

(1968) 01 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 385 to 387 of 1965

Mechanical Superintendent, Visakhapatnam Port Trust and
Others

APPELLANT

Vs

The Authority, Visakapatnam and Others

RESPONDENT

Date of Decision : 30-01-1968

Acts Referred:

Payment of Wages Act, 1936 — Section 15(2), 15(3), 9, 9(2)

Citation : AIR 1969 AP 200 : (1969) 18 FLR 58

Hon'ble Judges : Chinnappa Reddy, J

Bench : Single Bench

Advocate : K. Sreenivasa Murthy, for the Appellant; V.V. Venkataramanaiah, for Govt. Pleader and K. Satyanarayana, for the Respondent

Judgement

1. On 4-6-1964 the workers of the Visakhapatnam Port Trust, through the General Secretary, The Visakhapatnam Harbour and Port Workers' Union, issued a notice to the Chairman, Visakhapatnam Port Trust, informing him that if the demands listed in the Annexure to the notice were not settled, the workers would be compelled to go on strike. The workers complained to go on strike. The workers complained that the administration was indifferent to their grievances and was not taking any steps to have them settled by negotiation. Pursuant to the notice the workers went on strike from 8-7-1964 to 12-7-1964. On 13-7-1964, a settlement was reached between the Port Trust authorities and the Union of Workmen which was recorded by the Conciliation Officer. The Chairman of the Port Trust agreed that the demands of the workers should be referred for adjudication under the Industrial Disputes Act and the Union agreed to call off strike. Clause 4 of the terms of settlement reads as follows: -

"The chairman agreeable to treat the period of strike and any further time taken by the workers to join duty as `dies on`. If the Union President is not agreeable to this he is free to raise this matter as a separate industrial dispute to be settled under Industrial Disputes Act but he should not resort to any direct action on this

issue. In case he raises this as a separate Industrial dispute till the matter is settled the Union President is agreeable to treat this period as dies non". It is clear that there was no agreement between the parties as to whether the workers would be entitled to wages for the period of strike. The matter was left to be decided in appropriate proceedings. After making an unsuccessful effort to have the matter referred for adjudication under the Industrial Disputes Act, three of the workers filed applications u/s 15 of the Payment of Wages Act before the Authority constituted under that Act. The Port Trust Authorities contended that the workers were admittedly absent from duty on those dates and therefore deduction of wages for that period was valid and legal. The Authority under the Payment of Wages Act held that the strike was justified and that it was forced upon the workers because of the attitude of the management in not agreeing to a settlement by negotiation and therefore the workers was justifiable cause for absenting themselves from duty and the deduction from wages for the strike period was accordingly illegal. He granted the applications of the workers. The Port Trust authorities have filed these Writ Petitions seeking to have the orders of the Authority quashed.

2. The principal submission of Mr. Srinivasamurthi, learned Counsel for the Port Trust is that the Authority under the Payment of Wages Act has no jurisdiction to adjudicate upon questions relating the legality or reasonableness of a strike when the management is not attempting to penalise the workers in addition to deducting wages for the days of absence from duty.

3. Section 7(1) prescribes that the wages of an employed person shall be paid to him without deduction of any kind except those authorised by or under the Act. Section 7(2) enumerates the kinds of deductions that may be made in accordance with the provisions of the Act. Item (b) with which we are concerned is 'deduction for absence from duty'. Sections 8 - 13 prescribe the conditions subject to which the deductions permitted by Section 7(2) may be made. In particular Section 9(1) explains 'absence from duty' for the purposes of Section 7 to mean only absence from the place where the employee is required to work under the contract of employment: Section 9(2) provides that the amount of deduction that may be made for absence from duty is proportion to the wage period. The proviso is Section 9(2), however, enables the employer to make a further deduction of an amount not exceeding wages for eight days if ten or more persons acting in concert, without due notice and without reasonable cause absent themselves from duty. In other words, the proviso to Section 9(2) enables the employer to make a penal deduction where ten or more employees go on an unjustified strike. It may be noticed that Section 9(2) does not prohibit any deduction from wages for absence from duty due to strike, justified or unjustified on the other hand, the proviso authorises a further deduction where workers absent themselves due to illegal strike. This does imply that ordinary deduction from wages for absence from duty is permissible where such absence is due to strike, justified or unjustified.

4. Section 15(1) provides for the appointment of an authority to decide claims arising out of deductions from wages etc., Section 15(2) enables the worker, his lawyer, his Union or an Inspector appointed under the Act to apply to the Authority for relief u/s 15(3) in a case where any deduction from wages has been made contrary to the provisions of the Act. When an application u/s 15(2) is made, Section 15(3) authorises the authority, after due enquiry, to direct a refund of the amount deducted and also to direct payment of such compensation as may be considered justified. The jurisdiction to grant relief u/s 15(3) can be exercised by the authority constituted u/s 15(2) enables an application to be made contrary to the provisions of the Act. It is therefore clear that the foundation for the exercise of jurisdiction by the authority is a deduction from wages in contravention of the provisions of the Act. The authority is competent to decide the question whether a particular deduction has been made contrary to the provisions of the Payment of Wages Act and all other question incidental to such decision. But the authority is incompetent to enquire into questions whether the deduction has been made contrary to the provisions of some other statute or contrary to other established principles of Industrial and Labour Law. The authority is a tribunal of limited jurisdiction and so it must stay.

5. In the present case the workers voluntarily absented themselves from duty from 8-7-1964 to 12-7-1964. They were not prevented from presenting themselves for duty by any lock-out or lay off declared by the employer or by any order of dismissal or other overt act of the employer. They absented themselves from duty in pursuance of a notice of strike issued by them. The action was by the workers and however unreasonable the attitude of the management may have been the workers cannot contend that they did not absent themselves from duty. If they absented themselves from duty, the management was, in terms of Section 9(2), clearly entitled to make the normal or ordinary deduction from wages for the period of their absence from duty. Such deduction was not contrary to the provisions of the Act, even if such deduction was unjustified by reason of some other principle of Industrial law. If it is not contrary to the provisions of the Act, the Payment of Wages Authority had no jurisdiction to entertain the applications and grant relief on the ground that the strike was justified. The question whether the strike was justified or not was clearly irrelevant where the deduction from wages was the ordinary or normal deduction and not the further deduction provided by the proviso to Section 9(2). The converse position also would not be open to the management to urge that there were good reasons for the lock-out and therefore the workers must be held to have absented themselves from duty. The question whether the lock-out was justified or not would be as irrelevant as the question whether the strike was justified or not and the Authority would be bound to grant relief to the workers.

6. Of course, in cases where further decision is made under the proviso to Section 9(2), the Authority is bound to adjudicate upon the justification for the strike because it is only where the strike is without reasonable cause that the further deduction can be made. In the present case there is no further deduction

under the proviso to Section 9(2) and therefore the question whether there was reasonable cause for the strike or not does not arise.

7. Sri K. Satyanarayana, learned Counsel for the workers, has invited my attention to Anant Ram and Others Vs. District Magistrate, Jodhpur and Another, and Jerry Sabastian v. Badshah, 1960 (2) L LJ 99 .

8. In the first case, worker who was dismissed and later reinstated claimed wages for the period from the instatement. Wanchoo C. J. held that the worker was entitled to get relief under the Payment of Wages Act as his absence from duty was not voluntary but was forced on him by the employer's act dismissing him from service. There can be no quarrel with this conclusion. I have pointed out earlier that a worker cannot be said to have absented himself from duty when he has been prevented from presenting himself from duty by any lock-out or lay off being declared by the management or by any order of dismissal or other overt act.

9. In the second case, the workers of Messrs. Richardson and Cruddas Ltd., filed an application under the Payment of Wages Act alleging that though the workers were ready and willing to work, the management declared a lock-out and prevented the workers from working. The workers claimed that they were entitled to wages and compensation. A preliminary objection was raised by the management on the ground that the Payment of Wages Authority had no jurisdiction to make any directions in the matter `as the question of payment of wages depended on whether the strike or lockout was illegal and that question could not be decided by the authority, the question being one relating to or arising out of an industrial dispute within the meaning of the Industrial Disputes Act, 1947. Shah and Naik JJ. held that the Authority had jurisdiction to entertain the petition. With that conclusion I agree. The learned Judges observe that by Section 15, the State Government is invested with the power to constitute a Payment of Wages Authority to hear and decide for any specified are all claims arising out of deductions from the wages of persons employed. They observe that `the only limitations placed upon the jurisdiction of the authority are of a four-fold character, relating : -

(i) to the class of persons entitled to make a claim, that is, as prescribed by Sub-sections (4) and (5) to S. 1:

(ii) to the limits of pecuniary jurisdiction prescribed by Section 1(6);

(iii) to the nature of the claim which may be made before the authority, viz., claims arising out of deduction or delay in payment of wages of persons employed; and

(iv) to claims of persons employed in or paid in the areas specified in the notification by the Provincial Government.

They further observe that `within the ambit of these limitations the jurisdiction of the tribunal is exclusive and unrestricted". The learned Judges have

completely ignored the provisions of Section 15(2) which enables a worker to make an application only where the deduction from wages is contrary to the provisions of the Act which clearly implies that the jurisdiction of the authority is confined to decide question arising directly under the Act and excluded from its jurisdiction questions concerning contraventions of provisions of other Act or other branches of Industrial Law. The learned Judges have also not referred to the provisions of Section 9(2) which, as I pointed out earlier, shows that ordinary deduction from wages is not prohibited but is implicitly authorised where the absence from duty is due to strike. It is true that the workers cannot approach an Industrial Court and seek relief under the industrial Disputes Act unless the Government makes a reference under that Act to that tribunal. But that cannot enlarge the extent of the jurisdiction of the authority constituted under the Payment of Wages Act. It is not without significance that expressions like lockout, strike, industrial dispute etc., are nowhere mentioned in the Payment of Wages Act. I therefore, hold that the Payment of Wages Authority had not jurisdiction to grant relief u/s 15(3). Having regard to the findings of the Payment of Wages Authority, my conclusion is unfortunate but I cannot allow my sympathy for the workers to lead me to make, what I imagine, is bad law. The Writ Petitions are accordingly allowed, but in the circumstances without costs.

10. Petition allowed.