THE COUNCIL OF THE UNIVERSITY OF ZAMBIA AND UNIVERSITY OF ZAMBIA AND ALLIED WORKERS UNION (THROUGH IT'S GENERAL SECRETARY MICHEAL KALUBA)

Supreme Court
J.S. Chirwa

Flynote:

Labour Law – Industrial and Labour Relations Act – Employer – compliance with collective agreement – Collective bargaining – Legality of Collective agreement – Registration of Collective agreement – Labour minister's powers over Collective agreements.

Headnote

The appellant was taken to the Industrial Relations Court by the Respondent Union when the appellant failed to implement a Collective agreement that was made between them. The collective agreement sought to pay 58% harmonized salary increments and settlings all after terms and conditions of service of the collective agreement. The said collective agreement was earlier sent to the Labour Commissioner as required by law to prepare it for registration. The Minister of labour and social security declined to have the collective agreement registered saying that at that time there was a wage freeze in the public service and in all those institutions which were outside government but which depended on subvention from the National Treasury. Hence the Respondent lodged a complaint into the Industrial Relations Court to enforce compliance with the agreement by the appellant. The Court held in favour of the respondent hence the appeal by the appellant.

Held:

(i) That a collective agreement although satisfies section 68 of the Industrial and Labour Relations Act, is of no legal effect it it has not been approved by the Minister of Labour.

(ii) That the Industrial Relations Court misdirected itself following upon (i above) when it ordered the appellant to honour 58% harmonized salary increment and settling all other terms and conditions of service based on the unregistered collective agreement.

(iii) That having found that the Labour Commissioner had no powers to inquire into the ability of the employer to the agreed remunerations and conditions of service, the court below misdirected itself to make reliance on that when it ordered payment of 58% harmonized salary increment.

Judgement

Chirwa, J.S. delivered judgment of the Court:-

The respondent presented a complaint in the Industrial Relations Court under Section 85 of the Industrial and Labour Relations Act seeking the following reliefs:-

(1) A declaration that the 1998 Collective Agreement herein complied with the Act in providing statutory clauses and should therefore be registered;

(2) An order compelling the appellant to honour the provisions of the 1998 Collective Agreement by paying 58% harmonized salary increment and settling all other terms and conditions of service of the 1998 Collective Agreement;

(3) Salaries to be with effect from 1st April 1998 as agreed and signed by the bargaining units;

(4) All allowances and other terms and Conditions of Services to be with effect from 9th July 1998 the date of signing the Collective Agreement as agreed and signed by the bargaining units.

(5) Interest on the salaries and allowances and all monetary emoluments from the date of signing the Collective Agreement until date same are effected. The said interest being the highest Commercial Bank interest rate.

(6) General and aggravated damages; and costs.

The background to the matter is that the respondent Union representing some workers at the University of Zambia negotiated new salaries and other conditions of service with the representatives of the appellant and this was put into a Collective Agreement. The said agreement was signed by the parties on 9th July, 1998. In this agreement salaries and salary related items were backdated to 1st April 1998. This agreement was sent to the Labour Commissioner as required under Section 70 of the Industrial Relations Act to be registered. The Minister of Labour and Social Security declined to order the registration of the agreement under Section 71 on the ground that there was a wage freeze in the public service as a whole and all those institutions outside Government but dependent on subvention from the national treasury. The Minister refused to register the agreement because it was not capable of being implemented because of the wage freeze. The complaint by the respondent in the Industrial Relation Court was that the Minister can only refuse to direct registration of the agreement if he is satisfied that:-

(a) the agreement does not contain the statutory clauses referred to in Section 68 and

(b) the clauses in the agreement do not contain anything which is contrary to any written law.

As is provided for in section 70 of the Industrial and Labour Relations Act. Section 68 which provides for statutory clauses reads:-

"68 Every Collective Agreement shall contain clauses, in this part referred to as statutory clauses, stipulating---------------

(a) the date on which the agreement is to come into effect and the period for which it is to remain in force; and

(b) the methods, procedures and rules for reviewing, amending, replacing or terminating the Collective Agreement."

It was argued that the agreement sent to the Labour Commissioner contained the statutory clauses and that it contained nothing which was contrary to any written law. It was argued also that the wage freeze was no reason for refusing to register the agreement more so that the university indicated that it would find its own sources to meet the agreement. The answer by the appellant in the Industrial Relations Court was that it was agreed by the parties that it would pay the harmonized salaries when the government provided the funds and that the government has not provided the funds and that it could not implement the agreement as it had not been registered by the Labour Commissioner.

On the evidence and documents before it, the Industrial Relations Court found that the appellant had not shown any written law which forbade the government from registering Collective Agreements because of a wage freeze for the year 1998, and that in the absence of such written law it regarded the letter by the Minister as a violation of Section 71(2) of the Industrial Relations Act and declared it null and void. It then declared that the 1998 UNZA/UNZAWU Collective Agreement complied with the Act in providing the Statutory Clauses and thus was Legal. It then ordered the appellant to honour the provision of 1998 Collective Agreement by paying the 58% harmonized salary increment and settling all other terms and conditions of service as it intimated it was capable of doing it.

The appellant has appealed on three grounds, namely:-

(1) Court erred in law and in fact in deciding that the appellant should honour the provisions of the 1998 Collective Agreement by paying the 58% harmonized salary increment and settling all other terms and conditions of service as it intimated it was capable of doing in its letter marked "MCK 20". In so doing the Court erred in not taking into consideration provisions of the Memorandum of Understanding between the parties to the effect that the harmonized salaries would only be paid upon the government providing funding for the same and the fact that the 58% harmonized salaries only become part of the Collective Agreement by virtue of the said memorandum of understanding.

(2) The Court erred in law when it decided that the appellant should honour the provisions of the 1998 Collective Agreement by basing its decision on the letter marked "MCK 20" which was addressed to a third party and did not form part of the negotiations or any preceding or subsequent agreement between the parties to the Collective Agreement and further that the Court erred by not taking into consideration the circumstances leading to the 58% harmonized salaries being attached to the Collective Agreement.

(3) The Court erred in law when it decided that the appellant should honour the provisions of the 1998 Collective Agreement without an order to the effect that the Agreement be registered to give it requisite force of law which should be rightfully compelled to honour the provisions of the said agreement.

The parties submitted detailed written submissions which they augmented in their oral submission which submissions we have taken into account in our judgment. In considering this appeal we will generally first look at the law and later apply that law to the facts of this case. Collective Agreement is defined in Section 3 of the Industrial and Labour Relations Act as to mean.

"an agreement negotiated by an appropriate bargaining unit in which the terms and conditions affecting the employment and remuneration of employees are laid down".

Bargaining unit is also defined in Section 3 to mean:-

"(a) the management of the undertaking and the Trade Union representing employees in such undertaking where Collective Bargaining is at the level of an undertaking, other than an industry; and

(b) (irrelevant to our situation)

What is to be in the Collective Agreement is provided for in Section 68 of the Act and Section 68 reads:

"68. Every Collective Agreement shall contain clauses in this part referred to as statutory clauses, stipulating------

(a) the date on which the agreement is to come into effect and the period for which it is to remain in force; and

(b) the methods, procedure and rules for reviewing, amending, replacing or terminating the Collective Agreement."

Once the bargaining units have agreed to call the requirements in Section 68, they are obliged to lodge the Collective Agreement, duly signed, with the Labour Commissioner within fourteen days of signing and the Labour Commissioner within 14 days of receipt of the same submits the agreement to the Minister (See Section 70). The Minister's powers over the Collective Agreement are in Section 71 which reads ad follows:-

"71. (1) The Minister may, after considering a Collective Agreement lodged in accordance with Section 70 together with the comments of the Commissioner received under subsection (2)-----

(a) direct that a copy of the Collective Agreement be returned to the parties together with his reasons for not directing the registration and give instructions to re-submit the Collective Agreement to the Commissioner; or

(b) direct the Commissioner to register the Collective Agreement.

2. The Minister shall not direct the registration of a Collective Agreement unless he is

satisfied that-----

(a) the agreement contains the statutory clauses referred to in Section Sixty-eight; and

(b) the clauses in the agreement do not contain anything which is contrary to any written.

3. Every Collective Agreement which has been approved by the Minister shall---

(a) come into force on the date on which it is approved or on a later date specified in the Collective Agreement.

(b) remain in force for such period as shall be specified in the agreement.

(c) Be binding on the parties to it.

We now look at the undisputed facts of this case against the law outlined above. There is no dispute that the bargaining units of the appellant and the respondent met and negotiated for new conditions of employment and remuneration for the employees and this Collective Agreement was dully signed by the bargaining units. This Collective Agreement was duly sent to the Labour Commissioner as required by law and the Commissioner wrote the appellant reminding it that the salary schedule had not been attached to the agreement and the appellant duly sent the schedule. Here we would pose to agree with the observation by the Industrial Relations Court that the Labour Commissioner has, per se, no business to inquire if the employer is capable of paying the salaries agreed upon. His function in as far as Collective Agreements are concerned is to make comments on them received and then register them if directed by the Minister.

As provided under the law, the Minister on receipt of the Collective Agreement had either to register it or refuse to direct to have it registered under Section 71 (1). Under Section 71 (1) (a) the Minister may refuse to direct the registration of the Collective Agreement. It is only under this sub-section that the Minister has an option whether to direct or not for any reasonable reasons but it is mandatory to refuse if the agreement falls under section 71(2) of the Act. In the instant case the Minister refused to direct the Labour Commissioner to register the agreement and the law give him that power under Section 71(1)(a) of the Act and here he refused and gave reasons for his decision, namely, that there was a government wage freeze in the public sector and institutions that were dependent on subvention from the national treasury and that the agreement when registered could not be capable of being implemented because of the wage freeze. He advised the parties to start fresh negotiations to cover the period from January 1999 and not backdated to 1998. Whether these were good reasons or not for refusing to register, was not canvassed in the Industrial Relations Court. There are rules and procedures in challenging decisions of public officer or bodies. Whether the Industrial Relations Court has jurisdiction to order a Minister to direct the Labour Commissioner to register a Collective Agreement in proceedings commenced by a complaint is another issue which was not considered by the Industrial Relations Court. In any event that is not an issue in this appeal.

Be as it may, the position of the Collective Agreement as agreed upon the by parties is that is was not registered and the Industrial Relations Court never ordered that it

be registered. What is the effect of non-registration of the agreement? The answer to us is simple. It has not legal force. Under Section 71(3) the Collective Agreement becomes effective under two instances. Before the two instances are evoked, the first condition is that it must be approved by the Minister as it is provided under section 71(3) reads as follows:-

> "71(3) Every Collective Agreement which has been approved by the Minister shall----
>
> (a) Come into force on a date on which it is approved or on a later date specified in the Collective Agreement."
>
> (emphasis our own)

There is therefore no agreement for 1998 although the agreement reached by the parties satisfied Section 68, it was never approved by the Minister. Having thus found we hold that:-

(a) Although the agreement satisfied Section 68 of the Act, it was of no legal effect as it was not approved by the Minister. This is not a proper case for this court to avail Section 25(1) of the Supreme Court Act as reasons for refusal were not contested in the court below.

(b) Following upon (a) above, the Industrial Relations Court misdirected itself when it ordered the appellant to honour 58% harmonized salary increment and settling all other terms and conditions based on the 1998 unregistered Collective Agreement.

(c) Having found that the Labour Commissioner had no powers to inquire into the ability of the employer to pay the agreed remuneration and conditions of service the court misdirected itself to rely on the same in ordering the appellant to honour the 58% harmonized salary increment.

We may say by way of obiter that the whole agreement and the memorandum on harmonized salary structure was contingent on funds being made available by the government because the authority given by the Council of University of Zambia to it, bargain unit in clause 3 of the Collective Agreement was given conditionally as can be seen from the Minutes of the Council at pages 89-97 particularly paragraphs 5.7,5.5,5.9,5.11 and paragraphs 3 of the memorandum on harmonized salary structure at page 146 of the record. They were all dependent on funding being made available by the government.

In conclusion, we are in total agreement with the submissions by the learned counsel for the appellant, the findings and orders of the Industrial Relations Court cannot be supported by law on the facts of this case. The appeal is allowed with costs to the appellant. Costs to be agreed, in default, to be taxed.

Appeal allowed.