
(1969) 08 OHC CK 0032
In the Orissa High Court
Case No : Civil Revision No. 26 of 1966

Rameshwar Lal and Another

APPELLANT

Vs

Jogendra Das

RESPONDENT

Date of Decision : 12-08-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 9
Industrial Disputes Act, 1947 — Section 25F
Payment of Wages Act, 1936 — Section 15, 17, 18, 2, 22

Citation : AIR 1970 Ori 76

Hon'ble Judges : S. Acharya, J;B.K. Patra, J

Bench : Division Bench

Advocate : D.P. Mohanty, for the Appellant; A.C. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

Patba, J.—This application in revision is directed against an appellate order of the District Judge, Cuttack u/s 17 of the Payment of Wages Act, 1936 (hereinafter referred to as the Act). The petitioners here are proprietors of a Gurakhu factory situate in Telenga bazar, Cuttack and the opposite party was serving under them in the factory. While so working opposite party is said to have met with an accident which disabled him from attending to his work with effect from 9-1-1961. After undergoing treatment when he wanted to join his duties, the petitioners refused to employ him any further. The opposite party therefore, made an application u/s 15 of the Act before the Additional District Magistrate, Cuttack, who is the appropriate authority appointed u/s 15 of the Act, claiming arrears of wages for the months of November and December, 1960 and 8 days of the month of January, 1961 at the rate of Rs. 55/- per month and alleging that it is a case of retrenchment, he also claimed a month's wages in lieu of notice besides retrenchment compensation of Rs. 247-50 p.

The Addl. District Magistrate reduced the retrenchment compensation claim to Rs. 220/- and allowed the other items of claim as prayed for by the opposite

party. The petitioners filed an appeal before the District Judge which was dismissed and it is against that order that the petitioners have come up in revision,

2. At the outset It is contended by the opposite party, that this revision petition is not maintainable on the ground that the authorities appointed under the Payment of Wages Act are not courts and much less subordinate to the High Court. In support of this contention, he placed reliance on decisions of this Court and other High Courts, namely, *Labangalata Dei Vs. Sk. Azizullah*, ; AIR 1944 288 (Nagpur); *B. Triloki Nath Vs. Lord Krishna Sugar Mills Ltd.*, and *H. C. D. Mathur, Secy. of the National Federation of Railway Vs. E.I. Rly. Administration*, . In all these cases, the revision applications were filed directly against the orders passed by the authority appointed u/s 15 of the Act. In the Orissa case cited above, *Barman J.* held that a Commissioner appointed under the provisions of the Payment of Wages Act is not a Court subordinate to the High Court u/s 115, C. P. C. Hence, a revision application does not lie to the High Court from an order u/s 15 of that Act passed by the Commissioner. In the Nagpur case also, the order that was challenged in revision was one passed u/s 15 of the Act by the "authority" mentioned therein and *Bose. J.* held that the authority is a "persona designata" and not a regular civil Court subordinate to the High Court within the meaning of Section 115, C. P. C. The same view was expressed by Division Bench of Allahabad High Court in *B. Triloki Nath Vs. Lord Krishna Sugar Mills Ltd.*, which is also a case in which a revision was filed against an order passed by the authority u/s 15 of the Act and this view was reiterated subsequently by the Full Bench of Allahabad High Court in AIR 1959 All 80. It was canvassed before their Lordships that the authority constituted u/s 15 of the Act is a Court. Referring to this contention their Lordships observed that -

"The word "Court" is not a term of art having a fixed meaning: it indicates a large number of entirely divergent things. So far as a Court of law in the wider sense of the word, is concerned, any person or a body of persons, called upon to decide any question of right in accordance with judicial principles and which is a "tribunal which exercises jurisdiction by reason of the sanction of the law" is a Court. It does not, however, follow from this that every such tribunal is a Court of civil jurisdiction, to which alone Section 115, C. P. C. applies, x x x x x . The conclusive test is provided by Section 22 which excludes the jurisdiction of "Courts" in respect of matters entrusted to the jurisdiction of the authority u/s 15. Clearly, therefore, the Legislature intended that the authority constituted u/s 15, Payment of Wages Act, should not be a Court. The fact that Section 18 of the Act directs that the authority should have certain powers of civil Courts and that it should be treated as a Civil Court for the purpose of Section 195 and Chap. XXXV, Criminal Procedure Code, would not lead to the inference that the authority is a civil Court. x x x x x x x . The authority created u/s 15. Payment of Wages Act, is not subject to the appellate jurisdiction of the High Court. That section, therefore, does not give the High Court jurisdiction to interfere with the orders of the authority. Hence the authority invested with jurisdiction under the

Payment of Wages Act is not a Court subordinate to the High Court within the meaning of Section 115. C. P. C."

3. The present revision application is directed not against an order of the authority u/s 15 of the Act but against the appellate order passed by the District Judge in exercise of his powers u/s 17 of the Act. Section 17 of the Act so far as is material may be quoted;

"17. Appeal -- (1) An appeal against an order dismissing either wholly or in part an application made under Sub-section (2) of Section 15, or against a direction made under Sub-section (3) or subsection (4) of that section may be preferred, within thirty days of the date on which the order or direction was made, in a presidency-town before the Court of Small Causes and elsewhere before the District Court".

It may be noticed that the appeal under the section has to be filed before the District Court and not before a District Judge. If a District Judge as distinguished from a District Court had been invested with this jurisdiction such authority could be called a *persona designata* as distinguished from a Court. But it cannot be contended that a District Court can be designated as *persona designata* just because it has been invested with jurisdiction under a special Act A District Court being a civil Court subordinate to the High Court Sec. 115, C. P. C. clearly applies to orders passed by such Court.

In *Debidutt Dube v. Central India Electrical Supply Co. Ltd.* AIR 1945 Nag 244, an appeal was filed against an order passed by the authority u/s 15(1) of the Act in the District Court at Jabulpore. As against this order passed by the District Court in appeal, a revision was filed in the High Court, and in this case, a preliminary objection was raised that no revision lay against an order passed by the District Court u/s 17 of the Act. Repelling this contention it was held that the District Court decides a "case" within the meaning of Section 115, C. P. C., when it decides an appeal u/s 17 of the Act and the High Court, therefore, has power to revise an order passed by the District Court in appeal under Sec. 17 of the Act. In *Jogendra Nath Chatterjee and Sons Vs. Chandreswar Singh*, , an appeal against an order passed under S. 15 of the Act was filed in the Court of Small Causes and against the order passed by that Court a revision application was filed in the High Court. A preliminary objection was taken that no revision u/s 115, C. P. C. lay in as much as Section 17 of the Act provides that the decision of the authority appointed under the Payment of Wages Act shall be final subject to an appeal and that inasmuch as an appeal had already been filed and decided, the unsuccessful party had no further remedy, Repelling this contention, their Lordships held that all that the word "final" in Section 17 of the Act means is that no further appeal would lie from the decision of the Appellate Court, but that the Court of Small Causes being subordinate to the High Court, by virtue of the provisions of Section 115, C. P. C., the High Court has power to revise the order passed by the Court of Small Causes.

Having regard, therefore, to the provisions of the Act and the authorities on the subject, we are clearly of opinion that the revision application is maintainable.

4. Now coming to the merits of the case, it is no more in dispute that the opposite party was employed under the petitioners and that wages for the months of November and December, 1960 and 8 days of January, 1961 were due to the opposite party. The petitioners state that there is no evidence to show that the place where they are manufacturing Gurakhu is a factory within the meaning of the Factories Act, But no such specific contention was raised by them in their written statement and at any rate, the finding of fact recorded by the learned District Judge" is that it is a factory.

The only point which was urged with some amount of vehemence on behalf of the petitioners is that the cessation of employment of opposite party is not due to retrenchment, and that, in any case, it was beyond the jurisdiction of the authorities under the Act to investigate into the question whether or not it is a case of retrenchment and to award retrenchment compensation and wages in lieu of notice. It is argued on behalf of the opposite party that it has been admitted by the petitioners in the written statement that this is a case of retrenchment and, that, therefore, the authorities were perfectly justified in awarding retrenchment compensation.

5. Our attention was invited to the petition filed by the opposite party and the written statement filed by the petitioners and on perusing the same, we are satisfied that the contention of the opposite party that he was retrenched had not been admitted by the petitioners in the written statement. The averment on this point is contained in paragraphs 5 and 6 of the petition. In paragraph 6 of the written statement filed by the petitioners it is definitely averred that the allegations contained in paragraph 6 of the petition are all false and imaginary. It is true, that in paragraph 6 of the petition, the opposite party had also mentioned about his claim for arrears of wages and the denial made by the petitioners in para 6 of their written statement also referred to this claim. But it is not disputed that the claim relating to arrears of wages is a matter which is within the purview of the authorities under the Act. The question, therefore, is where in an application u/s 15 of the Act, the worker contends that he was retrenched from employment, and as such he is entitled to retrenchment compensation etc., and this claim is disputed by the employer on the ground that it is not a case of retrenchment, whether it is within the jurisdiction of the authorities concerned to investigate into this claim and give relief to the workman.

It is submitted on behalf of the opposite party that the authority under the Act has jurisdiction to determine any question that incidentally arises, namely, 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 that the matter relating to retrenchment is one such incidental question. In fact Section 15(1) which is quoted below provides for investigation into matters

which are incidental to such claim.

"15. Claim arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.-

(1) The State Government may, by notification in the Official Gazette, appoint a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims.

* * * * *

In order to have a clear appreciation of the nature and extent of the jurisdiction of the authority, we have necessarily to look to the scheme of the Act. The Act is intended to regulate the payment of wages to certain classes of persons employed in industries and the object is to provide for a speedy and effective remedy to the employees in respect of their claims arising out of illegal deduction or unjustified delay made in paying the wages to them. The definition section defines words and phrases used in the Act "Wages" is defined by Section 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", Section 4 fixes wage period, Section 5 prescribes time of payment of wages and Section 7 specifies deductions which can be made from wages. u/s 15, the Authority has to decide all claims arising out of deductions from wages or delay in payment of wages of persons employed including all matters incidental to such claims. 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 Section 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. u/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. It would thus be noticed 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 should be defeated by placing an unduly narrow construction on such provision in order to oust the jurisdiction of the authority concerned.

5A. Clear cases of deductions from wages the quantum of which is not disputed or delay in payment of wages present no difficulty. It is the expression "incidental to such claims" which has given rise to a lot of controversy as to which claim in a particular case is incidental to the main claim and which not. In a recent decision in *Payment of Wages Inspector Vs. Surajmal Mehta and Another*, , their Lordships had to consider the question whether a claim for compensation payable u/s 25FF of the Industrial Disputes Act can be entertained u/s 15(2) of the Act where the defence involved complicated questions of law, and they answered the question in the negative. Their Lordships observed-

"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 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, xxxxx".

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 Payment of Wages Act a claim for it on the ground that its payment was delayed by an employer cannot be entertained u/s 15(2) of the Act, because the claim 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 and in view of the defence taken the Authority would inevitably have to enter into questions arising under the proviso to Section 25FF viz., whether there was any interruption in the employment of the workmen, whether the conditions of service under the new employer, were anytheless favourable than those under the old employer and whether 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. When the cases of sums payable under a contract, instrument or a law it could not have been intended that such a claim for compensation which is denied on grounds which inevitably would have to be inquired into and which might entail prolonged inquiry into questions of fact as well as law was one which should be summarily determined by the Authority u/s 15. Nor could the Authority have been intended to try as matters incidental to such a claim questions arising under the proviso to Section 25FF. It would be the Labour Court in such cases which would be the proper forum which can determine such questions u/s 33C(2) of the Industrial

Disputes Act which also possesses power to appoint a commissioner to take evidence where question of facts require detailed evidence."

6. It is true that in this case we are not concerned with a case of retrenchment compensation payable either u/s 25FF or Section 25FFF of the Industrial Disputes Act, but with a claim of compensation made u/s 25F of the Industrial Disputes Act. In cases where retrenchment itself is not disputed or is clearly indisputable, there can be no doubt that a claim for retrenchment compensation as per Section 25F of the Industrial Disputes Act can be entertained by the Authority under the Payment of Wages Act as retrenchment compensation comes within the definition of "wages". There are no materials in this case from which it can be inferred that it is a clear case of retrenchment. The employer disputes the claim that the termination of service was by way of retrenchment. The question, therefore, is whether under such circumstances, it is within the province of the relevant Authority u/s 15 of the Act to investigate into this question as a matter incidental to the claim arising out of deduction from wages.

This specific question came up for consideration before the Mysore High Court in *Manager, Codialabail Press v. K. Mohappa* AIR 1963 Kant 128 and the learned Judge held -

"Even if retrenchment compensation payable u/s 25F of the Industrial Disputes Act can be regarded as wages, an order for its payment can be made u/s 15 only when the retrenchment is not disputed or is clearly indisputable. But if the employer who admits the termination of the employment disputes that the termination was by the process of retrenchment there being no provision in the Payment of Wages Act for an adjudication on that matter, the foundation for a complaint u/s 15 that wages though due were withheld would be unavailable, since the purpose of the Act is to enforce payment of wages in a case where the facts admitted by the employer clearly establish the liability to pay the wages and it is complained that there is non-payment or incomplete payment".

This decision was rendered before the amendment of Section 15(1) of the Act by the Amending Act 53 of 1964 which inserted the words "including all matters incidental to such claims" in Sub-section (1) after the words "persons employed or paid in that area". After the amendment question similar to the one under consideration in the present case came up for consideration before a Division Bench of the Bombay High Court in *Rahim Hajubhai Shaikh (A) Vs. Shiraj Kasim Nadar and Others*, . In an application u/s 15(2) of the Act, a workman claimed from his employer, notice pay, retrenchment compensation, leave wages and bonus for termination of his service by the employer. The employer admitted employment of the work man but contended that the workman had left his service of his own accord and therefore, he was not entitled to the amount claimed by him. A preliminary contention was raised by the employer that the Authority under the Act had no jurisdiction to entertain and decide the application as he had no jurisdiction to try the issue whether the workman was retrenched or left of his own accord. After an exhaustive consideration of the

principles involved and on an examination of the case law on the subject including the decision of the Mysore High Court referred to above. AIR 1963 Kant 128, their Lordships held that the question raised was connected with the matter in issue as it was necessary to decide it in order to give relief to the applicant, and that, therefore, it was within the jurisdiction of the Authority to decide it. With respect we are in full agreement with the views expressed by the learned Judges of the Bombay High Court that the question about retrenchment compensation raised in this case is a matter incidental to the claim for wages. Both the Authority u/s 15 and the appellate Court have held on consideration of the evidence on, record that the termination of service of the opposite party was by way of retrenchment and sitting in revision we are bound by this finding. It is on this basis that compensation was allowed to the opposite party.

7. In the result, the application fails and is dismissed, but in the circumstances, without costs.

Acharya, J.

8. I agree.