

(1987) 01 RAJ CK 0037
In the Rajasthan High Court
Case No : Civil Revision No. 350 of 1986

Rajasthan State Ware Housing Corporation	APPELLANT
Vs	
Authority appointed under the Payment of Wages Act	RESPONDENT

Date of Decision : 05-01-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Industrial Disputes Act, 1947 — Section 25F, 25FF, 25FFF
Payment of Wages Act, 1936 — Section 10, 11, 12, 13, 15
Warehousing Corporations Act, 1962 — Section 15, 2, 20, 23, 3

Citation : (1987) RLW 16 : (1987) 1 WLN 503

Hon'ble Judges : Mohini Kapoor, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohini Kapoor, J.—The common question which arises in all these revision petitions is whether the Rajasthan State Ware Housing Corporation (here in after referred to as "the Corporation") can deposit the arrears of Dear-ness Allowance (DA) admissible to its employees in the General Provident Fund (GPF) or some similar account and not pay in cash, and would deposit in such GPF or other account amount of deduction of wages u/s 7 of the Payment of Wages Act (here in after referred to as "the Wages Act").

2. The petitioner Corporation has been constituted under the Ware Housing Corporation Act, 1962 (hereinafter referred to as "the Act") in which 50% shares belong to the State Government. It has its own staff and the service conditions of the staff are governed by regulations framed u/s 42 of the Act and are called the Rajasthan State Ware Housing Corporation (Staff) Regulations 1574 (here in after referred to as the Regulations). The Act provides for the constitution of the Corporation and other bodies in order to carry its functions. Section 20 provides for the constitution of the Board of Directors in which shall vest the general superintendence and management of the affairs of the Corporation.

Section 23(1) and (2) of the Act read as under:

23(1) A State Warehousing Corporation may appoint such Officers and other employees as it considers necessary for the efficient performance of its functions.

23(2) Every person employed by a State Warehousing Corporation under this Act shall be subject to such conditions of service and shall be entitled to such remuneration as may be determined by regulations made by the Corporation under this Act.

Regulation 24 of the Regulations framed u/s 42 of the Act reads as under:

24 Dearness and Compensatory Allowance.-Employees of the Corporation shall be entitled to dearness and compensatory allowance at the rates admissible to employees of the State Government from time to time.

3. The Government from time to time revised the dearness allowance payable to the employees of the State Government and such increased dearness allowance was made payable in cash from a date specified in the order by which the dearness allowance was sanctioned, but as regards the arrears of dearness allowance it was ordered that the same shall be credited to the provident fund account of each employee. The relevant documents in this connection are Annexures 1 and 2. instalments of additional dearness allowance were sanctioned by the Government w.e.f. 1-8-1983, 1-10-1983 and 1-11-1983 by order dated 22nd July, 1984 and it was ordered that the arrears of dearness allowance payable upto 31-5-1984 shall be impounded and thereafter the D\\ shall be paid in cash. Annexure-1 order passed by the Government says that all public sector undertakings, corporations, autonomous bodies etc. shall ensure that the amount of dearness allowance sanctioned to the employees with effect from the aforesaid date shall be recovered as arrears of dearness allowance upto 31-5-1984 and credited to the provident fund account of the employees. The order Annexure-2 passed by the Government on 31st October, 1984 is in respect of the revised dearness allowance rates w.e.f. 1-1-1984, 1-2-1984, 1-4-1984 and 1-6-1984. This order also directs the corporations etc. to recover the arrears of the dearness allowance and credit the same to the provident fund account of the employees.

4. The respondent No. 2 applied before the Authority under the Wages Act u/s 15(2) of the Wages Act and claimed that the arrears of the dearness allowance payable to him has been unlawfully deducted by the employer who should be directed to pay the same. Upon this the Corporation was heard and after considering the relevant law applicable in this context, the Authority under the Wages Act, by order dated 30th Jan., 1985 directed the petitioner to pay the amount of arrears of dearness allowance payable to each employee, in cash, along with compensation Rs. 50/- and costs, Rs. 25/- each. This order of the Authority was challenged in an appeal before the District and Sessions Judge, Jaipur City, who after taking into consideration all the pleas that were advanced before him, dismissed the appeal on 25th April, 1986 Against this order the

present revision has been preferred.

5. The learned Counsel for the petitioner has raised several contentions in order to show that the decision of the courts below is not proper. His contention is that the Annexures-1 and 2 are orders by which the rates of DA stood revised with the stipulation that the DA would be payable in cash only after a specified date subsequent to the issue of the orders and the calculation of amount prior to that be deposited in the fund. According to him this being a composite order has to be made applicable in all parts and different provisions cannot be bifurcated so as to make it applicable in parts. It is argued that the amount which has been calculated and deposited in the GPF cannot be said to be a deduction from the wages because the amount has been credited in the account of the employees which shows that he has not been deprived of it. In the alternative, this deduction is said to be an authorised deduction u/s 7(2)(h) of the Wages Act. It is argued that under Regulation 24, the employees of the Corporation are to be treated at par with the employees of the State Government and when the arrears of the State Government's employees are being deposited in the general provident fund account then the said provision is applicable to the employees of the Corporation also. His contention is that the employees of the Corporation cannot ask for the quantum of allowance as payable to the State Government employees and contest the mode of paying the same which would amount to blowing hot and cold in the same breath. The deposit of arrears of dearness allowance in the general provident fund account is said to be a policy decided on the basis of instructions and guidance given by the State Government as is provided in Section 20(4) of the Act.

6. The jurisdiction of the Authority under the Payment of Wages Act has also been challenged by putting forward the argument that complicated questions of law cannot be decided by the Authority and if the validity of any order is to be challenged then it should be done in the writ jurisdiction of this Court and not before the Authority under the Wages Act. According to him exercise of jurisdiction by the Authority amounts to material irregularity in exercise of jurisdiction because the Corporation is to obey all orders passed by the State Government and without getting the same quashed, no relief can be granted against the petitioner. According to the petitioner the object of Regulation 24 is fulfilled as soon as the employees of the Corporation are treated similar to the Government servants in the matter of dearness allowance and beyond that they are not entitled to anything. Emphasis has also been laid on the ground that this matter is of national interest and the payment of arrears of dearness allowance in cash would directly affect the economy of the country and the rate of growing inflation. The Government has adopted the present decision after taking into consideration such and other aspects which has to be accepted.

7. The learned Counsel for the non-petitioner No. 2 has contended that the persons to whom the provisions of the Wages Act are applicable are to be paid wages without any deductions in accordance with Section 6 of the Wages Act.

This provides that all wages shall be paid in current coin or in currency notes and it is only under the authority of the employee that the wages can be paid either by cheque or by crediting the wages in his bank account. Section 7 permits the authorised deduction and for the present purpose Section 7(2)(h) is relevant which reads as under:

Section (2) Deductions 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;

(h) deductions required to be made by order of a Court or other authority competent to make such order.

8. It is contended that the Authority under the Wages Act has to decide whether the authority which has made the order to make a deduction can be said to be a competent authority or not. There is no dispute that clearness allowance payable to an employee is part of wages as defined in Section 2(vi) of the Wages Act. There is no dispute about the amount payable also and the only question is whether it has to be paid in cash or it can be deposited in the account of the employee. This is said to be a matter within the jurisdiction of the Authority and cannot be thrown out simply by saying that this is a complicated question of law. It is contended that the State Government is not the competent authority to pass any order in respect of employees of the Corporation which is a body constituted under the Central Act and has its own Board of Directors and Executive Committee etc. to manage its affairs. Thus, any authority, to become a competent authority, to authorise a deduction has to be an authority under the Act and its place cannot be taken by the State Government. The maintainability of a revision by the petitioner is also challenged on the contention that the Authority under the Payment of Wages Act as well as the District Judge have exercised jurisdiction vested in them and their decisions cannot be challenged merely on the ground that they should have arrived at a different conclusion.

9. The first question which arises is whether the Authority under the Wages Act has jurisdiction to entertain the application made by the non-petitioner No. 2. In this connection both the parties have placed reliance on *Payment of Wages Inspector Vs. Surajmal Mehta and Another*, In this case the employees of an Electricity Board were served with notices that their services would no longer be required. Upon this an application on behalf of the employees was submitted u/s 15(2) of the Wages Act to recover wages for the notice period and also retrenchment compensation payable to them u/s 25FF of the Industrial Disputes Act. This claim was contested by the employer and the jurisdiction of the Authority under the Wages Act was also challenged. In this connection it was held that the Authority under the Wages Act cannot entertain a claim for compensation u/s 25FF of the Industrial Disputes Act as it involved complicated questions of law. The proper authority was held to be the Labour Court. The compensation payable u/s 25F, 25FF and 25FFF of the Industrial Disputes Act was held to be included in the definition of wages but no time limit was fixed for

the payment of this compensation. Referring to the jurisdiction of the Authority under the Wages Act, it was observed as under:

It is explicit from the terms of Section 15(2) that the Authority appointed under sub Section (!) has jurisdiction to entertain applications only in two classes of cases, namely, of deductions and fines not authorised under Sections 7 to 13 and of delay in payment of wages beyond the wage periods fixed u/s 4 and the time of payment laid down in Section 5. The only applications which the Authority can entertain are those where deductions unauthorised under the Act are made from wages or there has been delay in payment beyond the wage period and the time of payment of wages fixed or prescribed under Sections 4 and 5 of the Act, Section 15(2), postulates that the wages payable by the person responsible for payment u/s 3 are certain and as such that they cannot be disputed.

It is true that the Authority has the jurisdiction to try matters which are incidental to the claim in question. It is also true that while deciding whether a particular matter is incidental to the claim or not care should be taken neither to unduly expand nor curtail the jurisdiction of the Authority. But it has at the same time to be kept in mind that the jurisdiction u/s 15 is a special jurisdiction. The Authority is conferred with the power to award compensation over and above the liability for penalty of fine which an employer is liable to incur u/s 20.

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The question, therefore, is whether on the footing that compensation payable under Sections 25FF and 25FFF of the Industrial Disputes Act being wages, within the meaning of Section 2(vi)(d) of the Act, a claim for it on the ground that its payment was delayed by an employer could be entertained u/s 15(2) of the Act. In our view it could not be so entertained. In the first place, the claim made in the instant case is not a simple case of deductions having been unauthorisedly made or payment having been delayed beyond the wage periods and the time of payment fixed under Sections 4 and 5 of the Act. In the second place, in view of the defence taken by Respondent 1, the Authority would inevitably have to enter into questions arising under the proviso to Section 25FF vis, whether there was any interruption in the employment of the workmen, whether the conditions of service under the Board were any the less favourable than those under the company and whether the Board, as the new employer, had become liable to pay compensation to the workmen if there was retrenchment in the future. Such an inquiry would necessarily be a prolonged inquiry involving questions of fact and of law. Besides, the failure to pay compensation on the ground of such a plea cannot be said to be either a deduction which is unauthorised under the Act nor can it fall under the class of delayed wages as envisaged by Sections 4 and 5 of the Act. It may be that there may conceivably be cases of claims of compensation which are either admitted or which cannot be disputed which by reason of its falling under the definition of wages the Authority may have jurisdiction to try and determine. But we do not think that a claim for compensation u/s 25FF which is denied by the employer on the ground that it

was defeated by the proviso to that section, of which all the conditions were fulfilled, is one such claim which can fall within the ambit of Section 15(2).

10. On the basis of this decision, it can be said that the authority under the Wages Act is empowered u/s 15 of the Act to entertain matters concerning delay in payment of wages and deduction from wages and while doing so it can decide whether the deduction is authorised and permissible under the provisions of Wages Act. It cannot be said that merely because a question of law has arisen which has a wide effect it would become a matter beyond the purview of the Authority or because the employer has raised a plea that the deduction is authorised by a competent authority then it would become a matter which cannot be decided by the Authority. In the present case, the employees have come with the definite case that their wages have been deducted against the provisions of law and the case of the employer is that firstly there is no deduction and secondly if there is a deduction then it has been authorised by competent authority. Both these questions are such which the Authority under the Wages Act has jurisdiction to decide and such Authority cannot be divested of this power merely on the ground that the questions involved are complicated. The present matter cannot be equated with a claim for compensation u/s 25FF of the Industrial Disputes Act which does not provide for any time for making the payment and the claim for such payment can also be defeated under the provisions of this section itself. The Industrial Disputes Act provides for separate forum for agitating claims for compensation arising under the provisions of the Act. Here, if there can be any alternative remedy, it is by way of a writ petition which cannot be said to be a remedy which should have been first availed of by the employees. On the contrary it would be contended in a writ petition that an alternative remedy by way of an application u/s 15(2) of the Wages Act was available.

11. On the basis of some other decisions also it can be said that the present claim of the employee was maintainable before the Authority under the Wages Act. In *Bijai Cotton Mills Ltd., Bijainagar v. Sub-Divisional Magistrate, Beawar* the workmen applied u/s 15 AIR 1965 Raj. 11 of the Wages Act for recovery of a claim under an award. The amount payable under an award is included under the definition of "wages" u/s 2(vi) of the Wages Act and the application was held to be within the jurisdiction of the Authority under the Payment of Wages Act. In *Maruti Mahipati Mullick v. Poison Ltd.* 1970 Lab. IC 308 it was held that it cannot be said that the Authority under the Wages Act is a Tribunal of "summary jurisdiction" and that the legislature has intended that the Authority should try and decide "complicated" questions which should normally be heard by a civil court. The jurisdiction of the Authority although limited in extent was held to be exclusive. It was held that the Authority under the Wages Act cannot refuse to entertain the application for fixation of Wages on the ground that there is a variance between the contract pleaded by the workman and the contract relied upon by the employer. Similarly the Punjab and Hariyana High Court in *Gian Chand Har Dass v. G. Kay Industries, Amritsar* 1971 Lab. IC 1360 (Vol. 4 C 334)

has held that all matters which are incidental to the determination of wages which have been wrongly deducted or wages payment of which has been delayed can be settled and decided by the Authority concerned.

12. At the risk of repetition it may be stated that the present case is purely a case where the employee has alleged a deduction from his wages which is denied by the employer and in the alternative it is said to be justified as authorised deduction. If in deciding this question some incidental questions have to be gone into, the complication of the claim would not change so as to say that the Authority under the Wages Act has no jurisdiction to entertain it. The claim in the present case cannot be said to be maintainable under the provisions of any other Act so as to say that the proper course would have been to apply before that forum.

13. In order to show that a revision u/s 115 of CPC is maintainable the petitioner has to satisfy the existence of the conditions enumerated in this provision. The Authority in the present case has exercised jurisdiction vested in it by law and this exercise of jurisdiction cannot be said to be materially illegal or irregular merely because it has arrived at a particular conclusion. If the Authority has jurisdiction to decide a matter then even an incorrect decision would not make it illegal exercise of jurisdiction. However, as I am satisfied that the decision of the Authority as well as the learned District Judge does not deserve to be varied or reversed, I would like to endorse their view in my own way.

14. Section 23(2) of the Act provides for laying down the conditions of service and the remuneration to which an employee of the Corporation shall be entitled. Regulation 24 provides for payment of the dearness and compensatory allowance at the rates admissible to the employees of the State Government from time to time. By this Regulation it is the Corporation which has decided that the dearness allowance of the employees shall be at the same rate which is admissible to the employees of the State Government and it is not the State Government which has directed the Corporation to pay dearness allowance to the employees of the Corporation at the same rate which is admissible to the employees of the State Government. When the direction to pay dearness allowance at a particular rate cannot be said to be that of the State Government then the direction of the State Government to make the payment of the arrears of the dearness allowance not in cash but by way of deposit in the provident fund account of each employee cannot be said to be an order which has to be accepted as a condition precedent for paying the dearness allowance at a particular rate. Regulation 24 has provided for dearness allowance at the rate admissible to the employees of the State Government without providing for the manner in which this dearness allowance is to be paid. The Board of Directors of the Corporation to whom the general superintendence and management of affairs of the Corporation has been entrusted are to exercise powers on business principles having regard to public interest and can even be guided by instructions on questions of policies as may be given to them by the State Government or the Central Ware Housing

Corporation. It is the decision of the Board of Directors which will apply to the employees of the Corporation and not the decision of the State Government, In order to make a deduction authorised deduction u/s 7(2)(h) of the Wages Act, the deduction should be made by order of a court or other authority competent to make such order. In the present case, the competent authority can be Board of Directors which has not passed any order for the deduction of wages but it is the State Government which has passed the order which is not the competent authority under the Act or the Regulations.

15. On the face of it this argument appears to be attractive that the employees of the State Government will have to forego the arrears of dearness allowance by getting them deposited in the general provident fund account while the employees of the Corporation shall be getting the same in cash and it may be said to be treating different, employees differently. However, it may be mentioned that the provisions of Sections 6 and 7 of the Wages Act are not applicable to employees of the State Government. Section 6 may be referred to again which provides for payment of all wages in current coin or in currency notes and not payment either by cheque or by crediting in the bank account of the employee. It can be said that the employees who are governed by the Wages Act cannot be paid wages in kind. Again Section 7 of the Wages Act provides for payment of wages without any deduction except those authorised under the Act. In Section 7(2)(k), (kk), (kkk), (p) the circumstances have been given where deduction with the written authorisation of the employed person can be made. They are on account, of premium of life insurance to the Life Insurance Corporation of India and contribution to any trade union or to the Prime Minister's National Relief Fund or such other funds as the Central Government may by notification in the Gazette specify. All these deductions can be made only on the written authorisation of the employed person. There is no provision for making any deduction for the purposes of depositing it in the account of the general provident fund of the employees. The petitioner Corporation could have justified the deduction only u/s 7(2)(h) of the Wages Act but when the deduction has not been required to be made by the authority competent to make such order then the deduction cannot be said to be an authorised deduction. When the amount has not been paid in the currency coin or currency notes but has been deposited in the account of the employee which will be payable at a future date, which may be the date of superannuation or some other date then this cannot be said to be payment in accordance with the provisions of the Wages Act.

16. The only case which may be said to have a bearing on the question which is under consideration is the case of *Samir Kumar Chatterjee v. State of West Bengal* (5). The petitioners in this case were employees of the Calcutta State Transport Corporation. Pay revision was made on the recommendation of a Pay Revision Committee and it was accepted by the respondent Government. By means of a Government order it was ordered that arrears of wages need not be paid to worker in cash but should be credited in a special fund called Retirement Benefit Fund. It was held that it was not the Corporation which had decided or

determined that the arrears be carried to any fund nor did the corporation decide about the application of such money. Referring to Section 29 and 34 of the Calcutta State Transport Corporation Act it was held that it does not authorise the Government to determine or decide what should be done u/s 29 and the Government could not direct deduction from any wages lawfully payable to the employees. This decision was taken in a writ petition and the question whether the authority under the Wages Act had jurisdiction to entertain such an application did not arise. The learned Counsel for the petitioner wants to press this decision into service in order to argue that the application u/s 15 was not maintainable but this is not the principle laid down in this case. The decision on merits of the claim has been followed by both the courts below and as stated above I am in agreement with this view.

17. "Merely because same union of the employees has filed a writ petition challenging the order of the State Government by which the direction has been given to deposit the arrears of dearness allowance in general provident fund account, the claim before the Authority under the Wages Act would not become non-maintainable.

18. These revisions have no force and are accordingly dismissed. Parties are left to bear their own costs.