

(1957) 05 MAD CK 0001

In the Madras High Court

Case No : Writ Petition No. 1027 of 1956

The Managing-Director, T.S.T. Company, Ltd.

APPELLANT

Vs

V.R. Perumal Naidu and Another

RESPONDENT

Date of Decision : 03-05-1957

Acts Referred:

Payment of Wages Act, 1936 — Section 1(6), 15, 2, 3, 4

Citation : AIR 1958 Mad 25 : (1957) ILR (Mad) 1129

Hon'ble Judges : Rajagopalan, J; Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : R. Desikan, for the Appellant; K. Narayanaswamy Mudaliar and S. Swamikannu, for the Respondent

Final Decision : Dismissed

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 first 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 dearness 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 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 second 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 second 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 authorized 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 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 3 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.

5. 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.

½ omitting the rest of the definition which is not material to the present case. 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.

7. 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. 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.

8. 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.

9. 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 I.L.R, (1953) Mad. 775, 799. The

case itself was concerned with the question, whether a film studio was a factory within the meaning of the Factories Act (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 (vi), defines wages as follows. ½ Various other provisions of the same statute were

brought to 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 average

two hundred 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. 200 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. ½ 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.

10. 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.

11. 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 case ILR (1953) Mad. 775 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 Wages Act itself furnishes a dividing line for the purpose must be held to be "wages".

12. 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 piece-work basis or on a time-scale basis, and the latter category would comprise every case whatever be the wageperiod. 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.

13. The result is that the petition fails and is dismissed. The rule nisi issued will be discharged. The first 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.