

(1968) 03 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No. 1389 of 1967 with Special Civil Application No's. 1390 and 1392 to 1395 of 1967

Rahim Hajubhai Shaukh (A)

APPELLANT

Vs

Shiraj Kasim Nadar and Others

RESPONDENT

Date of Decision : 16-03-1968

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 17, 18, 2, 22

Citation : (1968) 70 BOMLR 704 : (1969) 18 FLR 238 : (1969) 1 LLJ 226

Hon'ble Judges : S.H. Naik, J;D.V. Patel, J

Bench : Division Bench

Judgement

Patel, J.—These special civil applications are brought to this Court challenge the decision of the authority under the Payment of Wages Act on an interlocutory question, namely, whether the authority had jurisdiction to entertain and decide the applications made by the respondent workmen in each case. Each of respondents 1 in the applications was working with each of the petitioners in each of these applications, who are running different factories. Respondent 1 in Special Civil Application No. 1389 of 1967 claimed that he was entitled to notice-pay, retrenchment compensation, leave wages and bonus for the year 1963-64 at 20 per cent. of the pay and compensation on termination of his service. The petitioner admitted the employment of the workman, but contended that on 22 March, 1965 the workman left the factory without permission and thereafter he did not attend the factory at all, In short, his contention was that the workman voluntarily abandoned the employment of the petitioner. The claims in the other applications are of the same nature and the defences are also the same. The question that will have to be decided is whether the workman was retrenched or left of his own accord, i.e., abandoned the employment.

2. The question whether the authority has jurisdiction to try this issue was raised as a preliminary issue and the authority found the issue against the petitioners. The petitioners seek to revise this decision.

3. We will first examine the question on first principles. The Payment of Wages Act is intended to provide a short and speedy remedy to a workman who is not paid wages as defined in the Act or from whose wages anything is deducted illegally and improperly. The definition sections define words and phrases used in the Act. "Wages" is defined by S. 2(vi). It has a wide meaning and includes within it any benefit to which a workman is entitled to, on termination of service, either under the contract of employment or under any law or an award or a settlement. It includes within it a large number of benefits which but for the wide definition may not be included in "wages." Under S. 15, the authority has to decide all the claims, including all incidental matters, after hearing the parties and making such inquiry as it deems proper. The orders which the authority is entitled to make are comparatively wide; they are not limited to merely giving necessary directions for the payment of money to the employee, but also to the making of orders imposing penalty upon the employer for illegal deductions or non-payment. By S. 17, a right of appeal is given against the decision of the authority to the Court of Small Causes in the presidency towns and elsewhere to the District Court. Any decision rendered by the authority and/or the appellate Court in any appeal against his judgment is made final. Under S. 18, the authority has got all powers under the CPC for the purpose of taking evidence and of enforcing attendance of witnesses and compelling production of documents. Section 22 bars the jurisdiction of civil Courts in all matters which can be decided by the authority under the Payment of Wages Act.

4. It cannot be gainsaid that the remedy is to some extent a summary remedy and to the extent to which the jurisdiction can be exercised by the authority, the jurisdiction is taken away from the civil court. It is well-settled that where a statute creates special jurisdiction taking away the jurisdiction of the civil Court, the statute ought to be strictly construed. However, even though the statute has to be construed strictly, it does not and cannot mean that the very intention of the legislature ought to be defeated by placing unduly narrow construction on such provision in order to oust the jurisdiction of the authority concerned. We may in this connexion refer to the rule of construction of such provisions. In Maxwell on the Interpretation of Statutes, 9th Edn., p.360, the author says :

"Where an Act confers a jurisdiction it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution."

5. Some of the cases cited there illustrate the application of the principle. Thus where an Act empowered the justices to require persons to take an oath as special constables, and also gave them jurisdiction to inquire into offences, was construed to vest in them impliedly the power to arrest them if the persons failed to appear before them, *The King v. Twyford* (1836) 5 Ad & E. 430. Similarly, where an Act empowered the Court to grant an injunction was construed to imply a power to commit for disobedience, *Ex Parte Martin* (1879) 4 Q.B.D. 212 and *Martin v. Bannister* (1879) 4 Q.B.D. 491. The principle underlying these decisions

is that the jurisdiction granted would be useless without this implied power. It is true that there is presumption against ousting the jurisdiction of the Superior Courts (Maxwell 138) and may be of regular Courts, which must be either expressly or by clear implication taken away. It is also true that where summary powers are conferred, the Court ought not "to be construed into a jurisdiction." The statute however ought to be construed reasonably and fairly, and a matter which falls within it ought not to be taken out of it. As an illustration of this principle, we may refer to some cases decided by our own Courts. The Provincial Small Causes Courts Act, 1887, vests jurisdiction in the Small Cause Courts alone in certain matters where the claim is less than a certain pecuniary limit. There is a large body of decided cases which have laid down that, in order to determine whether or not the Small Cause Court has jurisdiction, the Court must look to the nature of the suit as brought by the plaintiff and embodied in the plaint and not to the nature of the defence; it is not in the power of the defendant to oust the Small Cause Court of a Jurisdiction which it would otherwise have, by the mere raising of a plea of title, *Bapuji Raghunath v. Kuvarji Edulji Umrigar* ILR (1890) 15 Bom. 400 and *Kesrisang v. Naransang* ILR (1908) 32 Bom. 560.

6. Having regard to the language of the present statute, particularly Ss. 15 and 22 which are nearly similar in their effect to Ss. 15 and 16 of the Small Cause Courts Act, we should be justified in adopting the principles applying under that Act. We should look to the claim that is made. The defendant ought not to be allowed to defeat, the only quick and effective remedy available the employee, by merely raising contentions which require evidence to be taken or to be considered. The machinery provided by the Act is sufficient for the purpose and then there is a right of appeal. It is unfortunate that, so far, in the absence of a guiding principle, the remedy intended to be quick and effective, has in many cases caused much unnecessary expense to the employees and waste of public time, for the question of jurisdiction is raised in a large number of cases by employers who raise some contention the other and contend that the authority has no jurisdiction because of that contention.

7. We now come to the decided cases. Sri Chitale referred us to two decision of this Court. First is the decision in *Sarin (Controller of Stores, B.B. & C.I. Railway) v. B. C. Patil and another* 1951 II L. L.J. 188 In that case the workman contended the order of suspension passed by District Controller of Stores against appellant was illegal and void, and claimed his wages for the period of suspension. The tribunal held that the order of suspension was invalid and wrong, and directed District Controller of Stores to deposit the amounts due to the claimant from time to time. This Court held that the authority would have jurisdiction to construe terms of contract of employment in only to determine what wages are paid or payable; even if the contract of employment has been terminated, it is open to him construe its terms in order to determine whether any sums are payable by reasons the termination; that a mere denial of the factum of employment cannot oust the jurisdiction of the authority; he would have

authority to decide whether or and the claimant was an employee; that he had jurisdiction to determine the terms of contract in so far as they relate to payment wages and determine the liability of the employer to pay wages under the terms of contract. But that the jurisdiction, how ever, does not extend to determine the question as to whether the contract has terminated as alleged by the employer or the contract is still subsisting as alleged by the servant. Much reliance has been placed on this observation. The observation cannot be taken out of its context and its extended. This observations is a passing observation, the real question being whether the order of suspension was legal or illegal. It has been explained in a later to mean only this that when the employer says that the employment has been terminated, and it is proved, the further whether the termination of the employment is legal or not is not within the jurisdiction of the authority. In that case, the authority went into the question as to whether the order of suspension was erroneous and illegal had having come to the conclusion that it was illegal, it created a liability in the employer in future even though the order of suspension had not been withdrawn or properly and effectually set aside by a Court of competent jurisdiction. Section 7(1) explanation provides, among other things, that deduction of wages due to as order of suspension is not deemed to be deduction, if the rules framed by the employer for the imposition of the penalty are in conformity with the requirements specified by the State Government. His jurisdiction would therefore extend only to the determination of the question whether the rules conform to the requirements, specified by the State Government.

8. The next case is *Mushran v. Patil* and another 1951 II L. L.J. 584. In this case a railway servant was employed for a certain period, then compelled to go on leave for some time on full pay, for some time on half pay and for some time without pay. No charge was framed against him and no enquiry was held. The employee applied to the authority and claimed full pay for the entire period alleging that there was illegal deduction. The authority ordered the railway administration to pay the entire amount. The Court confirmed the order. The learned Chief Justice who delivered the judgment, referred to the remarks made in *Sarin* case 1951 II L.L.J. 188 (vide supra) and explained that delay in payment of wages can only mean delay in payment of "wages which are admitted" and further observed at p. 586 :

"... Therefore, it is only in a case where the employer has put an end to the contract of employment, has dismissed his employee and the employee is complaining of a wrongful dismissal and claiming damages from his master for wrongful dismissal, that according to us in that decision, the jurisdiction of the authority was ousted to determine questions with regard to the wrongful dismissal"

9. This decision is consistent with the principles which we have affirmed.

10. In *A. V. D"Costa (Divisional Engineer), G.I.P. Railway v. B. C. Patel and M. Lazarus* 1955 I.L.L.J. 363 the facts are as follows : An employee was employed

by the Central Railway and was rated as a daily rated casual workman. He was paid at the rate of Rs. 3-4-0 per day. The Pay Commission recommended that as far as possible daily-rated labour should be replaced by monthly-rated labour. The administration then created a cadre of monthly-rated employees and admitted those who had passed the trade test. The applicant did not pass this test and continued to draw daily wages though his juniors were admitted to the cadre. The authority held that they were "temporary workers" and were entitled to wages in the Rs. 55-130 scale plus allowance. Though the High Court held that the authority had jurisdiction in the matter, as pointed out by the Supreme Court, the real contention of the employees was not that there was illegal deduction or non-payment of wages, but that though the wages were paid, they were entitled to be admitted to the cadre created on account of the new scheme, in which their juniors were promoted and they were not. It must also be noted that the question was not even as to the construction of the Pay Commission's finding and its application. The matter that the authority actually decided had no direct connexion with either deduction of wages or non-payment of wages but raised a dispute which was outside the provisions of the Act. For this reason, the Court denied jurisdiction to the authority.

11. The next case is *Anthony Sabastin Almeda Vs. R.M. Taylor and Another*, . The facts of the case are as under, The employees were in the service of the Indian Naval Dockyard and were originally paid Rs. 100 per month. Thereafter, the Governor-General framed rules under S. 241(2) of the Government of India Act and fixed the wage-scale at Rs. 60-70 per month. Option was given to the employees to accept the new conditions and if they accepted, the order was to be effective from a particular date. They accepted the new wages-scales. They were then paid Rs. 75 per month and in addition, Rs. 25 personal pay. The quantum of the total wages and the allowances continued to be the same. Thereafter, from 1 August, 1947, their wages were reduced to Rs. 80 and they were paid Rs. 75 and only Rs. 5 as personal pay. The employees therefore claimed the difference. During the course of the judgment the learned Chief Justice observed (pp. 453 454) :

"..... The jurisdiction of the authority (under the Payment of Wages Act, 1936), is limited to decide what is the contract in the sense of construing the contract in order to determine the liability of the employer to pay wages. But when the employer and the employee come before him and rely on different contracts, it is not within his jurisdiction to decide which of the two contracts holds the field, which of them is subsisting and under which of them the employer is liable to pay wages. It is only when there is no dispute as to the contract that subsists and regulated the right and liabilities of the parties, that the jurisdiction of the authority arises to determine the quantum of wages."

12. These observations do not help the petitioners in this case, Moreover, we will explain later how the authority of this case is shaken by the decision in *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*,]

13. In *Valajibhai Aucharbhai v. Chimanlal Hemraj Joshi* 1957 II L.L.J. 1861, the employees claimed overtime wages contending that the establishment in which they were working was a factory within the meaning of the Factories Act, 1948 and the respondent contended that the establishment was not a factory but a restaurant. The authority rejected the application on the ground that he "was not supposed to determine complicated questions of laws or decide question about the status of the workmen." The Court held that, the claim being "wages unlawfully deducted," the authority was bound to decide all question incident to the determination of wages unlawfully deducted.

14. In *Vishwanath Tukaram v. General manager Central Railway, and others* 1957 II L.L.J. the facts were these. The railway employee was arrested for a criminal charge 26 October, 1949 and on 6 May, 1953 he was discharged by the trying magistrate. On 20 October, 1953, he resumed his work. He then applied to the authority claiming wages for the whole period contending that during this period he was under suspension that he continued to be in the employment till he was reinstated on 20 October, 1953. The railway administration contended that the employee was not in their employment during the relevant period as his name was automatically struck off the attendants register as nothing was heard about his and he was treated as absconding after 26 October, 1949. The Full Bench seems to have adopted the test whether the issue directly and substantially arose in the issue being whether the employee in the employment of the railway administration during the relevant period and said "there can be no doubt that that is an which the authority can try and determine"

15. In *Ambika Mills Company, Ltd. v. S. B. Bhatt and another* 1961 - I L.L.J. 1 (vide supra), the question arose in this way. The employees were workers of the mills. A standardization award covering the mill industry in Ahmedabad was made by the industry tribunal on 21 April, 1948. It fixed the wage for different categories of workers in the textile mills at Ahmedabad, leaving the question of clerks open. The case of hand folders amongst the categories was argued. It was argued that the wages awards was too low, as they did the same work as lookers in Bombay where they were paid higher wages. Sufficient evidence, however was not forthcoming regarding the work done by the hand-folders. The industrial tribunal had said;

"At the same time, we desire to make it clear that if there are persons who are doing cut-looking as well as folding, they should be paid the rate earned by the cut-lookers in Bombay."

16. The employees claimed that they were doing the work of cut-looking and were entitled to the benefit of that direction. The authority considered the duties of the employees and allowed their claim. Before the Supreme Court the question of jurisdiction was raised, Justice Sri Gajendragadkar, speaking for the Court, observed that in a sense the jurisdiction of the authority was limited by S. 15 and in another sense it was exclusive as prescribed by S. 22 and that while deciding the question of wages or delayed wages, the authority would inevitably

have to decide all questions incidental to the said matters. Considering the definition of wages in its unamended form, he said (p. 8) :

".... Now, if a claim is made by an employee on the ground of alleged illegal deduction or alleged delay in payment of wages several relevant facts would fall to be considered. Is the applicant an employee of the opponent ? If the said fact is admitted, then the next question would be : What are the terms of employment ? Is there any contract of employment in writing or is the contract oral ? In some cases a question may arise whether the contract which was subsisting at one time had ceased to subsist and the relationship of employer and employee had come to an end at the relevant period. In regard to an illegal deduction question may arise whether the lockout declared by the employer is legal or illegal. In regard to contracts of service sometimes parties may be at variance and may set up rival contracts and in such a case, it may be necessary to enquire which contract was in existence at the relevant time ..."

17. Applying the principles formulated to the question at hand, the learned Judge said (p. 9) :

"..... In our opinion, on these facts, the question as to whether a particular employee is an operative falling under the award or one who is above an operative and below the clerk falling under 01.5 is a question which is so intimately and integrally connected with the problem of wages as defined under S. 2(vi) that it would be unreasonable to exclude the decision of such a question from the jurisdiction of the authority under S. 15"

18. The Court did not express any opinion on the correctness of the decision in Anthony Sabastin Almeda Vs. R.M. Taylor and Another, but distinguished the same. However, that is not affirming the same, since as the earlier passage cited by us says : "that where the parties set up rival contracts, it may become necessary to enquire which contract is in existence at the relevant time"

19. After the decision of the Supreme Court, the legislature thought it fit to amend the provisions of the Payment of Wages Act, by adding the last word in Sub-section (1) of S. 15 along with the proviso and which so far as relevant are : "of persons employed or paid in that area, including all matters incidental to such claims ..." The later portion of the section, therefore, now reads thus : ".... be the authority to hear and decide for any specified area all claims arising out of deducting including all matters incidental to such claims." This in effect is bringing the section in line with the judgment of the Supreme Court.

20. Sri Chitale tried to place reliance on the word "incidental" and contended that incidental would mean a subsidiary question, and the question such as the one before us cannot be regarded as an incidental question. The matter cannot be regarded as simple as that. The words are inclusive and the effect would be to recognize in the authority jurisdiction to decide all questions necessary to be determined in order to give relief to the party concerned, including such other questions as may incidentally arise in the matter, subject, however, to this that in

doing so it does not encroach upon other jurisdictions, in respect of any matter. Even the Supreme Court, after holding that the authority would be entitled to decide all incidental questions, applied the test whether the question was integrally connected with the question of non-payment or illegal deduction of wages, and therefore necessary to be decided.

21. Sri Chitale relied upon the decisions in *Codialabail Press Vs. Monappa (K.)*, , *Peirce, Leslie and Co. Ltd. Vs. Rama Moily*, and *Lakhpatri v. Om Prakash* 1965 II L.L.J. 398. Both the later cases related to wrongful removal and evidently could not be within the jurisdiction of the authority under the Payment of Wages Act. As to the first, with respect, we are unable to agree with the conclusion there reached for reasons recorded above.

22. We, therefore, hold that the authority has jurisdiction to determine any question that may incidentally arise, i.e., which is integrally connected with and necessary to be decided in considering the question whether there is non-payment of wages or illegal deduction of wages and it would not be within the power of the employer to take the matter out of the jurisdiction of the authority by raising questions of fact or law subject to this that in doing so, it does not encroach upon other jurisdictions.

23. In the present case, the respondent claimed the amount on the footing that he was discharged by the petitioner. The petitioner says that the respondent left the service of own accord and therefore, he is entitled to the amount. What the respondent claims is notice-pay, retrenchment compensation, leave-wages and bonus. Clearly the claim is wages. Employment is admitted. These are benefits Which to the workman on termination of service and amount to wages. It is said that if they left voluntarily, they are not entitled to the same. The question is clearly connected with the matter in issue and it is necessary to decide in order to give relief to the applicant and it is within the jurisdiction of the authority to decide.

24. There is no merit, therefore in these petition and the rule is discharged with costs. Costs Quantified at Rs. 150 in each.