

(1994) 11 RAJ CK 0021
In the Rajasthan High Court
Case No : C.R. No. 185 of 1993

Murudhar Kshetriya Gramin Bank

APPELLANT

Vs

Bhagwan Ram and Another

RESPONDENT

Date of Decision : 25-11-1994

Acts Referred:

Payment of Wages Act, 1936 — Section 17(1A)

Citation : (1995) 71 FLR 393 : (1995) 2 LLJ 1076 : (1995) 2 RLW 214

Hon'ble Judges : G.C. Mittal, C.J

Bench : Single Bench

Advocate : M.R. Singhvi, for the Appellant; R.S. Saluja, for the Respondent

Judgement

Gokal Chand Mital, C.J.—The Authority under the Payment of Wages Act decided the matter in favour of the workman on April 10, 1990 and awarded Rs. 3388/- as compensation to the workman. The employer applied for certified copy of the order on that very day; vide registered No. 130 of 1990. It is averred that no date for delivery was given and copy was made available to the employer on May 10, 1990 and without loss of time, an appeal was filed on May 11, 1990. on May 19, 1990 the amount of Rupees 3388/- was deposited and the certificate of payment was produced on the record of the appeal on that very day. According to the learned counsel for the employer, the last date of filing of the appeal and deposit was June 11, 1990 and therefore, even if appeal is deemed to have been filed on May 19, 1990, when the certificate of deposit was produced on record, it was within time. However, the appellate court dismissed the appeal as not maintainable on the ground that Section 17(1-A) of the Payment of Wages Act, 1936 (for short "the Act") envisages that the certificate of deposit has to accompany the memorandum of appeal and since on May 11, 1990 the appeal was not accompanied by the certificate of deposit, the appeal was not maintainable and by the order dated December 10, 1992 the appeal was dismissed as such. This is revision by the employer against that order.

2. The learned counsel for the employer urges in support of the revision that true

meaning and scope of the beneficial legislation contained in Section 17(1-A) has not been appreciated by the appellate court. The idea is that within the period of limitation the appeal should be filed so also the appellate court should be informed that the amount awarded has been deposited by producing a certificate thereof- This beneficial legislation is for the purpose that in case appeal is dismissed or the order of the trial court is modified, the amount which is payable to the employee should be paid to him without loss of time.

3. The learned counsel urges that if the relevant provision of appeal is correctly read and understood, it would show that no appeal shall lie unless the memorandum of appeal is accompanied by certificate of deposit. Therefore, he says that until the deposit is made, no appeal shall lie. He says that it does not mean that in spite of actual filing of appeal within limitation and in spite of actual deposit of amount and production of the certificate within time, a Court of law can say that the appeal did not lie or the appeal will be dismissed as not maintainable.

4. In order to appreciate the argument, I consider it proper to reproduce the relevant provisions:-

"17. Appeal. - (1) An appeal against an order dismissing either wholly or in part an application made under Sub-section (2) of Section 15, or against a direction made under Sub-section (3) or Sub-section (4) of that section may be preferred, within thirty days of the date on which the order of direction was made, in a Presidency-town before the Court of Small Causes and elsewhere before the District Court.

(1-A). No appeal under Clause (a) of Sub-section (1) shall lie unless the memorandum of appeal is accompanied by certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against."

5. A reading of the aforesaid provisions clearly shows that limitation of 30 days is given for filing of appeal besides the time spent in obtaining certificate copy of the order appealed against. It further shows that no appeal shall lie unless memorandum of appeal is accompanied by certificate of deposit which clearly means that the appeal and deposit and information of deposit to Court have to be within limitation. It is wrong to say that even if appeal filed is within limitation, but prior to deposit and deposit is not made within limitation and information by producing certificate of deposit is filed within limitation, such an appeal will be deemed to be not competent and would be dismissed as such.

6. After I have given the statement of law as enunciated above, the question arises whether the employer has done his duty as required by law within limitation or not.

7. While the learned counsel for the employer says in the facts stated in the memorandum of revision that the petitioner applied for certificate copy on that

very day when the order appealed against was passed, but since no notice (add by court no date) for preparation of copy was given and since the copy was made available on May 10, 1990, the appeal was filed on May 11, 1990. On this basis, the learned counsel for the employer says that if time is given for obtaining certified copy from April 10, 1990 to May 10, 1990, on the first day he has filed appeal on May 11, 1990 and even if May 19, 1990 is treated as the date of filing of the appeal, it would be 9th day out of 30 days limitation available to the employer. As against this, the learned counsel for the workman says that the facts stated in the memorandum of revision are not clear and are vague. It is not stated that no date for taking copy was given, on the contrary it is said that no notice for preparation of copy was given. He says that generally courts give a date when a person who applies for certified copy is to come and receive the certified copy and since this fact is not stated, this Court, should not give any opinion and should leave the matter to be determined by the appellate court.

8. Considering the arguments of both the sides, I am of the view that the first appellate court has to decide how much time would be allowed to the employer for obtaining copy in accordance with law subject to the provisions of Section 12 of the Limitation Act. The limitation will then be counted by the appellate court from the date of production of certificate of deposit before the appellate court and on that date, it be treated that the appeal was properly constituted. If on that date the appeal is found to be time barred after giving benefit of thirty days plus time spent in obtaining copy, it will be open to him to dismiss the same as time barred. If on that date it is within limitation then he will decide the appeal on merits.

9. For the reasons recorded above, the order of the first appellate court is set aside and the matter is remitted to it to re-decide the matter in accordance with law keeping in view the observations made in the order. The parties through their counsel are directed to appear before the appellate court on January 3, 1995.

10. With the aforesaid observations, the revision is disposed of. The record of the case is here and the same be sent back immediately.