
(1978) 03 OHC CK 0008
In the Orissa High Court

Orissa Police Co-operative Syndicate

APPELLANT

Vs

Binoy Kumar Bose and Another

RESPONDENT

Date of Decision : 22-03-1978

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11, 12, 13, 15
Payment of Gratuity Act, 1972 — Section 15

Citation : (1979) 2 LLJ 360

Hon'ble Judges : R.N. Misra, J;P.K. Mohanty, J

Bench : Division Bench

Judgement

R.N. Misra, J.—This application for a writ of certiorari is directed against the order dated 17.9.1976 made by the competent authority under the Payment of Wages Act, 1963 (hereinafter referred to as "the Act") holding that the claim laid by opposite party No. 1 was maintainable and the Authority had jurisdiction to continue the enquiry.

2. Opposite party No. 1 was employed as chief accountant in the establishment of the Orissa Police Syndicate at Cuttack on a consolidated remuneration. He made an application u/s 15(2) of the Act alleging that he had worked overtime and was, therefore, entitled to overtime wages. Petitioner appeared in the said proceeding and filed counter-affidavit disclose with the stand that the claim was not maintainable and the authority under the Act had no jurisdiction to entertain the claim. The preliminary question of jurisdiction was examined by the opposite party No. 2 and he came to hold that the claim was sustainable and the same would be enquired into. Petitioner disputes the correctness of the aforesaid view and reiterates its stand that the claim is not sustainable by the authority under the Act.

3. In the instant case the payability of overtime wages is disputed and it is contended that where such a dispute is raised, the Act has no application. Counsel for the petitioner places reliance on the observations of the Supreme Court in the cases of The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., ,

and Payment of Wages Inspector Vs. Surajmal Mehta and Another, . Reliance is also placed on the decisions in the cases of Surajmal Mehta Vs. Authority under Payment of Wages Act and Another, , and Gurusharan Singh Brijbhusan Singh Vs. Manager, Rewa Transport Services and Others, , for the said contention. On the other hand, counsel for opposite party No. 1 places reliance on a decision of the Supreme Court in the case of Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., .

4. Section 15(2) of the Act provides:

Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under Sub-section (1), may apply to such authority for a direction under Sub-section (3):

* * *

The Supreme Court observed in the Central Bank of India's case (supra) that u/s 33C(2) of the Industrial Disputes Act the Labour Court had jurisdiction to determine whether the workman had right to receive benefit in question where the claim for such benefit was in dispute, In the second decision of the Supreme Court Payment of Wages Inspector Vs. Surajmal Mehta and Another, , the tenability of a claim for compensation u/s 25FF of the Industrial Disputes Act in a proceeding u/s 15(2) of the Act was under consideration. The Supreme Court held that a claim u/s 25FF of the Industrial Disputes Act would be covered by the definition of "wages" within the meaning of Section 2(vi) Clause (d) of the Act; yet,

It must, however, be remembered that though such compensation falls within the definition of wages, cases may arise where it would not be a simple question of recovery of wages. In the present case, for instance, the defence taken by respondent I was that he was not the person responsible for payment of compensation and that the right of the workmen was defeated, by reason of the proviso to Section 25FF being, according to him applicable inasmuch as these workmen were continued in the employment by the said Board, the new employer, that, therefore, there had been no interruption in their employment, that the terms and conditions of service given to them by the new employer were in no way less favourable than those they had when the company was the employer, and that the new employer was responsible for payment of compensation if any retrenchment took place in future. The question, therefore, is whether in view of the limited jurisdiction of the authority u/s 15(2) of the Act, it was intended to deal with such questions, which in some cases might well raise complicated problems of both fact and law.

After examining this position, the Court held:

It is explicit from the terms of Section 15(2) that the Authority appointed under Sub-section (1) has jurisdiction to entertain applications only in two classes of cases, namely, of deductions and. fines not authorised under Sections 7 to 13 and of delay in payment of wages beyond the wage periods fixed u/s 4 and the time of payment laid down in Section 5. This is clear from the opening words of Sub-section (2) of Section 15, namely, "where contrary to the provisions of this Act" any deduction has been made or any payment of wages has been delayed. These being the governing words in the sub-section the only applications which the Authority can entertain are those where deductions unathorised under the Act are made from wages or there has been delay in payment beyond the wage period and the time of payment of wages fixed or prescribed under Sections 4 and 5 of the Act. Section 15(2) postulates that the wages payable by the person responsible for payment u/s 3 are certain and such that they cannot be disputed.

The claim for overtime wages in the instant case was disputed and was not an admitted due. To the same effect are two decisions of the Madhya Pradesh High Court already referred to.

Counsel for Opp. Party No. 1 relied on another decision of the Supreme Court which had been placed before the authority under the Act. In said case Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., the claim was for computing benefit for overtime work and work done on weekly off-days. There the rates claimed in the application were not disputed by the employer. In this background, the Court observed:

The language used at all stages of the Minimum Wages Act leads to the clear inference that Act is primarily concerned with fixing of rates of minimum wages, overtime rates, rate for payment for work on a day of rest and is not really intended to be an Act for enforcement of payment of wages for which provision is made in other laws, such as the Payment of Wages Act No. 4 of 1936, and the Industrial Dispute Act No. 14 of 1947. The language used in Section 20(1) shows that the Authority appointed under that provision of law is to exercise jurisdiction for deciding claims which relate to rates of wages, rates for payment of work done on days of rest and overtime rates. The purpose of Section 20(1) seems to be to ensure that the rates prescribed under the Minimum Wages Act are complied with by the employer in making payments and, if any attempt is made to make payment at lower rates, the workmen are given the right to invoke the aid of the Authority appointed u/s 20(1). In cases where there is no dispute as to rates of wages, and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off-days is due to a workman or not, the appropriate remedy is provided in Section 15 of the Payment of Wages Act may not provide adequate remedy, the remedy can be wrought either u/s 33C of the Industrial Disputes Act or by raising an industrial dispute under the Act and having it decided under the various provisions of that Act.

(Quoted from the head-notes)

What was said by the Supreme Court was in the admitted background of no dispute regarding rate. Here, as already pointed out, there is a dispute regarding payability. In that view of the matter, we are inclined to agree with Mr. Murty, learned Counsel for the petitioner, that the ratio laid down in the latter case of the Supreme Court *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, had no application and the authority under the Act had no jurisdiction to entertain the claim in question.

5. Once we take this view, the impugned order must stand quashed and the authority under the Act must be found to have no jurisdiction to entertain the claim. The writ application is allowed and the impugned order is quashed. There would be no direction for costs.

Per Mohanti, J.

I agree.