
(1947) 05 MAD CK 0001
In the Madras High Court

The Managing Director, T.S.T. Co., Ltd. APPELLANT
Vs
R. Perumal Naidu and Another RESPONDENT

Date of Decision : 03-05-1947

Acts Referred:

Citation : (1957) 2 MLJ 345

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Division Bench

Judgement

Rajagopala Ayyangar, J.—The meaning of the expression ""wages"" as used in the Payment of Wages Act, 1936 and particularly in Section

15 of that enactment is the only point that arises for consideration in this writ petition.

2. The petitioner is a managing director of an establishment conducting a transport business. The 1st respondent Perumal Naidu was employed in

this establishment as a driver, in which post he was confirmed with effect from 1st May, 1953. The pay of this driver was then fixed on the scale of

Rs. 40/2/60 per month with a dear-ness allowance of Rs. 28 and a house rent allowance of Rs. 5, a month. At the time of his confirmation, his

basic pay was fixed at Rs. 42 on this time-scale. It would be seen that this employee was entitled to annual increments but the petitioner did not

give effect to this contract and pleaded financial stringency in excuse. The workman thereupon preferred an application u/s 15 of the Payment of

Wages Act to the Commissioner for Workmen's Compensation with regard to the payment of the sums representing the annual increments which

had not been paid over to him. The Additional Commissioner for Workmen's Compensation who heard this application granted to this workman a

decree for Rs. 14, the rest of the claim having been disallowed on the ground that it was barred by limitation.

3. This writ petition has thereupon been filed by the management raising the contention that where the remuneration payable to an employee was

on a monthly basis, the same would not be ""wages"" within the meaning of that expression in Payment of Wages Act, and that consequently the

Additional Commissioner for Workmen's Compensation who is the 2nd respondent to this petition had no jurisdiction to entertain the claim of the

workman or to give him the relief which he sought u/s 15 of the Act. This petition came on for admission before one of us, and in view of the fact

that reliance was placed on certain observations of a Division Bench of this Court, to which we shall advert a little later, it was directed to be posted

before a Bench and it has accordingly been heard by us.

4. Section 15 of the Act under which the workman made the application to the 2nd respondent enacts:

15 (1). The State Government may, by notification in the Official Gazette appoint any Commissioner for Workmen's Compensation or other officer

with experience as a Judge of a Civil Court or as a Stipendiary Magistrate to be the authority to hear and decide for any specified area all claims

arising out of deductions from the wages, or delay in payment of the wages of persons employed or paid in that area.

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages

has been delayed, such person himself, or any legal practitioner, or any official of a registered trade union authorised in writing to act on his behalf,

or any Inspector under this Act or any other person acting with the permission of the authority appointed under Sub-section (1) may apply to such

authority for a direction under Sub-section (3).

* * *

(3) when any application under Sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible

for the payment of wages u/s 5 or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may

without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person, of

the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not

exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter.

The expression ""wages"" has been defined by the statute itself in Section 2(vi) which runs thus:

(vi). "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 whether conditionally upon the regular attendance, good work or conduct or other behaviour of the

person employed or otherwise, to a person employed in respect of his employment or of work done in such employment and includes any bonus

or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the

termination of his employment, but does not include....(Omitting the rest of the definition which is not material to the present case.)

5. On this definition the increment which was payable under the contract between the employer and the workman would no doubt be

remuneration "" which "" would, if the terms of the contract of employment, express or implied, were fulfilled be payable"" (to quote the words of the

definition). The withholding of this payment, therefore, could have been complained of u/s 15.

6. The argument addressed to us by learned Counsel for the petitioner was based almost wholly on the terms of Section 4 which ran:

4. (1) Every person responsible for the payment of wages u/s 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such

wages shall be payable.

(2) No wage-period shall exceed one month.

Learned Counsel urged that Section 4(2), which specially enacted that a wage-period shall not exceed one month, by implication must be taken to

have also enacted that where the ""wages"" as defined in Section 2(vi) was payable monthly and not calculated as for periods less than a month, it

would not be ""wages"" within the definition. So we are unable to agree in this construction, because Section 4 has nothing to do with the basis upon

which the remuneration payable to an employee which is defined as ""wages"" in

Section 2(vi) is computed. The purpose of Section 4 is to ensure that whatever be the method of computation for arriving at the remuneration and whatever be the contractual term as to when this remuneration is payable ""wages"" shall be paid at least once in every month. In this connection it is necessary to refer to the terms of Section 1(6) of the Act which provides an exception to the cases to which the Act applies. This provision runs:

1(6). Nothing in this Act shall apply to wages payable in respect of a wage-period which over such wage-period average two hundred rupees a month or more.

It would be seen that this exception takes into account every case, whatever be the wage-period fixed, and it takes out of the category of employment to which the Act applies, cases where the remuneration of the employee is Rs. 200 a month or more. This provision therefore would appear to indicate the converse, viz, that whatever be the wage-period, if the average wage received by an employee is less than Rs. 200 a month" the Act would apply. In this connection it must be borne in mind that this provision applies irrespective of the wage-period fixed by the contract.

But this apart we are unable to uphold the contention that Section 4(2) enacts an exception further to Section (1)(6) by which the contractual wage-period of a month or more takes such employment apart from Section 1(6) outside the category of industrial relationship to which the Payment of Wages Act applies.

7. Learned Counsel however based his submission not so much upon the terms or language of the provisions which we have discussed just now but on the observations to be found in a judgment of a Bench of this Court reported as K.V. V. Sarma, In re(1952) 2 M.L.J. 917. The case itself was concerned with the question, whether a film studio was ""a factory"" within the meaning of the Factories Act (LXIII of 1948). In the course of their decision, holding that it was not, Govinda Menon, J., who spoke for the Court observed:

The learned State Prosecutor, by applying analogies, laid stress upon the meaning of the term ""wages"" occurring in certain similar statutes In the

Payment of Wages Act (IV of 1936), Section 2, Clause (pi), defines wages as follows;....Various other provisions of the same statute were

brought Our notice viz, Section 5, Sub-section (4). relating to the payment of

wages on a working day, and Section 6 to the effect that all wages shall be paid in current coin or currency notes or in both. If anything at all can be gathered from the Preamble to this Act it is that this legislation is intended to regulate the payment of wages to certain classes of persons employed in industry. One cannot by reference to this Act gather the impression that the term wages is intended to apply to persons who receive a fairly good sum of money as monthly salary. It is noteworthy that Section 1, Sub-section (6) prohibits the application of the Act to wages payable in respect of a wage-period, which, over such wage-period averages two 200 rupees a month or more. If the intention of the Legislature had been that the term "wages" can be applied to monthly salaries, in our opinion, there was no necessity for the enactment of this section. By restricting the remuneration for a wage-period to Rs. 900 and less, the section seems to suggest that the wage period is something which is less than a month. Otherwise it could easily have said that the wages for a period of one month should not exceed Rs. 200. We are inclined to think that on a construction of the various provisions of the Payment of Wages Act, the underlying idea is that the term "wages" should be understood as compensation paid for work done for a period less than a month. It may be either daily or weekly but where the payment is to be made monthly, one finds it difficult to apply the provisions of the Payment of Wages Act to such state of circumstances. Moreover, Section 4, Sub-section (2) says that no wage-period shall exceed one month. That makes it very plain that the Act is not intended to apply to any kind of salaries payable monthly.

In a later passage the learned Judge went on to say:

We are definitely of opinion that if the remuneration is to be paid daily or weekly, it can be called wages. But where it is monthly remuneration payable on the last day of the month or after that date and where the remuneration, considering the general standards of payment, is fairly high, then it has to be understood as salary.

With due respect to the learned Judges we are unable to agree in this construction of Section 2(vi) of the Payment of Wages Act. We have already examined the terms of the relevant provisions and it is not necessary to repeat ourselves. Further the question before the Court in Sarma's case¹,

was only in relation to the construction of the relevant provisions of the Factories Act and the discussion of the term ""wages"" as used in the

Payment of Wages Act was brought in incidentally by the State Prosecutor as supporting his construction of the provisions of the Factories Act.

The observations are therefore obiter. But this apart, the learned Judges lay emphasis in more than one place that they had in mind the quantum of

remuneration payable to the workmen as the point of distinction between wages and salaries. If this last test were applied, and Section 1(6) of the

Payment of Wages Act itself furnishes a dividing line for the purpose of this enactment all remuneration below Rs. 200 a month must be held to be

wages"".

8. Learned Counsel for the petitioner sought to derive some support for his argument from the terms of Section 1(6) of the Act. We find ourselves

unable to appreciate this argument. The remuneration payable to a workman may be on a piecework basis or on a time scale basis, and the latter

category would comprise every case whatever be the wage-period. The purpose of Section 1(6) was to exclude from the operation of the

enactment higher paid employees, and this took the form of laying down the average monthly remuneration by drawing the line where the average

remuneration per month was under Rs. 200. We do not see how this could be construed as by implication providing that in every case where the

remuneration was calculated on the basis of wage-periods extending over a month, the employees in receipt of wages so calculated were

notwithstanding that the quantum of wages payable to them was less than that provided by Section 1(6) were also outside the enactment. In our

judgment the remuneration payable to a workman which is wages as defined by Section 2(vi) of the Act does not cease to be wages as so defined

merely because the wage-period on the basis of which remuneration is calculated is the month.

9. The result is that the petition fails and is dismissed. The rule nisi issued will be discharged. The 1st respondent is entitled to his costs; counsel's

fee Rs. 100. Though the amount involved in the petition is Rs. 14 we are making this order as to costs, because when the insignificance of the

amount was pointed out to the learned Counsel for the petitioner at the time of the admission of the writ petition, he urged that it had been filed as a

test case.