

(1998) 01 J&K CK 0003
In the Jammu And Kashmir High Court

Tramboo Joinery Private Limited

APPELLANT

Vs

Authority under Payment of Wages Act

RESPONDENT

Date of Decision : 01-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 1 SCT 47 : (1998) SriLJ 78

Hon'ble Judges : M.Rama Krishna, C.J and R.C.Gandhi, J

Bench : Division Bench

Judgement

Gandhi, J.—The appellant through this LPA is seeking to quash an order dated 23.11.1994 passed by the learned Single Judge in OWP

No. 654 of 1992 and the Award dated 19.11.1991 passed by the respondent No. 1, Authority under Payment of Wages Act, in favour of the

respondent No. 2.

2. A few facts necessary for the disposal of the appeal are that the respondent No. 2 filed an application under the Payment of Wages Act before

the respondent No. 1 stating therein that he had worked as Chamber man in the Tramboo Joinery Private Ltd. Khonmoh Srinagar from 1982 up

to 08.03.1989 while on that day he was informed that due to shortage of raw material he and others will be laid off and paid wages during lay off

period and as soon as raw material is arranged they will be taken back in the services. It is alleged that the appellant arranged the raw material and

allowed maximum workers to resume their duties excluding the respondent No. 2 and other three/four workers. The respondent No. 2

approached the appellant for resumption of duties but the latter did not allow him to resume the duties and also not paid the wages for the laid off

period and that the respondent No. 2 has been illegally retrenched and claims a compensation of Rs. 10400/ for the laid off period.

3. Taking cognizance of the claim, the respondent No. 1 (herein after called an Authority) issued notice to the respondentappellant herein and

despite service of the notice through publication, the appellant did not appear before the Authority and was proceeded exparte.

4. Respondent No. 2 produced two witnesses in support of his application to prove his claim and himself also appeared as a witness. The

Authority after consideration of material before it returned a finding that, ""On the basis of documentary evidence on record and in view of the

statements of witnesses, it has been established that the N.A. (nonapplicant) has retrenched the services of applicant illegally....

5. The Authority allowed the claim of Rs. 22,750/ against the claim of Rs. 10400/ as calculated by the respondent No. 2 and further directed the

Managing Director to deposit the Awarded amount within 30 days from the date of notice with the Authority for disbursement to the respondent

No. 2, failing which the awarded amount together with interest shall be recovered as fine imposed.

6. Aggrieved of this Award, the appellant presented the writ petition OWP No. 654/ 1992 seeking to quash the Award which came to be

disposed of by the learned Single Judge placing reliance on AIR 1969 SC.556 and AIR 1985 S.C.330 that the writ petitioner has not exhausted

the efficacious remedy of appeal under the Payment of Wages Act and instead approached the writ court invoking extra ordinary jurisdiction, thus

refused to issue a writ dismissing the writ petition. The appellant has challenged the correctness and legality of this order in this appeal on various

grounds.

7. We have heard the learned counsel for the parties, perused the memorandum of appeal, grounds taken therein, order under appeal, Award of

the Authority and other evidence on record.

8. Mr. Bhan, learned counsel for the appellant, questioning the order under appeal, submitted that the Award passed by the Authority is without

jurisdiction as the issue involved is the legality and validity of the action or retrenchment which cannot be entertained and adjudicated upon by the

Authority under the Payment of Wages Act. He submits that though this point

was argued before the writ court but neither the same has been dealt with nor any finding has been returned by the writ court in the course of the order under appeal.

9. The argument of the learned counsel goes to the very root of case and in case we come to the conclusion accepting the contention of the learned counsel, we feel there is no need of dilating upon the other legal questions taken in the appeal.

10. Considering the contention of the learned counsel it is to be seen whether the claim of the respondent No. 2 is under Sec. 15/(2) of the Payment of Wages Act or he is seeking for setting aside his illegal retrenchment. The appellant in the writ petition has stated that the respondent No.

2 after his retirement from the Government Service, joined his company and started working as a labourer and the petitioner is between 75 to 80

years of age. In March, 1989 the respondent No. 2 stopped coming to work in the Company and pleaded that he being very old man is not in a

position to continue to work and requested the Manager of the Company that his case for withdrawal of C.P.Fund be recommended. The

respondent No.2 moved an application for withdrawal of the C.P.Fund and in the application he has mentioned that he has resigned from the job.

11. Whether the respondent No. 2 has resigned or stopped working or has been retrenched, it is still to be seen with reference to the claim based

on a definite and specific cause of action and also whether the Authority under the Payment of Wages Act has the jurisdiction to deal with the relief

claimed based upon said cause of action. The respondent No.2 has projected in his application that he has been illegally retrenched and not paid

the wages of the laid off period and has led his evidence to prove the claim and illegal retrenchment upon which basis the Authority has returned a

finding holding that the retrenchment is illegal and consequently allowed the claim.

12. It is, however, required to be seen now as to whether the Authority under the Payment of Wages Act has the jurisdiction to record such a

finding declaring the retrenchment illegal. The claim of the petitioner has been permitted and authorised by the Authority declaring the retrenchment

as illegal, which on the contrary, means that had the retrenchment not been declared illegal, the respondent No. 2 would not have been found

entitled to the wages. Though the question of Wages can be raised before the Authority under the Payment of Wages Act but the Authority under the Act has no jurisdiction to adjudicate upon and decide the question of retrenchment. Section 15(2) of the Payment of Wages Act deals with the matter concerning delay in payment of wages and deduction from wages, and every such application seeking that relief need to be presented in twelve months from the date on which such deduction was made or the date on which payment was due to be made.

13. Section 2A of the Industrial Disputes Act reads as under;

2A, Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

14. It is clear from the bare reading of 2A that an action of retrenchment of respondent No. 2 is an industrial dispute and the Authority under the Payment of Wages Act has no jurisdiction to entertain and deal with the dispute of retrenchment.

15. In *M/s Singh Engineering Works Pvt. Ltd. Versus Kandhai and another*, reported in *Labour and Industrial Cases 1975 (853)*, the Allahabad

High Court held in para 7 (part);

Where it is admitted that the relationship of employer and employees did initially exist between the parties, but it is pleaded that the employer has put an end to that relationship either by dismissal, removal, termination of service or by retrenchment, then the validity of such action cannot be questioned before the Payment of Wages Authority.....

16. From the facts of the case in hand, the claim of the respondent No. 2 is not the main dispute. The main dispute is the action of retrenchment

and payment of wages is incidental thereto. If the retrenchment is held to be illegal, the respondent No. 2 is entitled to the claim of wages and vice

versa if the retrenchment is held valid, he is not entitled to any relief. It is clear that the claim of the respondent No. 2 was dependent upon the

outcome of adjudication of the action of retrenchment. The Authority under the

Payment of Wages Act can only entertain the application for dealing with in two classes of cases with regard to deduction made from the wages or delay in payment of wages. Therefore, the finding recorded by the Authority is without jurisdiction.

17. Dealing with the contention of the learned counsel for the respondent that the appellant had approached the writ court without exhausting

efficacious remedy of appeal and the writ petition has rightly been dismissed, the writ Court while recording such finding for dismissal of the petition

has placed reliance upon the judgments of the Hon'ble Supreme Court reported in AIR 1969 556 and AIR 1985 p. 330. We have pursued the

judgments. The Hon'ble Supreme Court has laid down law in AIR 1969 p. 556 while dealing with a particular situation holding that the writ court

should refuse to entertain the application where efficacious alternative remedy is available." In AIR 1985 S.C. 330, it is observed that where the

Court is convinced that there are good and sufficient reasons to by pass the alternative remedy provided by the Statute, the extra ordinary

jurisdiction can be invoked and exercised. In the present case the order of the Authority under the Payment of Wages Act is without jurisdiction

and in case the matter is remanded back for exhausting the remedy available, it will be of no use and will serve no purpose and will only aggravate

the agony of the parties to receive the verdict of the appellate Authority provided by the Statutes and only thereafter to approach the writ court.

18. It is well settled law that where the order of the Authority is patently without jurisdiction, the availability or exhausting of the alternative remedy

is no bar to invoke the extra ordinary writ¹ jurisdiction of the High Court by the aggrieved party.

The Hon'ble Supreme Court while dealing with the situation of exhausting of alternative remedy in case Master Construction Co. (p) Ltd. Vs. State

of Orissa and anr, reported in AIR 1966 page 1047 held,

Art. 136 confers a discretionary appellants jurisdiction on the Supreme Court against any order passed by any tribunal in the territory of India.

The said jurisdiction is not subject to any condition that the party who seeks special leave of the Supreme Court to appeal from such order to

exhaust all his other remedies including a petition under art. 226. The existence of a statutory remedy to such a party may persuade this Court not

to give leave to appeal to the party. The Orissa Sales Tax Act does not provide for a further remedy against the order made by the Commissioner

in revision, and under Art. 226 of the Constitution of India, the High Court's jurisdiction is discretionary and the scope of the jurisdiction is rather

limited. In the circumstances, there is no justification to throw out an appeal under Art. 136 on the ground that the appellant has not exhausted all

his remedies, including one under Art. 226.

19. It is further held by the Hon'ble Supreme Court in case title Dr. Smt. Kuntesh Gupta Vs. Management of Hindu' Kanya Mahavidyalaya Sitapur

(UP) and ors reported in AIR 1987 page 2186 in para 12 of the judgment which is extracted as; ""The next question that falls for our consideration

is whether the High Court was justified in dismissing the writ, petition of the appellant on the round of availability of an alternative remedy.' It is true

that there was an alternative remedy for challenging the impugned order by referring the question to the Chancellor under Sec. 68 of the UP State

Universities Act. It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority

has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under art. 226 of the Constitution on the ground

of existence of an alternative remedy.

20. The Writ Court has not appreciated this aspect of the law laid down by the Hon'ble Supreme Court holding that where the order of the

Authority is without jurisdiction the High Court should not refuse to entertain the writ petition and exercise extra ordinary with jurisdiction under

sec. 226 of the Constitution of India. We feel that on this score the order under appeal deserves to be interfered and set aside.

21. For the foregoing reasons, we accept the appeal and set aside the order dated 23.11.1994 passed by the learned Single Judge and also the

Award under the Payment of Wages Act. However, the respondent No. 2 is at liberty to move the competent forum seeking adjudication of the

action of retrenchment by the appellant, if so advised.