

(2014) 05 RAJ CK 0080
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5060/1998

Registrar, University of Rajasthan and Others	APPELLANT
Vs	
Authority, appointed under the Payment of Wages Act, 1936 and Others	RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226 — Income Tax Act, 1961 - Section 34 —
Payment of Wages Act, 1936 - Section 1, 1 (4), 1(4), 15, 17

Citation : (2014) 05 RAJ CK 0080

Hon'ble Judges : Veerender Singh Siradhana, J.

Bench : Single Bench

Advocate : Rupin Kala, for the Appellant; Suresh Kashyap, for the Respondent

Final Decision : Allowed

Judgement

Veerender Singh Siradhana, J.?The petitioner - University of Rajasthan, has impeached the order dated 11th November, 1997, passed by the Payment of Wages Authority, Jaipur, primarily on the ground of jurisdiction and has approached this Court with the prayer, which reads thus:--

"It is, therefore, requested that writ petition of the petitioners be admitted and allowed and order dated 11/11/97 of the Payment of Wages Authority, Jaipur be quashed and set aside by passing a writ of certiorari or writ of mandamus or any other writ or direction quashing the order dated 11/11/97 of the Payment of Wages Authority, Jaipur. Any other order or direction, as is deemed fit, proper and appropriate in the facts and circumstances of this case, the same be also passed in favour of the petitioners and cost of petition be also awarded in favour of the petitioners".

2. Shorn off unnecessary details, the indispensable essential material facts necessary for appreciation of the controversy raised are: that the respondent number 2 (Dayal Singh S/o. Shri Dan Singh) was engaged temporarily with effect from 1st April, 1993 to 31st October, 1993, on daily wages basis, in view of the

vacancy that occurred in the office of Dean, Students Welfare, University of Rajasthan, Jaipur. It is pleaded case of the petitioner that respondent number 2 also approached this Court by way of S.B. Civil Writ Petition Number 508/1995, claiming wages for the period of 1st January, 1993 to 31st March, 1993 and from November, 1993 to December, 1994. This Court by an order dated 11th March, 1997, issued a direction to calculate the wages for the period aforesaid and make the payment within a period of one month from the date of receipt of a copy of the order. The respondent number 2, thereafter, filed a complaint before respondent number 1 i.e. Authority appointed under the Payment of Wages Act, 1936 (hereinafter referred to as the "Act of 1936", for short), claiming wages for the period of 1st January, 1995 to 30th June, 1997 amounting to Rs. 24,960/- (Rupees : Twenty Four Thousand Nine Hundred and Sixty) and compensation thereon to the tune of Rs. 2,49,600/- (Rupees : Two Lakhs and Forty Nine Thousand and Six Hundred). The petitioner-University did not appear before the Authority appointed under the Act of 1936 (respondent number 1) and as a consequence, impugned order dated 11th November, 1997, was made under Section 15 of the Act of 1936 for an amount of Rs. 24,960/- (Rupees : Twenty Four Thousand Nine Hundred and Sixty) and compensation of Rs. 10,000/- (Rupees : Ten Thousand) in addition i.e. a total amount of Rs. 34,960/- (Rupees : Thirty Four Thousand Nine Hundred & Sixty), to be paid within 30 days.

3. Learned counsel, Mr. Rupin Kala, appearing on behalf of the petitioner, reiterating the contents of the writ application, has vehemently argued that no effective service, of the notice of the proceedings initiated on the complaint made by the respondent number 2 before the respondent number 1 (the Authority appointed under the Act of 1936) claiming wages, was made. The learned counsel would further submit that the petitioner-University is not amenable to jurisdiction under the Act of 1936 and therefore, the impugned order dated 11th November, 1997, is absolutely illegal, without jurisdiction and contrary to the provisions of Section 1(4), which determines the applicability of the Act of 1936 to the persons employed in the establishments specified thereunder.

4. In response to the notice of the writ application, reply has been filed on behalf of the respondent number 2, raising preliminary objection as to the very maintainability of the writ application in the face of Section 17 of the Act of 1936, which provides for an appeal against an order under Section 15, within a period of 30 days before the District Court. Learned counsel for the respondent number 2, Mr. Suresh Kashyap, referring to Rule 8 of the Payment of Wages (Procedure) Rules, 1936, pointed out that in the event of failure of the employer or his representative to appear before the Authority, an application to set aside the ex-parte determination could be sustained for re-hearing on a good cause being shown within a period of 1 month from the date of the order. Therefore, in view of availability of alternative, efficacious and speedy remedy under the Act of 1936 and the Rules made thereunder, the writ application merits rejection on that count alone. The contents of the writ application have also been generally

denied supporting the impugned determination made by the Authority vide order dated 11th November, 1997.

5. The rival submissions of the parties and contentious pleadings received my due consideration.

6. For a proper appreciation of the controversy, the text of Section 1 of the Act of 1936, needs to be considered at this juncture, which reads thus:--

"1. Short title, extent, commencement and application.-(1) This Act may be called the Payment of Wages Act, 1936.

[(2) It extends to the whole of India[***]].

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) It applies in the first instance to the payment of wages to persons employed in any [factory, to persons] employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration. [and to persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (ii) of section 2]

(5) The State Government may, after giving three months" notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of [this Act] or any of them to the payment of wages to any class of persons employed in [any establishment or class of establishments specified by [the Central Government] or a State Government under sub-clause (h) of clause (ii) of section 2]

[Provided that in relation to any such establishment owned by the Central Government, no such notification shall be issued except with the concurrence of that Government.]

[(6) This Act applies to wages payable to an employed person in respect of wage period if such wages for that wage period do not exceed [eighteen thousand rupees] per month or such other higher sum which, on the basis of figures of the Consumer Expenditure Survey published by the National Sample Survey Organization, the Central Government may, after every five years, by notification in the Official Gazette, specify.]"

7. The Act of 1936 under Section 2(ii) defines "industrial or other establishment" and reads thus:--

"2. Definitions-

(i).....

(ii) ["Industrial or other establishment" means] any--

[(a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;]

(b) dock, wharf or jetty;

[(c) inland vessel, mechanically propelled;]

(d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;]

[(h) any other establishment or class of establishments which [the appropriate Government] may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette;]

(ia) "mine" has the meaning assigned to it in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952)."

8. By now, it is well settled law that alternative remedy is not to operate as bar at least in 3 contingencies as has been declared by the Hon"ble Apex Court of the land in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, ; i.e., where the writ proceedings have been initiated for enforcement of a fundamental right or where any violation of principles of natural justice is apparent on the face of record or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is under challenge. The Hon"ble Supreme Court in the case of Whirlpool Corporation (supra) held thus:--

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Qua Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is

that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. Rashid Ahmed Vs. The Municipal Board, Kairana, , laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting Writs. This was followed by another Rashid case, namely, K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that Writ Petition under Article 226 could still be entertained in exceptional circumstances.

17. Specific and clear rule was laid down in The State of Uttar Pradesh Vs. Mohammad Nooh, , as under:

"But this rule requiring the exhaustion of statutory remedies before the Writ will be granted is a rule of policy convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

18. This proposition was considered by a Constitution Bench of this Court in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, and was affirmed and followed in the following words:

"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court".

19. Another Constitution Bench decision in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, laid down:

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Court will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against Income Tax Officer acting without jurisdiction Under Section 34 I.T. Act".

20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

9. The petitioner-University is an institution engaged in imparting of education. Further, an educational institutional may be an "industry", but that fact itself is not sufficient to bring that educational institution within the ambit of the Act of 1936 unless the educational institution was covered by the mandate of Section 1 (4) or (5). The learned counsel for the respondents could not substantiate that the petitioner-University was covered under the establishment as specified either under sub-section (4) or there was any notification in the official gazette extending the provisions of the Act of 1936, in accordance with the procedure provided under sub-section (5) or it was covered under any of the establishments as defined under Section 2, sub-clause (ii), sub-clause (a) to (h) of the Act of 1936. The attempt made by the learned counsel for the respondent number 2, with the aid of "other establishment" specified in sub-clause (a) to (g) of clause (ii) of Section 2, is absolutely misconceived.

10. For the reasons and discussions herein above, the impugned order dated 11th November, 1997, passed by the Payment of Wages Authority (Annexure-3) is thus, without jurisdiction.

11. In the result, the writ application succeeds and is hereby allowed.

12. Consequently, the writ application is allowed and the impugned order dated 11th November, 1997, passed by the Payment of Wages Authority, Jaipur, in case No. P.W. 27/1997 is hereby quashed and set aside.

13. The interim order dated 3rd August, 1999, is hereby vacated.

14. However, in the facts and circumstances of the case, there shall be no order as to costs.