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(1971) 04 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1059 of 1971

Gian Chand APPELLANT

Vs

M/s. G. Kay (Kay) Industries RESPONDENT

Date of Decision : 26-04-1971

Acts Referred:
Payment of Wages Act, 1936 — Section 15

Citation : (1971) 04 P&H CK 0001

Hon'ble Judges : Harbans Singh, J

Bench : Single Bench

Advocate : S. Bindra, for the Appellant; B.K. Jhingan with M/s. B. Dass and S.K. Hiraji, for the Respondent

Judgement

Harbans Singh, C.J.

` 1. This revision has arisen out of a dispute between a worker and his employer in the following circumstances.

Gian Chand petitioner admittedly was working as a weaver in the factory of the respondent on piecarated basis. He was, however, paid every month. On 19th January, l96i, Gian Chand was retrenched. The question of legality of this retrenchment was referred to the Labour Court. On 8th September. 1937, the Labour Court held the retrenchment to be illegal. Two directions were issued, first, that Gian Singh should be reinstated with all back wages and with continuity of service and, secondly, that the employer should pay all the back wages to the applicant-petitioner, i.e., average pay from 20ih January, 1966, till the date of his reinstatement subject to deduction of wages already paid to the employee. Gian Chand was actually reinstated on 20th September, 1967. So far as the back wages are concerned, there was a dispute between the parties as to the actual amount due.

On 19th April, 1968, Gian Chand filed an application u/s 15 of the Payment Wages Act, 19.6 (hereinafter referred to as the Act) claiming a sum of Rs.

3,265-08 as wages for the period from 20th January, 1956, to 20th September, 19(7, asserting his average wages to be Rs. 175 per mensem. According to the employer the average monthly wages of the workman came to Rs. 70-29 and after making deduction of the sum already paid, the employer offered to pay the balance which came to Rs. 802 82.

The Authority under the Act relying on the two statements, Exhibits Rule 1 and Rule 2, filed by the employer giving the total amount of wages paid to the workman from time to time during the period of his employment from the year 1959, to 1965 and total number of working days of the workman during this period respectively, came to the conclusion that the average daily wages of the workman were Rs. 4-36 and after calculating the number of days for which he was entitled to payment, arrived at a figure of Rs. 2,123-3.2, as being payable for the period mentioned above. Deducting a sum of Rs. 24b 02, which had admittedly been paid to the workman the employer-respondent was directed to pay a sum of Rs. 1,877.30 by way of unpaid wages and Rs. 10 by way of compensation.

Incidentally before the Authority under the Act an objection was taken that u/s 15 of the Act the Authority concerned had no jurisdiction to go into the question of calculating the amount of wages due because there was a dispute about it. This contention, however, did not find favour with the Authority.

2. In appeal, however, the Appellate Authority has accepted this contention and held that the Authority under the Act had no jurisdiction to go into this matter and, consequently, the appeal was accepted. Except for giving a direction to the payment of Rs. 802-82, which was admitted as payable by the employer, the Appellate Authority rejected the claim of the workmen. It was suggested that the workman can seek his remedy under the Industrial Disputes Act. The workman has come up in revision.

3. It is now well settled that simply because there is some dispute about the terms of the contract between the employer and !he employee or there is a dispute about the interpretation of these terms would not by itself oust the jurisdiction of the authority under the Act u/s 15 to determine the disputed question regarding the terms applicable or the interpretation of those terms All matters which are incidental to the determination of the wages, which have been wrongly deducted, or the wages payment of which has been delayed, can be settled and decided by the Authority concerned. Reference in this respect may be made to a judgment of the Supreme Court in Ambica Mills Comtany Ltd, v. S.B. Bhatt 1961 I L.L.J. 3 the relevant head note runs as follows:

It was further contended that when the employee and the employer go before the payment of wages Authority with two different contracts, it has got no jurisdiction to decide which of the contracts held the field, which of them is subsisting and under which of them the employer is liable to pay wages to the applicant-employee.

Negativing the said contention, held that in dealing with claims arising out of deductions or delay made in payment of wages the authority inevitably would have to consider questions incidental to the said matters. In determining the scope of these incidental questions care must be taken to see that under the guise of deciding incidental matters the limited jurisdiction is not unreasonably or unduly extended. Care must also be taken to see that the scope of these incidental questions is not unduly limited so as to affect or impair the considering of questions as to what could be reasonably regarded as incidental questions. 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? and that refers to the subsistence of the relation between the employer and the employee. 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? If that is not a point of dispute between the parties, than it would be necessary to enquire what are the terms of the admitted contract. 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.

Hence it would be inexpedient to lay down any hard and fast or general rule which would afford a determining test to demarcate the field of incidental facts which can be legitimately considered by the authority and those which cannot be so considered."

4. Thus no hard and taste rules were laid down, yet it has clearly been held that the jurisdiction of the Authority under the Act is not ousted simply because a dispute arises as to the contract under which different amounts are claimed as due by the parties,

5. Earlier also in The State of Bombay Vs. Bhanji Munji and Another, , Sinha J, as he then was, speaking for the Court, observed in headnote (b) as follows:

"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 potentional wages. That was a case where the dispute was whether the employee was entitled to be promoted to a higher group of workers entitled to higher wages. See in this respect also a Full Bench judgment of the Bombay High Court in Viswanath Tukaram v. General Manager, Central Railway AIR 1968 Bom. 111, where Chief Justice Chagla, speaking for the Courts expressed the view substantially to the same effect

6. In the case before me it is not dispute! that Gian Chand was a weaver and was working with this employer from 1959 till he was retrenched, at piece-rate basis The rate at which he was paid is not disputed. The fact that he was paid alter every month is also not in dispute. In fact, as already stated, the Authority has proceeded on the basis of the copies of the documents produced by the employer himself, the correctness of which is not being challenged by the employee. The only question of dispute is what are the average wages according to the material placed on the record, payable to the employee for the period which is also not in dispute. I am unable to agree that a dispute with regard to this simple mathematical calculation would oust the jurisdiction of the authority.

7. The learned counsel for the employer placed reliance on Payment of Wages Inspector v. Swaraj Mal Mehta, Director, The Barnagar Electric Supply and Industrial Company Ltd. AIR 1939 S.C. 590. The facts of that case were entirely different and the observations made therein rather support the case of the petitioner in this case. There the license of an Electric Supply Company was revoked by the Madhya Pradesh Government and the Company''s undertaking was taken over by the Madhya Pradesh Electricity Board (hereinafter referred to as the Board). The Managing Director of the Electric Supply Company was proceeded against u/s 15(2) of the Act for payment of compensation to about 20 employees treating the transfer as amounting to retrenchment and the claim of compensation being based under Sections 25-FF and 25-FFF of the Industrial Disputes Act. Their Lordships of the Supreme Court, in the first instance, dealt with the question whether, if an amount became due u/s 25-FF or 25-FFF of the Industrial Disputes Act, it would fall within the definition of ''wages'' as it existed at the time. This question was answered in the affirmative The provisions of the Payment of Wage? Act were then examined in detail and at page 595 of the report it was observed as under:

It is explicit from the terms of Section 15(2) that the Authority appointed under Sub-section (1) has jurisdiction to entertain applications only in two classes of cases, namely, of deductions and fines not authorised under Sections 7 to 13 and of delay in payment of wages beyond the wage periods fixed u/s 4 and the time of payment laid down in Section 5.

Obviously the present case does not fall under the first of the two classes mentioned above There is no deduction unauthorised under the law. Back wages have been ordered to be paid under the award and those wages are being delayed. Therefore, it would fall under the second category of cases envisaged by their Lordships of the Sap-erne Court.

8. After discussing the cases in A. V. D'' Costa v. B.C. Patel and Ambica Mills Company Ltd, v. S.B. Bhatt and another1, noticed above, their Lordships of the Supreme Court went on to observe in Barnagar Electric Supply Co''s case (supra) at page 596 of the report as follows:

It is true that the Authority has the jurisdiction to try matters which are incidental to the claim in question. Indeed Section 15(1) itself provides that the Authority has the power to determine all matters incidental to the claim arising from deductions from or delay in payment of wages. It is also true that while deciding whether a particular matter is incidential to claim or not care should be taken neither to unduly expand nor curtail the jurisdiction of the Authority. But it has at the same time to be kept in mind that the jurisdiction u/s 15 is a special jurisdiction. The Authority is conferred with the power to award compensation over and above the liability for penalty of fine which an employer is liable to incur u/s 20.

9. Then their Lordships went on to consider the question whether on the footing, that compensation payable under Sections 25-FF and 25-FFF of the Industrial Disputes Act are wages within the meaning of Section 2(vi)(d) of the Act, a claim for it on the ground that its payment was delayed by an employer could be entertained u/s 15(2) of the Act. It was observed that the claim was being resisted inter alia on the ground that there has been no interruption in the employment of the workmen because they have been taken over by the Board and the conditions of service under the Board were no less favourable than those under the Electric Supply Company and that the Board, as the new employer, had become liable to pay compensation to the workmen if there was retrenchment in the future. These defences having been taken, the Authority under the Act shall have to go into these matters and give a decision. With regard to this, their Lordships observed as follows:

Such an inquiry would necessarily be a prolonged inquiry involving questions of fact and of law. Besides, the failure to pay compensation on the ground of such a plea cannot be said to be either a deduction which is unauthorised under the Act, nor can it fall under the class of delayed wages as envisaged by Sections 4 and 5 of the Act, It may be that there may conceivably be cases of claims of compensation which are either admitted or which cannot be disputed which by reason of its falling under the definition of wages the Authority may have jurisdiction of to try and determine. But we do not think that a claim for compensation u/s 25-FF which is denied by the employer on the ground that it was defeated by the proviso to that section, of which all the con?ditions were fulfilled, is one such claim which can fall within the ambit of Section 15(2).

10. It is, therefore, clear that the case before their Lordships of the Supreme Court was a peculiar one where the claim for compensation u/s 25-FF of the Industrial Disputes Act was being denied on the ground that all the conditions for the grant of such a compensation were not complied with and the defences taken raised complicated issues of law and fact, for deciding which the Authority under the Act had no jurisdiction u/s 15(2) of the Act Their Lordships, however, stated earlier, as quoted above, that the Authority u/s 15(2) of the Act has full jurisdiction to decide all incidental matters and I am of the view that mere mathematical calculations as to how much was the average wage" and for how long was it due are matters which are purely incidental in respect of the back

wages which have been awarded by the Labour Court.

11. Another point urged was that there was also another procedure available to the employee, namely, to proceed u/s 33C(2) of the Industrial Disputes Act Sub-sections (1) and (2) of the Section 33-C of the said Act run as follows:

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A, the workman may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that, any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in Sub-section (1).

12. These two Sub-sections also came up for consideration in the above-mentioned Barnagar Electric Supply Company''s case. Relying upon an earlier decision in Punjab National Bank Limited Vs. K. L. Kharbanda, , it was observed as under:

...Section 33 C was a provision in the nature of execution and where the amount to be executed was worked out or where it might be worked out without any dispute Sub-section (1) would apply but where such amount due to the workman was not stated or worked out and there was a dispute as to its calculation, Sub-section (2) would apply and the workman would be entitled to apply thereunder to have the amount computed provided he was entitled to a benefit, whether monetary or non-monetary, which was capable of being paid in terms of money.

13. The learned Judges posed the question, whether far such a claim the legislature intended to provide alternative remedies both under the Industrial Disputes Act and the Payment of Wages Act and for answering this question they examined in detail the provisions and scheme of the earlier Wages Act and cams to the conclusion as reproduced above.

14. However, it was not held by their Lordships that if a claim can be made under Sub-section (1) or Sub-section (2) of Section 33-C of the Industrial Disputes Act then it would be barred u/s 15 of the Payment of Wages Act. In any case, so far as the present ease is concerned, the matter is quite clear and all that was in dispute were mathematical calculations, which would be merely incidental and would be well within the jurisdiction of the Authority.

(5) I would, therefore, accept tins revision and set aside the order of the Appellate Authority on the ground that it had failed to exercise the jurisdiction

vested in it. The case is remanded back to the Appellate Authority to decide it on merits, because I find that in ground No. 4 of the Grounds of Appeal filed by the employer before the Appellate Authority, it was specifically mentioned that the Authority under the Act failed to work out average wages as stated by me appellant and applied a different method, which was basically wrong and incorrect. Thus the actual calculation was disputed. Counsel will direct the parties to appear before the Appellate Authority on 24th May, 1971, to take a further date. Records of the case will be sent back immediately. There would no order as to costs before me. The other costs would be costs in the cause.

