(1995) 09 AHC CK 0028

In the Allahabad High Court

Case No : C.M.W.P. No. 19051 of 1994

Elgin Mills Co. Ltd. and Another — APPELLANT

Vs

Additional Regional Commissioner and Others — RESPONDENT

Date of Decision : 28-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
General Clauses Act, 1897 — Section 21
Industrial Disputes Act, 1947 — Section 33C
Payment of Wages Act, 1936 — Section 5
Uttar Pradesh Factories Welfare Officers Rules, 1955 — Rule 22
Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 — Section 2, 3, 4

Citation : (1995) 09 AHC CK 0028

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Rakesh Tewari, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Singh, J.—Recovery certificate dated 30.4.1994 issued by the Additional Labour Commissioner, U.P. Kanpur Region. Kanpur in the purported exercise of power u/s 3 of the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 (in short ''the Act'') is sought to be quashed by means of this writ petition filed at the instance of the concerned Industrial Establishment.

2. The Impugned recovery certificate has been issued on an application u/s 3 of the Act read with Rule 22 of the U.P. Factory Welfare Officers Rules, 1955 (in short ''the Rules) moved on behalf of the workmen of the concerned Industrial Establishment through Ram Das Shukla, President of Elgin Mill No. 2, Rashtrtya Shramlk Sangh 2, Navin Market, Kanpur for realisation of a sum of Rs. 7,24,619.56 as overtime due to the workmen and Rs. 2,44,236.11 due to the welfare officers arrayed herein as Respondents No. 3 and 4. It was alleged in their application that all the workmen of Elgin Mill No. 2 had worked overtime

from time to time during 1.1.1980 and 31.12.1980 and thereby earned overtime wages at the rate of 200% i.e., at double rate for the period they had worked overtime, but they were actually paid overtime wages at single rate, i.e., at the rate of 100% and so an amount of Rs. 7,24,619.56 remained unpaid to the workmen during the year 1980. Similarly, it was alleged that a sum of Rs. 2,44.236.11 remained unpaid to the two Labour Welfare Officers herein arrayed as Respondent Nos. 3 and 4, which they were entitled to get towards dearness allowance, bonus, provident fund, housing, medical and other facilities.

3. The Additional Labour Commissioner, Kanpur Region, Kanpur rejected, vide order dated 22.4.1983, the application aforestated inasmuch as the matter, in his opinion, Involved computation which could be done u/s 33C of the Industrial Disputes Act, 1947. An application was then moved on behalf of the workmen and the two Labour Officers u/s 151 of the CPC read with Section 4 of the Act and Section 21 of the General Clauses Act for review of the order dated 22.4.1983. The review application was opposed on behalf of the petitioners, inter alia, on the ground that it was not maintainable inasmuch as the Labour Commissioner has no power of review under the provisions of the Act.

4. Upon consideration of the submissions made on behalf of the parties, the Additional Labour Commissioner, U.P.. Kanpur Region, Kanpur held, by his order dated 28.11.1984, that the review application was maintainable. Aggrieved the Petitioners preferred a writ petition, it being Civil Misc. Writ Petition No. 17318 of 1984 : A learned Judge held that "the Labour Commissioner is not statutorily authorised to review adjudication of the rights of the parties under the Act," but dismissed the writ petition, vide judgment and order dated 21.9.1993, for reasons which, stated in the words of the learned Judge, himself, read as under:

A perusal of the order reveals that it did not adjudicate upon any of the right of the parties, namely, the employer or the employee. By this order, the Labour Commissioner only relegated the concerned employee to the remedy provided for u/s 33C of the Industrial Disputes Act, as in his opinion the matter pertained to computation for which the Labour Court was competent. In view of the fact that the order dated 22nd April, 1983 did not adjudicate upon any of the rights of the parties, the Impugned order dated 24th November, 1984 entertaining the proceedings in respect of the claim of the employee, on a revised opinion, cannot be taken to amount to review of earlier order of 22nd April, 1983. It only purports to hold the proceedings to be maintainable.

5. Thereafter the Additional Labour Commissioner entertained the application u/s 3 of the Act and issued the impugned recovery certificate according to which the occupier of the concerned Industrial Establishment, viz. M/s. Elgin Company Ltd., Kanpur was in default of payment of wages to the workmen from 1.1.1980 to 31.12.1980 and the two Labour Welfare Officers from 27.1.1954 to 12.9.1987. The wage bill in respect of which the default was committed amounted to Rs. 10,69,007.15.

6. The principal questions raised by Sri J.N. Tewari, learned senior counsel appearing for the petitioner are: (i) the dispute involved in the case was outside the purview of Section 3 of the Act; (ii) the Additional Labour Commissioner has issued the impugned certificate in a mechanical manner without applying his mind to the objections raised against the demand of the workmen and two Labour Welfare Officers working in the Mills. The question as to maintainability of review was also reagitated by Sri J.N. Tewari who urged that the order dated 22.4.1983 was not open to review by the Additional Labour Commissioner. In reply, Sri K.P. Agrawal, learned senior counsel appearing for the Respondents urged that the impugned order made by the Additional Labour Commissioner did not suffer from lack of Jurisdiction nor can it be termed as an order made without application of mind. According to Sri K.P. Agrawal, the objection raised on behalf of the Petitioners to the application moved on behalf of the workmen and two Labour Welfare Officers were frivolous and untenable and were not such as may oust the jurisdiction of the Additional Labour Commissioner u/s 3 of the Act.

7. Section 3 of the Act provides a forum for speedy redressal of workmen''s grievance as a whole where the occupier of an Industrial Establishment has committed default in payment of wages in respect of a wage bill exceeding fifty thousand rupees. The scope and ambit of powers of the Labour Commissioner u/s 3 of the Act came-up for consideration before the Supreme Court in Modi Industries Ltd. Vs. State of Uttar Pradesh and others, . Their Lordships of the Supreme Court held that the enquiry that is conducted by the Labour Commissioner u/s 3 of the Act is of quasi-Judicial nature and further that when liability to pay the wages is in dispute which involves investigation of questions of fact and/or law. It would not be open to the Labour Commissioner to adjudicate the same. The principle governing exercise of power has been encapsulated by their Lordships of the Supreme Court as under:

...The Labour Commissioner may have to deal with broadly three

different situations, viz.: (1) where there is no defence whatsoever raised by the employer to the claim of the workmen; (ii) where the employer raises frivolous and untenable pleas to resist the claim; and (iii) where there is a genuine dispute with regard to the entitlement of the workmen to the wages and the said dispute cannot be resolved without Investigating the disputed questions of fact or law. In the first case, the Labour Commissioner is not called upon to give any reason while issuing the certificate. In the second case, the Labour Commissioner has to give reasons as to why according to him, the pleas raised are untenable. In the third situation, the Labour Commissioner when he rejects the claim of the workmen has to Indicate the disputed questions of law or fact which prevent him from exercising his limited jurisdiction. Thus both for issuing certificate as well as for rejecting it, the Labour Commissioner may be called upon to give his reasons depending upon the facts in each case...

8. The present was not a case of ''no defence whatsoever raised by the employer

to the claim of the workmen'' inasmuch as the application u/s 3 of the Act was opposed, inter alia, on the grounds that (i) occupier committed no breach u/s 5 of the Payment of Wages Act; (ii) the application is vague and does not specify the names of workmen who had worked overtime during the year 1980 nor does it specify the hours for which workmen may have worked overtime; and (iii) the two Labour Welfare Officers did not come in the category of workmen and their claims "are also not established as existing claims but an attempt is being made in this proceeding to seek adjudication on the issue of parity with the officer with whom they are to be classified." Apparently, it cannot be said to be a case, where there is no defence whatsoever, raised by the employer to the claim of workmen''. It was, of course open to the Additional Labour Commissioner to go into the pleas taken by the employer in defence to the application u/s 3 of the Act and hold, for recorded reasons, that the pleas taken were frivolous and untenable pleas to resist the genuine and bona fide claim of the workmen. The Additional Labour Commissioner has not done that and seems to have issued the recovery certificate in a mechanical manner as would be evident from the set language used therein. The Additional Labour Commissioner has not at all adverted himself to the application u/s 3 of the Act.

9. It was urged by Sri K.P. Agrawal that entitlement of the workmen for overtime wages at the rate of 200% could not be disputed for that is a claim recognised by statute and so was the claim of the two Labour Welfare Officers who were entitled, by virtue of rules of the U.P. Factories Welfare Officers Rules 1955, to have status of an officer of the factory entitled to dearness allowance, bonus, provident fund, leave, housing, medical and other facilities at par with the officers of similar status and grade in the factory and to whom the provisions of the Act were made applicable by virtue of Rule 22 of the Rules aforestated as Inserted by U.P. Factories Welfare Officers (Sixth Amendment) Rule, 1970). The argument is attractive but it cannot be gainsaid that the claim of the two Labour Welfare Officers taken in isolation of the claims of the other workmen would not be maintainable u/s 3 of the Act which cannot be pressed into service for enforcement of claim of individual workmen. True, Section 3 of the Act applies, as urged by Sri K.P. Agrawal, to a case of "default of payment of wages" but the further requirement for the applicability of the section is that the default must be in respect of the "wage-bill" exceeding five thousand rupees. The expression "wage-bill" as defined in Section 2(d) of the Act means total amount of wages payable by an Industrial Establishment to its workmen. These questions and the question whether a stale and inveterate claim can be enforced u/s 3 ought to have been adverted to and examined by the Additional Labour Commissioner before issuing recovery certificate. It is not for this Court to go into the questions aforestated and pleas taken in defence to the claim u/s 3 of the Act and pass an order allowing or rejecting the application.

10. As regards the question as to maintainability of the review application, suffice it to say that albeit the power to review is not the inherent power and it must be conferred by law either expressly or by necessary implication, an

authority exercising quasi-Judicial function under a statute can recall its order passed earlier if such order had been passed on mis-conception of law or fact or on the basis of any fraud or misrepresentation notwithstanding the fact that the statute does not expressly confer such power of review for such a limited power of review Inheres in every statutory authority exercising administrative or quasi-judicial powers. Additional Labour Commissioner can therefore, in appropriate case, review and recall an order passed u/s 3 of the Act. Section 4 of the Act and Section 151, CPC under which the application was moved may not be pressed into service but, having regard to the nature of Labour Commissioner''s function u/s 3 and likely consequences of the order rejecting an application moved under the section on a technical ground, I am of the considered view that it is the duty of the Labour Commissioner to rectify, review and recall his order as and when it is brought to his notice that the order sought to be recalled was passed on a wrong or mistaken assumption of facts or on a misconception of law and that if allowed to stand, the order would have serious consequences and may result in grave injustice. See Nagraj and Ors. v. State of Karanataka and Anr. JT 1993 (5) SC 27.

11. I must, however, hasten to add that the question whether the limited grounds of review as discussed above, are made out or not, ought to be gone into either separately or while issuing the recovery certificate. The earlier order may be recalled, if in the opinion of the appropriate authority, the grounds are made out. It goes without saying that the reasons for the formation of opinion one way or the other are to be disclosed in the order itself. This has not been done in the instant case. The order holding the review application to be maintainable would not absolve the appropriate authority of its duty to go into the questions discussed above except on pain of invalidating the order that may come to be passed without expressly going into the questions aforestated.

12. In view of the above discussion, the writ petition succeeds and is allowed. The impugned recovery certificate is quashed with the direction to the Additional Labour Commissioner to go into the pleas raised on behalf of the employer in defence to the claim u/s 3 of the Act and take appropriate decision in the matter in accordance with law and in the light of the observations made in the body of this judgment.