

(1983) 01 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1155 Of 1979

Sri Shatrughanjee Sahay

APPELLANT

Vs

The Industrial Tribunal and Others

RESPONDENT

Date of Decision : 18-01-1983

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 26, 26(2), 28, 28(2), 28(7)
Payment of Wages Act, 1936 — Section 15, 15(2)

Citation : (1983) PLJR 186

Hon'ble Judges : S.B. Sanyal, J;P.S. Sahay, J

Bench : Division Bench

Advocate : Roy Shivaji Nath, for the Appellant;

Judgement

S.B. Sanyal, J.—In this writ application the petitioner seeks for quashing Annexure 2, by which the claim petition of the petitioner filed u/s 28 of the Bihar Shops and Establishment Act, 1953 (hereinafter to be referred to as "the Act") has been partly allowed as well as Annexure-3 by which, the court of appeal u/s 28(7) of the Act, dismissed the appeal with respect to the rest of the claim. The claim with respect to back wages from 10.12.1973 to 8.2.1975, was only allowed by the Presiding Officer, Labour Court. The relief with respect to payment of compensation and other claims relating to Bonus, Gratuity, leave pay, retrenchment compensation, and, increments etc., were disallowed. Brief fact of the case is, that the petitioner was appointed as a Store Keeper in the Apna Bazar, Patna, on 15.4.1967 and he was dismissed on 10.12.1971. This led to the filing of a complaint by the petitioner u/s 26(2) of the Act giving rise to miscellaneous Case No. 1 of 1972. The petitioner's dismissal was set aside by the Labour Court on 27.7.1972 and he was ordered to be reinstated with all his dues. The Apna Bazar authorities filed a writ petition bearing number C.W.J.C., 1326 of 1972 assailing the order of the Labour Court directing reinstatement of the petitioner, which was dismissed on 12.12.1974 by a Bench of this court. The application for grant of a certificate for leave to appeal to the Supreme Court was also rejected on 16.1.1976.

2. The petitioner having not received the payment of his back wages as well as his other dues filed a claim petition on 28.2.1975 claiming a sum of Rs. 6930/- on account of wages and also claimed a sum of Rs. 3000/- by way of compensation and other claims comprising nine items, namely, gratuity, retrenchment compensation, retrenchment salary, interest on the sum, provident fund, increments that he would have been entitled to had he continued in service, leave salary for leave not-availed etc., amounting to a sum of Rs. 34,600/- and odd. It is averred that Apna Bazar was taken over with all its assets and liabilities b) Bihar State federation of Wholesale Consumers Co-operative limited, Patna, some time when the writ petition was pending before the High Court i.e., between 1972 to 1973. The petitioner, therefore, imp led the Managing Director of Bihar State Federation of Wholesale Consumers Co-operative Limited, Patna, a party along with the Managing Director of Apna Bazar in this application u/s 28 of the Act. 3. The Labour Court by its order dated 8th of September 1976 allowed the back wages from 10.12.1973 to 28.2.1975, but rejected not only the claim for compensation but the claim for other dues at well. The reason assigned for rejecting the other claim is that the petitioner should move the appropriate authority under the relevant Act for recovery of his statutory claims, i.e., gratuity, provident fund etc. As far as the claim for salary of higher scales, increments, leave salary for leave not availed, the Labour Court rejected them on the ground of absence of satisfactory evidence. The claim for compensation was outright rejected as the petitioner failed to adduce satisfactory evidence as to how the sum of Rs. 3000/- is constituted.

4. As against the said decision of the Labour Court neither Apna Bazar nor Bihar State Federation of Whole sale Consumers Co-operative Limited preferred any appeal or any cross appeal. The petitioner, however moved the appellate court u/s 28(7) of the Act for non-payment of compensation as well as for non-allowance of other dues comprising nine items. The claim for compensation was refused by the appellate court in view of the proviso to Section 28(2) of the Act i.e., because of existence of a bonafide dispute between the parties.

5. As regards other claims there is no whisper in the appellate court judgment. The petitioner has annexed a copy of the grounds of appeal which has been marked Annexure "4" to show that the said claim was very much asked for in appeal. He has also filed a copy of the claim made before the Managing Director, Bihar State Federation of Wholesale Consumers Co-operative Limited giving out the details of the claim. The said representation has been marked as Annexure 6 to petitioner's supplementary affidavit in order to show that the claim for other dues was always agitated by the petitioner No counter affidavit has been filed in this case on behalf of the Bihar State Federation of Wholesale Consumers Co-operative Limited, who is respondent no. 3 to this writ petition. No body appeared even to oppose this petition.

5. Mr. Ray Shivaji Nath, learned counsel appearing for the petitioner, has contended that the courts below have erred in the exercise of their jurisdiction in

refusing to grant compensation as well as the other claims. He submits that the ground as to existence of bonafide dispute is altogether untenable, for not allowing compensation to the petitioner inasmuch as in spite of the judgment of the Labour Court in the proceeding u/s 26 of the Act as well as the order of the High Court, petitioner's dues were not immediately paid. The attention of the courts were drawn to this aspect but the courts brushed aside the said question, on the plea that the petitioner could have recovered the said sum through other machinery or could have taken appropriate steps for disobedience and non-compliance of the court's order. So far as other claims are concerned the learned counsel submitted that he was entitled to a decision from the appellate court with respect to the said question. The point in relation to the said claim was pleaded and pressed. He also contended that the reason assigned by the Labour Court for refusing the said claim and directing the petitioner to move other authorities is wholly erroneous since u/s 28 of the Act the Labour Court is competent to compute and direct the payment of the same as well.

6. In order to appreciate the argument of learned counsel it will be worthwhile to set down the definition of Wages under the Act as well as under the Payment of Wages Act and the provisions of section 28 of the Act and Rule 22 of the Rules framed under the Act:--

(Bihar Shops and Establishment Act)

2. Definitions:--In this Act, unless there is anything repugnant in the subject or context--

X X X

X X X

(20). "Wages" means wages as defined in the Payment of Wages Act, 1936 (IV of 1936) and includes the dearness allowance as the workman is for the time being entitled to;

x x x

(Payment of Wages Act)

2. Definitions:--In this Act, unless there is anything repugnant in the subject or context--

X X X

X X X

(vi) "Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms 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, and includes--

- (a) any remuneration payable under any award or settlement between the parties or order of a Court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include--

- (1) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
- (i) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (4) any travelling allowance or the value of any travelling concession;
- (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (6) any gratuity payable on the termination of employment in cases other than those specified in sub clause (d).-/"

(Bihar hops and Establishment Act)

28. Claims arising put of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.--

- (1) Where contrary to the provisions of the Act any deduction has been made from the wages of an employee, or any payment of wages has been delayed, or any sum is otherwise due from the employer to the employee, such employee, or any legal practitioner or any authorized agent or any officer of a registered trade union or any Inspecting Officer may make an application in such manner, within such time, and to such authority as may be prescribed for a direction under sub-section (2).

(2) When an application under sub-section (1) is entertained, the prescribed authority shall hear the application in the prescribed manner and may, without prejudice to any other penalty to which an employer is liable under this Act, direct the refund of the amount deducted, or payment of the delayed wages or any other sum, to the employee together with the payment of compensation not exceeding ten times the amount deducted in the first case and not exceeding ten rupees in other cases:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to--

(a) A bonafide error or bonafide dispute as to the amount payable to the employed person, or

(b) The occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages, was unable, though exercising reasonable diligence to prompt payment, or

(c) The failure of the employed person to apply for or accept payment.

(3) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding twenty five rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application.

X X X X

(Bihar Shops and Establishment Rules)

22. Application under subsection (1) of section 28:--(1) An application under subsection (1) of section 28 shall be made to a Sub divisional Magistrate or an Assistant Commissioner of Labour or Deputy Commissioner of Labour of the local area or the Presiding Officer of the Labour Court, mentioned in column 2 of the Schedule hereto annexed having their respective jurisdiction as specified in column 4 of the said Schedule or an Officer authorized in this behalf by notification in the Official Gazette within six months from the date on which the deduction from the wages was made or the date on which the payment of wages was due to be made as the case may be:

Provided that an application may be admitted after the period of six months if the applicant satisfies the authority that he had sufficient cause for not making the application within such period:

Provided that the cases pending before the Presiding Officers of Labour Courts from before shall be heard and disposed of by them."

X X X X

7. It will be manifest from mere reading of section 28 of the Act that the courts are empowered to grant compensation not exceeding ten times. The amount deducted but the said compensation would not be admissible if there exists a

bonafide dispute as to the amount payable of because of emergency or existence of special circumstances under which, the person responsible for the payment of the wages was unable to make payments, exercising reasonable diligence or failure of the employed person to apply for accept payment. Even if it is assumed for a moment, that a bonafide dispute existed between the parties is view of the pendency of section 26 proceeding before the Labour Court as well as before the High Court as to the amount payable if at all, I do not find any justification for non-payment of the wages to the employee immediately after 12.12.1974 when C.W.J.C., 1326 of 1972 was dismissed by the High Court upholding the decision of the Labour Court that the termination of the service of the petitioner is wholly illegal. To my mind the dispute thereafter cannot be termed as bonafide at all. The courts below, therefore, erred in law to hold that in view of the existence of a bonafide dispute the petitioner is not entitled to any compensation whatsoever. The courts below failed to apply judicial mind to this aspect of the case namely, what bonafide dispute existed at least after the dismissal of the writ petition. The employer, should have immediately complied with the direction of the Labour Court. The petitioner has been unnecessarily harassed and was driven to another proceeding for recovery of his dues. It is well settled principle "that where you have interference with a legal right, the law presume damages" (See *Constantive v. Imperial Hotels* (1944) 1 King's Bench 693). It cannot be said that the petitioner is not entitled to any compensation.

8. Provisions of Section 28 of the Act and Section 15 of the Payment of Wages Act are almost similar except that under the later provision there is no reference to the words "delayed wages." Compensation of ten times has been provided for under the Payment of Wages Act along with refund of "deducted wages". The word "deduction" has neither been defined u/s 28(2) of the Act nor u/s 15 of the Payment of Wages Act. While considering cases under the Payment of Wages Act it was held by a Bench of Rajasthan High Court that the word "deductions" should be construed in the wider sense. It also observed that hence amount pertaining to wages which ought to have been paid and which has not been paid would be deductions for the purpose of section 15 of the Act" See *Bijai Cotton Mills Ltd., v. Sub divisional Magistrate*, 1964 (4) LLJ 618. Similar view has been expressed in the case of *The Upper India Coupar Paper Mills Company Ltd., v. J.C. Mathur* reported in A.I.R., 1659 Alla, (sic). His Lordship held that the word "deduction" in section 15 of Payment of Wages Act appears to be used in a wide sense so as to include the entire deficiency which the employee alleges to have been caused in the payment of wages, as a result of the withholding of the same by the employer whether partial or wholly. His Lordship further observed that "It is unreasonable to hold that the legislature intended that where the employer withheld payment of one pie from the salary due, the application would be maintainable, it being a case of deduction, but where the employer withheld the entire salary the application would not be maintainable, as being not a case of deduction. Further such a case would be covered by the category of "delayed wages." This view has been reiterated again by the Allahabad High Court in the

case of *Raj Kumar Manohar Lal v. Union of India* reported in A.I.R., 1969 Alla 472. It was held non-payment of wages to employee whether wholly or in part for period between his wrongful dismissal and re-instatement, it is a case of deduction and is covered by section 15(2) of Payment of Wages Act. Where wages are withheld from an employee once removed from service but later re-instated, the same can be treated as either wages deducted or wages regarding which there has been delay in payment, is also the view of Punjab & Haryana High Court (See *Union of India v. Mohan Singh Chaudhri* reported in 1970 L.I.C., 165.

9. There is, therefore, preponderance of judicial opinion that the word "deducted" and the word "delayed payment of wages" as envisaged under the two Acts for recovery of employee's wages stands on the same footing. I am of opinion that in cases of non payment of wages as well a person is entitled to by way of compensation up to the extent of ten times the amount, payment of which is delayed. The legislature while enacting the provisions of section 28 of the Act made it clear which was impliedly there. Any narrower view would fail to achieve the manifest purpose and courts should avoid construction which would reduce the legislation to futility. The words "ten times the amount deducted in the first case," in section 28(2) of the Act will also mean ten times of the amount, payment of which has been delayed. The quantum of compensation payable however will depend upon objective consideration of the circumstances of each case. The compensation of ten rupees in the sub-section in my opinion, do not apply "to deduction" or payment of "delayed wages."

The proviso to section 28(2) of the Act also support my aforesaid conclusion, whereas the main section refers to "compensation not exceeding ten times the amount deducted" the said payment is made inadmissible by the proviso, it in the case of "delayed wages" the employer satisfies the court, or it being so, due to bonafide error or bonafide dispute or exceptional circumstance the failure of the person employed to accept payment etc. It would., therefore, be seen that these words "deducted" and "delayed wages" have been used in juxtaposition with each other. To my mind it would be, too, unreasonable to hold that for payment of paltry compensation of rupees ten only towards "delayed wages" the employer is required to prove the requirements of the proviso and the employee's to prove the absence of the said conditions.

In this case the claim for compensation has been confined to a sum of Rs. 3000/- only whereas from 27.7.19.2 the wages have been withheld in spite of the decision of the Labour Court and subsequently of the High Court in the year 1974, The delayed wage claimed constitutes a sum of Rs. 6950/- for the period from 10.12.1272 to 20.2.75. It is shocking that the petitioner did not receive the said wage during his tenure of office, he ultimately superannuated in the year 1976, even though he was held to be entitled to it by virtue of an order of re-instatement passed by a competent court as far back as 1972. In the facts and circumstances of this case, I hold that the claim of compensations for a sum of

Rs. 3000/- is most reasonable and the petitioner is entitled to the same and the respondent no. 3 must pay the said compensation. It is submitted that after institution the recovery proceeding the petitioner has been paid by Respondent no. 3 the delayed wage.

10. So far as the other claims are concerned, the petitioner was entitled to a judgment of the appellate court, who even though noticed the claim in its judgment, gave no reasons as to why the petitioner cannot recover the said claim. The Labour court in its turn, however, while rejecting the said claim held as follows:--

Categorical statement has also been held which includes 9 items and on perusal of those items it appears that bonus in item no. 5, retrenchment salary in item no. 7, compound interest in item no. 8, and Provident Fund in item no. 9, cannot be allowed in this proceeding because in the aforesaid matter he has to make a separate prayer in relevant provision. So far as his claim regarding increment he has not given the scale in his evidence nor he has filed any document showing about the due date of those increments. There is also no evidence of admissible leave salary for the leave not availed out and in the aforesaid circumstance those 2 items in absence of satisfactory evidence on record cannot be allowed.

The attention of the Labour Court is drawn to the definition of the word "wages" as envisaged under the Payment of Wages Act and on a mere perusal of it the Labour Court would find that some of the claims could be recovered under the provisions of section 28 of the Act. The Labour Court has not at all applied its mind to the said definition while rejecting that part of the claim. The petitioner by virtue of his reinstatement would be entitled to all increments that would accrue during the said tenure of his employment and he would further be entitled to leave salary for not availing leave. The Labour Court has rejected the said claim on the ground that there is no satisfactory evidence on record without at all referring to any evidence whatsoever. The petitioner attained the age of superannuation on 14.8.1976 and therefore, he was entitled to continue in Service up to that date. If, however, in view of the take over, his services stood terminated, then he would be entitled to, in law, either retrenchment compensation or closure benefits whatever may be appropriate in the facts and circumstances of the case. These claims needed judicial consideration of the courts below and not the perfunctory manner in which they have been disposed of. I do not feel satisfied that the claims could have been rejected in the manner it has been done. Some claims to my mind clearly come within the definition of "wages" and the Labour Court is fully competent to grant the same u/s 28 of the Act. I would have liked finally to dispose of this claim as well in view of inordinate delay but I have refrained to do so in view of the absence of the respondent no. 3.

11. I, therefore, set aside the judgments of the courts below and quash Annexure 2 and 3 and direct payment of a sum of Rs. 3000/- by way of compensation by respondent no. 3 to the petitioner. As far as other claims are

concerned, the matter is remitted back to the labour Court, who should reconsider the said claims in accordance with law and in the light of the observations, made above. I think for the advancement of the cause of justice and keeping in view the facts and circumstances of this case, the Labour Court should afford opportunity to both the parties to lead fresh evidence in relation to the claims sent down for its consideration. To (sic) mind a denial of this opportunity would defeat the very purpose of the Act, which lays down a special remedy to an employee for recovery of illegal deduction of wages, non-payment of wages, delayed payment of wages etc. In the result, the writ petition is allowed, Annexures "2" and "3" are quashed to the extent aforesaid and the Labour Court is directed to dispose of the claims in the light of the observations, made above, within four months from today. The respondent no. 3 should deposit the sum of Rs. 3000/- in Labour Court within three months from today. There will, however, be no order as to costs.