
(2008) 09 SHI CK 0017
In the High Court Of Himachal Pradesh

Leela Thakur

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

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

Citation : (2009) 120 FLR 1032 : (2009) 3 LLJ 410 : (2009) 1 ShimLC 91

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—The brief facts necessary for the adjudication of this petition are that the Labour Inspector under the Payment of Wages Act, 1936, Labour Circle, Solan, Himachal Pradesh filed an application u/s 15(2) of the Payment of Wages Act, 1936 in the Court of Commissioner under the Payment of Wages Act on 20.4.1993. The Commissioner vide order dated 8.10.1996 directed the petitioner to pay a sum of Rs. 45,357/- and Rs. 525/- as costs. The respondent No. 2 moved an application for the recovery of delayed wages from the petitioner in case No. 1/13-A-93. The Commissioner vide letter dated 19th January, 1998 referred the matter to the Judicial Magistrate 1st Class, Arki u/s 15(5)(b) of the Payment of Wages Act, 1936. The Additional Chief Judicial Magistrate, Arki, District Solan vide order dated 5.10.2001 after disposing of the objections filed by the petitioner under Order 21 Rule 58 of the CPC issued warrant of sale for attaching the property of the petitioner. Thereafter the Additional Chief Judicial Magistrate passed the order on 29.11.2001 whereby he issued fresh sale warrants on old Process Fees.

2. The petitioner has assailed the orders dated 5.10.2001 read with order dated 29.11.2001. The primary submission of Mr. Sanjeev Bhushan is that the orders passed by the Additional Chief Judicial Magistrate, Arki, District Solan are without jurisdiction. In other words, his submission is that since the Commissioner was himself discharging the duties of Magistrate, he alone was competent to pass the orders u/s 15(5)(a) and he could not have referred the matter to the Additional

Chief Judicial Magistrate, Arki.

3. Mr. Rajiv Rai appearing vice Counsel for respondent No. 2 has supported the order dated 5.10.2001 read in conjunction with order dated 29.11.2001.

4. I have heard the learned Counsel for the parties and perused the record carefully.

5. It is not disputed by the parties that the application was filed by the Inspector before the Commissioner u/s 15(2) of the Payment of Wages Act, 1936 (hereinafter referred to as the Act for convenience sake). He has passed the order as noticed above on 8.10.1996. The dues were not paid to the workmen. The workmen approached the Commissioner for recovery of delayed wages from the petitioner. The Commissioner vide letter dated 19th January, 1998 referred the matter to the Judicial Magistrate 1st Class, Arki. It is how the matter was adjudicated upon by the Additional Chief Judicial Magistrate, Arki on 5.10.2001 and 29.11.2001. The procedure for appointing the "authority" has been provided under Sub-section (1) of Section 15 of the Act. The State has appointed all the Sub Divisional Magistrates-cum-Sub Divisional Officers (Civil) as authority within the ambit of Section 15 of the Act. In the present case the order has been passed by the Commissioner being an authority u/s 15 of the Act. It is evident from the plain reading of Section 15 of the Act that the appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or any Officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience or 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 other Officer with experience as a Judge of a Civil Court or a Judicial Magistrate as an authority.

6. In the present case, the State had appointed all the Sub Divisional Magistrates-cum-Sub Divisional Officers (Civil) as "authority" under the Act. It is evident that they have been appointed as an authority being Commissioner for workmen compensation as per Sub-section (a) of subsection (1) of Section 15 of the Act. It is in this back-drop that the present lis is to be adjudicated upon. It will be apt at this stage to refer to Sub-section (5) of Section 15 of the Act, which reads thus:

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

(a) if the authority is a Magistrate, by the authority as if it were a fine 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 fine imposed by such Magistrate.

7. It is clear from the bare reading of Sub-section (a) of Sub-section (5) of Section 15 of the Act that if the authority is a Magistrate, amount directed to be

paid may be recovered as if it was fine imposed by him as a Magistrate. It is evident from the language employed in Sub-section (b) of Sub-section (5) of Section 15 of the Act that if the authority is not a Magistrate, the orders are required to be passed by any Magistrate to whom the authority makes the application in this behalf as if the fine has been imposed by such Magistrate. What emerges from the combined reading of Sub-sections (a) and (b) of Sub-section (5) of Section 15 of the Act is that if the order is passed by a person competent under Sub-section (e) of Sub-section (1) of Section 15, i.e. a Judicial Magistrate, then the application for recovery would lie before the Magistrate himself. However, if the authority is not a Magistrate, appointed under Sub-section (e) of Sub-section (1) of Section 15 of the Act, i.e. the Judicial Magistrate, the matter is to be referred by the authority to the Judicial Magistrate by way of application. Mr. Sanjeev Bhushan has argued that the Sub Divisional Magistrate-cum-Sub Divisional Officer (Civil) himself was a Magistrate and he was not required to refer the matter to Additional Chief Judicial Magistrate, Arki. This submission cannot be accepted if Sub-section (1) of Section 15 of the Act is harmonized with Sub-section (5) of the Act. The Commissioner has passed the order on 8.10.1996 not as a Judicial Magistrate. If the order had been passed by the Judicial Magistrate appointed under Sub-section (e) of Sub-section (1) of Section 15 of the Act, he was not required to refer the matter to the Additional Chief Judicial Magistrate. The Commissioner has correctly referred the matter to the Additional Chief Judicial Magistrate vide communication dated 19th January, 1998. The orders passed by the Additional Chief Judicial Magistrate on 5.10.2001 and 29.11.2001 do not suffer from any jurisdictional error or any procedural irregularity. The orders passed by the Additional Chief Judicial Magistrate are upheld.

8. The other issue involved in this petition is whether the workman on behalf of whom the application was filed by the Inspector before the Commissioner, under the Payment of Wages Act has received the payment after the release of money by this Court on 5.6.2003 or not. The Court had directed the petitioner to deposit a sum of Rs. 30,000/- vide order dated 8th January, 2002. This amount was deposited in the Registry of this Court. The respondent No. 2 moved an application CMP No. 863 of 2003 for the release of the amount deposited by the petitioner in the Registry of this Court. The order dated 5.6.2003 passed in CM.P. read thus:

For the reasons stated, the application is allowed. It is directed that an amount of Rs. 30,000/- deposited in this Court shall be released in favour of respondent No. 2 Badri Ram on his furnishing undertaking before the Registrar General that if ultimately the applicant loses in the matter, he shall refund the aforesaid amount to the petitioner with interest at the rate of 6% per annum.

9. In sequel to order dated 5.6.2003, he filed an undertaking before the Registrar General in the shape of security bond. He had annexed the revenue record with the security bond. The Registrar General had recorded his statement

on 10.7.2003 which reads thus:

Security bond Exhibit C-A has been executed by me. Through this bond, I have kept my property, described in the schedule, as security for the payment of any amount which I may be directed to re-fund in case I loose in the matter. I hereby undertake that in case, I loose in the matter, I shall refund an amount of Rs. 30,000/-, which amount has been ordered to be released in my favour, vide Hon"ble Court's order dated 5.6.2003, with interest at the rate of 6% per annum.

R.O. & A.C. Sd/- Sd/- (Badri Ram) (Surjit Singh)³ 10.07.03 Registrar General.
10.7.2003

10. This Court on 27th October, 2005 passed the following order:

Learned Counsel for respondents No. 2 and 4 state that reply filed on behalf of respondent No. 1 may also be treated as reply on behalf of respondents No. 2 and 4. Statements in this regard recorded.

Mr. Sood, learned Counsel for the petitioner prays for four weeks time to file rejoinder. Allowed.

On the next date of hearing, learned Counsel for respondent No. 2 shall place on record the receipt vide which he has made the payment to the individual workman.

11. The respondent No. 2 did not place on record the receipt(s) vide which he might have made the payment to the individual workman. The Court issued the order on 8th May, 2008 whereby the respondent No. 2 was directed to file supplementary affidavit to ensure whether a sum of Rs. 30,000/- released by the Court had been disbursed to the workman or not with receipts obtained by him from the workman. Despite numerous opportunities, the respondent No. 2 neither filed the affidavit nor any receipts were filed. It was with great difficulty that the presence of respondent No. 2 was secured by this Court.

12. A sum of Rs. 30,000/- was directed to be released in favour of respondent No. 2 on 5.6.2003. He was required to file receipts and supplementary affidavit which he failed to do so. The Court in these circumstances is bound to draw an adverse inference against respondent No. 2 u/s 114 of the Evidence Act. The Court is of the firm opinion that the sum of Rs. 30,000/- which was got released by respondent No. 2 had not been disbursed to the workman. The Commissioner has passed the order in favour of the workman on 8.10.1996. The petitioner did not pay this amount to the workman which led to the filing of proceedings for recovery. The proceedings were initiated by the Additional Chief Judicial Magistrate, who passed the orders on 5.10.2001 and 29.11.2001. The entire exercise had been taken by the statutory authority including the Additional Chief Judicial Magistrate to ensure that the money is disbursed to the workman in whose favour the order has been passed. It is the duty of the Court to ensure that the money which was released in favour of respondent No. 2 vide order 6.5.2002 is received by the workmen. The respondent No. 2 has got the money

released, but since he has failed to file any supplementary affidavit or place on record the receipts, it is a fit case where he is required to deposit the money in the Registry of this Court with interest at the rate of 6% per annum.

13. Accordingly, the writ petition is disposed of in view of the observations made hereinabove.

14. However, the respondent No. 2 is directed to deposit a sum of Rs. 30,000/- in the Registry of this Court with interest at the rate of 6% per annum within a period of four weeks from today. If the respondent No. 2 fails to deposit this amount as directed within four weeks, in that eventuality, the District Magistrate, Solan is directed to recover a sum of Rs. 30,000/- from respondent No. 2 as per security bond as arrears of land revenue from him and to deposit this amount in the Registry of this Court for its further disbursal to the workmen through the agency of Labour Commissioner. No costs.