
(2001) 03 P&H CK 0077
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2618 of 1984

Hissar District Central Co-operative Bank Limited Hisar	APPELLANT
Vs	
S.L. Sharma	RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Wages Act, 1936 — Section 1, 15(1), 15(3), 15(4), 17

Citation : (2001) 03 P&H CK 0077

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Advocate : Mr. Gurinder Pal Singh, for the Appellant; Mr. B.D. Sharma, for the Respondent

Judgement

Nirmal Singh, J.—In this petition, the petitioner has prayed for quashing the order dated 4.5.1984 passed by the authority under the Payment of Wages Act, 1936 (Labour Officer-cum-Conciliation Officer), His-sar Circle, Hissar vide which the application of respondent No. 2 was allowed.

2. The case set up by the petitioner is that Anand Samp-Respondent No. 2 was appointed as Secretary for the Co-operative Credit and Service Society in the year 1974. The service of respondent No. 2 was governed under the Haryana State Control Co-operative Banks (Staff Service Common Cadre) Rules. 1975 (hereinafter referred to as "the Rules"), Respondent No. 2 submitted his resignation from the service on 6.8.1981. The resignation was accepted and the same was received in the office of the petitioner on 10.8.1981. The resignation of respondent No. 2 was accepted by the petitioner on 13.9.1982 with effect from 6.8.1981, the date on which respondent No. 2 tendered his resignation. Respondent No. 2 withdrew his resignation vide letter dated 9.10.1982. The same was received on 11.10.1982. It was informed to the respondent on 17.10.1982 that his resignation has already been accepted. Consequently his request cannot be considered and accepted. It was further averred that after a

lapse of more than two years respondent No. 2 moved an application u/s 15(2) of the Payment of Wages Act (hereinafter called "the Act") and claimed the back wages which had not been paid with effect from 1.1.1982 to 30.3.1983. Alongwith the application moved by the respondent, the respondent attached a schedule relating to the wages due from the petitioner. The petitioner contested the application. The authority under the Payment and Wages Act allowed the application vide impugned order Annexure P-9. The petitioner impugned the order on the following grounds :-

"i) That respondent No. 1 has had no jurisdiction to" pass the impugned order inasmuch as the bare perusal of the application and Section I read with Section 2 of the Payment of Wages Act, does not cover the respondent under the Payment of Wages Act. Consequently, the impugned order is void and without jurisdiction.

ii) That respondent No. 1 after holding that the application is barred by time, still without assigning any fresh cause or spelling out much less believing or there being an iota of evidence on the record inspite of the fact that there was no prayer or cause shown for condonation of delay has condoned the delay. Thus, the impugned order is illegal, arbitrary and void having been passed on a stale alleged claim barred by time.

iii) That the respondent No. 1 has ignored the admitted fact by respondent No. 2 in a statement before the Authority i.e. respondent No. I that he never recorded his presence anywhere since the date of his resignation.

iv) That section 15(3) of the Payment of Wages Act provides that in case of delayed wages, maximum compensation which can be awarded is Rs. 25/-and that too after a finding is returned that the payment of wages has been delayed for extraneous considerations. Here, no finding has been returned with respect to the dispute much less of a bona fide nature and he treated the payment of delayed wages as deducted amount which was neither the case of respondent No. 2 nor was ever put up to trial nor was pointed out to the petitioner and has arbitrarily imposed a penalty of 4 times the amount of delayed wages, amounting to Rs. 97,227-50 and further assessed the delayed wages at Rs. 19,445-50.

v) That respondent No. 2 was never given selection grade and inspite of that respondent No. 1 assumed that he is entitled for the selection grade.

vi) That respondent No. 1, on surmises and conjectures, has felt the necessity of seeing the internal noting of the petitioner bank from the date of resignation of respondent No. 2 till the date of passing of the formal order which was never issued. There is not an iota of evidence on the record to show that the acceptance of resignation has been antedated nor there is any allegation of mala fide against the officers of the bank.

vii) That the impugned order has been passed without there being any evidence on the record for the delayed wages and calculated delayed wages amounting to Rs. 19,445.50 and treated them perversely as deducted wages in order to

facilitate his own designs to impose a penalty of unconscionable nature of Rs. 97,227-50. This action of respondent No. 1 amounts to a legal and factual mala fide for the reasons best known to him.

viii) That the impugned order of respondent No. 1 is bad for reasons that the respondent No. 2 was never in the service of the petitioner relating to the period in dispute in view of his own letter of resignation.

ix) That the impugned order is non-speaking order which is liable to be quashed.

3. In the written statement filed on behalf of respondent No. 2, a preliminary objection has been raised to the maintainability of the writ petition on the ground that the petitioner has failed to avail alternative remedy u/s 17 of the Payment of Wages Act. On merits, it was pleaded that respondent No. 1 was having jurisdiction to pass the impugned order and the impugned order is legal and valid one.

4. Shri B.D. Sharma, learned counsel for respondent No. 2 submitted that the petitioner has failed to avail the remedy of appeal as provided under the Act, therefore, the writ petition should be dismissed. He further submitted that the petitioner has not availed the remedy of appeal intentionally as the appellant had to deposit the amount payable under the direction given by the Authority u/s 15(3) of the Act.

5. On the other hand, Shri Gurinder Pal Singh, learned counsel for the petitioner submitted that the wages were not due to the petitioner as he has resigned from the post with effect from 6.8.1981 and his resignation has been accepted on the same day. The respondent has claimed the wages with effect from 1.1.1982 to 30.4.1983 when he was not in the service of the petitioner, so, no wages were due towards the petitioner. Therefore, the application u/s 15(2) of the Act was not maintainable. When the application is not maintainable and the authority under the Payment of Wages Act had exceeded the jurisdiction and was not competent to pass the impugned order, then the petitioner can challenge the impugned order by way of writ petition without availing the alternative remedy of appeal.

6. I have given serious thought to the submissions made by the learned counsel for the parties and have carefully gone through the records.

7. u/s 17 of the Payment of Wages Act, 1936, an appeal has been provided. Section 17 reads as under :-

"17. Appeal-(1) an appeal against an order dismissing either wholly or in part an application made under sub-section (2) of Section 15, or against a direction made under sub-section (3) or sub-section (4) of that section may be preferred, within thirty days of the date on which the order or direction was made, in a presidency town before the Court of Small Cause and elsewhere before the District Court :-

a) by the employer or other person responsible for the payment of wages u/s 3. if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees; or

b) by an employed person, or any legal practitioner or any official or a registered trade union authorised in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the authority to make an application under sub-section (2) of Section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees; or

c) by any person directed to pay a penalty under subsection (4) of Section 15.

No appeal under clause (a) of sub-section (1) shall lie unless the memorandum of appeal is accompanied by a certificate by the Authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

(2) Save as provided in sub-section (1), any order dismissing either wholly or in part an application made under sub-section (2} of Section 15 or a direction made under sub-section (3) of sub-section (4) of that section shall be final,

(3) Where an employer prefers an appeal under this section, the Authority against whose decision the appeal has been preferred may, if so directed by the Court referred 10 in sub-section (1) shall pending the decision of the appeal, withhold payment of any sum in deposit with it.

(4) That court referred to in sub-section (1) may, if it thinks fit. submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision."

8. There is no merit in the contention raised by Shri Gurinder Pal Singh that this Court should entertain the petition under Article 226 of the Constitution of India, even if an effective and alternative remedy is available to the petitioner. The contention raised by the learned counsel for the petitioner that there was no wages due towards the petitioner and the petitioner has resigned on 6.8.1982 and his resignation was accepted on 30.9.1982 with effect from 6.8.1981 whereas the claim of the respondent is that his resignation was accepted on 30.9.1982, so, this point raised by the petitioner requires a detailed investigation into the issue of fact which cannot be adjudicated upon in a writ petition under Article 226 of the Constitution of India. When an issue requires a detailed investigation and an alternative remedy has been provided in the statute then no departure can be made from the well settled principle that, in presence of alternative remedy, the petition under Article 226 is not to be entertained.

9. In State of U.P. v. Mohammad Nooh, AIR 1958 SC 86 the Supreme Court has held as under:

"There is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. Provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. 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 exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior Courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. 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. The superior court will readily issue a certiorari in a case where there has been a denial of natural justice before a court of summary jurisdiction."

10. In Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, , the Supreme Court has held as under :-

"When an alternative and equally efficacious remedy is open to a litigant he should be enquired (required ?) to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and when such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

11. In Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, the Apex Court has held as under :-

"Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under sub-s. (1) of S. 23 of the Act. if the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-s. (3) of S. 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under S. 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment, can only be challenged by the mode prescribed by the Act and not by a petition under Art. 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in

Wolverhampton New Water Works Co. v. Hawkesford, (1859) 6 CBNS 336 at p. 356 in the following passage:

"There are three classes of cases in which a liability may be established founded upon statute ***** But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it ***** the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

12. In Assistant Collector of Central Excise, Chandan Nagar, West Bengal v, Dunlop India Ltd. and other (supra), the Supreme Court has held that:

"Art. 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require that recourse may be had to Art. 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Art. 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

In view of the above judicial precedent, the writ petition is dismissed as the petitioner has failed to make out a case for invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

13. Writ petition dismissed.