

(1970) 05 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1224 of 1970

Brham Sarup

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 26-05-1970

Acts Referred:

Industrial Disputes Act, 1947 — Section 7
Payment of Wages Act, 1936 — Section 15, 15(1)

Citation : AIR 1971 P&H 102 : (1971) 22 FLR 296

Hon'ble Judges : S.S. Sandhawalia, J

Bench : Single Bench

Advocate : J.S. Chawla, for the Appellant; R.S. Mittal and H.N. Mehtani, Asst. A.G., for the Respondent

Judgement

1. Whether a person appointed as an authority u/s 15(1) of the Payment of Wages Act, 1936, must imperatively have experience as a Judge of the Civil Court or a stipendiary Magistrate is the sole question that has been agitated in these two connected Writ Petitions Nos. 1855 of 1969 and 1224 of 1970.

2. Learned counsel for the parties agreed that the determination of the above-said legal question would govern both these writ petitions. Mr. J. S. Chawla on behalf of the same writ petitioner in both the petitions has hence confined himself to the facts of Civil Writ No. 1224 of 1970. In order to appreciate the legal controversy, it deserves notice that the petitioner is the Management Director of the University Victory Bus Service Private Ltd., and respondent No. 4, Chaudhry Ram was an employee of the company above-said. A dispute regarding the quantum of wages due to respondent No. 4 arose between the parties and the latter approached the authorities under the Payment of Wages Act (hereinafter referred to as the Act) at Ambala, which proceeding was decided in his favour vide annexure "A". In compliance with this decision of the authority, the petitioner made the directed payments to respondent No. 4, but thereafter proceeded to give notice to him as mentioned in order, annexure "A" and then

reduced his salary with effect from 1st of February, 1967, Respondent No. 4 aggrieved by this reduction in his emoluments submitted three applications claiming the difference of his wages from October, 1966, onwards u/s 33C(2) of the Industrial Disputes Act before the Labour Court at Faridabad. During the pendency of the said proceedings, by a decision of this Court the appointment of Shri P. N. Thukral as the Presiding Officer of the said Court was declared illegal. Respondent No. 4 thereupon moved another application before the Labour-cum-Conciliation Officer who was also appointed authority under the Payment of Wages Act claiming the same relief which he had earlier sought from the Labour Court at Faridabad. When respondent Nos. 2 and 3 commenced proceedings on behalf of the petitioner, two preliminary objections were raised regarding the maintainability of the application moved by respondent No. 4. The following issues were framed in this regard:-

1. Whether the appointment of the present Labour-cum-Conciliation Officer as authority under the Payment of Wages Act is not valid and whether he is not qualified for the appointment as such?
2. Whether the claims referred to in items Nos. 1 to 3 in the Annexure are pending before the Labour Court, Faridabad, and such application to that extent is not maintainable?

In the context of issue No.2, respondent No. 4 made a statement before the authority that he did not want to pursue his case before the Labour Court even if the Presiding Officer thereof is appointed and that he wanted to plead his case before the authority only and in no other jurisdiction. Vide annexure "D" dated the 27th of March. The authority under the Act decided both the above-said issues against the petitioner and the case was fixed for further evidence. It was thereupon that the present petition was moved on the 20th of April, 1970.

3. The main ground on which this petition has been pressed is that respondent No. 3 is only a Graduate and does not possess any experience as a Judge of Civil Court or a Stipendiary Magistrate, which it is alleged is the necessary qualification for appointment u/s 15(1) of the Act. It is averred that the mere fact that respondent No. 3 held the post of Commissioner under the Workmen's Compensation Act is not sufficient compliance with the statute prescribing the requisite qualification for the authority so appointed. It has also been averred that the claim of respondent No. 4 being still pending before the Labour Court, Faridabad, cannot, therefore, be agitated before the authority under the act.

4. On behalf of the official respondents, the position taken up is that respondent No. 3 already holding the post of a Commissioner under the Workmen's Compensation Act 1923 is as such fully qualified for appointment as an authority under the Payment of Wages Act. It is averred that the work "or" used in Section 15 of the Act clearly signifies that a distinct qualification has been laid down for the alternative authority to be appointed under the Act and thus gives a number of alternatives to the State Government for the purpose of such appointment. It

has then been averred that the remedies u/s 33C(2) of Industrial Disputes Act and u/s 15 of the Act are concurrent and there is no conflict between these two remedies which can be agitated in the alternative.

5. At the very outset, it may be noticed that the learned counsel for the petitioner did not press the contention that as the claim of respondent No. 4 was still pending before the Labour Court, therefore he was barred from agitating the same before the authority under the Act. As has already been noticed, respondent No. 4 had in categorical terms abandoned his alternative remedy in Labour Court in the proceedings which were concluded by a Annexure "D". The whole argument on behalf of the petitioner, therefore, has been directed to support the solitary contention that respondent No. 3 cannot be appointed as an authority under the Act as he does not fulfil the statutory qualifications laid down for the said posts. As the controversy resolves primarily around Section 15(1) of the Act it is convenient to set down its provisions forthwith-

"15(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 (14 of 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 deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims.

Provided * * *

(2) * * * *

Provided * * * "

In construing the provisions above said Mr. J.S. Chawla by way of analogy calls in aid the provisions of Section 7A (3) of the Industrial Disputes Act which provides the qualifications for persons to be appointed as Presiding Officers of a Labour Court. Referring to sub-cl. (a), (b), (d) and (e) thereof it is sought to be argued that these provisions virtually make judicial experience the necessary qualification for appointments to the posts of Presiding Officers for the Labour Courts. From this it is sought to be argued that the provisions of another statute, namely, Section 15(1) of the Payment of Wages Act should also be construed in such a manner as to make judicial experience an inflexible qualification for persons who are to be appointed as an authority under the said Act. the gravamen of Mr. Chawla's argument is that the clause "other officers with experience as a Judge of Civil Court or as a Stipendiary Magistrate" in Section 15(1) should not be read disjunctively, but as an overriding qualification prescribed for all appointees who are to act as an authority under the Act. it has been vehemently contended that the word "or" occurring prior to the beginning of this clause must be construed as "and". A number of authorities have been cited

for the proposition that in certain contingencies the word "or" may be read as "and".

6. I am unable to accede to the contention raised on behalf of the petitioner for a variety of reasons and the first and the primary one being that the plain language of Section 15(1) which falls for construction does not support such an interpretation. A bare reading of Section 15(1) would show that the legislature wanted to prescribe three distinct categories of persons who could be appointed as an authority under the Act. these three categories become patent if Section 15(1) is split up for purposes of construction into these separate clauses. These are -

(1) 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

(2) any Commissioner for Workmen's Compensation

or

(3) other officers with experience as a Judge of a Civil Court or a Stipendiary Magistrate.

The above-said break-up of S. 15(1), therefore, brings out the clear intention of the legislature that these three distinct categories are separate and independent giving alternatives to the State Government which is the appointing authority to appoint a person who may fulfil the requisite qualification of either category. Construed in this manner the clause "other officer with experience as Judge of a Civil Court or Stipendiary Magistrate" is far from an overriding clause prescribing qualifications for those categories. on the contrary it appears to me to be a residuary clause giving a wider field of choice to the State Government for appointing persons as authorities, who may not be holding posts either as Presiding Officers of Labour Courts or Commissioners under the Workmen's Compensation Act.

7. The use of the word "or" separating the above said three parts of Section 15(1) makes it plain that these clauses or portions of the statute are to be read disjunctively. Neither of the above-said clauses is, therefore, to impinge upon or control the other two. At this stage it is convenient to refer to the authorities relied upon by Mr. Chawla. Before advertng to these I may, however, mention that the learned counsel frankly and fairly conceded that there is no decision in which the word "or" used in Section 15(1) has been construed to mean "and" and the authorities cited by him, therefore, have no direct bearing upon the point. the reference to the authorities was thus primarily be way of analogy.

8. In Mazagaon Dock Ltd. Vs. The Commissioner of Income Tax and Excess Profits Tax, , their Lordships were construing the provisions of Section 42(2) of

the Income Tax Act 1922. In the particular context and language of that provision it was found that the use of the word "or" in the clause was patently inappropriate and obviously such a meaning could not have been intended and therefore the word "or" was construed to mean "and". Similarly in *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, whilst interpreting the particular language of Section 5(2) (g) of the Rajasthan Nathdwara Temple Act of 1959, their Lordships held that there can be no doubt that "or" in Clause (g) must mean "and", for the context clearly indicated that way. Lastly in *Ishwar Singh Bindra and Others Vs. State of U.P.*, interpreting Section 3(b) of the Drugs Act 1940 it was observed that where it became imperative to carry out the clear intention of the legislature to that effect the word "and" or "or" may be read in place of the other. Their Lordships also approved the view expressed in Stroud's Judicial Dictionary that the word "and" is generally used in a cumulative sense requiring the fulfilment of all conditions that it joins together and herein it is the antithesis of "or".

9. There can be no dispute with the general proposition that in exceptional circumstances it may be legitimate to read the conjunctive and disjunctive words "and" and "or" one for the other, where the literal interpretation would defeat the intention of the legislature and the very object of the Act. However, in construing the provisions of Section 15(1), none of those exceptional circumstances for reading the words "or" as "and" can even remotely be suggested. Mr. Chawla is wholly unable to show that the plain meaning of S. 15(1) was not obviously intended by the legislature when explicitly language to that effect has been used. Nor in this context does a grammatical construction leading to any absurdity which may have to be avoided by reading the word "or" as "and" in this statute. There is nothing in the context of the above said provision to show that a contrary meaning was intended for the word "or". It is, therefore, that none of the pre-requisites which have been mentioned in the above-said authorities exist in the present case and I do not therefore see my way as to how and why the plain word "or" in Section 15(1) should be construed as "and". This contention of Mr. Chawla, therefore, must fail.

10. The interpretation which I am inclined to take of Section 15(1) of the Act is further fortified by a reference to legislative history. Section 15 as originally enacted in 1936 (apart from the adaptation Order made in 1950) is in the following terms :-

"15(1) The State Government may, by notification in the official gazette appoint 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 deductions from the wages, or delay in payment of the wages of persons employed or paid in that area."

Obviously the above provision is considerably prior to the Industrial Disputes Act which was enacted in 1947. It is, therefore, that the reference to S. 7A(3) of the

Industrial Disputes Act on which Mr. Chawla wanted to rely is inappropriate because the provisions of a subsequent enactment could not control the earlier enactment viz., The Payment of Wages Act, 1936. Consequently even as originally enacted, the Commissioner for Workmen's Compensation was one of the persons who could be appointed as an authority under the Act. It was only with effect from the 1st of February, 1965, that by the amendment the Presiding Officer of the Labour Courts under the Industrial Disputes Act or the corresponding State legislation were also made eligible to act as an authority. It is thus patent that the subsequent prescription of qualifications for the appointment to the office of the Presiding Officer of the Labour Court vide Section 7A(3) of the Industrial Disputes Act cannot have any bearing in construing Section 15(1) of the Act.

11. Lastly there is weight in the contention raised on behalf of the respondents that if judicial experience was to be a pre-requisite for appointment as an authority, the Commissioner under the Workmen's Compensation Act exercise even more important and vital judicial functions under that statute. u/s 19 of the Workmen's Compensation Act all questions as to the liability of any person to pay compensation or as to the amount or duration of compensation or as to the amount or duration of compensation, in default of agreement, have to be adjudicated upon and decided by the Commissioner and the jurisdiction of the Civil Courts is barred therefrom. Similarly u/s 23 thereof, the Commissioner is empowered with all the powers of a Civil Court under the Civil Procedure Code, for the purpose of taking evidence on oath and enforcing the attendance of witnesses and compelling the production of the documents and is deemed to be a Civil Court for all purposes Section 195 of the Code of Criminal Procedure Vide Section 30 thereof appeals against the orders of the Commissioner lie direct to the High Court. It is unnecessary to refer to other provisions as it cannot be disputed that the Commissioner under the above-said Act indeed exercises a wide amplitude of judicial functions. It was in this context that the legislature in its wisdom held it appropriate that the commissioner, who already stood clothed with wide Judicial powers and the Workmen's Compensation Act, 1923, may also be empowered and appointed to exercise the closely analogous judicial functions of the Authority under the Payment of Wages Act. It is undeniable that the two statutes above-said are integral part of the Industrial Legislation within the country.

12. In the end, reference may well be made to the gnawing fear voiced by Mr. Chawla that the State Government who is the appointing authority may be tempted to abuse the power of appointment vested in it. A reference was made to Section 20 of the Workmen's Compensation Act which does not prescribe any qualifications for the post of the Commissioner and lays down that the Government may appoint any person to be a Commissioner for the Workmen's Compensation for the relative area. From this provision it was sought to be argued that the State Government may first appoint a wholly unqualified person unworthy to hold judicial office as Commissioner and then empower him as an

authority under the Payment of Wages Act also. this argument is indeed hypothetical and tends to assume mala fides on the part of the State. It is elementary that all power vested in any authority is capable both of use and abuse. One cannot proceed on the assumption that the State will necessarily abuse such a power and make such an assumption a basis for denuding it of the express power given to it under the statute. Indeed the presumption is to the contrary, namely, that the State would use the power vested in it bona fide for advancing the purposes of the enactment. The observations of Willes, J. in *Earl of Derby v. Bury Improvement Commr.* (1869) 4 Ex 222 are apt on the point.-

"In the absence of any proof to the contrary, credit ought to be given to public officers, who have acted prima facie within the limits of their authority, for having done so with honesty and discretion."

13. In the light of the forgoing discussion I am of the view that the appointment of the respondent who admittedly was holding the post of Commissioner under the Workmen's Compensation Act as an authority under the Payment of Wages Act is valid and unassailable.

14. No other point has been urged. The petition, therefore, must fail and is dismissed but in the circumstances of this case, there will be no order as to costs.

15. Petition dismissed.