
(1960) 09 CAL CK 0033
In the Calcutta High Court

Union of India (UOI)

APPELLANT

Vs

Arjun Singh

RESPONDENT

Date of Decision : 19-09-1960

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 2

Citation : (1961) 2 ILR (Cal) 503 : (1961) 2 LLJ 454

Hon'ble Judges : P.N. Mookerjee, J;N.K. Sen, J

Bench : Division Bench

Judgement

P.N. Mookerjee, J.—In this rule, obtained by the Eastern Railway Administration, represented by the Union of India, the only point that arises is whether the learned Judge, Second Bench, Court of Small Causes, Calcutta, acting as the appropriate appellate authority under the Payment of Wages Act, was justified in setting aside the order of the "authority" under the said Act, rejecting the opposite party's application, claiming certain wages from the petitioner railway, and remanding the case to the said "authority" for trial on merit.

2. The rule was issued under the following circumstances:

On 2 February 1959, the opposite party applied before the authority under the Payment of Wages Act, West Bengal, claiming Rs. 38,826-4-0 as "delayed wages" against, in "particular, the present petitioner. In the said application, the opposite party stated, inter alia,--

(a) that he was a permanent employee under the petitioner (the then East Indian Railway) in the year 1948, working as Claims Inspector, Ondal;

(b) that, in October 1948, the opposite party received an order from the railway administration, purporting to be an order retrenching him from his aforesaid service;

(c) that, by the Judgment and decree passed on 28 January 1958, In Suit No. 617 of 1954 of the Court of the Munsif, Nagina, District Bijnor, Uttar Pradesh,

brought by the opposite party against the petitioner railway administration, the said order was declared void and inoperative and it was further declared that the opposite party was continuing in service under the petitioner with all rights and liabilities, attaching to the post of a civil servant, and the said decision was affirmed in appeal by the Civil Judge, Bijnor, on 9 August 1958; and

(d) that in the circumstances, the opposite party was entitled to get his pay on the above footing from 25 May 1948.

3. On 6 February 1959, the authority recorded an order to the effect that, for certain reasons (with which we are not concerned In this rule), the opposite party's application, so far as it related to his claim, prior to 1 April 1958, could not be entertained by him but the said application could be proceeded with in regard to the claim from after 1 April 1958, if the applicant was employed in West Bengal during the relevant period. The proceeding, thereafter, continued, apparently, with regard to the claim for the period, subsequent to 1 April 1958, but, as, on the materials before him, the authority was not satisfied that, during the relative or relevant period, the opposite party was in the employment of the petitioner in West Bengal and, as further, he held that wages under the Act, that 18, wages which could be dealt with thereunder, must be "earned wages" and not "potential wages" and, the opposite party not having been reinstated, he could not claim to have earned any of the wages under consideration, "he rejected the opposite party's application.

4. Against the above order of rejection, the opposite party preferred an appeal to the appropriate appellate authority. That appeal was allowed and the case was remanded for further hearing according to law. In the opinion of the learned appellate authority, wages under the Act need not, necessarily, be "earned wages" but they may well be "potential wages" and he, further, held that, by virtue of the civil Court's declaratory decree aforesaid the opposite party must be deemed to have been and to be in service, or, to be more exact, to have continued and to be continuing in service, that is, service at Ondal, where he was last employed at the time of his purported dismissal. The petitioner then obtained the present rule.

5. In support of the rule, three points were urged by Sri Bose.

6. In the first place, Sri Bose contended that, under the law, no appeal, in this case, was maintainable. This argument, however, was, eventually, given up by Sri Boss, when his attention was drawn to the relevant amended Section 17.

7. Indeed, the amendment in question which was made by Central Act No. 68 of 1957 [the Payment of Wages (Amendment) Act, 1957] is a complete answer to Sri Boss's above argument and leaves no scope for it. Whatever might have been the position under the old section, the amendment has expressly made appealable an order, dismissing an application u/s 15(2) of the Act, and that is enough to justify the appeal before the appellate authority in the instant case.

8. Sri Bose next contended that the opposite party's application was premature in view of Para. 2044 of the Railway Establishment Code. That paragraph, however, deals with reinstatement and its consequences. The present case is not one of reinstatement but, under the Court's declaration, the opposite party's service, that is, his old service, is continuing and continuing without a break. This argument of Sri Bose must also therefore, fail. In the third place, Sri Bose argued that wages under the Act must be earned wages or wages earned by active service rendered and not "potential wages," which might have been earned. The term "potential wages" is not very happy but if it means wages which would or could have been earned by the particular employee, If the contract of employment has been respected by the employer, such wages would, certainly, come within the definition of Section 2(vi), and as the opposite party's claim, obviously, falls under that category or classification in view of the fact that, by reason of the civil Court's declaration, the contract of employment between the parties has all along been subsisting and it is only because the opposite party has not been allowed to work by the petitioner that he could not render service under the same, or, in other words, it is only because the petitioner has not respected the contract that the opposite party could not render the service and actually earn the wages in question, it would, plainly, be one under the (sic) amenable to the Act. Any other view would create a palpably unjust and impossible situation. It would, indeed, be strange, if the employer, merely by breaking or refusing to respect the contract between him and his employee, can deprive the latter of his rights and remedies under the special statute or legislation, namely, the "Payment of Wages Act." Happily, however, the definition Section 2(vi) is wide enough to include such claims as "wages."

9. We hold, therefore, that the learned appellate authority was right in his view of the law and this rule must fall. We, however, express no opinion as to the effect of the (original) authority's order, dated 6 February 1959, referred to hereinbefore, or upon the question of limitation, if any, in regard to any part of the opposite party's claim. These matters are not before us in this rule and we express no opinion on the same.

10. Subject as aforesaid, this rule fails and it is discharged with costs.

N.K. Sen, J.

11. I agree.