
(1976) 04 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 99 of 1973

R.S.Gupta

APPELLANT

Vs

Assistant Labour Commissioner Doda & Ors.

RESPONDENT

Date of Decision : 28-04-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1976) KashLJ 279

Hon'ble Judges : Mian Jalal-Ud-Din, J

Bench : Single Bench

Advocate : R.P.Sethi, J.S.Kotwal, F.A.Goni, Advocates appearing for the Parties

Judgement

1) This is a petition for issuance of a writ in the nature of Certiorari or any other direction or order for quashing the proceeding pending before the

Assistant Labour Commissioner. Doda the officer under the payment of Wages Act.

(2) The petitioner has averred that respondent No: 3 filed an application under the payment of wages Act. (herein after referred to as "the Act")

before the Deputy Commissioner, Doda, the then authority under section 15 (3) of the Act, 1956. Respondent No:3 has claimed payment on

account of wages for labour engaged for forest work by him for the petitioner. Respondent No. 3 it is admitted, was not an employee of the

petitioner and the relationship between the petitioner and respondent No: 3 was not that of an employer and an employee within the meaning of the

Act. Moreover, the wages as claimed by respondent No. 3 are in respect of forests which have not declared as Industrial Establishment by the Act

vide Section 2 (ii) (f) of the Act. The petitioner objected to the initiation of the proceedings on the ground that the Act was not applicable and that

the respondent had no jurisdiction to hear the petition. Further, under section 1 (5) of the Act no notification was issued by the Government of its intention to extend the provisions of the Act or any of them to any class of persons employed in any Industrial Establishment or in any class or group of Industrial Establishment. The petitioner has submitted that as the State Government has not extended the provisions of the Act to the Industrial Establishment of Forests as provided in section 1 (5) of the Act, therefore, also the proceedings before respondent No: 1 are without Jurisdiction.

(3) The petitioner has been resisted by the respondents on the ground that it is misconceived. In their objection the respondents have stated that the question raised by the petitioner can be determined by the Tribunal dealing with the application of respondent No. 3. The writ petition is, therefore, premature, as no order on the points raised by the respondent No. 3 have yet been passed on the application pending before the Tribunal. The contention of the petitioner is still to be considered and adjudicated upon by the respondent. Respondent No. 1 had fixed the case for arguments of the parties on 7. 7. 1973. On that day the counsel for the parties prayed for an adjournment. This was granted and the case was adjourned to 7 8. 1973. On this date respondents counsel was on leave and the case was taken up on 10. 9. 1973. The petitioner has, therefore, submitted to the jurisdiction of respondent No: 1 and it is he who is competent to decide the objections raised by the petitioner in the application made under the Act. Respondent No: 1 has not so far passed any order adverse to the petitioner and the petition being premature is liable to be dismissed on this account.

(4) Mr. Kotwal has met the preliminary objection by enunciating the view that if the court has not inherent jurisdiction to proceed in a case then in that case, the aggrieved party can approach High Court for issue of a writ of Certiorari. or prohibition as the case may be and in that event proceedings pending before the Inferior Court or Tribunal can be quashed. In support of his proposition he has relied upon AIR 1962 S, C. 1894 and 1967 KLJ 368 (FB). His argument is that as relationship of an employer and employee between the parties, as resNo. 3 is only a contractor and not an employee within the meaning of section 3 of the Act, the said Act is

not applicable to the case, and further as the State Government has not extended the provisions in Section 1(5) of the Act, therefore, also the proceedings pending before respondent No. 1 are without jurisdiction; and as such this court can in exercise of its extra ordinary Jurisdiction quash the said proceedings.

(5) In my Judgment the preliminary objection raised has got force and must, therefore, prevail. It is only in those cases in which the inferior court or

a Tribunal is not vested with inherent jurisdiction to take cognizance of a case that the proceedings are void, and in order to prevent an abuse of

the process of the court, the aggrieved party can approach the court to seek a writ of Certiorari or Prohibition as the case may be AIR 1962 S. C.

1894 and 1967 KLJ 368 (FB) (Supra) relied upon by the learned counsel for the petitioner have laid down this proposition of law. AIR 1962 S.

C. 1894, was a case where, a notice was issued by the Collector of Customs under Section 167 (8) of Sea Customs Act read with Section 3(2)

of the Imports and Exports (Control) Act, 1947, and called upon the appellant in that case by a notice to show cause why the sale proceeds

should not be confiscated and also why penal action should not be taken against it. It was stated in the said notice that the special licence was

issued to the appellant on the express condition that the goods covered by the licence should be utilized for consumption as raw material in the

factory of the licence holder and that no part thereof should be sold; that the appellant sold a portion of the goods received under the said licence

to others in breach of the said condition and that as the appellant had infringed the said condition the goods or the money substituted in its place

were liable to be confiscated. The court observed that if on a reading of the said notice it could be manifest that on the assumption of the facts

alleged or allegations made therein were true none of the conditions laid down in the specified sections were contravened, the respondent would

have no jurisdiction to initiate the proceedings pursuant to that notice. To put it differently, if on a true construction of the provisions of the specified

sections the respondent had no jurisdiction to initiate the proceedings or make an inquiry under the said sections in respect of the allegations made,

the respondents could certainly be prohibited from proceedings with the same.

(6) Again 1967 KLJ 368, was a case in which proceedings relating to corruption

were initiated against a judicial officer of the State by the Anti Corruption Commission. On the matter coming up before the Full Bench of this Court it was held that the powers of superintended and control vested in the High Court in respect of Judicial Officers, therefore, the commission, lacked inherent jurisdiction to proceed against the judicial Officer and because of want of inherent jurisdiction in the Commission, proceedings were quashed and a writ of Mandamus was issued.

(7) Now in the instant case, that exactly is not the case before us. The Assistant Commissioner exercising powers under the Act has got inherent jurisdiction to proceed in the case. It cannot be said that he has no jurisdiction in the matter. Of course, the questions whether the relationship of an employer and an employee does subsist or does not subsist between the parties, and, therefore, the Act does or does not apply to the case and further that the Act is not applicable to the case as the State Government has not extended the provisions of the Act to the Industrial Establishment of Forests or by Act No. 51 of 1970 when the payment of Wages Act, 1956, was extended to the State, and, therefore, the matter is covered by the notification issued under the said Act, these are the matters that cannot be decided off hand or summarily by this court in these proceedings.

These are the matters that have to be gone into by respondent No. 1. Suppose a civil suit is instituted in the court of a Subordinate Judge and a plea is taken by the defendant that the court has got no jurisdiction, that a particular Act is not applicable to the case, or that the suit is barred by limitation, and, therefore, the court has no jurisdiction in the matter. Will the defendant be allowed to approach the High Court for issuance of an appropriate writ in the matter. That exactly cannot be done. The High Court cannot usurp the jurisdiction of the Subordinate Judge who has got inherent jurisdiction to pronounce upon the question raised before him. He can decide the question of jurisdiction as also the question of application of the Act and also the question of limitation. If the contrary view is held to prevail then in each and every case in which the point of jurisdiction is raised before the Inferior Forum, would a party raising the objection approach the High Court for issuance of a writ of Mandamus and the court would be flooded with litigation. This cannot be the policy of law. I would, therefore, upheld the preliminary objection and dismiss the writ petition

on the ground. It will be open to respondent No. 1 to go into all the question raised before him and decide them according to law. If the petitioner thereafter feels aggrieved by an order passed by respondent No. 1, he will be at liberty to pursue such legal remedy as will be available to him.