

(2009) 12 JH CK 0015
In the Jharkhand High Court

Raj Kumar Singh	Vs	APPELLANT
The State of Jharkhand and Others		RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 12 JH CK 0015

Hon'ble Judges : Gyan Sudha Mishra, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal has been preferred by the appellant against the order dated 05.10.2009 passed in W.P(S) NO. 4129/2008 by which the writ petition filed by the writ petitioner for payment of his salary was rejected as the learned Single Judge was pleased to accept the contention of the respondent-State that the petitioner/appellant herein had an alternative efficacious remedy before the Payment of Wages authority under the Industrial Disputes Act where he can claim his salary.

2. The simple case of the petitioner/appellant herein before the learned Single Judge was to the effect that the salary has not been paid to him although he is still in service as a Mixture Operator in the Rural Engineering Organization, Works Division, Gumla which admittedly is a Government department of the State of Jharkhand. The Counsel for the petitioner had submitted before the learned Single Judge that the petitioner is a duly appointed employee of Rural Engineering Organization and yet he has not been paid the salary although he had been continuously discharging his duties.

3. On the other hand, the respondent-State categorically took the stand before the learned Single Judge that the petitioner/appellant herein had an alternative remedy before the Payment of Wages authority under the Industrial Disputes Act where he could claim his wages. This contention was accepted by the learned

Single Judge and hence the writ petition was dismissed against which this appeal has been preferred by the appellant-employee.

4. Assailing the judgment passed by the learned Single Judge, it was submitted by learned Counsel for the appellant, that the appellant could not have been directed to approach the Payment of wages authority as he is fully entitled to invoke the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India since he had not filed the writ petition in the capacity as a workman under the Industrial Disputes Act but as a full fledged employee of the State of Jharkhand. In view of this, it was not correct on the part of the learned Single Judge, to accept the contention of the counsel for the State and direct the petitioner to approach the Payment of Wages authority.

5. This submission could not be countered by the Sr. Standing counsel, Mr. A. Allam who had to accept the legal position that the petitioner/appellant herein could not be construed as a workman within the meaning of Industrial Disputes Act when he, in fact, was an employee of the respondent-State. He, therefore, submitted that although appellant's counsel may be correct in submitting that he could not have been directed to approach the Payment of Wages authority claiming salary, yet he is not entitled to the salary as he has disobeyed the transfer order of the authority and had refused to join his new place of posting.

6. However, the Sr. Standing counsel is missing that this was never submitted before the learned Single Bench that the appellant had disobeyed the order of the authority due to which he was not paid his salary. The respondent-State had categorically submitted only to the extent that the appellant had an alternative remedy before the Payment of Wages Authority and, therefore, his plea could not be entertained by the learned Single Judge in which we do not find any substance and hence accepted the plea of the counsel for the appellant, that the appellant could not be construed as a workman within the meaning of the Industrial Disputes Act as he was a full fledged and duly appointed employee of the State of Jharkhand.

7. In that view of the matter, he was well within his right to approach the Single Bench by way of a writ petition under Article 226 of the Constitution. Besides this, the appellant also could not have been directed to approach the Payment of Wages authority as the Payment of wages authority is under the legal obligation to compute only the wages but whenever there is legal dispute regarding the legal entitlement of the employee to claim wages, the same has to be referred to the Tribunal by way of a reference of the dispute.

8. However, this observation in the instant matter is purely incidental as the appellant herein cannot be treated as a workman under the Industrial Disputes Act. In view of the aforesaid reasons, the order passed by the learned Single Judge to the effect that he had an alternative remedy before the Payment of wages authority is not fit to be sustained. We further do not find any substance in the plea of the Sr. Standing counsel that the petitioner/appellant herein could

not be paid his wages because he had disobeyed the order of the authority concerned. Even if this is so, the respondent-State ought to have disclosed this fact before the learned Single Judge which was not done and hence was never adjudicated by the learned Single Judge. It is for the first time that it has been submitted at the stage of appeal that the petitioner/appellant had disobeyed the transfer order due to which the salary could not be paid to him. We, therefore, cannot accept the contention of the Sr. Standing counsel on this count too and, consequently, the same is rejected.

9. As a consequence of the aforesaid discussions, the obvious conclusion that can be drawn is that the respondent-State shall have to pay the wages to the appellant to which he is entitled as a full fledged employee of the State of Jharkhand since he had been duly discharging duties with the respondent-State. In so far the contention of the respondent-State to the effect that he could not be ordered for payment of his salary for the period during which he had disobeyed the order of the authority cannot be gone into as this plea had not been taken by the respondent-State before the learned Single Judge.

10. We, therefore, deem it legally appropriate to set aside the order of the learned Single Judge dated 05. 10. 2009 passed in W.P(S) NO. 4192/2008, and accordingly, this appeal is allowed.