
(2008) 08 JH CK 0077

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2193 of 2004

Sapan Kumar Burman and Smt. Jharna Burman

APPELLANT

Vs

Rajan Kumar Shrivastab and Another

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Payment of Wages Act, 1936 — Section 1, 15, 17

Citation : (2008) 56 BLJR 2722 : (2008) 3 JCR 735 : (2009) 3 LLJ 669

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : K.P. Deo, for the Appellant; S.K. Deo, for the Respondent

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—The petitioners in this writ application have challenged the order dated 31.12.2003, passed by the Presiding Officer, Labour Court, Deoghar in P.W. Case No. 3 of 2000, whereby the petitioners have been directed to pay a total amount of Rs. 88,500/- by way of Payment of wages to the Respondent.

2. The facts of the case in brief are that the petitioner No. 1 was the owner of the house bearing Holding No. 39 within Ward No. 17 of the Deoghar Municipality, which was acquired by him by way of inheritance, from his mother.

Later, he sold the house to the petitioner No. 2. The Respondent No. 1, Rajan Kumar Shrivastav, claiming himself to be employed as an undertaker by the petitioners for looking after and managing the aforesaid Holding of the petitioners at Deoghar, filed a petition before the Labour Court, Deoghar u/s 15 of the Payment of Wages Act on 17.11.2000, contending therein, that he was employed by the petitioners in the year 1995 as a Caretaker, on a salary of Rs. 3,000/- per month i.e. @ Rs. 100/- per day. Later on, after the petitioner No. 1 sold away the property to the petitioner No. 2, the petitioner No. 2 also continued to appoint him as the Caretaker of the aforesaid Holding on and from the month of July, 1998 on the same terms of salary. The Respondent No. 1 had

claimed that since December, 1995, his wages remained unpaid and a total sum of Rs. 1,77,000/- accrued as arrears which remained unpaid to him by the petitioners. His further contention was that both the petitioners, by virtue of an oral agreement, had agreed to transfer a piece of land measuring 20 ft. x 50 ft. within the aforesaid Holding for his residential purposes. His prayer before the court below was for an order directing to the petitioners to pay the wages due to him and also for a direction to transfer the piece of land measuring 20ft. x 50ft. within the said Holding in his favour.

3. The petitioners appeared before the court below in the aforesaid proceeding and submitted their written submissions denying and disputing the entire claim of the Respondent No. 1. Their specific stand was that they had never appointed the Respondent No. 1 as the Caretaker of their building at Deoghar, nor did they enter into any such agreement with the Respondent No. 1 either for payment of any daily wages or monthly wages or for transfer of any portion of the premises within their Holding at Deoghar in his favour. The specific stand taken by the petitioners in their written statements was that they had executed a power of attorney on 09.07.1998 in favour of the Respondent, Rajan Kumar Shrivastav for the limited purposes of presenting applications and to make "Pairvi" in the Title Suit filed by the petitioners, which was pending in the court of the Sub-Judge I, Deoghar vide Title Suit No. 21 of 1998.

4. During the pendency of the proceedings, the Respondent No. 1 filed an Amendment Petition after about three years on 29.09.2003 reducing his claim from Rs. 3,000/- per month to Rs. 1500/- per month i.e. @ 50/- per day. This was apparently done for the purposes of enabling the court below to have jurisdiction over the claim as filed by him. In spite of Objections raised by the petitioners, the prayer for amendment was allowed by the learned court below. By the impugned order, the learned court below had allowed the prayer of the Respondent No. 1, directing the petitioners to pay the sum of Rs. 88,500/- by holding that the Respondent No. 1 was employed by the petitioners and the nature of employment came within the definition of scheduled employment under the Payment of Wages Act (Procedure), Rules, 1962 and, therefore, the petitioners are liable to pay the arrears of wages to the Respondents.

5. The petitioners have assailed the impugned order of the learned court below primarily on the ground that the impugned order was passed without jurisdiction, since the provisions of the Payment of Wages Act, 1936 or its corresponding Rules do not apply at all to the claim as advanced by the Respondent No. 1 by any stretch of imagination. It is further contended on behalf of the petitioners that even the application as originally filed by the Respondent, claiming that he was entitled to a daily wage @ Rs. 100/-, was itself not entertainable by the learned court below, since at the time when the petition was filed by the Respondent No. 1 before the court below, the Act had applied to wages up to a ceiling of Rs. 1,600/- per month only. The petition as filed by the Respondent No. 1 ought to have been rejected outrightly at the time when it was filed, but the

learned court below had allowed the case to proceed and by a most unreasoned order allowed the amendment to be carried out in the petition to reduce the demand for the Arrears of wages @ Rs. 1500/- per month.

6. Counter affidavit has been filed by the Respondent No. 1, taking a preliminary objection against the maintainability of this writ application on the ground that u/s 17 of the Payment of Wages Act, 1936, a provision has been made u/s 17 of the Act for appeal against any order passed u/s 15 of the Act and, therefore, an alternative remedy being available to the petitioners, they ought to have preferred the appeal and not the present writ application. The further contention of the Respondent is that under the admitted power of attorney, the services of the Respondent was engaged by the petitioners and, therefore, they are liable to pay the agreed amount of wages to the Respondent and that since the nature of service rendered by the Respondent falls within the definition of Scheduled Employment under the Minimum Wages Act, the Respondent is entitled to claim the arrears of wages.

7. No doubt, it is a settled principle that the power under the writ jurisdiction of this Court is normally not to be exercised, if the aggrieved party has an alternative remedy available under any statute.

However, mere availability of an alternative remedy will not prevent this Court to exercise its powers under writ jurisdiction to interfere in cases where the impugned orders, suffer from patent illegality, which, if not interfered, would cause serious prejudice and infringement of rights of the aggrieved party.

8. From the admitted facts of the case, the petitioners being owners of the buildings situated at Deoghar, and they being the residents of Kolkata, had appointed the Respondent as their lawfully constituted attorney for the limited purposes of representing them in the civil suit, which was pending before the court of the Sub-Judge, pertaining to a dispute in relation to the holding. The terms of the power of attorney, which has been adduced in evidence before the trial court, do not suggest anywhere that the Respondent No. 1 was under the employment of the petitioners or that the petitioners had agreed to pay any wages to the Respondent No. 1 to function as their attorney holder.

9. u/s 1 Clause 6 of the Payment of Wages Act, it has been categorically stated that the Act would apply to an employed person in respect of wages period if such wages for that wage period do not exceed Rs. 1600/- per month (Enhanced to Rs. 6500/- per month by the amended Act of 2005).

10. It is manifest from the above that the Act applies to wages payable to an employed person and that too in respect of a wages period if such wages for that wage period do not exceed Rs. 1600/- per month, as per the provision existing on the date, when the case was filed by the Respondents. It implies, therefore, that there has to be an adjudication on the issue as to whether there was a relationship of employer and employee between the parties and on conditions of payment of salary/wages to the employee.

It also implies that a petition u/s 15 of the Act cannot be entertained by the court below, if the wages applied for, exceeds Rs. 1600/- per month.

11. In the instant case, the original application as filed by the Respondent was for a claim for purported wage exceeding Rs. 1600/- per month. The application, therefore, was outrightly liable to be rejected by the court below but it was not done for the reasons unexplained. On the contrary, the prayer for amending the original application, filed belatedly, after three years of the filing of the case, to enable the Respondent No. 1 to reduce his claim to the ceiling of Rs. 1500/- per month, was allowed without considering the fact that it would cause prejudice to the petitioners.

12. The learned court below, has though considered the power of attorney executed by the petitioners and has highlighted the term "Caretaker" as mentioned in the power of attorney but has failed to take notice of the fact that the Power of Attorney does not state or declare anywhere that the Respondent No. 1 was employed under the petitioners or that his services were engaged on consideration of Payment of any wage or salary to him. In absence of any supportive evidence of any agreement between the parties that the petitioners shall pay any wages to the Respondent No. 1 for his functioning on their behalf as an Attorney Holder, the finding of the learned court below that there was a relationship of employer and employee between the parties is totally misconceived. The facts and circumstances indicate that the learned court below had no jurisdiction whatsoever even to entertain the application as filed by the Respondent No. 1. The findings in the impugned order are totally perverse and cannot be allowed to sustain.

13. I find merit in this application. Accordingly, this application is allowed. With Costs.