
(1991) 09 AHC CK 0063
In the Allahabad High Court
Case No : C.M.W.P. 15182 of 1981

Nagar Palika

APPELLANT

Vs

Prescribed Authority and Others

RESPONDENT

Date of Decision : 10-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Wages Act, 1936 — Section 15, 17A

Citation : (1992) 1 AWC 376 : (1994) 3 LLJ 672

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Bhat, J.—The prescribed authority, respondent No. 1, appears to have granted back wages on account of wrongful deductions from the wages of the respondents No. 2 to 9 under the provisions of the Payment of Wages Act by his order dated 19.10.1981, which is impugned in this writ petition.

2. The facts giving rise to the filing of this writ petition are briefly stated. The respondents No. 2 to 9 were working as Safai Karamchari with the petitioner. It is stated that the age of superannuation in the municipal services is 60 years. The respondents No. 2 to 9, according to the petitioner, were retired after the completion of age of 60 years. The respondents were retired with effect from 21.4.1979 and this order was passed on 28.4.1979, a copy whereof is Annexure 1 to the writ petition. These respondents are said to have filed representations before the petitioner protesting against their retirement is in their opinion these respondents had not reached the age of superannuation. Their case was that they were examined by the Chief Medical Officer, Ghazipur and they were below 60 years when the order of retirement was passed. The petitioner states that since the record of the Nagar Palika had shown their age more than 60 years, therefore, they were retired.

3. After the order of retirement was passed the respondents No. 2 to 9 filed an

application before the prescribed authority, respondent No. 1, under the provisions of the Payment of Wages Act and claimed wages between the period of 1.4.1979 to 31.12.1979 and further claimed wages to the extent of Rs. 255/- per month. The petitioner had filed objection before the respondent No. 1 stating therein that the respondents No. 2 to 9 had reached the age of superannuation therefore, they were retired after attaining the age of 60 years. The petitioner seems to have taken objection to the maintainability of the application before the Prescribed authority. The payment of Wages Authority is said to have accepted the claim of the respondents No. 2 to 9 and gave directions for payment of wages with effect from 21.4.1979 to 31.12.1979 to them and further wages of Rs. 255/-per month per worker were directed to be paid. The respondents No. 2 to 9 were held entitled to Rs. 3044/- each. It was held by the respondent No. 1 that no order of retirement was served on the respondents No. 2 to 9, therefore they cannot be deemed to have been retired from service. It was further held that the Chief Medical Officer, Ghazipur had issued certificates in their favour certifying that the respondents No. 2 to 9 had not completed the age of 60 years on the relevant date i.e. 21.4.1979.

4. The petitioner challenges the order of the prescribed authority on the ground that it has given a declaration in respect of the age of retirement of the respondents No. 2 to 9. The respondent No 1 could not give such a declaration under the provisions of Section 15 of the Payment of Wages Act, which has a limited scope. Under the said section the respondent No. 2 could look whether there was any deduction in the payment of wages or there was any delay in payment of wages. It could not give any declaration about the age of the respondents No. 2 to 9. u/s 7 of the Payment of Wages Act permissible deductions, on the grounds specified in the said section, can be made which deductions cannot be claimed u/s 15 of the Payment of Wages Act. The respondent No. 1 could not adjudicate a disputed question as to whether the respondents No. 2 to 9 were in the employment or not. The impugned order dated 19.10.1981 is said to be wholly illegal, misconceived and bad in law.

5. In their counter affidavit the respondents No. 2 to 9 have stated that the age of retirement is 60 years but they say that on the relevant date they had not completed the age of superannuation and they were arbitrarily and wrongly retired by the petitioner. Their age was determined by the Medical Expert and - they were found below 60 years on the relevant date. The Municipal record are said to contain wrong entries about their date of birth which is without any basis. It is said that the respondent No. 1 has not given any declaration regarding their entitlement to work. It has only declared that the respondents No. 2 to 9 had not completed the age of superannuation; and they were entitled to wages for the period for which they were prematurely retired. The wages could not have been paid without giving a finding about the attainment of age of superannuation of the respondents No. - 2 to 9. The respondent No. 1 was deciding the question of wages, therefore, the finding about the respondents' age in the impugned order is an incidental matter and not the main matter, which was to be decided by the

respondent No. 1. The Payment of Wages Act is said to have been applied to the employees of the Nagar Palika. Anything said contrary to this in the writ petition is said to be not well-founded. It is stated that the petitioner had knowledge of the award dated 19.10.1981. The appeal could be filed against the award within 30 days under the provisions of the Payment of Wages Act. The petitioner has admitted that he got the knowledge of the award on 13.11.1981. He could have, therefore, preferred the appeal because 30 days limitation prescribed for filing the appeal had not expired on that date. Without exhausting the alternative remedy the petitioner has filed this writ petition, which is not maintainable

6. The rejoinder affidavit filed by the petitioner is also on the record. It refutes the contents of the counter affidavit and asserts the averments which are already pleaded in the writ petition. It is stated that the declaration about the question of superannuation could not be given by the respondent No. 1. Such a question could be decided under the provisions of the U.P. Industrial Disputes Act. Such a question cannot be treated incidental to the claim of payment of wages.

7. The learned counsel for the petitioner relied on Section 15 of the Payment of Wages Act and submitted that the respondent No. 1 had the jurisdiction to decide all claims arising out of deductions from the wages or delay in the payment of wages including all incidental matters to such claim but it could not give a declaration about the respondents No. 2 to 9 having not attained the age of superannuation on the relevant date. This finding is beyond the scope of Section 15 of the Payment of Wages Act. If the wages are deducted contrary to the provisions of the Payment of Wages Act, Section 15 of the Act would come into play. It was also submitted that deductions of some wages which are permissible under the Act cannot be made subject matter of claim u/s 15 of the Payment of Wages Act.

8. In support of his contention he has relied on the case of Singh, Engineering Works Pvt. Ltd. v. Kundhai and Ors. Reported in 1975 LIC 853. It says that the jurisdiction of the Authority u/s 15 is primarily limited to decide the two questions as to whether there has been any wrongful deductions from the wages of an employee and where there has been any delay in the payment of wages and the matters incidental to those questions which are as under:

- (1) Determination about the rate of wages;
- (2) Finding out terms of contract between the employer and employee;
- (3) Determination about the relationship of employer and employee; and
- (4) Determination about the limitation of the application and whether delay can be condoned.

9. Another authority relied upon by the petitioner was Ganeshi Ram, Etc. Vs. The District Magistrate and Another, . It is stated that claim for recovery of wages can be validly made u/s 15(2) and awarded u/s 15(3) of the Payment of Wages Act only when it is shown that the impugned deduction is not authorised or justified

by Section 7. u/s 7 certain specified deductions are permitted to be made which are authorised and respect of those deductions, there shall be no claim u/s 15 of the Payment of Wages Act. The deductions u/s 7(2)(h) of the Payment of Wages Act, which are made by an order of court or other authority competent to make such order cannot be awarded by the Prescribed authority under the Payment of Wages Act in this case it seems that a railway servant was reinstated in service. While reinstating him the railway authority concerned passed an order that the period for which the railway servant was absent from work should be treated as leave without pay and that he should not be entitled to any payment for such period. The railway employee applied u/s 15 of the Payment of Wages Act for the recovery of wages for the same period. It was held by the Supreme Court that deductions were permissible u/s 7(2)(h) and he was not entitled to claim the same.

10. In the case of A.V. D'costa Vs. B.C. Patel and Another, the Supreme Court held that u/s 15 of the Payment of Wages Act Tribunal is of a limited jurisdiction. Its power to hear and determine disputes must necessarily be found in the provisions of the Act. It cannot determine any dispute or controversy, which : is not within the ambit of the provisions of the Act. It has no jurisdiction to decide the question of potential wages. It was observed that if an employee were to say that his wages were Rs. 100/- per month which he actually received as and when they fell due, but that he would be entitled to higher wages if his claim to be placed on the higher wages scheme had been recognised and given effect to that would not be a matter within the ambit of his jurisdiction.

11. The learned counsel for the respondents has raised an objection about the maintainability of the writ petition on the ground of non-exhaustion of alternative remedy and also on the merits of the case. He has stated that the question as to whether the respondent No. 2 to 9 had attained 60 years of age was incidental to the main issue on which the question of payment of wages would depend.

12. In support of his first objection about the maintainability of the writ petition reliance was placed by the learned counsel for the respondents No. 2 to 9 on an authority Vishwamitra Karlayala Press v. Authority, appointed under payment of Wages Act, 1936 for Vishwamitra Karyalaya Press Vs. Authority appointed under Payment of Wages Act, 1936 for Kanpur and Others, . It was held that the question whether Section 15 applied to the facts of the case or not would make no difference to the maintainability of an appeal against an order which is expressly made under the provisions of Sub-section (3) of Section 15. It was also held that remedy of appeal u/s 17 of the Payment of Wages Act not availed of and becoming time-barred, the petition under Article 226 is not maintainable. On merits it was contended that the respondent No. 1 could decide a question of legality of an order of retirement. Reliance is placed of an authority of this court, Union of India (UOI) Vs. Babu Ram, .

13. The learned counsel for the respondents No. 2 to 9 have also relied on the case of S.M. Saiyad v. Baroda Municipal Corporation AIR 1984 SC 182 : 1984 Lab

IC 1446. It was held by the Supreme Court that the denial of back wages for a portion of period for the reason that the workman was prosecuting remedy in a wrong forum would not be a relevant consideration for refusal of back wages.

14. I have considered the submissions made by the learned counsel for the parties and also considered the pleadings and documents placed on the record. The award is announced on 19.10.1981. The petitioner obtains knowledge of the award on 13.11.1981 i.e. before the expiry of period of limitation for filing appeal, which is 30 days. The appeal is not filed. Writ Petition under Article 226 of the Constitution is filed in this Court on the ground that appeal is not an efficacious remedy and on the date of filing of the writ petition appeal had become barred by time. It was contended by the learned counsel for the petitioner that the order of the respondent No. 1 was without jurisdiction, therefore, there was no bar if the writ petition was filed and writ could not be barred for not exhausting the alternative remedy of filing the appeal. This contention cannot be accepted and the answer to learned counsel for the petitioner is given in Vishwamitra Karyalaya Press Vs. Authority appointed under Payment of Wages Act, 1936 for Kanpur and Others, . It is said by the Court that "if there is an order under that provision of law, that is enough to give a right of appeal to the aggrieved party. The question, whether any payment of wages could have been or should have been ordered, according to the terms of Sub-section (3) of Section 15, could be raised in the appeal and it could have been contended that the Magistrate had no jurisdiction to deal with this matter, in as much as the Payment of Wages Act did not apply to the case of these employee".

15. It is contended by the learned counsel for the petitioner that maintainability of the application under the Payment of Wages Act was raised before the respondent No. 1 and he decided it against the petitioner. If that be so, it was all the more necessary for the petitioner to file an appeal under the Payment of Wages Act and agitate this matter before the Appellate Court. He could not have directly approached this Court under Article 226 of the Constitution of India for setting aside of the order, which is clearly appealable.

16. It was also contended that filing of appeal would have necessitated deposit of the amount which was awarded to the respondents No. 2 to 9 under the award. There is a provision u/s 17 of the Payment of Wages Act which is Sub-section (1-A), which was inserted by Act No. 53 of 1964 with effect from 1.2.1965, which provides that no appeal under Clause (a) of Sub-section (1) shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against. How would this requirement of law prevent the petitioner from filing the appeal is not clearly discernible from the writ petition. It is not the case of the petitioner that he had no capacity to deposit the amount determined by the respondent No. 1 under the award and, therefore, he did not file the appeal. It is said that the writ petition is the efficacious remedy which would not mean that the filing of appeal was not an efficacious remedy. The requirement of

making deposit at the time of filing of appeal does not destroy the remedy of the appeal. It only safeguards the interest of the workman in case appeal is decided. It allows the appellate forum to deal with the amount so deposited in the manner in which it is required to be dealt with under the award if the appeal is dismissed and under the appellate order if the appeal succeeds or award is modified in any manner. The deposit of the amount determined under the award at the time of filing of appeal u/s 17 is not as a measure of penalty imposed by the law. Object of making deposit is entirely different. It seeks to achieve the purpose underlying the welfare legislation so as to avoid delay in payment of wages to the workman. Therefore, the contention of the petitioner is not tenable because he was required to make deposit of the amount determined under the award by the respondent No. 1 if he wanted to file the appeal, therefore, he did not file the appeal. Had he succeeded in appeal the amount deposited under the award could be refunded to him by the Appellate Court. This amount was not likely to be forfeited by the Appellate Court. u/s 17(3) of the Payment of Wages Act the petitioner could obtain a direction from the appellate court that pending decision of the appeal the payment of the amount deposited by the authority be withheld. This would safeguard the interest of the petitioner. Therefore, non-filing of the appeal when the time had also not run out for filing the appeal only on the ground that the petitioner was reluctant to deposit the amount determined under the award would not have the effect of negating the remedy of filing the appeal which in the present case was more efficacious and proper.

17. The next point argued by the learned Counsel for the petitioner was about the competence of the respondent No. 1 to make finding about the age. If there was a declaration given by the respondent No. 1 which was outside the scope of the provisions of the Payment of Wages Act such a declaration would be bad. In the present case there is no declaration given by the respondent No. 1 in respect of the age of the respondents No. 2 to 9. He has determined only a question of fact. The question of fact before him was whether or not the respondents No. 2 to 9 had completed 60 years of age on relevant date. The evidence was led by the parties on this point. The respondent No. 1 seems to have believed the evidence of the respondents No. 2 to 9 and disbelieved the evidence led by the petitioner with regard to the completion of 60 years of age by the respondents No. 2 to 9 on the relevant date. This was a question, which was incidental and auxiliary to the main question of payment of wages which was before the respondent No. 1.

18. The respondent No. 1 has not given the declaration with regard to the fact as to what should be the age of superannuation. On this point there was no dispute. Both the parties before him admitted that the age of superannuation of the respondents No. 1 to 9 was 60 years. As to whether the respondents No. 2 to 9 has attained that age was purely a question of fact, which could be ascertained on evidence. The evidence has been recorded in this regard. The respondents No. 2 to 9 have relied on the medical evidence whereas the petitioner seems to have relied on some entries in the service record of the respondents No. 2 to 9.

The service entries of the respondents No. 2 to 9 are not based on any evidence. The respondents No. 2 to 9 are illiterate, therefore, the age could be determined on such evidence which was admissible. The respondent No. 1 seems to have believed the medical evidence and not the entries in the record. No fault can be found with the approach which has been adopted by the respondent No. 1 in negating the contention of the petitioner. The respondents No. 2 to 9 claimed wages for a certain period for which they could remain in service. In order to determine that question it was necessary to find out whether the respondents No. 2 to 9 had attained the age of 60 years or not. The main controversy was about the Payment of wages which were deducted from the respondents by the Petitioner as he had retired them prematurely.

19. In determining the question of payment of wages regard must be had to the definition of the "wages" and to the questions which are required to be considered in connection with the payment of wages. The definition of wages" was amended by Act No. 68 of 1957 and with effect from 1.4.1958 a slight change was brought in the definition of "wages". Wages are all remuneration expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to person employed in respect of his employment or of work done in such employment. On the true construction of the definition the respondent No. 1, was, therefore, within his right to determine whether terms of employment express or implied in relation to the respondents No. 2 to 9 were fulfilled. This question would include determination of their due date of retirement on attaining 60 years of age. One of the terms of employment of the respondents No. 2 to 9 was that they had to retire at the age of 60 years. The determination with regard to the attainment to that age is not, therefore, alien to the enquiry which is held by the respondent No. 1 in respect of payment of wages.

20. The authority reported in 1975 LIC 853 (supra) relied on by the learned counsel for the petitioner also makes it possible for the prescribed authority to determine the matters which are incidental to the questions covered by Section 15 of the Payment of Wages Act. The authority under the said Act can among other things find out the terms of contract between the employer and employee and whether there is a relationship of employer and employee between the parties. This enquiry within its fold would embrace all questions relating to the terms of employment of the respondents No. 2 to 9 express or implied. The expressed term of employment was that the respondents No. 2 to 9 were liable to be retired on attaining 60 years of age. Whether they had attained that age or not would, therefore, be incidental to the question of payment of wages whether they were deducted or there was delay in their payment.

21. From the aforesaid discussion it will be revealed that the writ petition under Article 226 of the Constitution of India is not tenable because statutory remedy which is efficacious and which was available to the petitioner was not exhausted by the petitioner on untenable ground i.e. on the ground of avoidance of making

a deposit of the amount determined by the award. That remedy was not availed of though the knowledge of the award was acquired by the petitioner within the period of limitation. On merits the learned counsel for the parties advanced arguments. Therefore, the finding on merits is also recorded against the petitioner and for the reasons which have been given elsewhere in this judgment the prescribed authority had the competence of determining a question of fact as to whether the respondents No. 2 to 9 had attained the age of 60 years or not on the relevant date and if they had not attained that age the respondent No. 1 could allow them wages as the wages were deducted for that period in violation of statutory rules. That question was incidental and auxiliary to the main question as to whether the wages were deducted from the legally due and payable wages of the respondents No. 2 to 9. This question is not barred to be determined u/s 15 of the Payment of Wages Act. The decision of the Prescribed authority in respect of payment of wages u/s 15 of the Act does not suffer from any infirmity, illegality or error of law.

22. The writ petition accordingly fails and is dismissed with costs.