
(1972) 08 CAL CK 0005
In the Calcutta High Court
Case No : Civil Rule No. 264 of 1971

Kamal Prasanna Roy

APPELLANT

Vs

Maurice Hyam

RESPONDENT

Date of Decision : 03-08-1972

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25FF, 33C
Payment of Wages Act, 1936 — Section 15, 15(2)

Citation : (1973) 1 ILR (Cal) 586

Hon'ble Judges : Sankar Prasad Mitra, C.J.;Janah, J

Bench : Division Bench

Advocate : Arun Kumar Dutt, Sudhir Roy and Sanat Kumar Dutt, for the Appellant;Ajit Kumar Bose, for the Respondent

Judgement

Sankar Prasad Mitra, C.J.—In this Rule Order No. 12 dated December 15, 1970, made by the District Judge, Darjeeling, in Misc. Appeal No. 27 of 1970, has been challenged. The District Judge was hearing an appeal from, an order made on July 1, 1970, by the authority under the Payment of Wages Act, 1936. The point that has arisen in this Rule is whether the said authority has jurisdiction to decide the question of relationship of employer and employee u/s 15(2) of the said Act. We would, therefore, at the outset set out the relevant portions of Section 15 of the Payment of Wages Act, 1936. These are as follows:

15. Claims out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. (1) The State Government may by notification in the Official Gazette appoint a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947, or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or 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, including all matters incidental to such claims....

(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 authorised 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)....

2. The expression "including all matters incidental to such claims" was introduced into Section 15(1) by an Amendment Act being Act No. LIII of 1964. Before, however, this expression came into the Statute Book the Supreme Court in *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*, made certain observations with respect to the jurisdiction of the authority u/s 15 of the Payment of Wages Act. The Supreme Court has said that the only claims which can be entertained by the authority u/s 15 are claims arising out of deductions or delay made in payment of wages. The jurisdiction thus conferred on the authority to deal with these two categories of claims is exclusive. 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, their Lordships of the Supreme Court pointed out, 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 limited jurisdiction conferred on the authority. 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. The authority u/s 15, says the Supreme Court, has jurisdiction to determine what the terms of the contract between the parties are, and if the terms of the contract are admitted and the only dispute is, whether or not a particular employee falls within one category or another, that would be incidental to the decision of the main question as to what the terms of the contract are. Whether the terms of a contract are admitted and the only point in dispute is which of the two subsisting contracts applies to the particular employee in question the authority has jurisdiction to decide the same. This judgment of the Supreme Court laid down, therefore, that the authority u/s 15 had jurisdiction to determine all matters incidental to deductions from wages or delay in payment of wages. In other words, the amendment introduced by Act LIII of 1964 did not alter the legal position so far as the extent of the authority's jurisdiction was concerned. One has, however, to be conscious that this jurisdiction is a limited one and should not either be unreasonably extended or unreasonably curtailed.

3. After the amendment, however, the Supreme Court had to deal with this question of jurisdiction in other cases that came up before it. For instance, in *Payment of Wages Inspector, v. B.E.S. and I. Company A..I.R. 1969 S.C. 59* the Supreme Court had to consider whether the authority under the Payment of Wages Act could adjudicate upon claims u/s 25FF of the Industrial Disputes Act. This Section runs thus:

Where the ownership or management of, an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if--

- (a) the service of the workman has not been interrupted by such transfer;
- (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
- (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

4. The Supreme Court is of the view that the authority under the Payment of Wages Act in an application u/s 15(2) cannot entertain a claim for compensation u/s 25FF of the Industrial Disputes Act when the defence raised involves complicated questions of law. In *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, , it has been stated that in cases where there is no dispute as to rates of wages, and the only question, is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off-days is due to a workman or not, the appropriate remedy is provided in Section 15 of the Payment of Wages Act. In cases where Section 15 of the Payment of Wages Act may not provide adequate remedy, the remedy can be sought either u/s 33C of the Industrial Disputes Act or by raising an industrial dispute under the Act and having it decided under various provision of that Act.

5. Upon going through the views expressed by their Lordships of the Supreme Court, it seems to us that the legal position is that the authority under the Payment of Wages Act has a limited jurisdiction in deciding claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. This jurisdiction extends to all matters incidental to such claims. As to what are incidental matters no hard and fast rule can be laid down.

But the limited jurisdiction of the authority should not be unreasonably extended under the garb of deciding incidental matters. In other words, if a question involves a prolonged enquiry or enquiry into complicated questions of law and fact the authority under the Payment of Wages Act would refuse to exercise his jurisdiction.

6. Keeping these propositions in mind we have to examine the facts of the instant case. The Applicant before the authority has alleged that he is "a person employed in the industrial establishment entitled Mahalderam Tea Estate Private Limited": vide para. 1 of the claim petition. In para. 3 of the written statement of the opposite parties it was stated that although the Applicant was an employee as alleged, his service ended with effect from October 7, 1968, on which date the garden (that is, the Mahalderam Tea Estate) was sold away and the delivery of possession was given to the purchaser thereof and finally the conveyance, after obtaining sanction of the Dy. Commissioner, was registered in or about the month of January 1969. That although his service were terminated along with the delivery of possession of the Tea Estate as aforesaid, as the matters for completion of conveyance was still to be attended by him, he was paid salary in full upto January 31, 1969.

7. On these pleadings the dispute between the parties appears to be that the Applicant was claiming to be an employee of the private limited company. The opposite parties were contending that the Applicant's employment came to an end when the garden was sold away and possession delivered to the purchaser. It was also alleged by the opposite parties that although the garden was transferred on October 7, 1969, the Applicant was paid his salary upto January 31, 1969, as the Applicant had to attend to matters relating to completion of the conveyance.

8. We have to see, on the facts of this case, whether the dispute set out above involves any enquiry into complicated questions of law or fact. To answer this problem it is necessary to examine the terms of the Applicant's employment. It appears that a letter of appointment was addressed to him on April 21, 1966, by the Managing Director of the private limited company. The material portions of this letter runs thus:

We are pleased to appoint you as General Supervisor for Mahalderam Tea Estate and Mullotar Tea Estate--both gardens, on the following terms and conditions:

- (1) That your appointment is with effect from 1.4.66.
- (2) That your salary shall be at Rs. 300 Rupees three hundred only per month.
- (3) That you will be entitled to such amenities as are admissible under the rules in force of the Tea Estate.
- (4) That this appointment is subject to termination on one month's notice from either side.

9. This letter says that the Applicant was appointed as "General Supervisor" for the two tea estates mentioned therein. But, on February 13, 1967, the Managing Director of the private limited company passed an "office order". The office order was as follows:

Hereafter Mr. Maurice Hyam, General Supervisor, will be redesignated as "Labour Officer" of the Company and he will remain at least 15 days in every month in the Gardens to attend to all sorts of labour issues,- tackle labourers in order to improve cultivation, raise production and quality and effect better labour relation.

10. The authority under the Payment of Wages Act has examined these two documents and has also read a few letters -produced before him. These letters are dated March 14, March 22, April 12, April 26 and May 19, 1969, signed by one A.K. Chakravorty for the Director, Mahalderam Tea Estate Private Limited. The authority upon reading these letters comes to the conclusion that during the period of the correspondence the Applicant was being treated as an employee of the company and he dealt with Certificate cases, Commercial Tax cases, Provident Fund cases and Criminal cases on behalf of the company.

11. The authority ultimately holds as follows:

(i) That the Mahalderam Tea Estate Private Limited only sold the Mahalderam Tea Estate and the company, which was the employer, did not cease to exist.

(ii) Mr. Maurice Hyam was an employee of the company and not of the garden which was sold and, therefore, sale of the garden could not mean automatic termination of his service.

(iii) One month's notice, as required by the" appointment letter, was not served either orally or in writing.

(iv) Correspondence was carried on with Mr. Maurice Hyam till as late as May 1969 as if Mr. Hyam was still an employee of the company.

12. The authority then says that the conclusion is inescapable that the Petitioner continues to be in the employ of the company and the plea of the opposite parties that he is no longer in their employ is without any basis.

13. Incidentally, after the arguments were closed the opposite parties filed a petition stating that the company orally intimated to the Applicant that his service had been terminated and he was also informed about this in writing. This plea the authority has rejected on the ground that it was an after-thought.

14. Going through the judgment of the authority it does not appear to us that any complicated questions as to the relationship of employer and employee were raised before him. The authority had to construe only a few documents for his conclusion that the Applicant was an employee of the company and continued to be an employee even after the sale of the tea garden.

15. The matter then came up before the District Judge at Darjeeling. Before the

District Judge arguments were advanced on whether the employee, in the instant case, was governed by the provisions of Section 25FF of the Industrial Disputes Act. The Appellate authority, it appears, has gone into this question and has come to its findings. In our opinion, on the facts of this case, there is no scope for invoking the provisions of Section 25FF. We need not, therefore, deal either with the findings of the Appellate authority on Section 25FF or with the reasons therefor.

16. Mr. Dutt for the Petitioner has argued before us that Maurice Hyam, by the letter of April 21, 1966, was appointed General Supervisor for Mahalderam Tea Estate and Mullotar Tea Estate. Mr. Dutt says that the undertaking known as Mahalderam Tea Estate has been transferred and the lease in respect of Mullotar Tea Estate has expired. The only conclusion, therefore, is upon the transfer of the Mahalderam Tea Estate, the services of Maurice Hyam also stood transferred to the purchaser. This argument of Mr. Dutt does not appear to us to be sustainable. It is true that by the letter of April 21, 1966, Maurice Hyam was appointed as General Supervisor for the two tea estates, but subsequently by the document of February 13, 1967, his designation as General Supervisor of the two tea estates was altered and he was redesignated as "Labour Officer" of the company. Mr. Dutt submits that he was Labour Officer of the two tea estates and was not expected to discharge any duty in relation to any other affairs of the company. From the terms of the document of February 13, 1967, we cannot arrive at this conclusion. In this document Mr. Maurice Hyam was re-designated as "Labour Officer" of the company. This document provides further that he will remain at the tea gardens only for 15 days in the month. Regarding his duties for the rest of the month the document is silent. But, since he is Labour Officer of the company, it is to be presumed that he had to undertake other duties in connection with the company's business. On the basis of the document dated February 13, 1967, therefore, we cannot hold that Maurice Hyam was Labour Officer exclusively of the tea gardens. From this point of view it seems to us that both the authority under the Payment of Wages Act and the Appellate authority have come to the correct conclusion, namely, that Maurice-Hyam continued to be in the service of the company even after the transfer of the Mahalderam Tea Estate, and his services in the company were not terminated by one month's notice as stipulated in the letter of April 21, 1966.

17. If we were of opinion that prima facie the provisions of Section 25FF of the Industrial Disputes Act applied to the facts and circumstances of this case, we might have been inclined to hold that the disputes raised involved a prolonged enquiry and, as such, the authority under the Payment of Wages Act had no jurisdiction to entertain the matter. But on the documents produced before us, as we have already stated, we do not think that the provisions of Section 25FF of the Industrial Disputes Act can be invoked in aid of the Petitioners in the instant case.

18. In the result we discharge the Rule. The opposite parties are entitled to the costs of this Rule hearing fee being assessed at two gold mohurs.

19. The Petitioners are directed to deposit a sum of Rs. 4,225 with the authority under the Payment of Wages Act within, one month from date if the said sum has not already been deposited- If a portion of the said sum has already been deposited the balance thereof is to be deposited within a month from date.

20. Let the operation of this order in this Rule be stayed for three weeks from this date.

Janah, J.

21. I agree.