

(2012) 07 JH CK 0141

In the Jharkhand High Court

Case No : Writ Petition (C) . No. 1103 of 2003

Md. Quddus Ansari

APPELLANT

Vs

The State of Jharkhand and others

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Industrial Disputes Act, 1947 — Section 25FF
Payment of Wages Act, 1936 — Section 15, 15(2), 20

Citation : (2013) 136 FLR 934

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Chandra Shekhar Prasad, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh

1. Heard counsel for the petitioner. However, learned counsel for the respondent no.3 is not present. It appears that even on the last date also no one was present on behalf of respondent no. 3 and the matter was adjourned giving one indulgence to the respondent no. 3. This writ petition has been preferred for quashing the order dated 20.12.2002, Annexure-4 passed by Presiding Officer, Labour Court, Deoghar in Payment of Wages Case No. 01 of 1999 whereby the petitioner has been directed to pay a sum of Rs. 1,32,000 to the opposite party no. 3 within a period of 3 months.

2. The brief fact as per the submission of the counsel for the petitioner is that petitioner purchased the property by registered sale deed dated 5.2.1988 and respondent no. 3 claimed that he was appointed as caretaker cum "Durban" for the monthly salary of Rs. 1000/-. The instant proceeding under the Payment of Wages Act, 1936 was instituted by the respondent no. 3 being Payment of Wages Act Case No. 01 of 1999 seeking payment of wages from 1988 to 1998 along with penalty as prescribed u/s 20 of the said Act. The land lord / petitioner,

herein refused to make the said payment despite respondent no.3 being discharging the duty of care taker. The land lord-opposite party, petitioner herein, appeared and submitted his written statement stating therein that the applicant- respondent no. 3 was only authorized to take care of the property without any salary or remuneration, hence cause of action for the respondent no. 3 does not arise at all. Further the claim is barred by law of limitation under the provision of section 15(2) of the Act, since the claim for payment of wages should be made within specified time and if it is beyond the period of 2 months then the applicant should have sufficient reason for not making application within time by showing sufficient cause. Petitioner also submitted before the respondent no. 2 that two persons who were engaged by him have appeared and deposed that they were actually taking care of the house and that the respondent no. 3 was never engaged for any wages or remuneration for the aforesaid purpose. It is further submitted that the respondent no. 3 himself was "sarpanch" of the area and had telephone connection in his name, which is supported by Annexure-3 to the writ petition. He is well off person and there is no question of having engaged him as a care taker or workmen and giving wages to him. Learned Presiding Officer, Labour Court, thereafter, framed six issues including whether there was any relationship of employer and employee between the parties. It is submitted by the learned counsel for the petitioner that in spite of clear denial of relationship of employer and employee and there being no such document to support such contention, as it appears from the letter dated 5.2.1989 itself, Annexure-1 to the writ petition, however the Labour Court proceeded to award the wages under the Payment of Wages Act, 1936 along with penalty of 10 times the wages which is also excessive and arbitrary.

3. Learned counsel for the petitioner by taking this court to the determination of issue no. 5 has stated that the learned court below itself has, while deciding the issue of relationship of employer and employee categorically stated that the opposite party has denied the appointment of applicant as caretaker and hence, the question of payment does not arise, but the learned court below proceeded to direct the opposite party no. 3 i.e. the petitioner to make payment of salary @ 1000/- per month for the last 12 months along with 10 times the said amount as Penalty.

4. Learned counsel for the petitioner has relied upon the judgment of the Allahabad High Court in the case of D.C.M Ltd Vrs. Prescribed Authorities (Payment of Wages Act) Meerut and Others reported in LLJ 1997(1) 56 and submitted his contention that when the very question relating to the relationship of employer and employee involves determination of complex questions of facts on the basis of evidence, the authority under the payment of wages act should not proceed to issue any order or direction directing payment of wages, which is only determinable in a proper reference or proceeding instituted between the parties contesting the employer employees relationship under the relevant provision of Industrial Dispute Act. Para 8 and 11 of the said judgment is quoted herein below:-

Para 8:- Law in this regard has been categorically laid down by the Supreme Court in *Payment of Wages Inspector, Ujjain Vrs. Suraj Mal Metha and another* (1969-I-LLJ-762). While interpreting the scope of the proceedings u/s 15 of the Payment of Wages Act, the Supreme Court has laid down that when in an application u/s 15 of the Payment of Wages Act, the Supreme Court has laid down that when in a application u/s 15(2) claiming compensation u/s 25-FF of the Industrial Disputes Act, the defence taken by the ex-employer was that the person responsible for payment of compensation and that the right of workman was defeated by reason of provision of Section 25-FF being applicable, in view of the limited jurisdiction of the authority u/s 15(2) of the Payment of Wages Act, it was not intended to deal with such questions, which in some cases might raise complicated problems of both facts and law. What has been observed as a principle in the matter of claim u/s 25-FF before the authority under the Payment of Wages Act, is equally applicable to a case where claim is based on deduction of wages. Supreme Court further observed in the above noted authority that where a right of workman was disputed by his employer, the Labour court can go into the question as to whether he had a right to receive such a benefit.

Para 11:- In the instant case as already stated above, there is a serious dispute between the parties as to whether the respondents are employees of the petitioner or of the contractor. The prescribed authority, the respondent no. 1 has decided the question of existence of relationship of employer and employee in the affirmative in favour of respondents by, referring to the evidence led before him, but since it was not merely an incidental question rather went on the very root of the matter, and required in-depth inquiry and consideration of questions of law and facts, the same could not be decided in summary proceeding u/s 15 of the Payment of Wages Act, rather could validly be a subject of reference to a Labour Court under the Provisions of the Industrial Dispute Act, such court possessing wider powers for deciding the contentious question of the nature raised in this case.

5. It is further submitted on behalf of the petitioner that even the same authority in a subsequent proceeding i.e. Payment of Wages Act Case No. 01 of 2003 instituted by the same respondent no. 3 herein u/s 15(2) of the Payment of Wages Act, 1936 seeking award for further period has categorically refused to grant any relief holding clearly at para 11 that the petitioner has not been able to establish the relationship of employer and employee existing between the parties. As such the impugned order suffers from non- application of mind specifically in view of the fact that the disputed question were raised in the said proceeding, which the concerned authority under the Payment of Wages Act was not equipped to decide in the instant proceeding. Moreover the respondent no. 3 has miserably failed to produce any evidence to establish the relationship of employer and employee with the petitioner herein and had in-fact instituted the case out of vengeance as the proceeding u/s 107 Cr.P.C in which he had staked his claim over the property in question of the petitioner and tried to usurp it has not been successful, as a result of which, proceeding was instituted under the

Payment of Wages Act, thereafter.

6. No one appears on behalf of the respondents despite the case being adjourned on their behalf on previous occasion also. However, the counter affidavit has been filed on behalf of the respondent no. 3.

7. It is submitted by learned counsel for the petitioner that on mere perusal of the counter affidavit, it will reveal that it is wholly perfunctory.

8. Be that as it may, after hearing the parties and after carefully going through the records as well as the impugned order passed by respondent no.2, it appears that the respondent no. 2 has arrived at the finding in the impugned order without actually establishing the fact of relationship of employer and employee between the petitioner and respondent no. 3, when the whole claim was seriously contested on the aforesaid issues. Moreover, there was no evidence worth mentioning by the respondent no. 3 to justify the contention that he was caretaker on the monthly wages-salary given by the petitioner. Respondent no. 3 has further failed to show any sufficient cause for having not made his claim within the stipulated period before institution of this proceeding whereby the penalty of 10 times the amount has been awarded by the Presiding Officer, Labour Court. It further appears that the respondent no. 3 was a man of sufficient means having telephone connection in his name and it is also alleged that that he is zamindar / sarpanch of the area and in fact had initiated a proceeding u/s 107 Cr.P.C, as alleged by the petitioner in order to usurp the building in question from the hands of the petitioner. All these facts go on to show that the litigation instituted are motivated and respondent no. 3 failed to satisfy his claim by establishing cogent and reliable evidence that relationship of employer and employee exist between the parties. Learned court below also failed to render any finding over it. Moreover the judgment relied by the petitioner in the case instituted u/s of Payment of Wages Act shows that if issues relating to the existence of employer and employee relationship are seriously contested and are dependent upon determination of complicated issue of facts and evidence then the authority under the said act is not the right forum rather the grievances of the party is required to be establish in a separate proceeding under the Industrial Dispute Act. In view of the facts and circumstances, I find that the impugned order is not sustainable in law and is accordingly, quashed. This writ petition is, accordingly, allowed.