
(1961) 03 KL CK 0023
In the High Court Of Kerala

George Peter (C.)

APPELLANT

Vs

Its workmen and Another

RESPONDENT

Date of Decision : 30-03-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Payment of Wages Act, 1936 — Section 15, 17, 2, 3

Citation : (1961) 5 KLJ 1008 : (1962) 1 LLJ 484

Hon'ble Judges : M.A. Ansari, C.J.; P. Govinda Menon, J

Bench : Division Bench

Judgement

M.A. Ansari, C.J.—This appeal seeks to vary the decision by a learned Judge of this Court, whereby he had rejected the appellant's petition under Article 226 of the Constitution. The facts culminating in the appeal to this Court can be briefly stated.

2. Sixty-two workers of the appellant's factory, called C. George Peter Coir Factory, Alleppey, filed an application before the authority under the Payment of Wages Act IV of 1936, averring that they were entitled to leave with wages, balance bonus, lay-off compensation, notice pay, and retrenchment compensation, on the ground of closure of the factory, which was not bona fide. The claim was filed u/s 15 of the Act, which authorizes determination of the question whether the payment of wages has been wrongly withheld. The authority on 6 June 1959 allowed the application, holding the appellant liable on account of the aforesaid claims to pay Rs. 21,474-2-6. It is common ground that u/s 17 of the Payment of Wages Act, an appeal lies to the District Court, but the appellant did not avail of the right to appeal, and instead filed the writ petition in this Court on 5 March 1959. The petition was filed in this Court after the period of appeal had expired; and the learned Judge, after notice to the representative of the 62 workers and the authority, who had made the order, declined to exercise his discretionary jurisdiction under Article 226 on the ground that the failure to appeal precludes the appellant's claiming the discretionary relief under Article 226.

3. The appellant's learned Advocate has urged that the learned Judge has erred in declining to exercise his powers and in holding the case not to be fit, in which a writ of certiorari could be issued. Now the proposition of law is well-settled that failure to avail oneself of the statutory right of appeal is not always fatal to the writ of certiorari being issued. The circumstances under which the failure would not be treated as precluding a party from asking the writ, have been stated by the Supreme Court in *Uttar Pradesh State v. Mohd. Nooh* AIR 1958 S.C. 86 at 94 to be as follows:

On the authorities referred to above, it appears to us that there may conceivably be cases--and the instant case is in point where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior Court or tribunal of first instance is as patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Court's sense of fair play, the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or the tribunal of first instance, even if an appeal to another inferior Court or tribunal was available and recourse was not had to it or if recourse was bad to it, it confirmed what *ex facie* was a nullity for reasons aforementioned. This would be so all the more if the tribunal's holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior Court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above, it has the power to do so and may and should exercise it. We say no more than that.

4. The question, therefore, in this appeal is whether there be that infirmity or vice, which cannot be obliterated or cured on appeal. In other words, we have to decide whether the order asked to be vacated is vitiated by absence of jurisdiction or by any excess of jurisdiction or is in violation of fundamental principles of natural justice, so as to shock our sense of fair play. The appellant's learned Advocate has argued that giving the 62 workers money on account of their retrenchment compensation, was in excess of jurisdiction, because such compensations can only be allowed where the business be continued, whereas in this case the factory was admittedly closed. He has further argued that giving balance bonus for 1955 or leave with wages, was equally incorrect as bonus would be available only where profit be earned and the factory had been run on loss during the period, for which the bonus has been allowed. So far as the claims for leave with wages are concerned, the learned Advocate has pressed that none of the workers had been in appellant's employment for the period, which would justify their getting the leave with wages. Further, the observation

of the lower tribunal about the closure being not bona fide has been strongly challenged as being without any evidence. In these circumstances, it is argued that there has been excess of Jurisdiction and the failure to appeal would not be fatal.

5. In this connection it would be of advantage to remember that legal error apparent on the face of the record is not one of the grounds, on which a party can claim the benefit of Article 226, notwithstanding the failure to appeal and every one of the complaints pressed before us, is one of legal error. Before giving our reasons for the aforesaid conclusion, we would quote two provisions of the Act, one of which is the definition of wages at the time the petition was filed and reads as follows:

"wages" means all remuneration (whether by way of salary allowance 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 includes--

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or Instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force; but does not include--

(1) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on

him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in Sub-clause (d).

6. The next is Section 15(1), (2) and (3) and they ran thus:

15. (1) The State Government may, by notification in the official gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a civil Court or as a stipendiary magistrate, to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area.

(2) Where contrary to the provisions of this Act, any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or any inspector under this Act, or any other person acting with the permission of the authority appointed under Sub-section (1) may apply to such authority for a direction under Sub-section (3):

Provided that every such application shall be presented within six monies from the date on which the deduction from the wages was made or from the dace on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he bad sufficient cause for not making the application within such period.

(3) When any application under Sub-section (2) is entertained, the authority snail hear the applicant and the employer or other person responsible for the payment of the wages u/s 3, or give them an opportunity of being heard, and, after soon further enquiry (If any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may thick fit, not exceeding ten times the amount deducted in the former case, and not exceeding ten rupees in the latter:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages, if the authority is satisfied that the delay was due to--

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or

(b) the occurrence of any emergency or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment; or

(C) the failure of the employed parson to apply for or accept payment.

* * *

7. It is clear that the complaint made in this case to the authority u/s 15 is that payment of wages had been delayed, and the authority would have the jurisdiction to determine what had not been paid. In this connection, should the questions arising for determination be whether the claim be wages, any decision on the issue would not be beyond jurisdiction and any error of law or of fact in reaching the decision would be something, that could be Bet right by the appellate Court. Now the employer's complaint in this case is the person claiming were not entitled to the several heads and the decision holding the legal position to be otherwise, would not be without jurisdiction. Indeed, the appellant's learned Advocate has not been able to convince us that the claims were excluded from the definition of "wages" u/s 2(vi) of the Act as it then stood, and the consequence is that any objection concerning the correctness in the decision could be redressed by the appellate authority. We are, therefore, convinced that the failure to appeal is fatal to writ being issued in this case and the decision is not vitiated by excess of jurisdiction.

8. It is farther clear that withholding proper retrenchment compensation would be covered by the adjudication u/s 15 as such a compensation is included in the then definition of wages. Therefore, holding the employer liable would at beat be something erroneously decided and the error again could to corrected by the appellate Court with the result that the failure to appeal would disentitle the claimant to the writ of certiorari from us.

9. Finally we are convinced that-there has not been such violation of principles of natural Justice as to shock our conscience and to entitle the appellant to the benefit of Article 226. We, therefore, hold that the view of our learned brother, Velu Pillai, J., in declining to issue writ of certiorari was justified and the appeal fails, and is accordingly dismissed. As neither respondent has filed counter in the case, we would not saddle the appellant with costs of the appeal.