

(1959) 11 KL CK 0038
In the High Court Of Kerala

George Peter (C.)

APPELLANT

Vs

Its workmen and Another

RESPONDENT

Date of Decision : 25-11-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 15, 17, 79, 82

Citation : (1960) 1 LLJ 299

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Judgement

S. Velu Pillai, J.—This petition under Article 226 of the Constitution by an employer, challenges the validity of a direction made by the respondent 2 who is the authority appointed under B. 15 of the Payment of Wages Act, 1936, which may be referred to hereafter as the Act, by which he directed the petitioner, who represents a firm which carried on the business of a coir factory till about the end of November 1955 to pay wages during leave period, bonus, and retrenchment compensation which, for the purpose of this judgment, may be deemed to include pay in lieu of notice, amounting to Rs. 21,474-2-6 in the aggregate, to 62 workmen represented by the respondent 1. A preliminary objection was raised on behalf of the authority that the petitioner having failed to prosecute his remedy against the direction, by preferring an appeal u/s 17 of the Act, is now precluded from making this petition.

2. The parent application, which was made by the workmen on 14 March 1956 and was for a consolidated sum of Rs. 32,841-8-0, was followed by a statement dated 3 April 1956 limiting the amount of the claim under the several heads to Rs. 29,788-3-0. In a third statement made on their behalf on 4 September 1956 the claim for bonus for the year 1955 was made to rest on a settlement said to have been reached at the instance of the Labour Commissioner, Trivandrum, on 28 March 1956 and the claim for retrenchment compensation was advanced, as part of wages due to them as defined in the Act. By his earlier statements, the petitioner has disputed the claims for wages during leave period, and bonus, as

barred by limitation, and in his statement dated 5 September he reiterated the contention which he had raised earlier, that the factory having been closed, there was no jurisdiction for the authority to entertain a claim for retrenchment compensation, adding that the claim for bonus was also outside the provisions of the Act, and pressed for a decision on these preliminary points as to jurisdiction. In making the direction impugned, the authority came to the conclusion that there was really a closure of the factory, whatever be the reasons which led to it, and that bonus and retrenchment compensation constituted wages as denned in the Act, and were payable in addition to wages for the leave period.

3. In view of the preliminary objection, the first question to be considered is, whether the direction made by the authority suffers from any infirmity, and if so, what is its nature and effect. The view taken by him that even on the termination of employment, wages for the leave period are payable, receives support from Section 79(11) of the Factories Act, 1948. Section 82 of that Act provides that such wages shall be recoverable as delayed wages under the Act; but it was contended that this only means that the machinery provided by Section 15(5) of the Act for recovery of delayed wages by a Magistrate as if they were a fine, may be availed of. Section 15(5) presupposes a direction u/s 15(3), and it is only reasonable to think that such a direction is necessary, to settle the liability and to quantify the amount if for no other reason, and that not only Section 15(5) but also Section 15(2) & (3) of the Act may be deemed to provide the machinery for the recovery of delayed wages, within the meaning of Section 82 of the Factories Act, 1948.

4. On the question of compensation for retrenchment the learned Government Pleader conceded, on the authority of the decisions of the Supreme Court, notably in *Hariprasad v. A.D. Divelkar* 1957 I LLJ 243 that the award is inconsistent with the finding of the authority on the closure of the factory, and is therefore vitiated by an error apparent on the face of the record, and even stated that the authority would refrain from realizing the same from the petitioner, but denied that the error amounted to a Jurisdictional defect. Previously, the labour tribunals had been taking the view that even on bona fide closure of business, retrenchment compensation was payable till the Supreme Court dissented from it. The error committed by the authority in awarding retrenchment compensation, therefore, lay in his failure to apply the rule in *Hariprasad* case (*supra*) to his finding on closure, and resting the award solely on the definition of "wages" in the Act, and on the finding that a contract to pay it, must be deemed to be implied by law.

5. The next question relates to the claim for bonus. That bonus is "remuneration" within the definition of "wages," admits of no doubt, but to satisfy it, it must also be such, as "would be payable, if the terms of the contract of employment, express or implied, were fulfilled." In *Bala Subrahmanya Rajaram Vs. B.C. Patil and Others*, the Supreme Court has held that bonus, which an employer

engages to pay...should the terms of the contract of employment be fulfilled, by

a separate and independent agreement that is not part of the contract of employment,

also falls within the definition of "wages." As held in *A. V. D'Costa v. B.C. Patel* 1955 I LLJ 363 the authority under the Payment of Wages Act can ascertain and determine, for himself, what are the terms of a contract of employment in a given case; in this case the authority has come to the conclusion that bonus claimed pursuant to a settlement, as alleged, was payable according to the terms of the contract of employment. The learned Counsel for the petitioner relied on the decision of the Federal Court in *Heligers & Co. v. Nagesh Chandra* 1949 LLJ 493 and of this Court in *William Goodacre and Sons Ltd., Asramam, Quilon Vs. Mathan*, to contend that in order to constitute wages, the sum must be certain, and the contract must indicate when it becomes payable. As observed in *Balasubrahmanya* case (*supra*):

it may be, that the exact amount has yet to be ascertained, but the fact that bonus is payable and can be claimed as soon as the terms of the contract are fulfilled, is a matter that can be predicated beforehand, that is to say, even before the terms of the contract are fulfilled or indeed, even before the work has started, if the contract is made far ahead.

6. Assuming that the direction impugned is open to the objections pointed out by the learned Counsel for the petitioner and adverted to above, the view may reasonably be taken, that they constitute but errors, may be patent errors, committed by the authority in exercising his Jurisdiction, but do not establish, that he had acted wholly without jurisdiction, or in patent excess of Jurisdiction. For the decision of the preliminary objection, the learned Government Pleader was prepared to grant that they may be deemed to be Jurisdictional defects, and I shall therefore deal with it on that footing. The substance of his contention was, that whatever may be the position with regard to a writ of prohibition, except where the violation of a fundamental right or of rules of natural Justice can be posited, the existence of an alternative remedy always operates as a bar to certiorari, or at least imposes a check and a restriction, so formidable as to limit its issue, even on Jurisdictional defects to grave and extreme cases. The powers of the High Court under Article 226 are no doubt very wide and the limitations to their exercise, apart from the constitutional limitations, territorial and personal, implicit in Article 226, are those which the Courts have set for their own guidance. It is unnecessary to consider the cases cited, which have dealt with other limitations to certiorari, which do not arise in this case or with writs of prohibition. Quite recently, the Supreme Court has spoken through S.R. Das, C.J., on the subject in *Uttar Pradesh, State v. Mohammad Nooh* AIR 1958 SC 86 and the fact that the case arose on the ground of a violation of the rules of natural Justice does not, as contended, detract from authority on the issue now before me. The learned Chief Justice has summarized the law in Paras. 10 and 11 of his Judgment, I shall endeavour to make an analysis of it and to formulate the principles evolved, adhering, as far as possible, to the language employed by him.

(1) There is no rule, with regard to certiorari, that it will lie only where there is no other equally effective remedy,

(ii) The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior Court in arriving at a conclusion as to whether it should, in the exercise of its discretion, issue a writ of certiorari, to quash the proceedings and decisions of inferior Courts subordinate to it.

(iii) Ordinarily, the superior Court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any.

(iv) But this rule requiring the exhaustion of statutory remedies before the writ will be granted, is a rule of policy, convenience and discretion rather than a rule of law.

(v) If an inferior Court or tribunal,

(a) acts wholly without Jurisdiction, or

(b) patently in excess of Jurisdiction, or

(c) manifestly conducts its proceedings contrary to the rules of natural Justice and all accepted rules of procedure which offends the superior Court's sense of fair-play,

the superior Court may issue the writ of certiorari.

(vi) The above power may be exercised, even if an appeal to an inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what *ex facie* was a nullity for the reasons aforesaid.

(vii) In a proper case of the kind mentioned above, the superior Court should interfere.

Earlier, the Supreme Court had stated, the rule in the same terms, in *Union of India (UOI) Vs. T.R. Varma*, and in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*,].

7. The Mysore High Court in *S. Sridhar Raj v. Secretary, R.T.A.* AIR 1959 120 distinguished *Veerappa v. Raman & Raman, Ltd.*, on the facts of that case and on the terms in which the High Court had issued the writ which gave rise to the appeal to the Supreme Court, but did not advert to *State of Uttar Pradesh v. Mohammad Nooh*. The rule in *Krishnan v. Joint Director of Industries and Commerce (Coir)* 1959 KLJ 93 and in *Calicut-Wynad Motor Service (Private) Ltd. Vs. State of Kerala and Others*, , to which exception was taken by the learned Government Pleader as having been stated too broadly by a learned single Judge of this Court, must, it seems to me, be understood as implying only, as stated by T. K. Joseph, J., in *Velayudhan v. State of Kerala* Volde p. 319 *infra* , that

the existence of another remedy has never been treated as an absolute bar to the exercise of the powers under Article 226 of the Constitution.

T.K. Joseph, J., had accepted a similar preliminary objection in *New Kerala Bus Transport v. Regional Transport Authority, Cannanore* 1959 KLT 405 : 1959 KLJ 358 , although he also held that the merits of the case did not demand interference. In *R.K.V. Motors and Timbers (Private), Ltd. v. Secretary* 1959 KLJ 549 I quashed an order, issuing a temporary permit in the face of a non-temporary need, as was found, in flagrant violation of Section 62(c) of the Motor Vehicles Act, 1939; but in the light of the arguments addressed to me in this case, I do not know whether I would have reached the same conclusion in applying the rule in *State of Uttar Pradesh v. Mohammad Nooh*, though it cannot be overlooked, that on the facts of that case, what induced the authority to grant the permit was what was contained in a covering letter by the Director of State Transport which was extracted in the judgment, and under law, the alternative remedy prescribed by the Motor Vehicles Act is only by way of revision, u/s 64A, to the State Transport Authority, which in essence is only a discretionary remedy.

It remains only to apply the rule laid down by the Supreme Court in the three cases referred to above. As observed in *Veerappa v. Raman & Raman, Ltd.*, in such case, it is to the remedy prescribed by the statute, that "resort must generally be had," and in *Union of India (UOI) Vs. T.R. Varma*, where such remedy exists,

it will be a sound exercise of discretion to refuse to interfere...unless there are good grounds therefor.

According to *State of Uttar Pradesh v. Mohammad Nooh*, ordinarily this Court will decline to interfere. It was held by the Allahabad High Court in *Vishwamitra Karyalaya Press Vs. Authority appointed under Payment of Wages Act, 1936 for Kanpur and Others*, that according to the language of Section 17 of the Act, an appeal lay against a direction made u/s 15(3), and the

question whether Section 15 applied to the facts of the case or not, would make no difference to the maintainability of an appeal against an order which was expressly made under the provisions of Sub-section (3) of Section 15,

and the remedy by way of appeal, not having been availed of and having become barred by limitation, the Court refused to allow the petition under Article 226 of the Constitution. In the present case, the learned Counsel for the petitioner stated before me that the petitioner acted under wrong advice in not preferring an appeal u/s 17; this is no ground for departing from the ordinary rule against interference by certiorari under Article 226. Lastly, it was faintly suggested that the copy of the direction made by the authority might have been served on the petitioner only after the period for preferring an appeal had expired; there was no averment like this anywhere, and the records, so far as I have been able to peruse them, do not support this. If that were so, it would have furnished an effective answer to the preliminary objection. I do not find my way to allow this petition; it is therefore dismissed, but in the circumstances, without costs.