
(1973) 11 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Revision Petition No. 661 of 1969

Divisional Personnel Officer, Northern Railway

APPELLANT

Vs

Ramchandra

RESPONDENT

Date of Decision : 26-11-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Payment of Wages Act, 1936 — Section 11, 15

Citation : (1973) 6 WLN 892

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

C.M. Lodha, J.—The nonpetitioner Ram Chandra was a Guard in the authorised scale Rs. 130/-225/- and his salary was Rs. 150/- per month plus Dearness Allowance. He had a snake bite as a result of which he was incapacitated from performing the running duty of a Guard. On his own request he was absorbed as a Ticket Collector in the grade: Rs. 110, 180 on the maximum salary of Rs. 180/- per month and was posted at Ratangarh. On 25-8-1964 he made an application under Sub-section (2) of Section 15 of the Payment of Wages Act, 1936 (which will hereinafter be referred to as "the Act") in the Court of Sub-divisional Magistrate, Ratangarh, appointed as Authority under the Act claiming Rs. 2554.40 np. on account of deduction from his wages for the period commencing from 27-6-1960 to 2-8-1964 and also for compensation amounting to Rs. 25,544/- being 10 times of the amount claimed. His case was that as a guard he was drawing 40% of his pay on account of running duties which came to Rs. 63. 20 paise per month. He averred that his pay should have been fixed at Rs. 221. 20 np. per month in the alternative appointment provided to him as a Ticket Collector. On the basis of the difference between the pay claimed by him that is Rs 221.20 np and the pay actually fixed, that is Rs. 180/- he claimed Rs. 2554.40 np as already stated above. This application was registered as Application No. 42 of 1964. The claim was resisted by the Railway inter alia on

the ground that the Authority had no jurisdiction to determine the wages of the applicant and further that the claim did not fall within the scope of the words- deductions from the wages or delay in payment of the wages. By this order dated 18-1-1965 the Authority held that it had jurisdiction to entertain and try the claim, as it amounted to deduction of wages. Thereafter the learned Authority by his judgment dated 1-7-1965 allowed the applicant's claim for Rs. 2554.40 np and awarded Rs. 1000/- in addition to the said amount by way of compensation.

2. Thereafter the applicant filed the present application out of which this revision application arises on 8-10-1965 for recovery of Rs. 952.40 op alleged to have been deducted from his wages for the period commencing from 3-8-1964 to 12-9-1965 and ten times the compensation that is Rs. 10476.40 np The Railways again resisted the claim inter alia on the ground that the application falls out-side the scope of the Payment of Wages Act and that the judgment dated 11-7-1965 in the previous case No. 42/1964 did not operate as res judicata. The learned Authority by its judgment dated 20-11-1966, however, repelled the Railway's contention and allowed the plaintiff's claim for Rs. 798.40 np on account of illegal deductions from the wages, Rs. 3193.60 np as compensation being 4 times the amount of the claim and Rs 55/- as costs.

3 Aggrieved by the decision of the Authority the Railway filed appeal in the Court of District Judge, Bikaner who except for reducing the amount of costs from Rs. 55/- to Rs. 31.23 np upheld the judgment by the Authority. Dissatisfied with the judgment of the learned District Judge the Railway has filed this revision application.

4. Learned Counsel for the petitioner has urged, in the first instance, that the Authority was not competent to entertain the claim in as much as it amounted to determination of potential wages. He has urged in this connection that the judgment in the previous case cannot operate as res judicata. The only other point urged by him is that in any view of the matter the Authority as well as the learned District Judge were not justified in awarding compensation to the extent of four times the claim.

5. I would first take up the question of competence of the Authority to entertain the claim under the Act along with the other allied question, whether the judgment inter parties in the previous case No. 42/1964 operates as res judicata. In other words whether the Railway is debarred from raising the question of maintainability of the claim in view of the previous judgment. Both the questions are closely connected with each other in as much as the contention of the learned Counsel for the Railway is that the previous judgment was without jurisdiction and that being so, it can not operate as res judicata.

6. In *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers' Union*, it was observed that "the trend in recent decisions is that application of technical rules such as res judicata, acquiescence, estoppel etc. are not appropriate to industrial adjudication." It was further observed that

"industrial tribunals should be slow and circumspect in applying technical principles such as acquiescence and estoppel. It may be pointed out that it was a case arising out of proceedings for modification of standing orders under the Industrial Employment (Standing Orders) Act. Their Lordships referred to: *Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others*, , and *Workmen of Balmer Lawrie and Co. Vs. Balmer Lawrie and Co.*, and held that it is doubtful whether the principles analogous to *res judicata* can properly be applied to Industrial adjudication.

7. In this connection it may be stated that the earlier decisions of the Supreme Court relied upon by the learned Counsel for the non-petitioner have held that the principle underlying Section 11(c) expressed in the maxim *interest republicae ut sit finis litium* is founded on sound public policy and is of universal application and there are no reasons why this principle should not be applicable to decisions of Industrial Tribunal also. These are: *Burn and Co., Calcutta Vs. Their Employees*, , *State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others*, , *Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another*, , *Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers' Union*, & *Arjun Singh Vs. Mohindra Kumar and Others*, , and also a Bench decision of this Court reported as *S.B.C.M. Ltd. v. The R.M.M.S Bijaynagar* 1965 RLW 321. But the two later decisions of the S.C. relied upon by the learned Counsel for the petitioner, namely *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers' Union*, , and *Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others*, indicate that the trend of recent decisions is that the application of the principle such as *res judicata* to industrial disputes is doubtful.

8. Learned Counsel for both the parties, submitted that there is no direct authority regarding the application of the principle underlying *res judicata* to proceedings under the Payment of Wages Act. However, I am of opinion that the question as to whether a direction as to the refund of any amount to the employed person under the Payment of Wages Act should be given by the Authority must be examined on the merits of each individual case and technical consideration of *res judicata* should not be allowed to hamper the discretion of the authority.

9. The text contention raised on behalf of the learned Counsel for the petitioner is that the Authority had no jurisdiction to decide as to how much pay the non-petitioner was entitled to and, therefore, the previous judgment dated 1-7-1965 in application No. 42/1964 is not binding on the parties. In this connection reliance has been placed on *Maharaja Shri Umaid Mill Ltd. v. Collector, Pali* 1961 RLW 241, *Union of India v. Vishwa Deo* RLW 1963 557. *D.P.O.W.R. Ajmer v. Brijkishore Khanna* RLW 1970 579 Rly. A.V. *D'Costa Vs. B.C. Patel and Another*, , *P. Krishnan Nair Vs. Ramchandra Vithal Sanghavi*, , *Sir Sobha Singh and Sons Private Ltd. Vs. Delhi Administration and Others*, and *Sobha Singh and sons v. Delhi Administrator* 1960 RLW 90.

10. In *Maharaja Shri Umaid Mills Ltd. v. Collector, Pali* 1961 RLW 241 it was held

that "where the essential question is really not as to what the wages of the persons aggrieved were nor that there was any unlawful deduction from such wages but the question is whether the wages fell rightly to be governed by a contract relied upon by the employer as the subsisting contract or whether it falls to be governed by an earlier contract, relied upon by the employed persons and the validity of the subsisting contract is challenged, and the question is which of these two contracts would or should govern the relationship of the parties, then the Authority under the Act in question has no jurisdiction to decide which of the contracts should regulate the rights of the parties.?"

11. In *Union of India v. Vishwa Deo* 1963 RLW 557 the learned Judge held that the matter as to whether or not the applicant was a clerk recruited with the stipulation of a minimum qualification of a University Degree required determination by a superior officer before he could be entitled to draw pay in a particular scale, and this was beyond the scope of Payment of Wages Act. It was further held that the decision of the Authority in this respect was without jurisdiction.

12. In *D.P.O, WR, Ajmer v. Brijkishore Khanna* 1970 RLW 579, a Division Bench of this Court held that a question of fixation of pay cannot be treated as tantamount to deduction of the salary and it could also be not regarded as incidental to the proceedings u/s 15 of the Payment of Wages Act. Fixation of pay in accordance with the Rules is in fact determining the terms of employment of person. Once pay is so determined, further deductions or delay in its payment would bring the case under the purview of Section 15 of the Payment of Wages Act. It was held that the question of fixation of pay pure and simple do not fall within the purview of Section 15 of the Act, and that the Authority under the Payment of Wages Act had no jurisdiction to deal with this question.

13. In *A.V. D'costa Vs. B.C. Patel and Another*, , where the employee had been reverted to his substantive post from a senior post and he claimed that he was entitled to get the pay of senior grade, and on that basis made the claims before the Authority on the ground of illegal deduction of his wages, it was held that the employee is not entitled to claim the wages for the post to which he was not actually employed and that the authority under the Payment of Wages Act was not competent to decide the allegation of illegality of his reversion made by the employee.

14. In *P. Krishnan Nair Vs. Ramchandra Vithal Sanghavi*, it was held per majority that if an employee were to say that his wages were Rs. 100/- per month which he actually received as and when they fell due, but that he would be entitled to higher wages, if his claim to be placed on the higher wages scheme had been recognised and given effect to that would not, be a matter within the ambit of the jurisdiction of the Authority under the Payment of Wages Act. It was observed that the Authority has the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages but the Authority has no jurisdiction to determine the question of potential

wages.

15. The nonpetitioner's complaint in the present case is that on his absorption as Ticket Collector he was entitled to 40 percent of Rs. 158/-plus salary Rs 153/- which he was drawing as a Guard and that his salary had been wrongly fixed at Rs. 180/- only per mensem. In this connection it would be pertinent to refer to Sub-para (iii) of para 2609 of the Indian Railway Establishment Manual, which deals with alternative appointment to be offered to a railway servant. It reads as under:

2609. Alternative employment to be suitable.

?

(iii) For the purpose of this paragraph, an alternative appointment will be considered "suitable" if the emoluments of the same are at level not more than about 25 percent below his previous emoluments in his substantive appointment, or officiating appointment from which he was unlikely to revert. In the case of running staff, the former emoluments for the purpose of comparison will be basic pay plus 40 percent is in the nature of a guide and not a rigid rule. Each case should be judged on its merits. The underlying object is to ensure that the appointment offered will be considered "suitable" if it will not force the railway servant to adopt a standard of living (as far as the necessities of life are concerned) of a drastically lower standard of comfort. A railway servant with a large family and considerable commitments would merit greater consideration, than one without or with few dependents.

16. It would be crystal clear from the language of the above quoted paragraph that the emoluments in the case of an alternative employment offered to a railway servant will have to be determined by the competent authorities of the Railway Administration But instead of getting that done, the nonpetitioner has sought his redress by making a claim before the Authorities under the Act. As held by their Lordships of the Supreme Court in P. Krishnan Nair Vs. Ramchandra Vithal Sanghavi, if the Railway had withheld the employee's wages to which he was automatically entitled, without any orders of his superior officers he might justly have claimed redress of his grievances from the Authority under the Act as it would have amounted to an under payment. But in the present case it clearly appears to me that the superior officers of the Railway Administration were only competent to allow emoluments to the employee at a level of 40 percent of the pay he was getting as Guard. The Authority under the Act has not been empowered u/s 15 to make any such direction to those Superior Officers, The Railway is responsible to pay to the nonpetitioner only such wages as he was actually drawing but it cannot be directed to pay the nonpetitioner higher wages on the determination by the Authority that he should have been granted emoluments at 40 percent of his previous pay as Guard. In that view of the matter I have come to the conclusion that the Authority under the Payment of Wages Act had no jurisdiction in the present case to give a direction to the

officers of the Railway to pay to the employee the emoluments at 40 percent of his previous pay, as Guard, In other words the order dated 1-7-1965 in application No. 42/64 was without jurisdiction.

17. It is well settled" that a court to an erroneous decision as to its jurisdiction cannot clothe itself with powers to adjudicate upon the matters which it cannot on a true interpretation of the limits of its jurisdiction and the adjudication cannot be regarded, as binding upon the parties in other proceedings.

18. Learned Counsel for the nonpetitioner strenuously urged that rightly or wrongly the Authority had previously held in Case No. 42/64 that the claim arose out of deductions from, the wages, and this finding at any rate operates as res judicata, I am unable to accept this Contention. The decision being on a collateral or jurisdictional fact by a court of limited jurisdiction cannot be final and conclusive between the parties and cannot operate as res judicata. Apart from that I have held in earlier part of this judgment that the rule of res judicata underlying Section 11 C.P.C. cannot always be imported into the proceedings under the Payment of Wages Act. I have found in the present case that the previous order by which the employee seeks to debar the petitioner from raising its defence was itself without jurisdiction. My conclusions therefore are:

(i) that the order of the Authority under the Payment of Wages Act dated 1-7-1965 in Case No. 42/65 does not operate as res judicata against the petitioner; and

(ii) that the Authority had no jurisdiction to determine the question of potential wages in the present case and, therefore, the order of the Authority as well as the order of the learned District Judge, Bikaner dated 2-8-1969 upholding the order of the Authority cannot be sustained.

19. Accordingly, I allow this revision application, set aside the orders of the learned District Judge as well as of the Authority and dismiss the nonpetitioner's application under the Payment of Wages Act. In the circumstances of the case, I leave the parties to bear their own costs throughout.