

(1965) 03 KAR CK 0001
In the Karnataka High Court
Case No : Civil Petition No. 223 of 1963

L. Srikantaiah

APPELLANT

Vs

M. Puttaswamy and Another

RESPONDENT

Date of Decision : 17-03-1965

Acts Referred:

Constitution of India, 1950 — Article 227
Payment of Wages Act, 1936 — Section 15, 15 (3)

Citation : AIR 1966 Kar 133 : AIR 1965 Kar 133 : (1968) 17 FLR 433 : (1968) 2 MysLJ 392

Hon'ble Judges : T.K. Tukol, J;K.S. Hegde, J

Bench : Division Bench

Judgement

Tukol, J.

(1) The petitioner who is the Proprietor of S.E.L. Dry cleaners, Mysore, filed this petition under Art. 227 of the Constitution praying for a writ of certiorari quashing the order passed by the City Magistrate, Mysore in Criminal Misc. 44/62 on 27-11-1962 directing recovery of Rs. 205 towards compensation and penalty as being payable by him to respondent No. 1. Respondent No. 2 is the City Magistrate, while Respondent No. 3 is the Labour Officer and Appellate Authority under the Mysore Shops and Establishments Act, 1948.

(2) The material facts to appreciate the points at issue are as follows:-- Respondent No. 1 (who is hereinafter called the respondent) was an employee of the petitioner on a monthly salary of Rs. 50 from 17-2-1955 and had been working as accounts clerk. The respondent was removed from service after he was served with a notice through a lawyer at the instance of the petitioner on 29-1-1961 on the ground of negligence and unsatisfactory behaviour. Against the order of his removal from service, the respondent preferred an appeal to respondent No. 3 u/s 41(2) of the Mysore Shops and Establishments Act, 1948. The latter held an enquiry, came to the conclusion that the removal was unjustified and directed the petitioner to pay Rs. 200 (Rs. 150 towards three

months" wages as compensation and Rs. 50 being one month's wages in lieu of notice) within 15 days from the date of issuing the order. The order is dated 4-12-1961. The respondent then filed an application u/s 15(3) of the Payment of Wages Act, in the court of the City Magistrate, Mysore on 19-3-1962 for the recovery of wages of Rs. 50 for January, 1961, Rs. 35 being the amount deposited by him as security and Rs. 200 being the compensation. The petitioner admitted his liability to pay the salary of Rs. 50 for the month of January 1961 and the balance of the deposit of Rs. 35; he denied his liability to pay any other sum and challenged the validity of the order passed by the Labour Officer.

The petitioner also raised a preliminary objection to the effect that the effect that the claim for wages for January, 1961 and the deputy amount was not tenable as the same had been made more than six months after the due date of payment without any sufficient cause. The preliminary objection was upheld and the respondent himself filed an application restricting his claim for the recovery of Rs. 200 awarded as compensation by the Labour Officer. On the question of his jurisdiction the Magistrate held that the amount of compensation fixed by the Labour Officer fell within the definition of the word "wages" as contained in Section 2 (widow) of the Payment of Wages Act and that the failure of the petitioner to pay the same within the period fixed by the Labour Officer entitled the respondent to recover the whole amount "as delayed wages" within the meaning of Section 15(3) of the Payment of Wages Act. In view of these conclusions, the Magistrate directed the petitioner to pay Rupees 200 together with compensation amount of Rs. 5 on or before 10th December 1962. It is the legality of this order that is challenged in this petition.

(3) Mr. Mahesh Chandra Guru has appeared for the petitioner and there is no appearance for the respondent.

(4) The first question that arises for determination is whether the Magistrate had jurisdiction to direct the recovery of the amount of Rs. 205 under the provisions of Section 15(3) of the Payment of Wages Act (which is hereinafter called the Act)

(5) It cannot be disputed from the facts stated above that the amount of Rs. 200 ordered by the Magistrate to be recovered from the petitioner is the sum fixed by the Labour Officer u/s 41(1) of the Mysore Shops and Establishments Act, 1948. Section 41(1) of the Act prohibits an employer from dispensing with the services of a person employed continuously for a period of not less than six months, except for a reasonable clause and without giving him at least a month's notice or wages in lieu of such notice. The proviso lays down that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an inquiry held for the purpose. Sub-section (2) confers a right of appeal on the employee, to the prescribed authority on the ground that there was no reasonable cause for dispensing with his services or that he was not guilty of misconduct. Sub-sections (3) and (4) which are relevant, read as follows:

"(3) Where the services of a person have been dispensed with in contravention of the provisions of sub-section (1), such person shall, where the employer does not agree to reinstate him, be entitled to such compensation as the appellate authority may determine, provided that such compensation shall not exceed an every year of service subject, in any case, to a maximum of six months" wages.

(4) The decision of the appellate authority shall be final and binding on both the employer and the person employed."

It is in exercise of this power that the Labour Officer, as appellate authority, held an inquiry and came to the conclusion that the dismissal of the respondent was without reasonable cause and that as the employer was not willing to take back the employer into his service, the latter was entitled to Rs. 200 as compensation. The Magistrate, acting u/s 15 of the Act, has ordered the recovery of the amount from the petitioner.

(6) Since the main question requiring determination in this petition is dependant upon the scope of the Act and the powers of the Magistrate u/s 15 of the Act, it is necessary to examine the relevant provisions of the same. Dealing with the scope of the Act first, we proceed to consider Section 1(4) of the Act and it reads as follows:

"1(4). It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (other than in factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration."

This sub-section makes it clear that the scope of the Act is limited in its application. It applies to the payment of wages to persons employed in any factory or upon any railway by a railway administration; the employment by the railway administration may be either directly or through a sub-contractor working in fulfillment of a contract with such administration. A dry cleaner's shop will not come under the definition of the word "factory" as defined under the Factories Act. Sub-section (5) empowers the State Government to apply the Act by notification to payment of wages to any class of persons employed in any industrial establishment or groups of industrial establishments. The expression "industrial establishment" has been defined in S. 2(ii) and it does not obviously cover a washerman's shop. In this view, the Magistrate had no jurisdiction to deal with the case under the provisions of the Act.

(7) The main reason adopted by the Magistrate for acting under S. 15 is that the claim in question amounts to "delayed wages" and that he could therefore, order recovery. Assuming for the sake of argument that the Magistrate had jurisdiction to entertain the petition, yet the view taken by him is clearly incorrect. The expression "wages" has been defined in section 2(vi) as follows:

""Wages" means all remuneration (whether by way of salary, allowances 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 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 to 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 person 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)".

Primarily the term "wages" means all remuneration payable to a person employed in respect of the employment if he fulfills the terms of his employment. The terms of employment may be either express or implied. Clause (a) refers to remuneration payable under any award or order of a Court, Clause (b) and (c) include remuneration to which the employee is entitled either for overtime work, holidays, leave or bonus. Clause (d) refers to any sum which by reason of the termination of the employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum. In other

words, this clause is applicable only to those cases where either the law or the terms of the contract or agreement expressly provide for the payment of a definite sum on the termination of the employment. It does not include cases where a person is dismissed from the service and the employer is called upon to compensate him for wrongful dismissal. This view finds support from the decision of the Nagpur High Court is AIR 1945 244 (Nagpur) in which it has been laid down that the claim for compensation for wrongful dismissal does not fall within the definition of "wages" given in Section 2(vi), that under S. 15(3) the authority is empowered to award compensation, but that that will not include compensation for wrongful dismissal. The Lahore High Court has taken the view in Kishen chand v. Divisional Supdt., Lahore AIR 1948 Lah 202 that S. 15(3) of the Act does not empower the authority to decide cases of unjustifiable reversion.

(8) Lastly we come to S. 15 of the Act. It reads thus:

"15. Claims arising 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 any Commissioner for workmen's compensation or other officer with experience of 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 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);

Provided that every such application shall be presented within six months from the date on which the deduction from the wages was made or from the date 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 had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under S. 3 or give them an opportunity of being heard, and, after such further inquiry (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 think fit, one 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 an emergence, or the executed 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 person to apply for or accept payment.

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered--

(a) If the authority is a Magistrate, by a authority, as if it were a find imposed by him as Magistrate, and

(b) If the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a find imposed by such Magistrate.

(9) The one striking feature of the scheme envisaged by this section is to confine the exercise of the power conferred by sub-section (2), assuming that there is a requisite authorisation under sub-section (1), to cases of deductions from wages or delay in the payment of wages contrary to the provisions of the Act as expressly stated by sub-section (2). Sub-section (3) merely enjoins upon the authority empowered under sub-section (1) to make an injury after giving an opportunity of being heard to the employer. The proviso to sub-section (3) imposes restriction on the power of giving deduction for recovery; but it is not necessary in the present case to deal with the same. It is significant to note from sub-section (5) that the power of the Magistrate to direct the recovery of the amount determined under sub-section (3) as it is were a fine is confined only to any authority directed to be paid under this section.

(10) It would be thus manifest that before a Magistrate directs under sub-section (5) to recover any amount as if it were a find imposed by him, the section contemplates satisfaction of the three following requirements.

1. The Magistrate must be duly authorised by a notification in the official Gazette to hear and decide for any specified area all claims arising out of deduction in wages or delay in payment of wages;

2. the deduction from wages or delay in the payment of wages must be contrary to the provisions of the paid under S. 15

3. the amount ordered to be recovered must be one which has been determined and directed to be paid under S. 15.

(11) In the present case, we assume that the Magistrate has been duly notified under sub-section (1). Yet from the facts stated above, it would be clear that the amount of Rs. 200 ordered to be recovered is not the amount determined under this section and hence the Magistrate's order is clearly unsustainable.

(12) For the reasons aforesaid we have no doubts in holding that the order passed by the Magistrate is without jurisdiction. We accordingly set it aside and dismiss the respondent's petition. In the circumstances of this case we make no order as to costs.

(13) Order accordingly.