

(1987) 02 RAJ CK 0011
In the Rajasthan High Court

Case No : Civil Revision Petition No. 644 to 646, 673 and 705 of 1986

N.K. Baheti, Manager

APPELLANT

Vs

Sitaram and Another

RESPONDENT

Date of Decision : 12-02-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Industrial Disputes Act, 1947 — Section 33
Payment of Wages Act, 1936 — Section 15, 17

Citation : (1987) 2 WLN 511

Hon'ble Judges : Surendra Nath Bhargava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surendra Nath Bhargava, J.—These five revision petitions arise out of a common judgment passed by the District Judge, Ajmer, dated 11-7-1986 in appeal u/s 17 of the Payment of Wages Act, against the order of the Authority under the Payment of Wages Act, dismissing the applications of the non petitioner No. 1.

2. Sitaram Verma, non petitioner No. 1 was employed by the petitioner in its factory at Ajmer. He was elected President of the Ajmer Oudhogik Karmchari Sangh in January, 1980 and was declared as a protected workman by order of the Regional Assistant Labour Commissioner, Ajmer, vide his order dated 10-6-1981. He was given a charge-sheet on 20-6-1981 and was also placed under suspension in contemplation of a departmental enquiry. After holding enquiry, the Enquiry Officer found him guilty of the charges levelled and the enquiry report was submitted on 24-8-1981. The Disciplinary Authority accepted the finding of the Enquiry Officer and passed an order, dismissing the non-petitioner No. 1 vide order dated 16-9-1981. He was further informed that since he was a protected workman, an application u/s 33(3) of the Industrial Disputes Act, 1947 (here in after referred to as the "Act"), was being submitted for granting permission for his dismissal. He was further informed that he would be under statutory

suspension from 16-9-1981 till the application u/s 33(3) of the Act was decided.

3. Non petitioner No. 1, moved the Authority under the Payment of Wages Act for getting subsistence allowance upto 31-8-1981. Ultimately, he was paid subsistence allowance on 9-11-1984 after the order of the District Judge. The dispute between the parties is about the subsistence allowances from 1-9-1981 to 31-12-1984. Non petitioner No. 1 submitted five different applications before the Authority under the Payment of Wages Act and these applications were allowed vide order dated 31-12-1983. On appeal by the petitioner, they were remanded by order dated 7-8-84 for considering the evidence afresh and the Authority under the Payment of Wages Act dismissed the applications in all the five cases vide order dated 28-7-1985 and in other four cases vide order dated 23-8-1985.

4. The non petitioner No. 1 preferred an appeal before the District Judge u/s 17 of the Payment of Wages Act which came to be decided by the impugned order dated 11-7-1986.

5. It is against this order dated 11-7-1986 that these five revision petitions have been filed by the petitioners.

6. Mr. B.L. Samdaria, representing non-petitioner No. 1 raised a preliminary objection that unless payment is made to the non-petitioner No. 1 these revision petitions are not maintainable and he drew my attention to Section 17 of the Payment of Wages Act which provides that before filing an appeal, payment has to be made. Revision petition is not provided under the Payment of Wages Act and these revision petitions have been filed u/s 115 CPC. There is no such restriction in CPC and hence, this preliminary objection taken by Mr. Samdaria is over-ruled.

7. Learned Counsel for the petitioner has very vehemently submitted that the learned District Judge had no authority or jurisdiction to pass the impugned order because the subsistence allowance which has become payable in view of the latest judgment of the Supreme Court in Solanki's case 1986 Lab. I.C. 379) cannot be termed as "wages within meaning of the Payment of Wages Act, 1936 and therefore, it is the Authority under the Payment of Wages Act which has to determine and quantify the subsistence allowance which is payable to the workman. He also submitted that there is no provision either under the Certified Standing Order of the Company or the Model Standing Orders providing for payment of the subsistence allowances during the period of statutory suspension of the workman. He has further submitted that even in Solanki's case, the Supreme Court has also observed that in case where the proceedings are completed and the order of dismissal is successfully challenged on the ground of non-payment of subsistence allowance for the period of statutory suspension, a liberty has been given to the management to ask for the permission of the Authority u/s 33(3) of the Act and hence, the Payment of Wages Authority had no jurisdiction to entertain the claim for the subsistence allowance for the period

of statutory suspension u/s 15 of the Payment of Wages Act.

8 He has further submitted that learned District Judge has not given any opportunity to the petitioner before finalising the quantum of the subsistence allowance and he has accepted whatever the workman had submitted in his application, without any scrutiny what so ever and has passed the impugned order without any basis or material on record for the purpose. He has further submitted that the learned District Judge has seriously erred in granting damages and the costs to the non-petitioner No. 1 as according to the earlier view of the Supreme Court the petitioner was perfectly justified in not paying the subsistence allowances to the non-petitioner No. 1 for the period during which he remained under statutory suspension It is only on account of the latest judgment of the Supreme Court in Solanki's case that the non petitioner No. 1 can be held to be entitled to the subsistence allowance.

9. On the other hand, Shri B.L. Samdaria, representing non-petitioner No. 1, has very vehemently supported the judgment of the learned District Judge and has submitted that the non-petitioner No. 1 is governed by Model Standing Orders since 8-1-1981 and thereafter by the Certified Standing Orders for the Company. He has placed reliance on Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others, , Raman Nambisan (P.) and Others Vs. Madras State Electricity Board and Others, Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh,

10 He has further submitted that the learned District Judge was fully justified in awarding compensation by way of damages and costs in view of 1977 Lab. IC 207 . Lastly, he has placed reliance on a Full Bench decision of the Andhra Pradesh High Court in Mandegam Radhakrishna Reddy Vs. Sri Bharathi Velu Bus Service and Presiding Officer, Labour Court, Guntur,

11. He also drew my attention to some earlier cases namely P. Doraikannu Vs. The Proprietor, Hotel Savoy, Madras, Andhra Pradesh Road Transport Corporation Vs. Payment of Wages Authority and Another, and Bachitra Singh v. Punjab Woollen Textile Mills 1971(I) LLJ 437.

12. I have given my thoughtful consideration to the whole matter and have also gone through the record of the case and the authorities cited before me.

13. After the latest decision of the Supreme Court in Solanki's case (supra), it cannot be disputed that the workman is entitled to payment of subsistence allowance under suspension during the pendency of the proceeding u/s 33 of the Act. The only question for determination and consideration is as to which court should decide this amount, whether the Authority under the Payment of Wages Act or the Industrial Court.

14. Having considered the various submissions made by the learned Counsel for the parties and after going through the various authorities I am of the view that the Authority under the Payment of Wages Act has no jurisdiction to order and

grant payment of subsistence allowance to a workmen under suspension, during the pendency of the proceedings u/s 33 of the Act but it will be for the court dealing with the dispute to grant payment of subsistence allowance to a workman placed under suspension during the pendency of the proceeding u/s 33 of the Act. The Court after hearing the workman and the employer shall quantify such allowance. Learned District Judge in the instant case was not right in himself granting the subsistence allowance because he was an appellate authority u/s 17 of the Payment of Wages Act and holding the same powers as the Authority under the Payment of Wages Act. If the authority under the Payment of Wages Act could not have granted order for the subsistence allowance, learned District Judge hearing appeal against the order passed by the Payment of Wages Authority also could not have granted an order for the payment of subsistence allowance. In my opinion, the Labour Court or the Tribunal where the proceedings, in which the concerned workman successfully challenged his order of the termination, or where the proceedings u/s 33 of the Act are pending, alone has jurisdiction to entertain such request. The non-petitioner workman either should move an application before the labour Court or the Tribunal where the proceedings are pending or the employer may move an application where the proceedings are pending either u/s 33 of the Act or the reference and it will be for that Court to decide the matter after giving reasonable opportunity to both the parties and then quantify the amount of subsistence allowance which will be payable to the workman concerned in view of the observation of the Supreme Court in Solanki's case (supra).

15. In the result, these revision petitions are allowed, and the order of the learned District Judge, dated 11th July, 1986 is set aside. However, since the matter is pending for a pretty long time, it is expected that in case either employer or the workman move such an application before the Labour Court or the Industrial Tribunal, the matter shall be disposed of as early as possible. The parties are left to bear their own costs.