

(1961) 01 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 560-D of 1960

Shiv Singh

APPELLANT

Vs

Hans Raj Nayyar

RESPONDENT

Date of Decision : 06-01-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1898 (CrPC) — Section 195
Delhi Shops and Establishments Act, 1954 — Section 21
Payment of Wages Act, 1936 — Section 15, 17, 22
Punjab Courts Act, 1918 — Section 44

Citation : (1961) 2 ILR (P&H) 417

Hon'ble Judges : D. Falshaw, J

Bench : Single Bench

Advocate : Kewal Ram, for the Appellant; B.R. Malik, for the Respondent

Final Decision : Dismissed

Judgement

D. Falshaw, J.—This is a revision petition filed by Shiv Singh, challenging the order of the Authority-appointed under the Delhi Shops and Establishments Act of 1954 dismissing his petition u/s 21 of the Act.

2. The Petitioner alleged that he was employed by the Respondent, a contractor named Hans Raj Nayar, as a truck driver for the period from the 1st of October, 1958, to 15th of February, 1959 at Rs. 150 per mensem. He claimed that a sum of Rs. 2,391.11 nP. was due to him including his ordinary wages from the 1st of December, 1958, to the 15th of February, 1959, together with Rs. 1,360.75 nP. on account of overtime during the whole period of his employment and Rs. 400 for work done on his workly off-day. His claim was denied by the employer who alleged that there was a break in the period of employment from the 1st to the 16th of December, 1958, and also denied that any sum was due on account of overtime or work done on off-days. He alleged that the Petitioner had been paid full wages for the period of employment and that also he had been entrusted

with a sum of Rs. 95 on the 15th of February, 1959, for purchasing petrol and other things which he had misappropriated.

3. The Authority was not at all impressed by the evidence of the Petitioner particularly on account of the fact that although he admitted his signatures on three receipts for Rs. 240, Rs. 18, and Rs. 150, he denied having received the sums, and it has accepted the evidence of the employer that the Petitioner did not work for him from the 1st to 15th of December and also that he had embezzled Rs. 95 entrusted to him for making purchases. It was held that the claim of the Petitioner was frivolous and his application was dismissed.

4. The preliminary objection has been raised that no revision petition lies and that if the petition was to be treated as filed under Article 226 or Article 227 of the Constitution it was bad on account of the fact that the Authority had not been impleaded as a Respondent. As a matter of fact, although in the memorandum of parties appended to the petition it was described as a civil revision, the printed opening sheet shows that the petition was filed under Articles 226/227 of the Constitution. In spite of this the learned Counsel for the Petitioner has argued that an order of the Authority u/s 21 of the Act is liable to be challenged by an ordinary revision petition u/s 115, Code of Civil Procedure, and on this point he relied on a decision of a Full Bench in AIR 1946 316 (Lahore) in which it was held that the Authority appointed u/s 15 of the Payment of Wages Act, of 1936, must be regarded as a Civil Court and a Court Subordinate to the High Court within the purview of Section 115, Code of Civil Procedure, and Section 44, Punjab Courts Act. It is, however, clear from the judgment that the provisos of the Payment of Wages Act, differ considerably from those of the Delhi Shops and Establishments Act, and some of the provisions of the Payment of Wages Act, which chiefly influenced the learned Judges in deciding that the Authority was a Court Subordinate to the High Court, do not exist in the Act now under consideration. In fact the only provision which appears to be common to both Acts is in relation to the functions of the Authority, and this provides that the authority shall have all the powers of a Civil Court under the CPC for the purposes of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents and every such Authority shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

5. This provision in itself, however, will not make the Authority a Civil Court subordinate to the High Court for the purposes of Section 115, Code of Civil Procedure, and it seems that the principal reasons for holding the Authority under the Payment of Wages Act to be a Court were that Section 17 of that Act provides for an appeal against an order of the Authority in certain cases either to the Court of Small Causes in the Presidency Towns, or elsewhere to the Court of the District Judge, and also Section 22 of that Act bars the jurisdiction of the Civil Courts in claims which either have been, or could be, adjudicated upon by an application to the Authority u/s 15 of the Act.

6. On the other hand the Delhi Shops and Establishments Act contains neither of these provisions and does not contain any provision whatever for any appeal or revision, and there is apparently nothing to stop any person covered by the Act, who has a claim, from enforcing it by means of an ordinary civil suit. In the circumstances I am of the opinion that the order of the Authority could only be challenged under Article 226 or 227 of the Constitution by way of certiorari and I do not think there can be any doubt regarding the proposition that in such a case the Authority was a necessary party as was held in *Sha Devichand-Mool Chand v. Sha Dhandraj-Kantilal* AIR 1949 Mad 53, and by learned Judges of this Court in *Phalgu Dutt v. Shrimati Pushpa Wanti and Ors.* 62 P.L.R. 304, and *The Hoshiarpur Azad Transporters (Private) Limited, Hoshiarpur v. The State of Punjab and Ors.* 62 P.L.R. 409. I do not find it possible to treat the present petition under Article 226 or 227 since petitions of this nature have to be filed in a completely different form. In the circumstances, without going into the merits; I dismiss the petition but leave the parties to bear their own costs.