(1994) 09 RAJ CK 0023

In the Rajasthan High Court

Case No : C.W.P. No. 2540 of 1983

Laxmi Industrial Corporation APPELLANT

Vs

K.K. Tewari and Another RESPONDENT

Date of Decision : 08-09-1994

Acts Referred:

Payment of Wages Act, 1936 — Section 15(2), 17

Citation : (1995) 70 FLR 707 : (1995) 2 LLJ 276 : (1995) 1 RLW 431 : (1995) 1 WLC 651

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : R.K. Kala, for the Appellant; V.L. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Arun Madan, J.—The petitioner, which is a corporate industrial establishment and engaged in the manufacturing of edible oil by oil seeds, had availed of the services of respondent No. 2 and 29 others as workmen in the factory. It is contended in the writ petition that on October 20, 1983, some of the employees entered in the office of the petitioner establishment and indulged in rowdy behaviour against the management. Under the circumstances, on November 5, 1983, the management had by a notice in writing served all the employees to return their attendance cards to the factory guard for preparing salary sheet for the month of October, 1983. It has been further stated on behalf of the petitioner that in spite of the notice, the employees did not return their attendance cards and in the meanwhile they chose to file a petition u/s 15(2) of the Payment of Wages Act, 1936 (hereinafter referred to as "the Act"), for recovery of wages.

2. In the meanwhile, the management of the petitioner-firm declared a lock-out in the establishment with effect from October 31, 1983.

3. On November 8, 1983, respondent No. I (Authority under the Act) issued notice to the petitioner fixing the date of attendance before the Authority on

November 11, 1983, which was duly served upon the petitioner on November 12, 1983. It is contended by learned counsel for the petitioner that it was not possible for the petitioner under the circumstances to have attended the proceedings held before the Authority on November 11, 1983.

4. Thereafter, respondent No. l again issued a notice on November 11, 1983, fixing the date of hearing on November 14, 1983.

5. On November 14, 1983, when the matter was taken up by the Authority (respondent No. l), one Narain Singh, who was the General Secretary of the Workers'' Union and as such safeguarding the interest of the workmen, was present before the Authority. None was present on behalf of the management, in spite of the fact that the matter was called thrice and hence, under the circumstances, there was no option left with the Authority (respondent No. 1) but to proceed ex parte against the management.

6. On November 16, 1983, an application for setting aside, the exparte order dated November 14, 1983, was moved by the petitioner management with the office of the respondent Authority and the said application was taken up for hearing by the Authority on November 18, 1983, when both the parties were duly represented and heard by the Authority. A perusal of the order dated November 18, 1983, reveals that both the parties were given further opportunity of hearing and it is only then the final order rejecting petitioner''s application for setting aside ex pane order was passed.

7. I have heard learned counsel for the parties and also perused the relevant documents on record. It is the settled legal proposition that whenever an application is moved for setting aside the ex pane order by a party in person or through its counsel, a sufficient cause has to be explained for setting aside the ex parte order. It is further necessary that the said application should be supported by an affidavit of the affected party in respect of the averments contained in the said application. This fact has been mentioned in the order dated November 18, 1983, passed by the Authority (respondent No. 1). Hence in the absence of the affidavit, the said application could not be taken on record and, therefore, the said observation was necessarily to be recorded in the order sheet. It has been contended by Shri V.L. Mathur, learned counsel for the respondents, that as a mater of fact the petitioner wanted to transfer the undertaking because outstanding wages were due to the workmen and it is due to this reason that lockout was declared by the management in the mill on October 31, 1983, without any justifiable reason and without observing the procedure for declaring lock-out. It has been further contended in para 10 of the reply that as a matter of fact all the 30 employees attended the office of the Authority on all the dates of hearing, i.e., November 14, 15, 16 and 18, 1983, along with their duly authorised representative and their affidavits were presented before the Authority on November 16, 1983, and after hearing the arguments of the parties'' counsel, the impugned order was passed on November 18, 1983.

8. The above facts are fortified from the order sheet, dated November 16, 1983, of proceedings conducted before respondent No. 1. As a matter of fact, a perusal of the order sheet clearly reveals that the order was pronounced on November 18, 1983, itself and a representative of the petitioner had initialled the same in token of his presence on the said day.

9. In any event, if the petitioner was aggrieved by the impugned order of the Authority, he should have filed an appeal u/s 17 of the Act, which he did not file for reasons best known to the petitioner. A reference may be made in this context to the provisions of Section 17 of the Act which stipulates:

"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 Subsection (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 causes 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 of 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 Sub-section (4) of Section 15.

(1-A) 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 Subsection (3) or 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, and if so directed by the Court referred to in Sub-section (1) shall, pending the decision of the appeal, withhold payment of any sum in deposit with it.

(4) The 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."

10. It is clear from the above that the petitioner, having forgone its remedy of appeal to the District Judge available under the Act, did not choose to file the same and instead filed the present writ petition in this Court on December 15, 1983.

11. From the Statement of Objects and Reasons to the Amending Act 38 of 1982, it is apparent that the very purpose of enactment was to regulate the payment of wages to certain classes of persons employed in an industry. The Act was enacted with a view to ensure that the wages payable to the employees covered by the Act are disbursed to the employees within the prescribed limit and that no deductions other than those authorised by law, were made by the employers. Any intention to the contrary would be defeating the provisions of the enactment which is a social legislation and its very object being to safeguard the interest of the employees as against unscrupulous employers. The very object of the Legislature was to amend the Act with a view to extend its protection to a large number of persons and making the provisions of the Act more effective and beneficial.

12. After hearing learned counsel for the parties and examining the documents on the record, I am of the considered opinion that the petitioner has deliberately chosen to circumvent the provisions of law by filing the present writ petition which is not maintainable on the merits before this Court, inasmuch as, instead of availing of the remedy of appeal to the District Judge u/s 17 of the Act, the petitioner has filed the present writ petition under Article 226/227 of the Constitution of India. A perusal of the order sheet, dated November 18, 1983, certified copy of which has been placed on record, reveals that the Authority (respondent No. 1) had directed the petitioner management to disburse a sum of Rs. 13,243 + 750 + 200 = Rs. 14, 193 to 30 employees of the management to whom the arrears of salary were due for the month of October, 1983. The said amount was to be paid as per the respective entitlement of the said employees.

13. Since the aforesaid amount has been outstanding to the employees as against the petitioner-management with effect from October, 1983, I direct that the aforesaid amount be released in favour of the employees with interest at the rate of 12 per cent, per annum with effect from the due date till the date of actual payment and the said amount be paid within a period of eight weeks from today under due intimation to this Court.

14. With these observations, the writ petition is dismissed with no order as to costs.