

(2008) 04 AHC CK 0082
In the Allahabad High Court

Sulabh International Social Service Organisation (Branch U.P. State) APPELLANT

Vs

Prem Chandra Jha and Prescribed Authority, Payment of Wages Act, 1936 and Deputy Labour Commissioner RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 1, 15, 17, 2

Citation : (2008) 6 AWC 5477 : (2008) 118 FLR 92 : (2008) 3 LLJ 652 : (2008) 2 UPLBEC 117

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The petitioner a society registered under the Societies Registration Act, 1960 having its Head Quarter at Patna (Bihar) claims itself a non profit social organization having its primary object to promote scavenger free society, has filed the present writ petition for quashing the order dated 19th of August, 1999 passed by the Prescribed Authority under the Payment of Wages Act on the short ground that the impugned order is totally without jurisdiction as the provisions of Payment of Wages Act, 1936 (hereinafter referred to as the Act) are not at all attracted.

2. Prem Chandra Jha, the contesting respondent No. 1, herein, filed an application before the Prescribed Authority appointed under the Payment of Wages Act on the allegations that he is an employee of the petitioner society and his wages for the certain periods have not been paid

3. The due date for payment of wages, according to him, is fixed as 7th of every month. In response to the show cause notice issued by the Prescribed Authority, it was submitted by the employer that it is not covered by the provisions of Payment of Wages Act as it is not an industry as defined in Section 2(j) of

Industrial Disputes Act. This was held so by Patna High Court in writ petition No. 3408 of 1981 dated 9.2.1990 and the said judgement has been confirmed in civil appeal by the Apex Court. The employer is a social organization. The employee applied for employment and agreed to work without any remuneration.

4. The Prescribed Authority after taking into consideration the relevant material on record passed the impugned order dated 19th of August, 1999 holding that the establishment of the employer comes within the definition of the industry and the employee engaged therein is entitled for wages and ordered the payment of wages for the period 1.6.1965 to 1.9.1996 a sum of Rs. 21,000/- towards the wages and Rs. 7,000/- towards the house rent allowance as also damages amounting to Rs. 28,000/-. The said order is under challenge in the present writ petition.

5. The learned Counsel for the contesting respondent, at the very outset points out that in view of Section 17 of the Act, this Court should not entertain the present writ petition and it should be dismissed on the ground of alternative remedy available to the petitioner by way of appeal under the aforesaid provision. It was rightly reminded to this Court that court may refuse to exercise its jurisdiction in view of the availability of alternative remedy by way of statutory appeal to the aggrieved party. In reply, the learned Counsel for the petitioner does not dispute that the impugned order is appealable under the aforesaid Section 17 of the Act but submits that since the question of jurisdiction is involved in the present petition and no investigation of fact is required, the writ petition should not be thrown out on the ground of alternative remedy. He points out that on the facts as pleaded by the employee, the provisions of the Act are not attracted and as such he submits that the court should hear and decide the legal issue raised in the petition. Sub-section (6) of Section 1 of the Act restricts the applicability of the Act to wages payable in respect of a wage period to Ra. 1,600/- a month or more, submits the learned Counsel for petitioner. Elaborating the argument, he submits that on the petition filed by the contesting respondent No. 1, he claimed wages Rs. 1500 + Rs. 500 total Rs. 2,000/- per month, Sub-section (6) of Section 1 of the Act excludes such applications from the purview of the Act.

6. So far as the question of maintainability of the writ petition is concerned, time and again, it has been laid down by the judicial pronouncements that refusing to entertain a writ petition on the ground of alternative remedy is a rule of prudence and a self-restrained rule. Article 226 of the Constitution of India does not on its own bar the entertainment of the writ petition on the ground of availability of a statutory remedy. The courts have carved out to exceptions and have laid down that when a question of jurisdiction is involved not depending on the question of facts or the impugned order has been passed in violation of natural justice, it may entertain the petition under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy.

7. Taking into consideration that the petitioner society is a social organization

and the fact that the petitioner does not raise any factual controversy, a question of interpretation of Section 2(vi) of the Act viz. a vis Section 1(6) of the Act is involved, it is not desirable to relegate the petitioner to avail the statutory remedy of appeal first. The objection regarding the maintainability of the writ petition raised by the learned contesting respondent is, therefore, overruled.

8. Coming to the merits of the case, a bare perusal of the application filed by the employee before the authority concerned, would show that he claimed the wages for the following wage periods:

Wages 1.6.95 to 31.7.95 @ 1500/- p.m. x 14 = 21,000 HRA 1.6.95 to 31.7.95 @ 500/- p.m. x 14 = 7,000 ----- 28,000 -----

9. The further contention is that non payment of wages on due date amounts to an illegal deduction and therefore, he prayed that a direction may be issued under Sub-section (3) of Section 15 of the Act for payment of delayed/deducted wages as also compensation amounting to Rs. 2,80,000/-.

10. In para 2 of the application it has been stated that "wage and house rent of the applicant is due w.e.f. 1st of June, 1995 onwards." In para 3 the averment is that employers are not paying his wages as well as house rent w.e.f. 1st of June, 1995 even demands were made verbally and in writing. The assurance to pay due wages and HRA of the applicant has not been fulfilled. The contention of learned Counsel for the petitioner at this stage is that taking the aforesaid averments in the application on their face value, the application before the authority concerned was not maintainable as it exceeds the prescribed amount of Rs. 1600/- per month. Reliance was placed on the definition of wages as contained in Section 2(vi) of the Act. "Wages" as defined u/s 2(vi) of the act includes the house rent allowance also. If that is so, the learned Counsel for the petitioner submits that in view of the claim of Rs. 2, 000/- per month made by the employee, the application was clearly beyond the purview of the Act in view of Section 1(6) thereof.

11. The learned Counsel for the employee, on the other hand, submits that the house rent allowance, on the true and correct interpretation of definition of "wages" is excluded and not included in the definition of wages and as such the authority concerned rightly entertained the application of the employee.

12. The learned Counsel for both the parties referred and placed reliance upon the judgement of Apex Court in The Divisional Engineer, G.I.P. Railway Vs. Mahadeo Raghuo and Another, in support of their respective contentions.

13. Considered the respective submissions of the learned Counsel for the parties and perused the documents referred by them. The short point to be decided in this case is whether the house rent allowance claimed by the employee comes within the purview of definition of "wages" as contained in the Act. There being no difference on questions of facts between the parties, the answer to the question raised must depend upon the construction to be placed upon the

following material portion of definition of "wages" contained in Section 2(vi) of the Act:

(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 include-

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

but does not include-

(1) ...

(2) 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 general or special order of the State Government.

xx xx xx xx xx xx xx xx

14. The word "wages" has been exhaustively defined in the definition. The use of words "means", "includes" and "but does not include in the definition of wages in Section 2(vi) of the Act" clearly shows that definition is an exhaustive one and no other meaning can be assigned to the term "wages" than put down in the definition. The object of legislature in providing an elaborate definition comprising three parts, namely, the meaning party, inclusive part and the exclusive part, is to make the definition exhaustive. The Apex Court in the case of Divisional Engineer (supra) held that the wages are remuneration payable by an employer to his employee for services rendered according to the terms of contract between them. The question then arises, what are the terms of contract between the parties? In this case also the question whether house rent allowance is part of wages, arose. To appreciate the law laid down by the Apex Court in that case, it is apt to notice the facts and the controversy involved therein, in brief. It was a case of Railway employee and when he was appointed, was not entitled to any house rent allowance. The scheme for payment of house rent allowance was introduced subsequently by the Railway Administration and it was provided therein that the said house rent allowance would be admissible to certain specified cities only like Bombay, Calcutta, Madras etc. It was further provided that the employee posted at any one of those places will cease to be entitled to the house rent allowance if either government provides accommodation to the employee in question or the employee refused to occupy the accommodation so

offered to him. The employee was offered the government accommodation but he refused to occupy the same. Earlier, he was getting the house rent allowance but it was stopped with effect from the day when he refused to accept the offered government accommodation. The employee, thereafter laid a claim before the authority concerned under the Act for payment of house rent allowance.

15. On the above facts the Apex Court was called upon to decide as to whether the house rent allowance was included in the definition of wages as provided by Section 2(vi) of the Act. The contention of the employee was that he would be entitled for the house rent allowance. In this factual background the observations made by the Apex Court therein should be understood. The Supreme Court in view of the fact that an employee posted at one of the specified places would be entitled to the house rent allowance but as soon as he is offered a government quarter for accommodation he ceases to be so entitled, whether he actually occupies or does not occupy the quarter offered to him, held that house rent allowance is not included in the definition of wages and therefore allowed the appeal of the employer. While doing so, it rejected the argument of the employee by the following observation:

The argument on behalf of the respondent No. 1 would have been valid if the Rules in terms contemplate the grant of house rent allowance to every employee of a particular category but the Rules do not make the grant in such absolute term.

16. The emphasis was laid by it on the terms of the contract between the parties. A reading of paras 7 and 8 of the report, would show if the contract of employment provides the payment of house rent allowance to every employee, in other words, the terms of contract make it compulsory for the employer to grant house rent allowance without any thing more, the house rent allowance will be included within the definition of wages.

17. Coming to the facts of the present case and taking into consideration the averments made in the application filed by the employee it is evident that he claimed the house rent allowance as compulsory payment to be made by the employer. In his deposition, the employee has reiterated his stand that he was getting Rs. 1500/- per month and Rs. 500/- per month as house rent allowance separately. He has also claimed the penalty for non payment of house rent allowance. In other words, it follows that he was entitled for house rent allowance on his own showing as part of wages. The definition of wages, as pointed above, is exhaustive one. It includes all remunerations whether by salary, allowance or otherwise. The word "otherwise" will include other payments akin to salary or allowances expressed in term of money or capable of being so expressed.

18. The learned Counsel for the respondents at this stage submits that the Sub-clause (2) of Section 2(iv) excludes the value of any house/accommodation from

the definition of wages. In view of exclusory Clause (2) the claim of Rs. 5007- as house rent allowance is excluded from the definition of wages, submits the learned Counsel for the respondents. However, the said argument in view of the authoritative pronouncement of the Apex Court in the case of Divisional Engineer (supra) cannot be accepted. It has been pointed therein that the legislature had used expression valuation of any house accommodation in the definition of wages as denoting something which can be deducted from the wages. The one excludes the other. Making a clarification it has been observed as follows:

It is equally clear that house rent allowance which may in certain circumstances as aforesaid be included as wages, is not the same thing as the value of any house accommodation referred to in the Act.

19. It has, thus, drawn a distinction in between the "house rent allowance" and the value of any house accommodation. The value of any house accommodation is for the purposes of deduction from the wages and is not the same thing as house rent allowance which an employee may be entitled to get as per terms of the employment in addition to the monthly salary.

20. In *Purshotam H. Jadye and Others Vs. V.B. Potdar*, it interpreted the definition of wages as contained in the Act and held that on its plain meaning remuneration payable to an employee under an award or settlement amounts to wages within the meaning of Section 2(vi) of the Act. It was held that payment of bonus under scheme of profit sharing or otherwise if such bonus forms part of remuneration payable under the terms of employment, it is included in the definition which may have been prescribed by an award amounts to wages u/s 2(vi) of the Act. Likewise, bonus properly so called, which is payable under the award, is also included within the definition of wages. This also supports the view which is proposed to be taken in the present judgement.

21. The plea that the petitioner is not an industry as set out before the authority concerned in the reply to the show cause notice as also argued before it was not raised before me in the present writ petition and as such the said question is left untouched.

22. Viewed as above, there is sufficient force in the writ petition. The wages for the wage period as claimed by the employee exceeds Rs. 16007- per month, the proceeding under the Act before the authority concerned was total without jurisdiction and the application of the employee was not maintainable. The impugned order passed thereon, therefore, cannot be sustained.

The writ petition succeeds and is allowed. However, no order as to costs.