

(1958) 06 KL CK 0018
In the High Court Of Kerala
Case No : C.R.P. No. 221 of 1956 (M)

Chathukutty Raruputty

APPELLANT

Vs

Sait Nagjee Purushotam and Co. Ltd.
 Sait Nagjee
Purushotam and Co. Ltd. Vs Chathukutty Raruputty

RESPONDENT

Date of Decision : 26-06-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1908 — Article 85
Payment of Wages Act, 1936 — Section 15, 22
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : AIR 1959 Ker 356

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Advocate : C.R. Jagadish, T.V. Balakrishnan and P.A. Krishna Iyer, for the Appellant; K.N. Karunakaran, for the Respondent

Final Decision : Dismissed

Judgement

T.K. Joseph, J.—This Civil Revision Petition is directed against the decree in a small cause suit. The plaintiff was working in the shop of the defendant for some years and his services were terminated on 10-1-1951. According to the plaintiff he was illegally dismissed without notice and he sued for recovery of one month's salary as well as bonus equal to 6 months' salary.

The defence was that the plaintiff left the defendant's service voluntarily, that he was given one month's notice, that he was not entitled to any bonus, that the claim for bonus was not justiciable, that only a sum of Rs. 4/- was due to the plaintiff as per the defendant's account, and that the suit was barred by limitation. The learned Munsiff upheld the plaintiff's case except as regards bonus, in respect of which he held that the plaintiff, was entitled only to a sum of Rs. 100/-. The defendant has preferred this revision petition from the decree.

2. The findings of the trial court on questions of fact such as whether notice was

given to the plaintiff and whether the plea of discharge is true are based on evidence. The defendant had no consistent case regarding the circumstances under which the plaintiff's services were terminated, It was stated that the plaintiff left voluntarily and also that one month's notice was given before that. As pointed out by the learned Munsiff, satisfactory evidence has not been given by the defendant on this point. The plea of discharge was also not proved by reliable evidence. D.W. 1 admitted that the plaintiff! had acknowledged in writing receipt of a Sum of] Rs. 100/-. The particular Account-Book in which this was stated to have been entered was not produced. The findings of the trial court on these points do not call for interference.

3. It was contended on behalf of the petitioner that a suit for recovery of salary and bonus was not maintainable and that the plaintiff had to seek his remedy under the Madras Shops and Establishments Act, XXXVI of 1947 and the Payment of Wages Act, IV of 1936. The contention was that these Acts prescribed the machinery and procedure for enforcement of such claims and that Civil Courts could not entertain suits for the same. There is no provision in the Shops and Establishments Act for recovery of salary any bonus. Section 45 of the Act no doubt provides for penalties for contravention of certain provisions of the Act.

An employer who fails to pay such Bums to an employee as directed under the Act may make himself liable to a fine. There is also no provision in the Act which bars a suit in the Civil Court. Learned counsel for the petitioner cited certain decisions in support of the contention that when a special statute provides a remedy for the first time, that alone should be resorted to. The decisions cited have no application to this case. What was held in K. Nagarathnammal Vs. S. Ibrahim Saheb and Another, was that where a statute takes over and occupies a field previously not regulated by legislation, the rights and powers conferred and obligations imposed by the Statute must be worked out within the statutory framework.

The point for decision in that case was whether the Board of Revenue or the Government had the power to interfere with an order made by the District Collector u/s 10(b) of the Madras Hereditary Village Offices Act, appointing a Deputy to a post registered in the name of a minor. It was held that neither the Revenue Board nor the Government could interfere, as no right of appeal or revision had been provided by the Act, This decision cannot have any application to the facts of this case. The other decision relied on is Joti Prasad Upadhiya Vs. Amba Prasad It was held in that case that the jurisdiction of Civil Courts to try suits challenging election of Chairman of a District Board was impliedly barred by the U. P. District Boards Act X of 1922. In my opinion there is nothing in the Shops and Establishments Act which expressly or impliedly bars a civil suit by an employee wrongfully dismissed from service.

There is however a provision in the Payment of Wages Act which takes away the jurisdiction of civil courts to try a suit for recovery of wages including bonus,

which could have been recovered by an application u/s 15 of the Act. Section 2 (sic) (Section 1 (4)?) of the Act provides that it applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory) upon any railway by the Railway Administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration. The defendant has no case that the plaintiff was an employee in a factory. Section 2(5) (sic) (Section 1 (5)?) provides :

"The State Government may, after giving three months" notice of its intention of so doing, by notification in the Official Gazette extend the provisions of the Act or any of them to the payment of wages to any class of persons employed in any industrial establishment or in any class or group of industrial establishments."

No notification by the State Government extending the operation of this Act to shops was brought to my notice. This contention must therefore be overruled.

4. Another point raised by the learned counsel for the petitioner is that a suit for bonus is not maintainable. So far as this case is concerned, the defendant admits that the plaintiff was entitled to a sum of Rs. 100/- as bonus for the last year of his service and that the same was entered in the accounts to the credit of the plaintiff. The suit is not therefore one enforcing a claim for bonus not declared, What the plaintiff seeks is to recover a sum he had been credited with by the defendant.

5. The last point raised is that the suit is barred by limitation. The trial court was of the view that the suit was one on a mutual, open and current account. It was urged that though the account was open and current it could not be said to be "mutual" as there were no transactions on each side creating independent obligations on the other. The definition of "Mutual Account" given by Holloway J. in *Hirada Basappa v. Gadigi Mudappa* 6 Mad H.C.R. 142 still holds good and the same is extracted below :

"There must be transactions on each side creating independent obligations on the other and not merely transactions which create obligations on the one side those on the other being merely complete or partial discharges of such obligations."

The nature of the transaction has to be considered in the light of this dictum. The defendant's accounts disclose the nature of the transactions between the parties. The plaintiff was credited with the salary and other emoluments due to him and the amounts paid to him in discharge were debited in the account, In a similar case *Waller J. held in Subramaniam Chettiar v. N. P. L. A. R. Firm* AIR 11927 Mad. 819 that the account could not be treated as a mutual open and current one. The opposite view has been held in *Motirao v. Gambhirprasad* AIR 1925 Nag. 295.

I am inclined to follow the decision of Waller, J. as in my Opinion this is a transaction which created obligation on the defendant to pay the amounts earned

by the plaintiff as salary, bonus etc., the payments made by him being only in partial discharge of such obligation. The transaction cannot thus be treated as one governed by Article 85 of the Limitation Act. It is not disputed that if Article 85, is not applicable, the suit would be barred by limitation.

6. Even though I am unable to accept the view taken by the learned Munsiff on the question of limitation, I am of opinion that the decree does not call for interference. This is a revision u/s 25 of the Provincial Small Cause Courts Act. The revisional powers u/s 25 of the Act are discretionary and no injustice will be done if the decision of the court below is allowed to stand. Substantial justice has been done between the parties and injustice will certainly result if I set aside the decision of the court below. In AIR 1943 117 (Nagpur) a Full Bench of the Court held that there should be no interference on a question of fact or of law even though the decision may appear to be erroneous, unless the conclusion of the Small Cause Court is one which no Judge acting Judicially could reasonably reach. Vivian Bose, J. in his order of reference has laid down the principles governing revision in such cases in the following terms :

"As I see it the Court of revision is not there to set right errors of either law or fact in the lower court but merely to see whether there has been a fair and proper trial according to standards which obtain in Courts of justice, ignoring petty errors in procedure and trivial technicalities, and to see whether a judicial mind could have arrived at the conclusion reached. All else seems to me to be foreign to a revision. Any other conclusion seems to me either to slur all distinction between revision and appeal or else to break down on a close analysis.

If I am right in what I say, then it would appear that a revising authority cannot interfere with the decision of a lower court on a point like limitation unless the error is so gross that no judicial mind could have reached it, as for example when a lower court refuses to be bound by a decision of its own High Court or of the Privy Council, or refuses to follow a plainly worded section in an Act about which there could be no reasonable difference of judicial opinion."

This principle has been followed in *Govinda Chandra v. Brojendra Mohan* AIR 1946 Cal 529 where the High Court declined to interfere even though the trial court's view on a question of limitation was not accepted. The same view was held in *Cbitar v. Dattatrayarao* AIR 1946 Nag. 130, *C. P. Clarke v. Agha Aziz Khan* AIR 1936 Oudh 247 and *Maya Prakash v. Tulsi Ram* AIR 1936 Oudh 297. In AIR 1936 Oudh 247 referred to above, *Srivastava and Nanavutty, JJ*, held..

"Thus the principle is well established that the Court should not ordinarily exercise its discretionary powers in revision u/s 25, Small Cause Courts Act, if no injustice has been done. The question whether interferences should be made or not under this section must depend upon the facts and circumstances of each case. It is no doubt true that the question raised on behalf of the applicant is one of law and the court is not precluded from interfering with the lower court's decision on that ground; but having given our careful consideration to the facts

and circumstances of the case we are satisfied that, far from furthering any ends of justice, we would perpetuate an injustice in interfering with the decree of the lower court in the present case."

I respectfully follow this view and hold that interference is not required in the circumstances.

7. In the result, the decree of the court below is confirmed and the Civil Revision Petition is dismissed with costs.