
(1958) 04 OHC CK 0008
In the Orissa High Court
Case No : Civil Revision No. 146 of 1957

Labangalata Dei

APPELLANT

Vs

Sk. Azizullah

RESPONDENT

Date of Decision : 08-04-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Payment of Wages Act, 1936 — Section 1(5), 15, 17, 4(2)

Citation : AIR 1958 Ori 123 : (1958) 24 CLT 272 : (1958) 2 LLJ 623

Hon'ble Judges : S. Barman, J

Bench : Single Bench

Advocate : S. Patnaik, for the Appellant; B.B. Rath, for the Respondent

Final Decision : Dismissed

Judgement

S. Barman, J.—This revision is directed against an order of Commissioner, Payment of Wages, Balasore (Additional District Magistrate, Balasore) in Payment of Wages Act Case No. 1 of 1956 making an order that the petitioner (hereinafter referred to as the employer) should pay Rs. 165/- to the opposite party (hereinafter referred to as the employee). The said order was passed on an application made by the employee-opposite party u/s 15(2) of the Payment of Wages Act (Act IV) of 1936 (hereinafter referred to as the Act).

2. The said employee, being the petitioner before the Commissioner, the opposite party herein, was a bus conductor in a private stage carriage belonging to the employer, being petitioner herein. The said employee made an application to the Commissioner for a total sum of Rs. 275/- being his pay from February to May, 1956 at the rate of Rs. 55/- per month (Rs. 220/-) and one month's notice pay Rs. 55/-, aggregating the said sum of Rs. 275/-. The Commissioner made an order in favour of the said employee for payment to him by the employer of a sum of Rs. 165/- within fifteen days from the date of the order. It is against this order of the Commissioner that the present revision petition has been made by the said employer u/s 115 of the Civil Procedure Code.

3. It was contended on behalf of the employee-opposite party, by way of preliminary objection, that this application was not maintainable as this Court has no jurisdiction to entertain this revision. The proceedings originated with the claim made by the employee u/s 15 of the Act before the Commissioner appointed by the Provincial Government under the Act. The learned Counsel for the employee cited before me several cases in support of his proposition that the Additional District Magistrate as Commissioner was not a Court subject to the superintendence of the High Court within the meaning of Section 115 of the CPC (Turabali v. V. Sorabji AIR 1944 Nag-288 (A); B. Triloki Nath Vs. Lord Krishna Sugar Mills Ltd., ; Sawatram Ramprasad Mills Co. Ltd. v. Vishnu Pandurang AIR 1950 Nag 14 (C). In these cases it was held that a Commissioner appointed under the provisions of the Act is not a Court subordinate to the High Court within the meaning of Section 115 C. P. C. Hence, a revision application does not lie to the High Court from an order passed by the Commissioner. His remedy was by way of an appeal u/s 17 of the Act. But in the present case the total sum directed to be paid by way of wages and compensation being Rs. 165/-, no appeal lay to the District Court by reason of the provision of Section 17(1)(a) of the Act which provided that the appeal by an employer or other person responsible for payment of wages lay if the total sum directed to be paid by way of wages and compensation exceeded Rs. 300/-. It was argued on behalf of the employer that he had no other remedy except by way of an application u/s 115 C. P. C. The question whether or not he had any other remedy is another matter. But this Court, sitting in revision, cannot interfere with the decision of the Commissioner which is not a Court subject to superintendence of this Court as has been decided by the different High Courts, as aforesaid. The learned Counsel for the employer cited before me a decision of the Lahore High Court in Works Manager, Carriage and Wagon Shops v. K.G. Hashmat AIR 1946 Lah 316 (FB) (D). It appears that the Lahore case was dissented from, in AIR 1950 Nag 14 (C). I prefer the reasoning given in the Nagpur and Allahabad decisions cited above. A Patna decision in Mt. Dirji Vs. Smt. Goalin, was also cited in this context. But in that case the question whether the Commissioner is a Court subordinate to the High Court in the sense in which the expression is used in Section 115 C. P. C. was Act argued before the Patna High Court and their Lordships did not decide that point. I, therefore, hold that this application for revision u/s 115 C. P. C. is not maintainable.

4. Apart from the question of maintainability, I now proceed to deal with the merits-of the application. It was contended on behalf of the employer, being the petitioner herein, that the employee having been an employee on a monthly salary basis, was not entitled to the benefit of the said Act. The employer relied on the finding of the Commissioner in the older under revision that the employee was a monthly salaried servant. The employer also contended that the Act was not extended to the bus transport business u/s 1(5) of the Act. It appears, however, that by an order dated February 4, 1948, being Commerce & Labour Department Notification No. 524-Com, the Government of Orissa extended the

provisions of the said Act to the payment of wages to all classes of persons employed in motor vehicles plying under stage carriage permits and public carrier permits in the Province of Orissa (see Orissa Gazette dated February 6, 1948, Part III, p. 68). This clearly shows that the Act is applicable to the parties in this case. With regard to the amount of salary, the finding of the Commissioner was that it was Rs. 55/- per month. u/s 4(2) of the Act, no wage period was to exceed one month. In the present case, the wages were payable on a monthly basis and, therefore, did not exceed one month as provided under the Act:

The learned Counsel for the employer cited before me a Madras case *In re K.V.V. Sarma* AIR 1953 Mad 269 (F). This was an appeal against the conviction of the accused-appellant for having contravened the provisions of the Factory Act and it incidentally dealt with the definition of "wages" within the meaning of the Payment of Wages Act. In the judgment there is an observation to the effect that the Act, was not intended to apply to any kind of salaries payable monthly. I cannot accept the correctness of these observations having regard to Section 4(2) of the Act.

In any event, on the facts and in the circumstances of the present case when the wage period, in fact, did not exceed one month, the observations in the Madras case have no application.

5. I, therefore, hold that the employee was entitled to the benefit of the Act. The Commissioner carefully considered the evidence placed before him and came to a correct finding. I find no reason to interfere with his finding in favour of the employee.

6. This revision is, therefore, dismissed with costs. Hearing fee Rs. 32/-.