
(2004) 01 JH CK 0005

In the Jharkhand High Court

Case No : Writ Petition (L) No. 2708 of 2001

Bijay Kumar Verma and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Wages Act, 1936 — Section 1(4), 15(1), 2

Citation : (2004) 105 FJR 355 : (2004) 2 LLJ 927 : (2004) 101 FLR 458 :
(2004) 1 JCR 472

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Vijoy Pratap Singh, for the Appellant; R.N. Sahay, Senior Standing Counsel II and Prabhash Kumar, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—The Petitioners being the Secretary, Treasurer, the President of the Managing Committee of Amrit Nagar High School, Karra, District-Hazaribagh have challenged the order dated 13.03.2001, passed by the Sub-Divisional Officer-cum-Authority under the Payment of Wages Act, 1936, (hereinafter called as the "Act" for the sake of convenience) whereby the learned Sub-Divisional Officer in exercise of the powers under the Payment of Wages Act, 1936 has allowed the application filed by the Respondent No. 3 Smt. Indu Kumari Sinha, and has directed the Managing Committee of Amrit Nagar High School to pay a sum of Rs. 2,93,130/-towards her due wages and a sum of Rs. 25/-towards compensation.

2. The facts of the matter, in short, is that the Respondent No. 3 Smt. Indu Kumari Sinha, filed an application, before the Sub-Divisional Magistrate, Sadar-Hazaribagh stating therein that she was working, as a Science Teacher on being appointed as such by the Managing Committee of Amrit Nagar High School since 1982, It is said that subsequently she was dismissed from the service by the

Secretary of the Managing Committee of the said High School by order dated 28.03.1997. It was further stated in her application that a sum of Rs. 2,52,826/- was payable to her by the said High School towards her arrears of salary and, accordingly, she prayed that the Managing Committee of the School be directed to pay her salary which was due to her amounting to Rs. 2,52,826/-.

3. The claim of the Respondent No. 3, was contested by the Managing Committee of the School raising various objections about the maintainability of the application filed by the respondent No. 3 under the Payment of Wages Act, 1936 and also on the ground that the claim of the Respondent No. 3 was time barred. However, the learned Sub-Divisional Officer by the impugned order dated 13.03.2001 as contained in Annexure-2 to the writ application, allowed the application of the Respondent No, 3 as aforesaid and directed the Managing Committee to pay a total sum of Rs. 2,93,155/- within three months from the date of the order.

4. Learned senior counsel for the petitioner, Mr. Vijoy Pratap Singh, has challenged the impugned order of the Sub-Divisional Officer, firstly on the ground that the Sub-Divisional Officer, had no jurisdiction at all to entertain, the application filed by the Respondent No. 3, as he was not an Authority under the Payment of Wages Act, 1936 to decide the aforesaid dispute. In this regard he further submitted that by a Notification dated 25.09.1973, the Government of Bihar in exercise of the powers conferred by Sub-section (1) of Section 15 of the Payment of. Wages Act, 1936 has already, notified the Authority, giving them power to decide the dispute under the Payment of Wages Act, 1936 with regard to the areas notified in the said Notification. It was submitted that for the district of Ranchi, Palamau and Hazaribagh, the Presiding Officer of the Labour Court, Ranchi was notified as the authority under the Act, who was authorized under the said Notification of the Government of Bihar to decide the dispute arising under the Payment of Wages Act, 1936. In support of his submission, he has referred and relied on the Notification No. S.O. 1231 dated the 25th September, 1973 which has been annexed as Annexure-5 to the writ application. On the basis of the said Notification as contained in Annexure-5 to the writ application. Mr. Singh submitted that the Sub-Divisional Officer had no authority at all to pass the impugned order and, therefore, the same is absolutely without jurisdiction.

5. Mr, Singh further submitted that in view of Section 1(4) and Section 2(ii) of the Payment of Wages Act, 1936, a School does not come under the purview of the provisions of the Act and, therefore, the application of the respondent No. 3 was not entertainable.

6. Mr. R.N. Sahay, learned Senior Standing Counsel No. II appearing for the Respondent nos. 1 and 2 has submitted that the writ application is not maintainable as the order under challenge has been passed against the School but the School has not filed the present writ application, rather the petitioners have filed the writ application in their individual capacity. This argument cannot be accepted because the petitioners have not filed this writ application in their

individual capacity but as the members of the Managing Committee of the School.

7. He further submitted that the impugned order is appealable one and u/s 17 of the Payment of Wages Act, 1936 an appeal lies against the order of the Sub-Divisional Officer and since the petitioners have filed the present writ application without availing the alternative remedy by way of appeal and, therefore, the writ application was not maintainable.

8. Mr. Sahay further submitted that the petitioners cannot challenge the jurisdiction of the Sub-Divisional Officer in passing the impugned order because they submitted to his jurisdiction and after having failed before the Sub-Divisional Officer they are estopped from challenging the jurisdiction of the Sub-Divisional Magistrate.

9. In order to appreciate the submissions made by the petitioners, it is necessary to notice the relevant provisions of the Payment of Wages Act, 1936.

Section 1(4) of the Payment of Wages Act, 1936 reads as under:--

1 (4) It applies in the first Instance to the payment of wages to persons employed in any [factory, to persons] employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration [and to persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of Clause (ii) of Section 2].

Section 2(ii) of the Payment of Wages Act, 1936 reads as under:--

2. Definitions.--In this Act, unless there is anything repugnant in the subject or context,-

(a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;]

(b) dock, wharf or Jetty;

(c) inland vessel, mechanically propelled;]

(d) mine, quarry or oilfield;

(e) workshop or other establishment in which articles are produced adapted or manufactured, with a view to their use, transport or sale;

(g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to generation, transmission and distribution of electricity or any other form of power

is being carried on;]

(h) any other establishment or class of establishments which the Central Government or a State Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette;]

10. From bare perusal of Section 1(4) of the Act, it is manifest that it applies to a Factory, Railway, Railway administration etc. and to the persons employed in an industrial or other Establishment specified in sub-clauses (a) to (g) of Clause (ii) of Section 2 of the Act.

11. Since the School in question is neither a Factory nor under the Railway and, therefore now we have to see as to whether it comes within the specified sub-clauses (a) to (g) of Clause (ii) of Section 2 of the Act or not?

12. From a plain reading of Clause (ii) of Section 2 of the Act and Clauses (a) to (g), it appears that the same talks about the Tramway, Air Services, Motor Transport Services or Transport Services, Dock, Wharf or Jetty, Inland Vessel, Mine, Quarry, or Oil Field, Plantation, Workshop or other Establishment in which articles are produced or manufactured, the Establishment in which any work relates to construction, development or maintenance of buildings, roads or bridges or canals etc. relating to operation connected with navigation, irrigation or supply of water or relating to generation, transmission or distribution of electricity are being carried on and it does not talk about a School, therefore, in my view from a bare perusal of the provisions of the Act quoted above, it is absolutely clear that an educational institution or a School does not and cannot come under the purview of the Payment of Wages Act, 1936, therefore, in my view the application filed by the respondent No. 3 before the Sub-Divisional Magistrate under the Payment of Wages Act, 1936, claiming her due salary was itself not maintainable.

13. Now coming to the point of jurisdiction of the Sub-Divisional Officer, the Respondent No. 2 who has passed the impugned order.

In this regard Section 15(i) of the Act is necessary to be noticed which is quoted herein below:--

15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. - (1) The State Government may, by notification in the Official Gazette, appoint [a presiding officer of any Labour Court or industrial Tribunal constituted under the industrial Disputes Act, 1947, or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or] any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deduction from the wages, or delay in payment of the wages, [or persons employed or paid in that area, including all matters

incidental to such claims:

Provided that where the State Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.]

14. Accordingly, the State Government by a Notification as contained in Annexure-5 in supersession of all the previous Notifications has notified the Presiding Officers of the Labour Courts to be the Authorities under the Payment of Wages Act, 1936, to decide the dispute falling under the Act, Therefore, it is only the Presiding Officer of the Labour Court as notified in the aforesaid Notification as contained in Annexure-5 are the authority under the Act to decide the dispute falling under the Act.

15. Even if it is accepted for the sake of argument as argued on behalf of the Respondents that the Sub-Divisional Officer was the Authorities under the Act, but in my view after the Notification by the State Government as contained in Annexure-5 which was issued in supersession of all earlier Notifications, the Sub-Divisional Officer who may have been notified at any time earlier by the Authority, ceased to be the Authority under the Act after the aforesaid Notification of the State Government.

16. In view of my above finding, I hold that after a clear Notification as contained in Annexure-5 to the writ application, it was only the Presiding Officer, Labour Court, Ranchi who had the jurisdiction to entertain the application and decide the dispute falling under the Payment of Wages Act, 1936. Nothing has been shown to me by the learned counsel for the respondents so as to hold that the S.D.O. was also having any jurisdiction to decide the dispute under the Payment of Wages Act, 1936, therefore, in my view, the Sub-Divisional Officer was not having any jurisdiction at all to pass the impugned order. Only because the petitioner submitted to the jurisdiction of the Sub-Divisional Officer as alleged by the petitioner that itself cannot confer jurisdiction of the Sub-Divisional Officer to decide the dispute falling under the Payment of Wages Act, 1936.

17. Now coming to the objection of the respondents regarding the maintainability of the present application on the ground of availability of alternative remedy of appeal, in my view the same cannot be accepted in view of the decision of the Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, wherein in Paragraph 15, the Supreme Court has clearly held that the alternative remedy has been consistently held not to operate as a bar where the action of the authority or his order is wholly without jurisdiction. Therefore, relying on the aforesaid decision of the Supreme Court, I hold that the writ application is maintainable as the order of the Sub-Divisional Officer was wholly without jurisdiction and, therefore, alternative remedy of appeal was no bar for filing the present writ application.

18. In view of my discussions and findings above, this writ application is allowed.

The order as contained in Annexure-4 dated 13.03.2001 is hereby quashed.