
(1961) 11 AHC CK 0006
In the Allahabad High Court

Abdul Latif

APPELLANT

Vs

Karamat Ali

RESPONDENT

Date of Decision : 02-11-1961

Acts Referred:

Factories Act, 1948 — Section 7, 79

Payment of Wages Act, 1936 — Section 15, 3, 7

Citation : (1962) 2 LLJ 335

Hon'ble Judges : Mithan Lal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mithan Lal, J.—This civil revision arises out of an order passed by the Additional District Judge, Agra, in a matter relating to Payment of Wages Act.

2. The opposite party was employed as a munim in Chishti Glass Works, Firozabad. According to the terms of the licence Abdul Latif was named as the occupier, but no person was named as the manager. However, Abdul Latif was acting as the managing proprietor and according to the finding of the lower appellate Court he was empowered to employ or dismiss the persons working in the factory. The factory stopped working on or about 8 January 1954, but admittedly Karamat Ali continued to work till 5 May 1954. The factory with the licence of its working was transferred by the proprietors to Sharda Glass Works. Thereafter a dispute arose about the delayed wages and also the leave wages of Karamat Ali. The matter was taken to the authority appointed u/s 15 of the Payment of Wages Act through Mazdoor Dal of Firozabad. The authority allowed the application and asked the managing proprietor to pay a sum of Rs. 516-12-0 as delayed wages and Rs. 187 on account of leave wages u/s 79 of the Factories Act. Thereafter an appeal was filed and the learned Additional District Judge, Agra, upheld the order. It is against this order that the present revision has been filed.

3. Three main contentions have been raised in this revision. The first is that

Karamat Ali was not a worker within the meaning of the Factories Act, nor could he be treated to be a worker after the factory was closed on 8 January 1954. The second contention is that u/s 3 of the Payment of Wages Act every employer has been made liable for the payment of wages to the persons employed, but in the case of factories if a person has been named as a manager of the factory under Clause (f) of Sub-section (1) of Section 7 of the Factories Act, then such a person shall be liable. It is said that there is no evidence to show that Abdul Latif was named as manager or he was the person found acting as the manager within the meaning of Sub-section (5) of Section 7 of the Factories Act and consequently a decree against Abdul Latif could not be passed. The third contention is that there being no finding about the leave wages a decree for Rs. 187 should not have been passed. All these contentions have no force.

4. "Worker" has been defined in the Factories Act as:

a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process.

5. It has been contended that as Karamat Ali was a munim and was not employed in the manufacturing process he was not a worker and in any case he ceased to be a worker when the factory closed on 8 January 1954. This contention is against the very wording of the definition. The definition not only includes a person employed in the manufacturing process but also includes a person employed in any other kind of work incidental to manufacturing process. Keeping of accounts of a factory is a work incidental to the manufacturing process and so the "munim" is definitely covered by the definition of the word "worker." So far as the question of closing of the factory goes, the lower appellate Court has observed that mere stopping of the manufacturing process did not amount to closure of the factory. It is further the admitted case of the parties that even after the closure of the factory Karamat Ali worked till 5 May 1954. There is a further finding of fact of the lower appellate Court that the services of Karamat Ali were never terminated and he continued to be a worker till 4 October 1954, that is, one day before the factory was transferred to Sharda Glass Works. The mere closing of the factory, therefore, was not enough to take away the status of the worker in this case.

6. An incidental argument has been raised by the learned Counsel in this case and it is that the authority or the lower appellate Court could not go into the question as to on what date the services of Karamat Ali were terminated. For this purpose reliance has been placed upon the case of A.R. Sarin v. B.C. Patil and Anr. 1951 II L.L.J. 188 but a perusal of that case will go to show that the Division Bench of that Court, while discussing the question of jurisdiction in Paras 3, 5 and 6, observed:

The mere denial of the fact of employment cannot oust the jurisdiction of the authority. If the employer denies or disputes the fact that the servant was employed by him, it will be for the authority to decide that question, and it is only after the question of employment has been decided that the question would arise as to what are the terms of the contract and what is the liability of the master under the terms with regard to wages.

7. It was admitted that Karamat Ali was employed till 5 May 1954 and so the Court had jurisdiction to decide whether his services were terminated on that date or any other date. If the Court decided this point and found that Karamat Ali continued in service till 4 October 1954, it cannot be said that the Court exceeded its jurisdiction or that it had no power to decide this point.

8. The next question is whether the suit could be decreed against Abdul Latif who was not named as manager of the factory. The material portion of Section 3 of the Payment of Wages Act lays down:

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

Provided that, in the case of persons employed (otherwise than by a contractor)-

(a) in factories, if a person has been named as the manager of the factory under Clause (f) of Sub-section (1) of Section 7 of the Factories Act, 1947...the person so named...shall be responsible for such payment.

Section 7 of the Factories Act requires that:

The occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief inspector a written notice containing-

* * * (f) the name of the manager of the factory for the purposes of this Act.

9. In this case no person was named as manager of the factory and consequently the provisions of Sub-section (5) would apply which lay down that:

(5) During any period for which no person has been designated as the manager of the factory...any person found acting as manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

10. In this case there is a finding of fact that Abdul Latif was the managing proprietor of the factory who was empowered to employ or dismiss the persons working in the factory. He was also empowered to give promotions or to inflict fines. This would mean that for the purpose of Sub-section (5) Abdul Latif, was the manager and if the Courts below have decreed the claim against Abdul Latif it cannot be said that there was any violation of any statutory provision.

11. The last contention which relates to the leave wages is governed by Section 79 of the Factories Act. Sub-section (3) makes a worker who has been discharged or dismissed from service entitled to leave salary. It is a case in which

the services of the were terminated or he was discharged from service because of the transfer of the factory from the former owner to Sharda Glass Works. Levy salary was, therefore, admissible to him. The allegations in the petition made by the petitioner were not specifically denied in the sense that the petitioner was not entitled to leave salary and that appears to be the reason why the Courts below have not discussed this point while passing orders. The learned Counsel cannot be permitted to raise a new point here. For all these reasons the revision falls and must be dismissed.

12. The revision is dismissed with costs. Record of the case shall be sent back to the Court below forthwith.