

(1969) 10 OHC CK 0021

In the Orissa High Court

Case No : Civil Revision No. 252 of 1965 and O.J.C. No. 742 of 1969

District Transport Manager, State Transport

APPELLANT

Vs

Satrughana Guru and Another

RESPONDENT

Date of Decision : 07-10-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Motor Transport Workers Act, 1961 — Section 25
Payment of Wages Act, 1936 — Section 15, 15(1), 2

Citation : AIR 1970 Ori 121 : (1970) 36 CLT 260

Hon'ble Judges : S. Acharya, J;B.K. Patra, J

Bench : Division Bench

Advocate : Y.S.N. Murthy, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

Patra, J.—Opposite party Satrughana Sahu, who is a driver of the State Transport Service. Sambalpur filed an application u/s 15(2) of the Payment of Wages Act (hereinafter referred to as the Wages Act) through the General Secretary of the All Orissa Transport Employees Union, Sarnbalpur for realisation of Rs. 15,601.30 p. towards his dues on account of his claim for extra wages in respect of the work done on days of rest and public holidays amounting to Rs. 1418-30 and compensation of ten times the claim amounting to Rs. 14,183-00, thus making the total of Rs. 15,601-30 p.. The period for which the claim was made was from the 1st August, 1958 up to the 30th June, 1962. The petitioner opposed the application inter alia on the grounds that the opposite party driver being a Government servant is not entitled to claim extra wages for the work done on public holidays and weekly rest days, that he is governed by the provisions of the Orissa Service Code and other rules framed by the Government of Orissa and that the provisions of the Wages Act are not applicable to him. It was also contended that the claim is not correct and is not maintainable in law and is also barred by limitation prescribed in the first proviso to Sub-sections (2) of Section 15 of the Wages Act. It was lastly contended that as the claim does not arise out

of deduction from wages or delay in payment of the same, the provisions of the Wages Act are not applicable to him.

2. The matter was enquired into by the Authority appointed u/s 15 of the Wages Act and he held that the claim up to 10-2-1962 is barred by time as that portion of the claim relates to a period which is beyond six months from the date of presentation of the application and that the claim for the period beginning from 11-2-1962 upto 30-6-1962 is in time. Regarding the merits of the claim he relied on Sections 19, 20, 25 and 26 of the Motor Transport Workers Act, 1961 (hereinafter referred to as the Workers Act) which was enforced in this State with effect from 1-2-1962 and held that the opposite party was entitled to a day of rest for every period of seven days or in lieu thereof compensatory rest days as provided in the Workers Act and after consideration of the duty chart (Ext A) which shows the days on which the opposite party had worked, he came to the conclusion that the opposite party had worked on 9 weekly rest days for which he is entitled to extra wages. As there was no dispute that the daily wage of the opposite party was Rs. 3-60 p. per day he found him entitled to a total amount of Rs. 32-40 p. towards extra wages. He also allowed him a tike amount towards compensation and ultimately passed an order allowing the claim to the extent of Rs. 64.80 p.

3. Being aggrieved by this order, the petitioner filed Civil Revision No. 252 of 1965 in this Court, praying that the order passed by the authority should be set aside. A preliminary objection was taken on behalf of the opposite party that an Authority appointed u/s 15(1) of the Wages Act is not a Court and much less a Court subordinate to the High Court and that therefore the High Court has no jurisdiction to revise an order passed by such Authority. During the hearing on this preliminary point, the petitioner filed an application under Articles 226 and 227 of the Constitution stating that the order passed by the Authority is without jurisdiction and should therefore be quashed. This application is numbered as OJC No. 742 of 1969. Civil Revision 252/65 and O. J. C. No. 742/69 Were analogously heard and this order would govern both.

4. In Rameshwar Lal and Another Vs. Jogendra Das, the question arose whether a revision lies against an order passed by the District Judge u/s 17 of the Wages Act 1936 and while answering the question in the affirmative we had occasion to refer to cases which involve the question whether revision lies against an order passed by the Authority u/s 15 Of the Wages Act. u/s 115 of the Code of Civil Procedure, the High Court has undoubted jurisdiction to revise Under circumstances mentioned therein Of orders passed by courts subordinate to the High Court. Unless, therefore, the Authority pronouncing the order is a Court and also subordinate to the High Court. Section 115 of the CPC would not apply.

5. Mr. Mohapatra appearing for the petitioner relies on a Full Bench decision of the Lahore High Court in Works Manager. Carriage & Wagon Shops. Mahalpura v. K. G. Hashmat AIR 1946 Lah 316 wherein their Lordships laid down the tests to determine whether a Tribunal is a Court or not and those tests are whether it

exercise jurisdiction by reason of the sanction of law or whether jurisdiction is given to it by the voluntary submission of the parties to a dispute, secondly whether it can take cognizance of a lis and thirdly whether in exercising its functions it proceeds in a judicial manner. Having laid down the tests, their Lordships proceeded to observe that the provisions of the Payment of Wages Act, 1936, and the Rules make it perfectly obvious that the "Authority" u/s 15 of the Payment of Wages Act performs the delegated judicial functions of the State and in exercising its functions It proceeds in a judicial manner and hence the Authority appointed u/s 15 of the Wages Act must be regarded as a Civil Court and Court subordinate to the High Court within the purview of Section 115 C. P. C. A Division Bench of the Patna High Court in A. Hasan Vs. Mohammad Shamsuddin and Another, took the same view and held that a review of the provisions of the Payment of Wages Act very clearly establishes that the Authority u/s 15 of the Wages Act acts as a Court. He is bound to decide judicially the matter in dispute before him and has to give his decision after hearing the parties and on materials produced before him. according to certain definite and specified rules of procedure laid down under the Wages Act as also supplemented by Statutory rules framed thereunder for his guidance, and his decision is subject to appeal to the District Court binding on the parties. It was therefore held that it is a Civil Court subordinate to the High Court and revision lies against his orders u/s 115 C. P. C. The Full Bench decision of the Lahore High Court referred to above was considered by a Full Bench of the Allahabad High Court in H. C. D. Mathur, Secy. of the National Federation of Railway Vs. E.I. Rly. Administration, and was disapproved. The reasons which impelled their Lordships to hold that the Authority u/s 15 of the Wages Act is not a Court are set out by us in Rameshwar Lal and Another Vs. Jogendra Das, referred to above and it is unnecessary to repeat the same. It would suffice to say that their Lordships held that the Authority invested with jurisdiction u/s 15 of the Wages Act is not a Court subordinate to the High Court within the meaning of Section 115 C. P. C. Dissenting from the Full Bench decision of the Lahore High Court, a Division Bench of the Nagpur High Court in Sawatram Ramprasad Mills Co. Ltd. v. Vishnu Pandurang Hingnekar AIR 1950 Nag 14 held that the Authority appointed u/s 15 of the Wages Act is not a Civil Court but an Administrative Tribunal and as such is not subject to the revisional jurisdiction of the High Court exercisable u/s 115 of the Code of Civil Procedure. A Division Bench of the Bombay High Court in Sitaram Ram-charan v. M. N. Nagrashna AIR 1954 Nag 537 held the same view following an earlier decision of that Court in AIR 1949 Bom 188. Manager, Spring Mills Ltd. v. G. D. Ambekar. The same view was reiterated by another Division Bench of the Punjab High Court in Divisional Superintendent, Delhi Division Northern Rly. v. Satyander Nath Kapur Chand. AIR 1964 P&H 242 and by Barman, C. J. of this Court in Labangalata Dei Vs. Sk. Azizullah, . The preponderance of the authority therefore is in favour of the view that the Authority u/s 15 of the Wages Act is not a Court subordinate to the High Court and therefore an order passed by him is not revisable by the High Court u/s 115 C.P.C. Civil Revision 252 of 1965 must therefore be dismissed as not

maintainable.

6. The next question is whether in exercise of our power under Article 227 of the Constitution we should interfere with the impugned order passed by the Authority u/s 15 of the Wages Act. Mr D. P. Mohapatra for the petitioner contends that we should do so because according to him the order is one passed without jurisdiction. According to him the jurisdiction of the Authority is limited only to decide claims arising out of deductions from the wages or delay, in payment of wages and this necessarily postulates that the quantum of wages to be paid must be undisputed and the moment the claim for wages is disputed, it would not be a case either of deduction from wages or delay in payment of wages to give jurisdiction to the Authority to determine the matter. It may be stated here that Section 15(1) of the Wages Act was amended by Act 53 of 1964 which inserted the words "including all matters incidental to such claims" in Sub-sections (1) of Section 15 of the Act after the words "of persons employed or paid in that area". It is contended that as the claim in this case relates to a period anterior to the aforesaid amendment, this case should be decided on the basis of Section 15(1) as it stood before the amendment. We are not prepared to subscribe to the view that by the amendment referred to above and that the scope of enquiry u/s 15 of the Wages Act has been enlarged. In fact, the amendment was necessitated only to give effect to judicial pronouncements which held that Section 15(1) in its un-amended form gave power to the Authority not only to decide cases of deduction from wages or delay in payment of wages but also matters incidental to such claims. In *Ambika Mills v. S. B. Bhatt* (1960) 63 Bom. LR 497 decided by the Supreme Court the question arose whether the employees were workers of the Mills. A standardisation award covering the mill industry in Ahmedabad was made by the Industrial Tribunal on April 21, 1948. It fixed the wages for different categories of workers in the textile mills at Ahmedabad, leaving the question of clerks open. The case of hand-folders amongst the categories came up for consideration and it was argued that the wages awarded were too low, as they did the same work as cut-lookers in Bombay where they were paid higher wages. Sufficient evidence however was not forthcoming regarding the actual work done by the hand-folders. The Industrial Tribunal had said "At the same time, we desire to make it clear that if there are persons who are doing cut-looking as well as folding, they should be paid the rate earned by the cut-lookers in Bombay." The employees claimed that they were doing the work of cut-looking and were entitled to the benefit of that direction. The Authority considered the duties of the employees and allowed claim. Before the Supreme Court, the question of jurisdiction was raised. Mr. Justice Gajendragadkar speaking for the Court observed that in a sense the jurisdiction of the Authority was limited by Section 15 and in another sense it was exclusive as prescribed by Section 22 and that while deciding the question of wages or delayed wages, the Authority would inevitably have to decide all questions incidental to the said matters. Considering the definition of wages in its un-amended form. His Lordship said at page 502 (of Bom. LR) = (at p. 975 of AIR).

". . . , Now. If a claim is made by an employee on the ground of alleged illegal deduction or alleged delay In payment of wages several relevant facts would fall to be considered. Is the applicant an employee of the opponent?;... If the said fact is admitted, then the next question would be: what are the terms of employment? Is there any contract of employment in writing or is the contract oral? ... In some cases a question may arise whether the contract which was subsisting at one time had ceased to subsist and the relationship of employer and employee had come to an end at the relevant period. In regard to an illegal deduction a question may arise whether the lockout declared by the employer is legal or illegal. In regard to contracts of service sometimes parties may be at variance and may set up rival contracts, and in such a case, it may be necessary to enquire which contract was in existence at the relevant time . . . ",

Applying the principles formulated to the question at hand, the learned Judge said at page 503 (of Bom, LR) = (at p. 975 of AIR).

", , . In our opinion, on these facts, the question as to whether a particular employee is an operative falling under the Award or one who is above an operative and below the clerk falling under Clause 5 is a question which is so intimately and integrally connected with the problem of wages as defined u/s 2(vi) that it would be unreasonable to exclude the decision of such a question from the jurisdiction of the Authority u/s 15."

It is thereafter that the Legislature thought fit to amend the provisions of the Wages Act by adding the last words in Sub-section (1) of Section 15. This in effect brought the section in line with the judgment of the Supreme Court. Although the position is clarified after amendment, it would not be in our opinion correct to say that before the amendment, the Authority had no jurisdiction to consider matters incidental to claims on the ground of deduction from, wages or delay in payment of wages.

7. In the present case, the opposite party approached the Authority under the Wages Act with an application u/s 15(2) of the Act complaining that over-time wages which were due to him had not been paid. To the application was appended a schedule giving particulars of the claim. All that was contended on behalf of the petitioner in reply to the claim is that the opposite party being a Government servant is not entitled to claim extra wages for the work done on public holidays and weekly rest days, that, therefore, the provisions of the Wages Act are not applicable to the facts of the case and that the amount claimed is also incorrect. It was also contended that as the establishment where he is working is not a factory, the provisions of the Wages Act are not applicable. The Workers Act came into force in this State on 1-2-1962. We are in this case concerned with a claim relating to the period from 11-2-1962 to 30-6-1962, that is the period during which the Workers Act was in force in this State. Section 25 of this Act provides that the Payment of Wages Act, 1936, as in force for the time being, shall apply to motor transport workers engaged in a motor transport undertaking as it applies to wages payable in an industrial establishment as if the

said Act had been extended to the payment of wages of such motor transport workers by a notification of the State Government under Sub-section (5) of Section 1 thereof, and as the motor transport undertaking were an industrial establishment within the meaning of the said Act Sections 19 and 20 of the Workers Act which are relevant for our purpose may be quoted:

"19. (1) The State Government may, by notification in the official Gazette, make rules providing for a day of rest in every period of seven days, which shall be allowed to all motor transport workers.

(2) Notwithstanding anything contained In Sub-sections (1) an employer may, in order to prevent any dislocation of a motor transport service, require a motor transport worker to work on any day of rest which is not a holiday so, however, that the motor transport worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

(3) Nothing contained in Sub-sections (1) shall apply to any motor transport worker whose total period of employment including any day spent on leave is less than six days.

20. Where, as a result of any exemption granted to an employer under the provisions of this Act from the operation of Section 19, a Motor transport worker is deprived of any of the days of rest to which he is entitled under that section, the motor transport worker shall be allowed within the month in which the days of rest are due to him or within two months Immediately following that month, compensatory days of rest of equal number to the days of rest so lost."

8. By Sub-sections (4) of Section 1, the Act is made applicable to every motor transport undertaking employing five or more motor transport workers. In fact, it is not disputed before us on behalf of the petitioner that the opposite party is entitled to the benefits of the provisions of this Act. It is clear from Section 19 thereof that the opposite party is entitled to a day of rest in every period of seven days, A combined reading of Sections 19 and 20 show that where, subject to the limits set therein a motor transport worker is required to work on a day of rest he is entitled to be compensated in the manner laid down in Section 20. Section 27 provides for payment of extra wages for over-time work and for work on any day of rest. Relying on these provisions and after taking into consideration Ext. A which is a copy of the duty chart relating to the opposite party, and which appears to have been supplied to him on behalf of the petitioner, the learned Authority held that a sum of Rupees 32-40 p. is due to him towards the extra wages and adding thereto compensation of like amount he passed the impugned order allowing the opposite party's claim to the extent of Rs. 64-80 p. No evidence has been produced by the petitioner before the Authority to indicate that the claim is incorrect In fact, as stated above, the overtime wages due to the opposite party have been calculated on the basis of materials supplied by the petitioner himself. We are therefore satisfied that on merits, the order passed by the Authority cannot be assailed.

9. The only question therefore that remains for consideration is whether this is an order passed by the Authority without jurisdiction. The expression "wages" is defined in Section 2(vi) of the Wages Act thus:

"2. (vi) "Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and include-

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(b) any remuneration to which the person employed is entitled in respect of over-time work or holidays or any leave period:".

The amount which the Payment of Wages Authority has found due to the opposite party towards over-time wages would thus fall within the definition of "wages" under the Wages Act, While paying wages to the opposite party for the period of his work when this portion of the wages had not been paid to him it would be a clear case of deduction from wages bringing the case within the purview of Section 15(1) of the Wages Act and by reason of Section 25 of the Workers Act the Authority u/s 15 of the Wages Act would have jurisdiction to decide the claim. We are therefore of the view that the impugned order is not one passed without jurisdiction so as to warrant interference under Article 227 of the Constitution.

10. Before closing we would like to record our appreciation of the assistance rendered by Mr. Y. S. N. Murty, who appeared amicus curiae for the opposite party.

11. In the result, both, the applications fail and are dismissed.

Acharya, J.

12. I agree.