

(1966) 06 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1301 and 1302 of 1964

Sri Ramadas Motor Transport (Private) Limited

APPELLANT

Vs

The Authority under Payment of Wages Act and Another

RESPONDENT

Date of Decision : 16-06-1966

Acts Referred:

Constitution of India, 1950 — Article 226

Minimum Wages Act, 1948 — Section 2

Payment of Wages Act, 1936 — Section 15, 16, 2, 3, 7

Citation : AIR 1968 AP 44 : (1968) 2 LLJ 500

Hon'ble Judges : Gopal Rao Ekbote, J

Bench : Single Bench

Advocate : A. Kuppuswamy, for the Appellant; G. Chandrasekhara Reddy, for 3rd Govt. Pleader and K. Satyanarayana, for the Respondent

Final Decision : Dismissed

Judgement

1. These two writ petitions raise common questions of law. They can therefore be disposed of under a common judgment.

2. These are petitions filed under Article 226 of the Constitution seeking the issue of a writ of certiorari to quash the order of the Authority under Payment of Wages Act, Visakhapatnam given on 30th September 1963.

3. The petitioner is carrying on the business of motor transport. It has several lorries and buses running not only in cities but also in mofussil areas and also in areas where some roads are covered by ghats. The 2nd respondent in each writ petition was appointed as driver by the petitioner on daily wages of Rs. 1-75 nP. On 16-8-1961, G. O. Ms. No. 1609 was issued under the Minimum Wages Act fixing the wages payable to the employees in the motor transport business. The said G. O. divides the drivers into three categories. Category I relates to the drivers of vehicles plying between towns, cities or villages; category 2 relates to the drivers of vehicles operating within a radius of 5 miles from a city or town; and the third category to drivers of vehicles on routes having more than 10 miles

of ghat section. The minimum wage, which is fixed under the said G. O. respectively for these three categories is Rs. 78, Rs. 91 and Rs. 104 per mensem. It is contended by the petitioner that the 2nd respondent in each writ petition was appointed as driver in 1960 and was working as mofussil driver in the beginning and later on as city driver. At the time when the said G. O. was issued, the 2nd respondent in each writ petition was working as city driver. Accepting the said G. O., the petitioner commenced paying these drivers Rs. 91 per month, In the month of February 1963, however both these drivers were transferred to the mofussil. They were paid Rs. 78 for that month. The respondents however claimed Rs. 91 on the footing that their salary was Rs. 91 and that the petitioner could not have deducted Rs. 13 from their salary. The said respondents therefore filed applications u/s 15 of the Payment of Wages Act before the Authority under the Payment of Wages Act, Visakhapatnam for the purpose of issuing directions against the petitioner that it should not deduct Rs. 13 from their salary and for the payment of the same.

4. These petitions were resisted by the petitioner mainly on the ground that the petitioner had a right to transfer these drivers from the city area to the mofussil area and since they have now been working in the mofussil area, their minimum wage fixed in the G. O. being Rs. 78 they were paid accordingly. There was thus no unlawful deduction and no action under the Payment of Wages Act can lie.

5. The Authority rejected these contentions and held that the petitioner could not have deducted the salary merely because they were transferred and are working in the mofussil by his order dated 30-9-1963. It is this order that is now impugned in these writ petitions

6. The principal contention of Mr. A. Kuppuswamy the learned Counsel for the petitioner, is that the petitioner has always a right to transfer the drivers from the city area to the mofussil area. They were paid Rs. 91 because they were working in the city area. Since they are now working in the mofussil area and their minimum wage being Rs. 78 they are not entitled to anything more than Rs. 78 and consequently, in his submission, no question of deduction arises. The learned Advocate therefore contends that the Authority under Payment of Wages Act had no jurisdiction to entertain the applications and give the direction as it did.

7. In order to appreciate this contention, it becomes necessary to read some of the provisions of both the Minimum Wages Act, 1948 as well as the Payment of Wages Act, 1936. Section 2(h) of the Minimum Wages Act defines "wages". That definition, in so far as it is relevant, is as follows:

" "Wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment,....."

8. Section 3 authorises the appropriate Government to fix the minimum rates of

wages payable to employees employed in the employment specified in the schedule. According to Sub-section (3) of that section, while fixing or revising minimum rates of wages, different minimum rates of wages may be fixed for different classes of work in the same scheduled employment or for different localities. It is under this power that different minimum rates of wages were fixed for the above said three categories of drivers by the above said G. O.

9. u/s 16, where an employee does two or more classes of work to each of which a different minimum rate of wages if applicable, the employer shall pay to such employee in respect of time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

10. Now, coming to the provisions of the Payment of Wages Act, Section 2(vi) defines "wages". In so far as this case is concerned, it is not denied that the two definitions of the two said Acts do not differ. It is therefore unnecessary to reproduce that definition.

11. Section 7 states the deduction which may be made from the wages. Under that section, the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under the Act. It is common ground that if the contention of the learned Advocate is not accepted, then such a deduction would not come within the permissible categories mentioned in Section 7.

12. It is Section 15, which is more relevant. It relates to the claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. Under that section, where contrary to the provisions of the Act, any deduction has been made from the wages of an employed person, such person may apply to the Authority appointed under that section, for a direction under Sub-section (3) of that section. Sub-section (3) empowers the Authority to make a proper enquiry of the claim as is necessary, and direct the refund to the employed person of the amount deducted together with the payment of such compensation as the Authority may think fit, subject of course to the limit placed in the said provision. It is under this provision of law that the two respondents filed the applications.

13. In the light of these provisions, what is required to be considered is whether the petitioner was justified in paying Rs. 78 only to the drivers on the ground that they have been working in the mofussil area although they were paid Rs. 91 when they were working in the city area at the time when their wages were fixed at the minimum level of Rs. 91. Admittedly, there is no provision in the Act or the rules made there under which permits the employer to make the payment in accordance with the minimum wages fixed as and when the drivers are transferred from one place to another. I do not think section 16 of the Minimum Wages Act is attracted to the facts of the present case. That section speaks of classes of work. Here, the class of work is not changed. It is only the locality for which a separate minimum wage is fixed that comes into question and not the

class of work. It may be that for different localities different minimum wages are permitted to be fixed but that does not automatically mean that the driver, who was drawing Rs. 91 when he was working in the city as a driver, would get only Rs. 78 if he works in the mofussil area. The function of the Minimum Wages Act is to lay down minimum wages which the employers must in every case pay to the categories of workers employed by them. In pursuance of this obligation, the minimum wage of the said two drivers was fixed at Rs. 91. After having discharged that obligation in that way for some time, it is not open to the employer to reduce the pay on the ground that the driver is now working in the mofussil area where the minimum wage is Rs. 78. It is not denied that after the said transfer, the employer could have successfully moved the authority to reduce the pay and fix it at Rs. 78. If he had been getting less than Rs. 78 the employee had a cause of action to move under the Minimum Wages Act to get his wage fixed at the minimum level. But he is already getting more than the minimum, whether under a contract expressly entered into or acted upon by the parties by necessary implication, which is the case here. It is not disputed that after the G. O. fixing the minimum wages was issued, the petitioner accepted the position and fixed the minimum wage of the two said drivers at Rs. 91. Therefore, the salary accepted by the employee would be Rs. 91. It is true that the employer has a right to transfer the employees anywhere he likes because that is one of the terms of their employment. That does not however necessarily mean that they would be paid less than the wage which the employer had accepted and paid to them for some time. While they may be thus transferred, the obligation on the employer would continue to pay the wage which he had accepted to pay. The transfer cannot produce an effect detrimental to the interest of the employees. The transfer need not therefore be connected with the minimum wage. Merely because these drivers are transferred, they cannot be deprived of the wage which they were already getting, which is higher than the minimum wage for the mofussil area. The provisions extracted above of the Payment of Wages Act cast an obligation on the employer not to deduct anything unlawful. If it is found, as I do, that the employees were entitled to receive Rs. 91 as that was their wage accepted by the employer and the employees amounting to a contract between them it cannot be reduced and, if it is so reduced, that would amount to unlawful deduction within the meaning of Section 7. It does not amount to reclassification of the driver. I am not therefore able to accept the contention that there has been no unlawful deduction in this case and therefore the Authority under Payment of Wages Act had no jurisdiction. I have already stated that if the drivers were entitled to get Rs. 91 the employer could not deduct anything from their salaries unless such deduction is brought within the permissible category mentioned in Section 7. That is not the employer's case. I am therefore clear in my opinion, that the employer, merely because he has power to transfer, cannot reduce their emoluments by using that power to the detriment of the employees, whose wages have already been accepted by the employer.

14. There is no direct authority on this point. The following decisions, however, were cited by the learned counsel for the petitioner, and I will discuss them. The first case relied upon is A.V. D'costa Vs. B.C. Patel and Another, . I do not think that case has any relevance to the point raised before me. What that decision decides is that where on the case as made on behalf of the employee orders of the superior officers are necessary to upgrade him from a daily wage earner to a higher cadre, the authority under the Act has not been empowered u/s 15 to make any such direction to those superior officers. The employer is responsible to pay the employee only such wages as are shown in the relevant register of wages presumably maintained by the department under the provisions of the Act, but he cannot be directed to pay the employee higher wages on the determination by the authority that he should have been placed on the monthly wages scheme. It would be clear that the matter involved in that case was entirely different. There, there was no question of any deduction. The claim of the employee was that he should have been placed in a higher grade and since he had not been so put, he should be put and be paid the higher wages. That request was rejected by the Supreme Court. That case is no authority for the proposition that the employer can transfer the employee to an area where lower scales of pay are paid and insist upon the employee to accept that although he was paid higher scale of pay at the place where he was working and from where he was transferred.

15. Similar is the case with the other case cited by the learned advocate, i.e. Anant Bhagoji Vs. Captain Superintendent Indian Naval Dockyard, Bombay, . That was a case where the claim arose out of deduction of wages. That claim however was based on an allegation that the petitioner ought to have been given another post with higher wages. It was held by the Bombay High Court that the Authority under the Payment of Wages Act has no jurisdiction to entertain such an application. It is not the case of the respondents here that they should have been classified in the higher grade. Their contention had been that they were already earning Rs. 91 and because of the transfer, the employer cannot deduct anything from their salary on the ground that the minimum wages in that area are lower than the salary which they were getting.

16. The third case, to which I was referred, is Md. Haji Umar v. Divisional Supdt N. W. Rly. AIR 1941 Sind 191. I do not think that case has any bearing on the facts of the present case. That was a case where the services were terminated and the employees were reappointed. It was held that there is nothing in the Payment of Wages Act to prevent an employer from terminating the existing contract with a servant and to re-employ him on a lower rate of pay. No question of deduction under the Act arose in that case. In this case, no question of termination of the drivers and their re-appointment arises.

17. My attention was drawn by the learned advocate for the 2nd respondent to paragraph 121(5) of the Award given by the All India Industrial Tribunal (Bank Disputes) on the Industrial Disputes between certain Banking Companies and

their workmen. The general principle accepted there was that no employee shall have his basic pay reduced by being transferred to an area where a lesser pay scale applies even though such basic pay may be more than the maximum of the scale fixed for the new station, and he will continue to have the usual increments as from such basic pay onwards. Unless, therefore, I am compelled by any authority to hold otherwise, I am inclined to hold that when once the pay of the drivers was fixed by the employer himself at Rs. 91 and they were getting those wages, merely because the employer transfers them to another area, the employer has no right to deduct anything from their wages on the ground that the minimum wages in that area are less than what these drivers were paid. I think the Authority was right in permitting the claim of these drivers u/s 15 of the Payment of Wages Act.

18. I see therefore no merit in these two writ petitions. They are therefore dismissed. There will be no order as to costs.