

(1998) 03 RAJ CK 0056

In the Rajasthan High Court

Case No : C.W.P. No. 1246 of 1991 and Others

Project Manager, Rajasthan State Tungsten Development
Corporation and Another

APPELLANT

Vs

Authority under Payment of Wages Act

RESPONDENT

Date of Decision : 06-03-1998

Acts Referred:

Payment of Wages Act, 1936 — Section 15(2), 7

Citation : (2000) 3 LLJ 1199 : (1998) 2 RLW 994 : (1998) 1 WLN 506

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Judgement

G.L. Gupta, J.—The above mentioned 11 petitions have been preferred by the Project Manager Rajasthan State Tungsten Development Corporation and another to quash the orders passed by the Payment of Wages Authority (to be hereinafter referred to as the Authority on the applications of Bhanwaroo, Sundari, Man Singh, Rajendra Singh, Devi Singh, Chunilal Chhoga, Heera, Sundari Devi, Krishna and Prabhu (to be hereinafter referred to as the applicants) against the petitioners (to be hereinafter referred to as the Corporation).

2. In all the 11 applications filed before the Payment of Wages Authority the Corporation either did not appear and file reply or failed to lead evidence in rebuttal. Therefore, the cases proceeded ex parte. The Authority directed the Corporation to make payment of the wages of the applicants, which were not paid to them for the periods stated in their applications alongwith 10 times compensation. The Corporation then made applications before the Authority for recalling the directions given ex parte in all the 11 cases, but the applications were dismissed by the Payment of Wages Authority. Since common questions of law and facts have arisen in all these writ petitions, they have been heard together and are being disposed of by this Order.

3. In the petitions, it has been averred that the applicants (respondent No. 4 in all the petitions) who had filed applications before the Authority had absented

from duty and even charge-sheets were given to them for their absence and therefore the Authority had no jurisdiction to entertain the application. It has been further averred that in some of the cases the Corporation was not afforded opportunity to file reply, and in others it was not given an opportunity to lead evidence and the cases proceeded ex parte against it. It has been stated that industrial dispute had been raised by the applicants and therefore the Authority had no jurisdiction to give directions,

4. In the replies filed on behalf of the applicants (respondents No. 4) in all the cases it has been averred that the Corporation did not appear and file reply in some cases and in others it did not lead evidence despite giving opportunities, and as there was no material on record supporting the plea of Corporation, the Authority was justified in giving directions to it for the payment of wages along with compensation. It has been further averred that no charge-sheets were given to the applicants and the Corporation had deducted the wages of the applicants without any justification. It has been stated that industrial disputes was not raised by the applicants and therefore the. Authority had jurisdiction to entertain the dispute.

5. Argument of the learned counsel for the parties have been heard and record perused.

6. The contention of Mr. Calla, learned counsel for the Corporation was that the applicants had absented from duty without any cause and for that enquiry was pending against them and therefore the Authority had no jurisdiction to entertain the matter. He submitted that in the proceedings u/s 15 of the Payment of Wages Act, 1936 (for short "Act of 1936") which are summary in nature, the Authority could not go into the justification of not doing the job entrusted to the applicants as this was not the incidental matter. His submission was that since the Authority had no jurisdiction to entertain such type of disputes, the impugned orders are liable to be quashed. Mr. Calla prayed that his application made in the Writ Petition No. 1246/1991 praying for filing one document, which is the order of the Labour Department of the Government of India dated February 21, 1995 referring the dispute to the Industrial Tribunal, be allowed. He cited the case of Smt. Indu v. Municipal Council 1991 WLR (5) Raj 245 Abdul Waheed Vs. Authority, Payment of Wages Act and Others, Municipal Council v. Khubilal 1990 (2) RLR 657 Union of India v. Chhaganlal 1974 LIC 497 and M. S. Khan v. Director 1972 LIC 36.

7. Mr. Parihar, on the other hand, pointing out that remedy against the impugned orders was available to the Corporation under the Act of 1936, which they have not availed, submitted that this Court in its discretionary power under Article 226 should not interfere, and the petitions should be dismissed on this preliminary ground. Mr. Parihar further contended that the Corporation had been given opportunities to defend the applicants, but they chose to remain absent and the orders are based on the evidence produced in the case, which should not be disturbed. He urged that the additional document should not be accepted on

record in the writ of certiorari, more so when the document was not in existence when the Authority had considered the matter, He canvassed that the deductions of the wages were wrongful and therefore the Authority was justified in entertaining the matter u/s 15 of the Act of 1936. He referred to the cases of Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another, V.K. Govindswami v. Navjappa 1972 LIC 1393 and State of Rajasthan Vs. Chokha Ram,

8. I have given thoughtful consideration to the rival submissions made by learned counsel for the parties.

9. As to the preliminary objection that alternative remedy was available to the Corporation, it may be stated that the writ petitions were filed way back in the year 1991 and it cannot be proper to throw them away after seven years on the ground that alternative remedy was available. The Full Bench of this Court has held in the case of Smt. Indu v. Municipal Council, Jodhpur (supra) that the alternative remedy is not absolute bar to the maintainability of writ petition, more so when an authority has acted wholly without jurisdiction. It is profitable to read paras 24 & 25 of the judgment.

"Now the recent trend is that the conventional approach that in case of existence of an alternative remedy the jurisdiction of the Court is barred has not found favour with their Lordships of the Supreme Court specially in matter of workmen. Our attention is also invited to Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, wherein it has been observed as under:-

"Further, it is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition, when an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of alternative remedy. In the instant case, the Vice-Chancellor had no power to review and the exercise of such power was absolutely without jurisdiction. Indeed, the order passed by the Vice-Chancellor on review was a nullity, such an order be challenged before the High Court by a petition under Article 226 was not justified in dismissing the writ petition on the ground that an alternative remedy was available to the appellant u/s 68 of U.P. State Universities Act."

Therefore, no sweeping proposition can be laid down that the existence of a statutory alternative remedy bars the entertainment of writ petition under Article 226 of the Constitution of India it will depend on the facts and circumstances of each case."

10. It is obvious that if it is found that the Authority had acted wholly without jurisdiction this Court cannot be justified in refusing to exercise its jurisdiction under Article 226 of the Constitution of India on the ground of existence of alternative remedy.

11. Sub-sections (2) and (3) of Section 15 of the Act read as under:-

(2) 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 permissions of the authority appointed under Sub-section (1), may apply to such authority for a direction under Sub-section (3):

Provided that every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of wages due to be made, as the case may be:

Provided further that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under Sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages u/s 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case not exceeding twenty five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding twenty five rupees.

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to -

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment.

12. A reading of Sub-section (2) indicates that where deduction is made contrary to the provisions of the Act, an application can be filed u/s 15. Section 7 of the Act lists the deduction which may be made from the wages lawfully. Sub-section (2) of Section 7 is as follows:-

(2) Deduction from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely -

(a) xxx

(b) deductions for absence from duty -

(c) xxx

13. It is evident that if the employer makes deductions from the wages of an employee for absence from duty, the deduction is permissible under Sub-section (2) of Section 15 and application is not entertainable under that Section.

14. The jurisdiction of the Authority under the Act first depends upon the fact which are stated in the application. If it is stated in the application presented before the Authority that the wages had been deducted unlawfully and the applicant had attended the duty during the period the Payment of Wages Authority prima facie has got jurisdiction to entertain the matter. It will then depend upon the reply filed by the employer as to whether the Authority should proceed with the matter or not.

15. In the writ petitions before us, there are three types of cases. In one set of cases, the reply filed by the Corporation before the Authority was that the applicants remained absent from duty during the disputed period and on the principle of "no work no wages" they were not entitled to the wages and therefore wages have been rightly deducted. These are the cases of Devi Singh, Rajendra and Bhanwaroo (Payment of Wages Authority Case Nos. 247/86, 228/86 and 238/86). In the second set of cases, it was averred in the reply that the applicants remained absent from the duty during the disputed period for which charge-sheets had been given to them. These cases are of Sundari, Mansingh and Chunilal (Application Nos. 310/88, 308/88 and 313/88). In the third set of cases of Prabhu, Sundari, Heera, Kishan, Chhoga (Applications No. 325/90, 286/90, 323/90, 285/90 & 288/90) reply could not be filed by the Corporation before the Authority. It has been averred in the writ petitions filed before this Court that they had been charge-sheeted for remaining absent from duty during the disputed period.

16. The Courts have held that though the jurisdiction of the Authority under the Payment of Wages Act is limited, yet it can decide questions incidental to the claim. The Supreme Court has held in the case of Ambica Mills (supra) that the Authority under the Payment of Wages Act has jurisdiction to decide the questions incidental to claims. In that case controversy was whether the person who had filed an application before the Authority was an employee of the management or not. This was held to be matter incidental to the claim filed before the Authority.

17. The point for consideration is whether the matter of deduction of wages on account of absence is incidental to the claim made by the applicant and the Authority can decide the justification or otherwise of the deduction.

18. The following situations may be contemplated in such matters.

(A) The employee pleads that he was present on duty, but he was marked absent, AND the employer comes with the plea that the employee did not attend the office.

(B) The employee says that he was present at duty point but he was not entrusted the work or that he was asked to do the work which was performable by the workman lower in rank to him, AND the employer pleads that the employee though attended the office, did not do the work entrusted to him.

(C) The employer makes an averment in the reply that the employee intentionally remained absent from duty or did not perform duty entrusted to him and therefore, disciplinary proceedings have been initiated against him.

19. In my opinion, in the situation (A) and (B) above, the Authority under the Act can decide the controversy on the basis of the evidence - oral and documentary - produced by the parties. In such case, the matter of justification of deduction of the wages for absence from duty shall be incidental to the claim. However, the position would be different where the employer pleads that disciplinary proceedings have been initiated against the employee for his absence from duty or refusal to do work i.e. in situation "C" above.

20. The Allahabad High Court had an occasion to deal with the matter of deduction of wages on account of absence from duty in the case of *Union of India v. Chhaganlal* (supra). In that case, the learned Judge observed as follows:-

"The jurisdiction of the authority acting u/s 15 of the Act will extend to determine whether the deduction was in respect of any of the items mentioned in Sub-section (2) of Section 7. If he finds that the deductions was for an item not covered by any of these clauses, he would be entitled to award the amount. Similarly, he will have jurisdiction to enquire as an incidental matter as to whether an employed person was in fact absent or not. Once he finds that the person was absent and deduction was made for his absence from duty, his jurisdiction to enquiry further comes to an end. He will have no jurisdiction to enquire about the justification of the absence. Whether an employee was justified in absenting himself from duty or not has to be determined by the employer."

21. I fully agree with the observations made in that case. I am of the considered view that the Authority under the Act cannot sit in appeal over the decision of the employer to chargesheet his workman for his absence from duty. The moment the Authority is informed that charge sheet has been given to the applicant for his absence from duty for the period, he was claiming wages, the Authority under the Act should not proceed with the matter and it should direct the parties to approach the proper forum.

22. It has been held by this Court in the case of *Abdul Wahid v. Authority* (supra) that under the provisions of the Payment of Wages Act, the Authority has no jurisdiction to entertain any claim which raises complicated issues of law and

facts. It is certainly a complicated question as to whether the employer was justified or not in chargesheeting its employee for his absence from duty.

23. In the case of M.A. Khan (*supra*), the Division Bench of Allahabad High Court had occasion to consider about the jurisdiction of the Authority where the deduction was made under Clause (h) of Sub-section (2) of Section 7. In that case, two questions arose. As to the first question that whether the authority who had directed the deduction of the wages was competent to pass such order, the High Court held on the basis of the decision of the Apex Court that Rule 2044 of the Railway Establishment Code has statutory force and an order passed under that rule by an Authority was correctly passed. The second question arose was that the authority who directed the deduction of wages had not followed the principle of natural justice. The Division Bench held that this matter could not be gone into by the authority under the Payment of Wages Act as its jurisdiction was limited and it could not sit as Court of Appeal over the order passed by the Railway Authority under Rule 2044. On the principle enunciated in that case, it can be understood that once the employer comes with the plea that he has taken decision to chargesheet his employee for misconduct, the jurisdiction of the authority under the Act comes to an end as this cannot be said to be the matter incidental to the claim made by the applicant.

24. Keeping in view the aforesaid legal position, I now proceed to examine the situation in all the 11 petitions. As already stated, in the three cases of Bhanwaroo, Rajendra and Devi Singh, the reply of the Corporation before the Authority was that the applicants were absent from duty. The applicants thereafter filed rejoinders saying that they attended the office daily but work was not taken from them. The controversy clearly falls within situation (A) stated above. The Authority, in my opinion was well within its jurisdiction to determine as to whether the applicants had attended the office and they were wrongly marked absent as it was the question incidental to the claim.

25. It is significant to point out that in the reply in all these 3 cases, the Corporation had not stated that any action was taken against the applicants for their misconduct in remaining absent from duty. When it was not the stand of the Corporation before the Authority that for the absence any action was taken against the applicants, the only question for determination was whether the applicants had attended to the duty or not on the days for which wages were deducted.

26. In these three cases the applicants went into witness box and examined witnesses to prove that they did attend the office of the Corporation and in one case even token was issued to the applicant. In the case of Bhanwaroo, it has been proved that he attended the office and even token was given to him. Not only this, Mohan Singh, Incharge says that the workman had even worked in the Canteen. In the case of Devi Singh it has been proved that he did attend the office but he was not entrusted work. Even Shafi Mohd., mate deposes in favour of the applicant. So also in the case of Rajendra Singh, besides the evidence of

fellow workmen, Chotaram, mate deposes that the applicant attended the office during the period but he was not entrusted the work, to be performed by him.

27. In the case of Bhanwaroo (W.P. No. 1246/91) the authority fixed dates August 26, 1989, September 14, 1989, November 16, 1989, November 24, 1989, December 22, 1989, January 24, 1990 and March 23, 1990 and April 18, 1990 for the evidence of the Corporation but it failed to adduce evidence and the evidence was closed on April 18, 1990.

Thereafter the case was fixed for arguments on May 16, 1990 and June 21, 1990. It is relevant to state that on the date the evidence of Corporation was closed and the case was fixed for arguments the representative of Corporation was present. He was also present on May 16, 1990 and June 21, 1990. However, no application was moved for producing evidence on these dates. On July 26, 1990 the day on which the arguments were heard no one was present for the Corporation though written arguments had already been submitted by its representative before the authority. It is obvious that despite number of opportunities given to the Corporation evidence was not led in rebuttal. The authority was therefore perfectly justified in holding that the deductions from the wages of the applicant was illegal. No fault can be found in the directions given by the Authority for making payment to the applicant alongwith compensation.

28. During arguments Mr. Calla referred to some documents to emphasise that the applicant was facing charge for his absence from duty and hence the authority had no jurisdiction to decide this matter. The documents are Exs. 8 (at page 59 & 60 of the paper book), Ex. 9 (at page 62 of the paper book) and Ex. 10 (at page 63 of the paper book). The documents Exs. 9 and 10 pertain to the period of the year 1985. The period for which the wages of the applicant were deducted was January, 1986 to September, 1986. Obviously, these documents were not relevant for the purpose of deduction of wages from January, 1986 to September, 1986. By the document Ex. 8 the applicant was chargesheeted for remaining absent from duty from January 24, 1986. This chargesheet was given on February 15, 1988 i.e. after filing of the application by the applicant before the Payment of Wages Authority. It was not in the reply of the Corporation that the applicant was going to be chargesheeted. The simple reply was that the applicant did not appear on duty from January 24, 1986. The evidence led by the applicant establishes that he did attend the office of the Corporation and even worked in the Canteen. There was no rebuttal. Since the applicant was not chargesheeted even upto the time the reply was filed before the authority, it cannot be said that the authority had no jurisdiction to decide the matter.

29. Coming to the application of the Corporation for filing the document in this Court it may be stated that in the writ of certiorari fresh evidence cannot be allowed to be produced and the matter is to be decided on the basis of the evidence produced before the authority. Vide *Municipal Council v. Khubilal* (supra). Apart from that, the document indicates that the reference to Industrial Tribunal was made in 1995 i.e. years after the matter was decided by the

authority. This document is, therefore, ignored.

30. In the case of Rajendra Singh (Writ Petition No. 1255/1991) the reply of the Corporation was that the applicant had not attended the office and therefore he was not entitled to the wages for which the deduction was made. The applicant closed his evidence on June 22, 1989 and the case was fixed for the evidence of Corporation on dates July 20, 1989, August 26, 1989, September 14, 1989, November 16, 1989, November 24, 1989, December 12, 1989, January 24, 1990, March 23, 1990 and April 18, 1990 but the Corporation failed to produce any evidence and therefore the evidence was closed on April 18, 1990. Thereupon the case was fixed for arguments on May 16, 1990, June 21, 1990 and July 26, 1990. On July 26, 1990 the arguments were heard but none appeared for the Corporation though its representative had submitted written arguments prior to that date. It is obvious that despite giving various opportunities to the Corporation, it did not lead evidence in rebuttal. When it was not the stand of the Corporation that any action was taken -against the applicant for his absence from duty, the authority was well within its jurisdiction to decide as to whether the applicant had attended the duty on the dates for which his wages were deducted. No fault can be found with the authority when it held on the basis of the oral evidence produced by the applicant that he had attended the office but work was not entrusted to him. That being so, the authority was justified in directing the Corporation to make payment to the applicant his wages alongwith compensation.

31. Same is true for Devi Singh (Writ No. 1256/1991). There was no averment in the reply of the Corporation that for the alleged absence disciplinary proceedings had been initiated against him. In that case after the applicant closed his evidence on March 23, 1990 the case was fixed for the evidence of the Corporation on April 18, 1990 but evidence was not produced on that day and therefore its evidence was closed. The case was fixed for arguments on May 16, 1990, June 21, 1990 and July 26, 1990. It is relevant to state that the representative of the Corporation was present on May 16, 1990 and June 21, 1990 but he did not make application, seeking opportunity to lead evidence. He failed to appear on July 26, 1990 the date on which the arguments were heard though the written arguments were put up by him on earlier date. The fact remains that the Corporation failed to produce evidence in rebuttal. The only point to be decided in the matter was whether the applicant had attended the office on the dates for which the Corporation deducted the wages. The applicant's case was proved by the evidence and the Corporation led no evidence. Therefore, the authority was perfectly justified in holding that the deduction from the wages was illegal. No fault can be found in the direction given by the authority to the Corporation to make payment of the deducted wages alongwith compensation.

32. However, the situation is different in the cases of Sundari, Mansingh and Chunilal. As already stated, in the reply it was averred that the applicants had

been chargesheeted for their remaining absent from duty. In view of the discussion made above, in these cases the authority could not have proceeded further to determine the question of absence from duty. The controversy in these cases cannot be called incidental to the claims made before the authority.

33. In the remaining five cases of Prabhu, Sundari, Heera, Krishna and Chhoga the Corporation could not file reply. The first date fixed in two out of five cases was December 26, 1990 and in the remaining three cases it was November 19, 1990. As the Corporation did not appear the authority directed the cases to proceed ex parte. However, the documents which have been filed along with the writ petitions indicate that in three matters applications were made by the Corporation on November 26, 1990 i.e. within one week of the order dated November 19, 1990 that the copy of the application was not delivered to them. No orders seem to have been passed on these applications, and the authority chose to decide the cases on March 14, 1991 ex parte. In two applications the Corporation had moved applications for adjournment on February 14, 1991 but the authority passed ex parte order on February 16, 1991. The case for the Corporation was that its representative could not reach on the dates fixed due to issues. It is evident that in these cases the action of the authority was over hasty and adequate opportunities were not given to Corporation to submit its reply. In this view of the matter, I would have remanded back the cases of these five applicants after setting aside the ex-parte order for deciding the matter afresh. However, for the reason which I will presently show, I am not adopting that course.

34. Along with the writ petitions the Corporation has filed documents Annexure 7 and Annexure 8 in some cases and Annexure 9 and Annexure 10 in other cases which indicate that charge-sheets had been served on the applicants for their absence from duty. It is obvious that these matters fall in situation "C" above and they could not be decided by the Authority under the summary proceedings u/s 15 of the Act. As the authority has got no jurisdiction in these matters, it is futile exercise to send back these cases to the authority.

35. The result, therefore is that the writ petitions Nos. 1246/1991, 1255/1991 and 1256/1991 are devoid of merit and are hereby dismissed. Writ petitions No. 1253, 1254, 1257, 1576, 1577, 1578, 1579 and 1580/1991 are allowed and the orders impugned therein are hereby quashed.

36. No order as to costs.