

(1959) 08 PAT CK 0008

In the Patna High Court

Case No : Civil Revision No"s. 478 and 530 of 1956

Manager, Searchlight Press

APPELLANT

Vs

Factories Inspector

RESPONDENT

Date of Decision : 05-08-1959

Acts Referred:

Payment of Wages Act, 1936 — Section 1(6), 15, 15(3), 15(5), 2

Citation : AIR 1960 Patna 33 : (1960) 1 LLJ 219

Hon'ble Judges : V. Ramaswami, C.J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : Sailesh Ch. Sinha, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiya Singh, J.—Both these cases raise the common question of whether the Payment of Wages Act, 1936, applies to the working journalists employed in the Searchlight Press, Patna, and will be disposed of in one judgment.

2. In Civil Revision 530 of 1956 the facts are these : The Inspector of Factories visited the Searchlight Press on 16-7-1955, and on 23-7-1955, he reported to the District Magistrate, Patna, to the effect that the payment of wages amounting to Rs. 10,903/- for the month of June 1955 had not been paid and recommended action u/s 15(2) of the Payment of Wages Act, 1936. It appears that the unpaid wages were in fact paid on 2-8-1955, that is, after the report of the Inspector of Factories.

The petitioner showed cause and urged that the delay in payment of the wages was not due to any negligence on his part but to non-realisation of heavy bills from the different Government departments. The District Magistrate was of the opinion that there was no sufficient cause for delay in payment of the wages, and, therefore, this case was outside the purview of the proviso to Sub-section (3) of Section 15 of the Act, Accordingly, on 14-5-1956, he allowed to the

workers compensation of rupee one per Lead on account of the delayed wages. It is the correctness of this order which is challenged in this case.

3. The facts in the other case (Civil Revision 478 of 1956) were almost similar. The Inspector of Factories reported to the District Magistrate that over-time wages to the several workers as mentioned in the four reports were not paid for the months of April to July, 1956. These payments were made by the Press after the report of the Inspector of Factories. The petitioner appeared and showed cause for delay -in payments. The District Magistrate was satisfied that the reasons assigned for the. delay were not .satisfactory. Accordingly, he allowed compensation of Rs. 100 to the employees mentioned in the list forwarded by the Inspector for the months of April, May, June and July, 1955. He further directed that the payment be made by 5-5-1956, and compliance reported on 8-5-1956.

4. It will be seen in both the cases that payment had been delayed and the District Magistrate, after having considered the cause shown by the petitioner, granted the workers compensation, as provided in Section 15 of the Act.

5. In support of these applications, Mr. S. C. Sinha raised three contentions. The first contention is that the persons employed in the Searchlight Press arc working journalists and that they are governed by the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, and that the Payment of Wages Act, 1936, has no application. An examination of the provisions and the scheme of both the Acts makes it perfectly plain that the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, does not exclude, either expressly or by necessary implication, the application of Payment of Wages Act, 1936, to the working journalists. The objects of these Acts though overlapping in certain respects are entirely different. As will appear from the preamble, the main object of the Payment of Wages. Act, 1936, is to regulate the, payment of wages to certain classes of persons employed in industry.

It ensures regular payment of wages and affords protection against unwarranted deductions from wages or delay in payment of wages. On the other, hand, the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, regulates certain conditions of service of working journalists and other persons employed in newspaper establishments. There is a provision in this Act for recovery of money due from an employer, but there is no provision similar to the one contained in Section 15 of the Payment of Wages Act, 1936. This Act does not provide for all classes of persons employed in an industry.

It seeks to give relief only to small wage-earners. As will appear from the Sub-section (6) of Section 1 of the said Act, it has no application to wages payable in respect of a wage-period which, over such wage-period, average two hundred rupees a month or more. Thus, persons drawing wages less than two hundred rupees a month are only covered by this Act, whereas the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, applies to all journalists irrespective of the pay or wages they get. I do not find any conflict

between these two Acts and, therefore, overrule this contention.

6. Mr. Sinha next contended that the delayed wages were paid soon after the report of the Inspector of Factories and before the order of compensation passed by the District Magistrate and therefore order of the District Magistrate was wholly without jurisdiction. His submission is that where the delayed wages had been paid after the Inspector made an application u/s 15, the District Magistrate could not order compensation to be paid by the employer. He urged that Section 15 comes into operation only when the wages and compensation are paid simultaneously. In support of his contention he referred to the decision of Desai T. in Chief Inspector of Factories Vs. V.K. Modi, . In this case the learned Judge expressed the . view that the language of Section 15 of the Payment of Wages Act made it clear that when wages had already been paid even though after due date, a subsequent order of payment of compensation alone is beyond the jurisdiction of the Magistrate.

In his opinion, if compensation can be ordered to be paid, it can be ordered to be paid only along with the wages. Logically it follows from his process of reasoning that if no wages are to be paid no compensation also can be ordered to be paid. With great respect to the learned Judge, I find it impossible to agree with the conclusion at which he arrived. In my considered judgment, the plain language of Section 15 of the said Act does not warrant the view that compensation cannot be allowed, unless both compensation and wages are to be paid together. Sub-section (3) of Section 15 (omitting the proviso) which is relevant for the present enquiry, is in the following terms :

"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 u/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 persons of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter".

In my opinion, the expression "together with" in this section does not mean simultaneously with. Truly, the foundation of compensation is delay in. payment of or deduction from wages. Where, however, there is no delay and no deduction from wages the provisions of Section 15 are not attracted. Cases may occur where deductions have been made from the wages of an employed person contrary to the provisions of the Payment of Wages Act, 1936, or where any payment of wages has been delayed. When this occurs, an application to the appointed authority may be made under Sub-section (2) of Section 15 of the said Act for a direction under Sub-section (3),

Now, Sub-section (3) provides that when such an application has been

entertained, the authority shall hear the applicant and the employer or any other person responsible for the payment of wages u/s 3 or give them an opportunity of being heard and after such further enquiry if any, as may be necessary, direct the refund to the employed person of the amount deducted or the payment of the delayed wages together with the payment of prescribed compensation. It is conceivable that soon after action is taken under Sub-section (3) of Section 15 the employer refunds to the employed person the amount deducted or pays to him the arrear wages. The question is, can in such cases compensation be awarded as provided in Sub-section (3)? In my opinion, the answer is emphatically in the affirmative.

The moment action is taken as provided in sub-section (3), compensation is payable unless the employer shows sufficient cause against the imposition of the compensation. If the contention of Mr. Sinha were to prevail, then the provisions of Sub-section (3) will be easily made nugatory, inasmuch as in all cases of default the employer will take precaution to make the necessary payments before the Magistrate passes order regarding compensation. When once the default has occurred and action has been taken in accordance with the provisions of the said Act, I do not see why the payment of compensation cannot be allowed, if in the meantime the deductions from the wages have been made good or delayed wages have been paid.

It is the delay or the unauthorised deduction which subjects the employer to penalty, provided in Sub-section (3), and subsequent payment, in my opinion, is not sufficient to exonerate the employer from payment of compensation in absence of any satisfactory explanation. If it were not so, the construction sought to be imposed upon Section 15 by Mr. Sinha will lead to startling results, and the protection granted to small wage-earners will be rendered meaningless. Therefore, I think, the payment of the delayed wages in this case in accordance with Section 15 of the Act does not oust the jurisdiction of the Magistrate to impose compensation., and, the order is not illegal. This contention also cannot but be rejected,

7. Lastly, Mr. Sinha contended that the underlying idea in the Payment of Wages Act is that the term "wages" should be understood as compensation paid for work done for a period less than a month. It may be either daily or weekly, but where the payment is to be made monthly, one finds it difficult to apply the provisions of the Payment of Wages Act to such state of circumstances. In support of his contention he referred to the Bench decision of the Madras High Court in *In Re: K.V.V. Sarma, Manager, Gemini Studios, Madras*, . This case was considered later by the same High Court in *Managing Director, J. S. T. Co Ltd. v. R. Perumal Naidu* AIR 1955 Mad 25, and the observation of Menon, J. in the former case was held obiter and not valid.

In the latter case it has been laid down that the remuneration payable to a workman which is wages, as defined by Section 2(vi) of the Payment of Wages Act does not cease to be wages so defined merely because the wage-period, on

the basis of which remuneration is calculated, is a month. I think, the latter decision of the Madras High Court lays down the correct position in law. There is nothing in the Payment of Wages Act to show that it has no application where the wage-period exceeds a month. Sub-section (6) of Section 1 of the said Act provides that nothing in this Act shall apply to wages payable in respect of a wage-period which, over such wage-period, average two hundred rupees a month or more.

This obviously shows that the wages may be calculated even monthly, and in fact whether or not this Act applies one has to determine whether or not the wage exceeds on an average two hundred rupees a month. Further, Sub-section (2) of Section 4 provides that no wage-period shall exceed one month. In other words, it means that the wage-period may extend to one month, and there is no warrant for saying that the wage-period must be less than a month. Therefore, with great respect, I differ from the view taken by the Madras High Court in *In Re: K.V.V. Sarma, Manager, Gemini Studios, Madras*, . In my opinion, this Act applies even to cases where wages are paid monthly. This contention, therefore, has no merit and must be overruled.

8. In the result, both these applications are dismissed. In the circumstances of the case, I will make no order for costs.

Ramaswami, C.J.

I agree.