

(1958) 07 CAL CK 0021
In the Calcutta High Court
Case No : Civil Revn. Case No. 1603 of 1958

Promode Ranjan Sarkar

APPELLANT

Vs

R.N. Mullick

RESPONDENT

Date of Decision : 18-07-1958

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 16, 17(1)

Citation : AIR 1959 Cal 318 : (1959) 1 CALLT 343 : 63 CWN 6 : (1959) 2 ILR (Cal) 751

Hon'ble Judges : K.C. Das Gupta, J;B.K. Guha, J

Bench : Division Bench

Advocate : Purnendu Narayan Biswas, for the Appellant; Nirmal Chandra Chakraborty and J.J. Chatterjee, for the Respondent

Judgement

K.C. Das Gupta, J.—On the 2nd April 1957 the Authority under the Payment of Wages Act made an order in the following terms ;

"O.P., Sri Pramoderanjan Sarkar of 40, Hindustan Park, Calcutta is directed to pay the earned wages of the employees for Rs. 9289/-. Ask O. P. to deposit the directed sum in this Court within 10 days from the date of receipt of notice."

Promoderanjan Sarkar preferred an appeal to the Small Cause Court Calcutta. The learned Judge, Small Cause Court held that as the amount directed to be paid to any one individual employee did not exceed Rs. 300/- no appeal lay under the Payment of Wages Act. Accordingly, he dismissed the appeal.

2. Promode Ranjan Sarkar now asks this Court to set aside the order dismissing the appeal in the exercise of his power of superintendence under Article 227 of the Constitution. His contention is that an appeal did lie against the direction made by the Authority.

3. The decision of the question in controversy depends on the interpretation of Section 17 of the Payment of Wages Act which provides for an appeal. Section 17 is in these words :

"(1) An appeal against a direction made under Sub-section (3) or Sub-section (4) of Section 15 may be preferred, within thirty days of the date on which the direction was made in a Presidency Town before the Court of Small Causes and elsewhere before the District Court-

(a) by the employer or other person responsible for the payment of wages u/s 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or

(b) by an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty-rupees, or

(c) by a person directed to pay penalty under Sub-section (4) of Section 15.

2. Save as provided in Sub-section (1), any direction made under Sub-section (3) or Sub-section (4) of Section 15 shall be final."

4. An employee or other person responsible for the payment of wages has, therefore, an appeal against a direction to pay a sum by way of wages or by way of wages and compensation or by way of compensation if the following conditions are satisfied: (1) the direction to pay (the sum has been made under Sub-section (3) of Section 15(2) the total sum directed to be paid exceeds Rs. 300/-.

5. Prima facie both these conditions have been satisfied in this case. The direction given in the order has been made on several applications made by the Inspector under the provisions of Sections 15 and 16. The Authority has, however, given one direction and not several different directions, and that directs payment of a sum far exceeding three hundred rupees. Why then is it said that an appeal would not lie? The argument is that in deciding what is the total sum directed to be paid we should take into consideration not the total of the sums directed to be paid to all the employees, but only the sums directed to be paid to an individual employee. It is said that the purpose of the Act is to secure proper payment of wages to employees considered as individuals and so when any part of the Act speaks of any amount directed to be paid, it has in mind the amount directed to be paid to an individual employee. It is argued from this that if the intention of the legislature was that the sums directed to be paid to all the employees are to be taken into consideration, in the "total sum directed to be paid", words like, "to the group of employees" would have been added.

6. Considering the question as one free from authority, I have no hesitation in saying that there is no substance in this argument. The golden rule of interpretation is that we must first try to ascertain the intention of the legislature from the words used, by attaching the ordinary meaning of the words on the grammatical construction--adding nothing and omitting nothing; and to give effect to the intention thus ascertained, if the language is unambiguous, and no absurdity results. If the language is not free from ambiguity, it becomes necessary and proper to take into consideration the background of the legislation

and other circumstances which may help the ascertainment of the intention. If, even though free from ambiguity, the ordinary meaning of the words used gives rise to an absurdity, we have to endeavour to avoid the absurdity, by adding, if possible, some words and omitting some words, to ascertain the legislature's intention.

7. Applying this rule to the present case, I find that the words "total sum directed to be paid by way of wages and compensation" are entirely free from ambiguity. They mean, on ordinary grammatical construction, the total of all the sums directed to be paid by one single direction--whether the payment is to be to one or more persons. I can see no absurdity, or even inconvenience, in the practical application of the rule. One has only to examine the direction, There may be cases where the direction is in form one, but in substance several. In such cases, the appealability of each such direction has to be considered separately after ascertaining the total sum directed to be paid by each such direction.

8. While it is true that the purpose of the Act is to ensure speedy and regular payment to employees considered as individuals, the Act has very reasonably provided, as a means to that end, for a number of employees acting together or an Inspector under the Act acting on behalf of several persons together. This has been made clear by the provisions of Section 16 of the Act that a single application may be presented u/s 15. Even where a number of separate applications has been made, Sub-section (3) of Section 16 empowers the Authority to deal with them as a single application and give one direction u/s 15(3), or make one order of dismissal.

9. This definite provision that one direction can in law be made in the case of a number of employees, makes it inevitable that the total sum payable by the direction, should include all the sums directed to be paid by that one direction, even though the payment is directed to be made to a number of persons.

10. As the ordinary and natural meaning of the phrase used is that sums directed to be paid to all employees by a single direction will make up the "total sum", it would have been meaningless for the legislature to use any further words for the purpose.

11. This is the view which appears to me to be correct on an interpretation of the words in Section 16 considered as free from authority. I am aware, however, that while this question has not yet come up for consideration in this Court, it has been considered in two cases by the Madras High Court and in one case by the Bombay High Court. In the case reported in *Union of India (UOI) Vs. S.P. Nataraja Sastrigal and Others*, , the learned Judge took the same view as has appeared to me to be reasonable. A later decision of the Madras High Court followed this decision. The Bombay High Court has, however, taken a different view in *Laxman Pandu and Others Vs. Chief Mechanical Engineer, Western Railway*, . There Chagla, C. J. disagreeing with the decision of the Madras High Court held that the amount directed to be paid to each employee is the amount

to be considered in deciding whether an appeal lies. The learned Judge was of opinion that it would be curious if the legislature's desire to confer a facility upon the employees by allowing one application to be made for the claims of several employees should have the result of giving a right of appeal to the employer. He was also of the opinion that pure procedural provisions should not be read or construed as offering a right of appeal or imposing a disability.

12. With very great respect to the learned Chief Justice, I am unable to agree with his view, When the result of a procedural provision is that one single direction can be made and on that basis a single direction is made, I can see no justification for splitting that one direction into several only for the purpose of preventing an appeal. In deciding the question whether an appeal lies or not, it would be improper in my opinion to take into consideration the inconvenience caused to the employees if the appeal is available to an employer. That was a question of policy in which the legislature had the right and duty to make its wish clear. As I read the section, the legislature has expressed its intention clearly that where one single direction directs payment of a sum exceeding Rs. 300/-, an appeal would lie. The fact that a single direction can be given as regards several employees, because of procedural facilities given in Section 16 cannot, in my opinion, take away the force of the words actually used by the legislature.

13. The learned Chief Justice has criticised the judgment of Subba Rao, J. of the Madras High Court where that learned Judge said that there is no reason why a distinction should be made in the case of an employed person u/s 17(1)(b) and in the case of an employer u/s 17(1)(a) and has gone on to say that there was good reason why the employees should be differently treated u/s 17(1)(b) from the manner in which the employers might be treated. I agree with Chagla, C. J. that it was open to the legislature to give a right of appeal to the employees even in cases where the employer would have no right of appeal. There would be nothing unreasonable in this. I would not base any conclusion on the fact that Section 17(1)(b) gives the right of appeal if the amount claimed exceeds Rs. 50/- whether individually or collectively. Quite apart from this, however, the language actually used in Section 17(1)(c) justifies, in my opinion, the conclusion which found favour with the Madras High Court that the total of the payments directed to be made to all the employees should be considered as a whole if it is one direction. In my opinion, therefore, an appeal did lie against the direction made by the Authority under the Payment of Wages Act and the learned judge of the Small Cause Court acted wrongly in dismissing the appeal in the view that no appeal did lie.

14. I would, therefore, make this Rule absolute, set aside the order passed by the learned Judge and direct that the appeal be disposed of by him in accordance with law.

15. There will be no order as to costs,

B.K. Guha, J.

16. I agree.