

(2002) 12 RAJ CK 0015
In the Rajasthan High Court
Case No : C.W.P. No. 897 of 1992

Umrao

APPELLANT

Vs

Authority under Payment of Wages Act and Another

RESPONDENT

Date of Decision : 03-12-2002

Acts Referred:

Payment of Wages Act, 1936 — Section 15

Citation : (2003) 96 FLR 314 : (2003) 1 LLJ 979 : (2003) 2 WLC 309

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : K.C. Samdaria, for the Appellant; Ravi Bhansali, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondents on February 11, 1992 with a prayer that by an appropriate writ, order or direction, the impugned order dated January 9, 1992 (Annexure 3) passed by the respondent No. 1 (Authority under the Payment of Wages Act) by which the learned Authority (respondent No. 1) came to the conclusion that respondent No. 2 (Jagdish) had made the payment to the petitioner and therefore, dropped the recovery proceedings, be quashed and set aside.

2. The facts as put forward by the petitioner are as under:

(i) That the petitioner was under the employment of respondent No. 2 (Jagdish) since last so many years.

(ii) That since the respondent No. 2 (Jagdish) did not make payment of wages to the petitioner, therefore, the petitioner moved an application u/s 15(2) of the Payment of Wages Act, 1936 (hereinafter referred to as the Act of 1936) before the authority under the Act (hereinafter referred to as the learned Authority) on October 27, 1989 and in that application, notices were issued to the respondent No. 2 (Jagdish) who refused to take summons, on which ex-parte proceedings

were initiated against the respondent No. 2 (Jagdish). The learned Authority through its order dated August 31, 1990 accepted the application filed by the petitioner u/s 15(2) of the Act of 1936 to the extent that respondent No. 2 (Jagdish) was ordered to make payment of Rs. 8000/- to the petitioner upto September 30, 1990.

(iii) That the further case of the petitioner is that the respondent No. 2 (Jagdish) did not make payment as ordered by the respondent No. 1 through judgment dated August 31, 1990 (Annexure 1), therefore, the learned Authority through letter dated November 14, 1990 (Annexure 2) asked the Chief Judicial Magistrate, Bhilwara to recover the said amount from the respondent No. 2. Thereafter the respondent No. 2 (Jagdish) filed an application for setting aside the ex-parte judgment dated August 31, 1990. During pendency of application filed by respondent No. 2 (Jagdish) for setting aside ex-parte judgment dated August 31, 1990, the respondent No. 2 moved another application that payment had already been made to the petitioner in pursuance of judgment dated August 31, 1990 (Annexure 1) and the respondent No. 2 (Jagdish) (also produced the receipt showing that the payment had been made to the petitioner. However, the petitioner contended that no payment had been made so far, but on the basis of the receipt produced by the respondent No. 2 (Jagdish), the respondent No. 1 accepted the application filed by the respondent No. 2 and dropped recovery proceedings through order dated January 9, 1992 (Annexure 3). Hence, this writ petition with the above mentioned prayer.

3. The petitioner has challenged the order dated January 9, 1992 (Annexure 3) passed by the respondent No. 1 and the main ground is that no payment was ever made by respondent No. 2 either to the petitioner or his counsel and the receipt which was filed by respondent No. 2 (Jagdish) is forged one as he did not put his signatures on it and the same was undated also and without making enquiry as to whether the receipt in question was executed by the petitioner or his counsel or not, dropping of recovery proceedings by respondent No. 1 through order dated January 9, 1992 (Annexure 3) was without jurisdiction and, therefore, the order dated January 9, 1992 (Annexure 3) passed by respondent No. 1 be quashed and set aside.

4. A reply to the writ petition was filed by the respondent No. 2 and his main submission is that since payment was made through receipt in question, therefore, the proceedings were rightly dropped by the learned authority (respondent No. 1) and hence the writ petition be dismissed.

5. Heard and perused the record.

6. From perusal of impugned order dated January 9, 1992 (Annexure 3), it appears that the fact that payment was not made to the petitioner was alleged by the petitioner. However, only by writing few lines namely heard both the parties and perused the file from which it appears that the payment was made, the proceedings were dropped.

7. In my opinion, the order dated January 9, 1992 (Annexure 3) passed by respondent No. 1 is not an order in the eye of law especially when in the impugned order dated January 9, 1992 (Annexure 3) there is specific mention of the fact that the petitioner did not accept the genuineness of the so called receipt by which the respondent No. 2 (Jagdish) alleged to have made payment, to the petitioner. When this being the position, the order dated January 9, 1992 (Annexure 3) by which the recovery proceedings were dropped cannot be sustained.

8. It may be stated here that burden of proof lies on the party which specifically asserts affirmatively on the point in question and not on the party who denied it. Since in this case genuineness of the receipt in question was denied by the petitioner. Therefore, burden of proving the genuineness of the receipt was on the respondent No. 2 (Jagdish), but without giving any finding on the genuineness of the receipt, the learned Authority (respondent No. 1) dropped the proceedings taking it for granted as if it was a genuine receipt. In these circumstances, the order dated January 9, 1992 (Annexure 3) passed by the respondent No. 1 is perverse and erroneous.

9. It may be stated here that the High Court's power of superintendence under Article 227 of the Constitution includes judicial superintendence also of Courts and Tribunals within its territorial jurisdiction. Hence, in exercise of this power, the High Court can interfere with the order of the Authority in an appropriate case.

10. Under Article 227 of the Constitution of India, it is competent for the High Court to interfere with any order made u/s 15 of the Payment of Wages Act if such order could not have been legally made and was outside the jurisdiction of the Authority concerned.

11. Since the order dated January 9, 1992 (Annexure 3) passed by the respondent No. 1 is erroneous and without jurisdiction, therefore, the same is being interfered with by this Court under Article 226 of the Constitution of India.

12. For the reasons mentioned above, the order dated January 9, 1992 (Annexure 3) passed by the learned Authority under the Act is liable to be set aside and this writ petition deserves to be allowed.

13. Accordingly, this writ petition is allowed and the impugned order dated January 9, 1992 (Annexure 3) passed by the Authority under the Payment of Wages Act (respondent No. 1) is quashed and set aside and the matter is remanded back to the Authority under the Payment of Wages Act, Bhilwara (respondent No. 1) with a direction to decide the genuineness of the receipt after giving an opportunity of hearing to the petitioner as well as respondent No. 2 (Jagdish). The parties are directed to remain present before the respondent No. 1 on December 26, 2002.

14. The record already received be sent back along with this order. Cost made

easy.