

(1974) 09 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 616 of 1974

M/s. Kapur Silk Weaving Mills, Amritsar	APPELLANT
Vs	
Manohar Lal	RESPONDENT

Date of Decision : 06-09-1974

Acts Referred:

Payment of Wages Act, 1936 — Section 15

Citation : (1974) 09 P&H CK 0006

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : J.N. Kaushal, with Mr. Ashok Bhan, for the Appellant; B.S. Bindra, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Nath Mittal, J.—This judgment of mine will dispose of Civil Revision Nos. 616, 630 and 681 of 1974, which arise out of the similar orders, dated February 8, 1974, of the Senior Subordinate Judge, Amritsar, passed by him under the payment of Wages Act, 1936, (hereinafter referred to as "the Act").

Briefly, the facts are that Manohar Lal filed three applications against M/S. Kapur Silk Weaving Mills and Kishan Chand Kapur (hereinafter referred to as "the employers") for recovery of wages under the Act, A preliminary objection was raised on behalf of the employers that the Court had no jurisdiction to decide the applications as it ceased to be an authority under the Act. On the objection of the employers, the following preliminary issue was framed by the trial Court :

Where this Court has ceased to be an authority under the Payment of Wages Act and as such this Court cannot decide this application ?

3. The trial Court held that that Court was still an authority under the Act and as such, was entitled to decide the applications. The employers have come up in revisions against the orders of the Senior Subordinate Judge, Amritsar, to this Court.

4. In order to decide the question whether the Senior Subordinate Judge is no longer an authority under the payment of Wages Act, it is necessary to notice section 15 of the Act and a few notifications. Sub-section (1) of section 15 of the Act deals with the appointment of authority under the Act. The said sub-section is as follows :--

15(1) The State Government may, by notification, in the Official Gazette, appoint a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947, or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State or any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims.

Provided that where the State Government considers it necessary to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

A Notification No. 778. I & L-37-8120 dated the 26th February, 1937, was issued under the Act by which the Governor-in-Council appointed the Commissioners for workman's compensation in the Punjab notified in Punjab Government Notification No. 905-6-25 5, dated the 18th February, 1924, as the authority to hear and decide, within their respective jurisdictions all claims arising out of deductions from the wages, or delay in payment of wages, of persons employed or (sic) with in their jurisdiction. By virtue of Notification No. 905-6-2535, dated the 18th February, 1924, the Governor-in-Council had appointed for each of the districts of Ambala, Ferozepore, Lahore, Amritsar, Rawalindi Lyallpur and Multan, the Senior Subordinate Judge and for each of the remaining districts in the Punjab, the District Magistrate, to be Commissioners of Workmen's Compensation under the Workmen's Compensation Act, 1923. THUS all the aforesaid Senior Subordinate Judges and the District Magistrates became authorities under the Act. In 1957 another notification No. 3095/5943/C Lab. 57/43462, dated the 18th/24th of May, 1957, was issued u/s 15 of the Act whereby the Governor of Punjab was pleased to appoint certain Sub Divisional Magistrates and certain Tehsildars, as detailed in the notification, as authorities under the Act. Still another Notification No. S.O. 71/C A-4/36-S5/1968, dated the 27th April, 1968, was issued under the aforesaid section by which the Governor of Punjab appointed Sub-Divisional Officer and Tahsildar, Anandpur Sahib as authorities to hear and decide within the areas of their jurisdiction of Anandpur Sahib Sub Division, all claims arising out of deduction from the wages or delay in payment of wages of persons employed or paid within the said area. The last Notification No. S.O. 45/C-A-4/36/S-15/72, dated the 22nd November, 1972, which is relevant for the purposes of decision in the present case, was issued, by

which the notifications dated May 8, 1957 and April 27, 1968 were superseded, and the Sub-Divisional Magistrates in the State of Punjab were appointed as authorities to hear and decide under the Act. The aforesaid notification is as follows : --

In supersession of the Punjab Government Labour Department Notification No. 3095-C-Lab-57/43462, dated 18th May, 1957 and No. CA-IV/36/S-15, dated 27th April, 1968 and in exercise of the powers conferred by Sub-section (1) of section 15 of the Payment of Wages Act 1936, (IV of 1936) the Governor of Punjab is pleased to appoint each Sub-Divisional Magistrate in the State of Punjab to be the authority to hear and decide claims arising out of deductions from wages, or delay in payment of wages of persons employed or paid, including all matters incidental to such claims under the said Act, within the area of his respective jurisdiction.

7. The first question that arises for determination is whether after the notification of November 22, 1972, the Senior Subordinate Judge of Amritsar is an authority under the Act or not. By virtue of notification dated November 22, 1972, only the two earlier notifications by which the Sub-Divisional Magistrates and the Tahsildars were appointed authorities, were revoked. The notification dated February 26, 1957, read with the notification dated February 18, 1924, under which the Senior Subordinate Judges were appointed as the authorities under the Act, has not been revoked by the notification. Thus the Senior Subordinate Judges of the places mentioned in the aforesaid notification are still the authorities under the Act.

8. The next question that arises is whether two authorities can act at the same place without making any provision for the distribution of the (sic) amongst them. Sub-section (1) of section 15 of the Act does not debar the State Government from appointing more than one authority for the same area under the Act. In the proviso to sub-section (1) of section 15 of the Act, it is also clarified that the State Government may appoint more than one authority for any specified area. Thus it is clear that in the same area, the Government can appoint more than one authority under the Act. It is further provided in the proviso that, in case, it appoints more than one authority then it may, by general or special order, provide for the distribution or allocation of work to be performed by them under the Act. It is vehemently argued by the Learned Counsel for the petitioners that the word "may" if the context permits, can be read as "shall". He further submits that in the present case, though the Legislature has used the word "may" in the proviso while empowering the State Government to appoint more than one authority and to provide for the distribution or allocation of work to be performed by them under the Act, yet in the latter case, the word "may" should be read as "shall". He also states that if the Government does not make any order to provide for distribution or allocation of work to be performed by each of them, it will become impossible for the two authorities to work together. I regret my inability to accept the contention of the learned counsel for the

petitioners. A plain reading of the proviso shows that the words "provided that where the State Government considers it necessary so to do," qualify both the clauses, namely, "may appoint more than one authority for any specified area and may by general or special order provide for the distribution or allocation of work to be performed by them under the Act". It is not necessary that in the case of appointment of two authorities, it is incumbent on the State to provide for the distribution or allocation of work to be performed by them. It is a discretion with the State Government whether to make a provision for such a contingency or not. It cannot be held that the two tribunals having the same jurisdiction, cannot function together at the same place. The Learned Counsel for the petitioners has placed reliance on *State of Uttar Pradesh v. Jogendra Singh* AIR 1963 SC 1613 and *Bishan Singh v. The Central Government* (1961) 63 PLR 75. In both of them, it has been held that the word "may" can be read as "shall" in context of certain enactments. There is no dispute about this proposition. The question is whether the context in the present case permits to do so. In my view it cannot be held that in the proviso, the former "may" is to read as "may" and the latter as "shall". Thus I reject the contention of the Learned Counsel for the petitioners.

9. For the reasons recorded above, these revision petitions fail and the same are dismissed with costs. Counsel's fee in all the three cases Rs. 100/-.