

(1965) 03 KAR CK 0015

In the Karnataka High Court

Case No : Civil Revision Petition No. 1008 of 1964

Peirce, Leslie and Co. Ltd.

APPELLANT

Vs

Rama Moily

RESPONDENT

Date of Decision : 10-03-1965

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 (oo), 25 F
Payment of Wages Act, 1936 — Section 15, 17

Citation : (1965) 2 LLJ 41 : (1965) 1 MysLJ 687

Hon'ble Judges : A.R. Somnath Ayyar, J

Bench : Single Bench

Judgement

1. These three revision petitions arise out of an order made by the authority functioning under S. 15 of the Payment of Wages Act, 1936, directing the payment of retrenchment compensation to three employee and which was confirmed in appeal under S. 17 of that Act by the District Judge of South Kanara.

2. The respondents in these revision petitions were the employees and their employer was the petitioner-company. On December 14, 1959 all the three employees were served with notice by the company that their services were terminated with effect from December 22, 1959 on the ground of continued ill-health. Those notices stated that they had been subjected to medical examination by the company's medical officer and that the expert opinion gathered by the company demonstrated that the employees were no longer medically fit to perform their normal duties which were required of them in the factory belonging to the company.

3. After the termination of the services of the employees in this way, there were applications made by each of them to the authority functioning under S. 15 of the Payment of Wages Act for the payment of retrenchment compensation. The company resisted those applications on the ground that retrenchment compensation was not payable to any workman whose service had been terminated on the ground of continued ill-health. The authority recorded a

finding that it was not true that the employees were continuously ill and that therefore their service could not have been terminated on the ground of continued ill-health. So there was a direction to the company for payment of retrenchment compensation in the case of each of the three employees. The direction was affirmed by the District Judge. South Kanara, in the appeal preferred by the company.

4. In these revision petitions presented by the company Sri Narayana Rao, their learned advocate, contends that it was not within the competence of the authority functioning under S. 15 of the Act to make an investigation into the question whether the ground on which the services of the employees had been terminated was or was not an available ground. It is not disputed that an order for payment of retrenchment compensation climbable under S. 25F of the Industrial Disputes Act could be made S. 15 of the Payment of Wages Act. Section 2(oo) of the Industrial Disputes Act which is relevant when a claim for retrenchment compensation is made under the Payment of Wages Act, defines "retrenchment" in the following way :

""Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) voluntary retirement of the workman; or

(b) retiring the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health."

So, what becomes clear from this definition is that, if the service of a workman is terminated on the ground of continued ill-health, such termination is no retrenchment, and therefore, no retrenchment compensation is climbable under S. 25F of the Industrial Disputes Act and none under S. 15 of the Payment of Wages Act.

5. So it was that the authority commenced investigation into the question whether the continued ill-health which was the ground on which the services of the respondents were terminated was a ground available to the company or not. After making that investigation, the conclusion was reached that it was an unavailable ground.

6. Sri Narayana Rao urged that that probe which was made by the authority was not within its province or authority. It seems to me that he is right in making this submission. Now what is beyond doubt is that the services of the respondents were terminated on the ground of continued ill-health. That was what was stated in the order of termination. So, what is manifest is that the termination was in the ground of ill health and that the termination is not retrenchment as defined

by S. 2(oo) of the Industrial Disputes Act.

7. But the question is whether it was within the competence of the authority functioning under S. 15 of the Payment of Wages Act to penetrate the order of termination with a view to ascertain whether there was continued ill-health such as would justify termination. In my opinion, it could not. So long as the order of termination did state that the termination was on the ground of ill-health, it was not within the power of the authority in a proceeding under S. 15 of the Payment of Wages Act, to make an adjudication on the question whether the ground on which there was termination of service was or was not a good ground. No such investigation is possible or permissible under the provisions of the Act.

8. In *Codialabail Press v. K. Monappa* [1963 I L.L.J. 683] this Court observed that an order for retrenchment compensation payable under S. 25F of the Industrial Disputes Act could be made under S. 15 of the Payment of Wages Act only when the retirement is not disputed or is clearly indisputable. The further elucidation made was that, if the employer who admitted the termination of the employment disputed that the termination was by the process of retrenchment, there being no provision in the Payment of Wages Act for an adjudication on that matter, no order under S. 15 of the Payment of Wages Act is possible, unless the facts admitted by the employer clearly established the liability to pay the wages and there is non-payment or incomplete payment. It was further explained that the scheme and purpose of the Act made it clear that claims which may be decided under S. 15 of the Act are only those in which the foundation of the claim is beyond controversy or indisputable or reasonably clear although there may be a dispute about its measure or magnitude, and that if there was a dispute about the foundational facts constituting the basis of the claim which could not be satisfactorily resolved in a summary enquiry, the controversy fell outside the orbit of the enquiry authorized by the Act.

9. The application of these principles makes it clear that in the cases before me it cannot be said that the claim could be satisfactorily resolved in a summary enquiry, since the foundational facts constituting the basis of the claim are the subject-matter of a serious controversy which was outside the sphere of the enquiry authorized by the Act.

10. Although in proceedings under the Industrial Disputes Act it may be possible for a workman to demolish the truth of the ground on which his service is terminated and by that process claim retrenchment compensation, although his service was ostensibly terminated on the ground of ill health, that is not what is possible in the limited enquiry authorized by the Payment of Wages Act.

11. These revision petitions, therefore, succeed. I allow them and set aside the order made by the authority and which was affirmed by the appellate Court, in each of these three cases.

12. In the circumstances, each party will bear his or its own costs throughout.