector who then proceeds to recover the amount as an arrear of land revenue. The second part then speaks of a benefit computable in terms of money which benefit, after it is so computed by a Tribunal, is again recoverable in the same way as money due under the first part. This scheme runs through s. 6-H
B sub-ss. (1) and (2).

That there is some difference between the two sub-sections is obvious enough. It arises from the fact that the benefit contemplated in the second sub-section is not "money due" but some
C advantage or perquisite which can be reckoned in terms of money. The Divisional Bench has given apt examples of benefits which are computable in terms of money, but till so computed are not "money due". For instance, loss of the benefit of free quarters is not loss of "money due" though such loss can be reckoned in terms of money by inquiry and equation. The contrast between
D "money due" on the one hand and a "benefit" which is not "money due" but which can become so after the money equivalent is determined on the other, marks out the areas of the operation of the two sub-sections. If the word "benefit" were taken to cover a case of mere arithmetical calculation of wages, the first sub-section would hardly have any play. Every case of calculation, however,
E simple, would have to go first before a Tribunal. In our judgment, a case such as the present, where the money due is back wages for the period of unemployment is covered by the first sub-section and not the second. No doubt some calculation enters the determination of the amount for which the certificate will eventually issue but this calculation is not of the type mentioned in the second
F sub-section and cannot be made to fit in the elaborate phrase "benefit which is capable of being computed in terms of money". The contrast in the two sub-sections between "money due" under the first sub-section and the necessity of reckoning the benefit in terms of money before the benefit becomes "money due" under the second sub-section shows that mere arithmetical calculations of
G the amount due are not required to be dealt with under the elaborate procedure of the second sub-section. The appellant no doubt conjured up a number of obstructions in the way of this simple calculation. These objections dealt with the "amount due" and they are being investigated because State Government must first satisfy itself that the amount claimed is in fact due. But the anti-
H thesis between "money due" and a "benefit which must be computed in terms of money" still remains, for the inquiry being made is not of the kind contemplated by the second sub-section but is one for

the satisfaction of the State Government under the first sub-section. It is verification of the claim to money within the first sub-section and not determination in terms of money of the value of a benefit. The judgment of the Division Bench was thus right. The appeal fails and will be dismissed with costs. The companion appeal will also be dismissed but we make no order about costs in that appeal. A B

Appeal dismissed.