
(2004) 09 RAJ CK 0048

In the Rajasthan High Court

Case No : Civil Revision Petition No. 1013 of 1996

State of Rajasthan and Others

APPELLANT

Vs

Bhawani Shanker and Another

RESPONDENT

Date of Decision : 02-09-2004

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 15(2), 2

Citation : (2005) 104 FLR 761 : (2005) 1 LLJ 1011 : (2005) 1 RLW 226 : (2005) 1 WLC 181

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Narendra Moolchandani, for the Appellant; K.S. Gill and Manish Dadich, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This revision petition has been filed by the petitioners against the judgment dated 3.4.1996 passed by the learned District Judge, Bikaner in appeal No. 90/95 by which he partly accepted the appeal of the petitioners and modified the order dated 6.5.1995 passed by the respondent No. 2 Authority appointed under the Payment of Wages Act, Bikaner (for short "the Authority") in the manner that he maintained that portion of the order dated 6.5.1995 granting wages of Rs. 99125/- to respondent No. 1 Bhawani Shanker, but set aside that portion of the order dated 6.5.1995 granting compensation of Rs. 99125/- to respondent No. 1 Bhawani Shanker.

2. It arises in the following circumstances:-

The respondent No. 1, Bhawani Shanker was employee of the petitioners and his services were terminated by the petitioners vide order dated 31.12.1988 and thereafter, respondent No. 1 filed claim before the Labour Court, Bikaner and the Labour Court, Bikaner through judgment and award dated 26.10.1993 allowed the claim of the respondent No. 1 and set aside the termination order dated

31.12.1988 and ordered reinstatement of the respondent No. 1 in service with all consequential benefits.

Thereafter, no doubt the respondent No. 1 was taken back in service, but benefits, which were to be given to him were not paid by the petitioners and therefore, the respondent No. 1 filed an application u/s 15(2) of the Payment of Wages Act, 1936 (hereinafter referred to as "the Act of 1936") before the respondent No. 2 Authority claiming Rs. 99125/- as wages for the period from 1.1.1989 to 31.5.1994 and he also claimed compensation of Rs. 9,91,250/- as he was not paid the amount in time.

Notices of that application filed u/s 15(2) of the Act of 1936 were issued to the petitioners and the petitioners filed their reply stating that since the judgment and award were passed by the Labour Court, therefore, respondent No. 2 Authority had no jurisdiction to grant relief as sought for by the respondent No. 1 and further, the claim as put forward by the respondent No. 1 was not covered by the definition of "wages" as defined in Section 2(vi) of the Act of 1936. Hence, it was prayed that the application filed by the respondent No. 1 be rejected.

After hearing the parties, the learned Authority (respondent No. 2) through order dated 6.5.1995 rejected the contentions of the petitioners and granted Rs. 99125/- as wages and Rs. 99125/- as compensation total Rs. 1,98,250/- to the respondent No. 1 holding inter-alia:-

(i) That the claim as put forward by the respondent No. 1 was covered by the definition of wages as defined in Section 2(vi) of the Act of 1936 and further, the Authority had jurisdiction to decide such matter and thus, the plea that the amount, which was claimed by the respondent No. 1, should have been agitated before the Labour Court u/s 33C(2) of the Industrial Disputes Act, 1947 (for short "the Act of 1947") was rejected.

(ii) That on point whether the claim of the respondent No. 1 comes within the purview of deducted wages or delayed wages, the learned Authority came to the conclusion that it was a case of illegal deducted wages and not delayed wages and thus, granted Rs. 99125/- as wages and Rs. 99125/- as compensation total Rs. 1,98,250/- to the respondent No. 1.

Aggrieved from the said order dated 6.5.1995 passed by the respondent No. 2 Authority the petitioners preferred appeal before the learned District Judge, Bikaner and the learned District Judge, Bikaner through impugned judgment dated 3.4.1996 partly allowed the appeal of the petitioners and modified the order dated 6.5.1995 passed by the respondent No. 2 Authority in the manner that he maintained that portion of the order dated 6.5.1995 granting wages of Rs. 99125/ to respondent No. 1 Bhawani Shanker, but set aside that portion of the order dated 6.5.1995 granting compensation of Rs. 99125/- to respondent No. 1 Bhawani Shanker.

Aggrieved from the said judgment dated 3.4.1996 passed by the learned District

Judge, Bikaner, the petitioners have preferred this revision petition.

3. In this revision petition, two contentions have been raised by the learned counsel for the petitioners:-

(i) That the respondent No. 1 should have taken recourse under the provisions of the Act of 1947 because his claim was based on the judgment & award passed by the Labour Court and the Labour Court had jurisdiction to pass appropriate order u/s 33C(2) of the Act of 1947 and the same was not available under the provisions of the Act of 1937.

(ii) That furthermore, computation of the amount was not the function of the Authority and from this point of view also, the impugned judgment and order passed by both courts below suffer from basic infirmity and illegality and thus, liable to be quashed and set aside.

4. On the other hand, the learned counsel appearing for the respondent No. 1 has supported the impugned judgment & order.

5. I have heard the learned counsel for the petitioners and the learned counsel for the respondent No. 1 and gone through the record of the case.

6. There is no dispute on the point that termination order dated 31.12.1988 passed by the petitioners against the respondent No. 1 was set aside by the Labour Court, Bikaner through judgment and award dated 26.10.1993 and the respondent No. 1 was ordered to be reinstated back in service with all consequential benefits and when the wages for the period from 1.1.1989 to 31.5.1994 were not paid to the respondent No. 1, he filed an application u/s 15(2) of the Act of 1936 before the respondent No. 2 Authority claiming Rs. 99125/- as wages and he also claimed compensation of Rs. 9,91,250/- for not making the payment in time.

7. There is also no dispute on the point that against the judgment and award dated 26.10.1993 passed by the Labour Court, Bikaner setting aside the termination order dated 31.12.1988 and ordering reinstatement of the respondent No. 1 in service with all consequential benefits, the petitioners filed a writ petition before this Court being S.B. Civil Writ Petition No. 2273/95 and that writ petition was dismissed by this Court through order dated 21.7.1995 and special appeal being No. 940/95 filed against the said order dated 21.7.1995 was also dismissed by the Division Bench of this Court through judgment dated 3.1.1996 meaning thereby the judgment and award dated 26.10.1993 passed by the Labour Court, Bikaner in favour of the respondent No. 1 had become final.

8. The question for consideration is when in a case where judgment and award have been passed by the Labour Court in favour of a party, whether that party can claim wages u/s 15(2) of the Act of 1936 before the Authority or not.

9. Before deciding the above question, first it is to be seen whether the claim filed by the respondent No. 1 was covered by the definition of wages as defined

u/s 2(vi) of the Act of 1936 or not.

10. Section 2(vi) of the Act of 1936 defines wages and according to that definition, it includes any remuneration payable under any award or settlement and further, any sum payable by reason of termination of employment.

11. Thus, the definition of wages is exhaustive on the point that remuneration payable under the award can be described as wages.

12. The definition of the word "wages" as it stood prior to the 1957 Act had given rise to a question as to whether it covered a sum payable under a statute by reason of termination of employment and in my considered opinion, answer should be in the affirmative and the claim to compensation u/s 25F of the Act of 1947 can be held to be within the jurisdiction of the Payment of Wages Authority. The definition of wages in Section 2(vi) expressly covers such claim.

13. The definition of wages starts by saying that "wages" would mean all remuneration (whether by way of salary, allowance 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 and therefore, payment of compensation u/s 25F(b) of the Act of 1947 must be taken to be an implied term of the contract and would thus come within the definition of "wages" as defined in Section 2(vi) of the Act of 1936.

14. Thus, it is held that any remuneration payable under any award or settlement and further, any sum payable to a person by reason of termination of his employment are wages within the meaning of Section 2(vi) of the Act of 1936.

15. Therefore, in view of the above, if the respondent No. 2 Authority has come to the conclusion that the claim as put forward by the respondent No. 1, on the basis of the judgment and award passed by the Labour Court, was covered by the definition of wages as defined in Section 2(vi) of the Act of 1936, it has committed no illegality in doing so and the findings of the learned Authority in this respect are liable to be confirmed one.

16. On point whether the Payment of Wages Authority had jurisdiction or not, after going through the various judicial pronouncements of Hon'ble Supreme Court and various High Courts, the preponderance of judicial opinion on the subject can be laid down in the following manner:-

(i) That both the Payment of Wages Act as well as the Industrial Disputes Act are special enactments and as such the principle "generalia specialibus non derogant" is not applicable.

(ii) That the remedies provided u/s 15 of the Act of 1936 as well as Section 33-C(2) of the Act of 1947 are independent and alternative and one does not exclude the other.

(iii) That the remedy u/s 33-C(2) of the Act of 1947 is wider in scope and more

favourable to the workman than the remedy u/s 15 of the Act of 1936.

(iv) That when a workman is governed by the provisions of both the Act of 1936 as well as the Act of 1947 it is open to him to avail either of the remedies provided under those Acts.

(v) That a claim barred by time u/s 15 of the Act of 1936 can be entertained u/s 33-C(2) of the Act of 1947.

For coming to the above conclusion, the law laid down by the Full Bench of the Andhra Pradesh High Court in Mandegam Radhakrishna Reddy Vs. Sri Bharathi Velu Bus Service and Presiding Officer, Labour Court, Guntur, may be referred to.

17. Thus, in view of the law laid down above, the respondent No. 2 Authority had jurisdiction to decide the application filed by the respondent No. 1 u/s 15 of the Act of 1936, though jurisdiction was also with the Labour Court.

18. When this being the position, the order passed by the respondent No. 2 Authority dated 6.5.1995 on the application filed by the respondent No. 1 u/s 15 of the Act of 1936 cannot be said to be illegal and without jurisdiction.

19. So far as granting of Rs. 99,125/- as wages to the respondent No. 1 by the respondent No. 2 Authority through order dated 6.5.1995 is concerned, in my considered opinion, looking to the entire facts and circumstances of the case, no illegality or irregularity has been committed by the learned Authority (respondent No. 2) in granting that amount to the respondent No. 1 as wages and the learned District Judge, Bikaner has rightly maintained that part of the order of learned Authority (respondent No. 2) dated 6.5.1995.

20. For the reasons stated above, no interference is called for with the impugned judgment dated 3.4.1996 passed by the learned District Judge, Bikaner as it does not suffer from any basic infirmity or illegality and this revision petition deserves to be dismissed.

Accordingly, this revision petition filed by the petitioners is dismissed.