

**(1964) 01 KL CK 0005**  
**In the High Court Of Kerala**  
**Case No : C.R.P. No. 80 of 1962**

Varghese and Others

APPELLANT

Vs

M/s. Carmal Coir Works

RESPONDENT

**Date of Decision :** 20-01-1964

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115, 17  
Industrial Disputes Act, 1947 — Section 15, 17, 17(1), 25  
Payment of Wages Act, 1936 — Section 15, 16, 17, 2(6)

**Citation :** (1964) KLJ 407

**Hon'ble Judges :** C.A. Vaidialingam, J

**Bench :** Single Bench

**Advocate :** V. Viswanatha Menon, for the Appellant; T.K. Kurien and M.C. Varghese, for the Respondent

## **Judgement**

Vaidialingam, J.—In this revision, u/s 115 of the Code of Civil Procedure, Mr. V. Viswanatha Menon, learned counsel for the petitioners-employees, challenges the order of the District Court, passed on appeal u/s 17 of the Payment of Wages Act, 1936, (Central Act IV of 1936) hereinafter referred to as the Act. The petitioners claimed a total sum of Rs. 3,378-7-5- under various heads either as deductions from wages or delay in payment of wages. The claim itself was under several heads and the application before the Payment of Wages Authority was made under sub-section (2) of section 15 and section 16 of the Act.

2. It will be seen that even according to the petitioners, the industry in question, namely, the Carmal Coir works, was closed down in February, 1956 without notice. In particular, the claims among other items, included notice pay, bonus for the years 1954, 1955 and 1956, as well as retrenchment compensation. The application itself was filed only on 8-10-1956, admittedly beyond the period mentioned in sub-section (2) of section 15.

3. The claim of the employees was very severely contested by the management on several grounds. It was urged that the application itself not having been filed

within six month from the date of the alleged deduction or delayed payment, should be dismissed in limini.

4. The Authority under the Payment of Wages Act did not accept the plea of the management that the application should be dismissed in limini on the ground that it has not been filed within the period prescribed under sub-section (2) of section 15. In fact, the Authority exercised the discretion vested in it under the second proviso to sub-section (2) of section 15 and was satisfied that the employees had sufficient cause for not making the application within the period of six months, and therefore, held that the application is maintainable.

5. Having held that the application is maintainable, the Authority proceeded to consider the claim on the merits. The authority finds, even on the case set up by the employees that the industry in question was closed down in February 1956. The Authority took the view that the various claims made by the employees will come within the expression "wages" as defined in section 2 (6) of the Act.

6. But the Authority is of the view that the employees have not been able to satisfy it that the industry has made profits during the years 1954 to 1956 so as to entitle the employees to claim bonus. On this ground, it rejected the claim of the employees for bonus for these years. But in all other respects, the claim made by the employees, was accepted; and ultimately the Authority directed the respondent to pay all the amounts claimed by the employees in the statement filed by them excepting bonus for the years 1954 to 1956.

7. The respondent challenged this decision of the Authority by taking it up in appeal, as it was entitled to u/s 17 of the Act.

8. The appellate authority was the District Court of Alleppey.

9. Though it was urged by the employer that the application filed by the workmen should have been dismissed in limini as barred by limitation, the learned District Judge was not prepared to accept this plea. But the District Court went into the merit of the claim made by the employees under the various heads. It also took note of the fact that the disallowance of the claim for bonus for the years 1954 to 1956 by the Payment of Wages Authority was not challenged by the employees.

10. The learned District Judge is of the view that the claim made by the employees for pay, in lieu of notice, cannot be sustained as it will not come under the definition of the expression "wages" u/s 2 (6) of the Act. In this connection, the learned District Judge has followed the decision of the Madras High Court reported in *Narayanaswami v. Vasudeva* (A.I.R. 1958 Mad 360), wherein a Division Bench had held that a claim for compensation of 15 days' wages, in lieu of notice, on the termination of the services, when the claim is not related to a contract of service between the employee and the employer, falls outside the scope of section 2 (6) of the Act, and as such, such a claim cannot be allowed by the Payment of Wages Authority.

11. The learned District Judge then considers the claim of the employees for retrenchment compensation. Here again, the District Court agrees with the finding of the Authority under the Payment of Wages Act that even according to the case set up by the employees, the factory has been closed down from February 1956. In fact, the learned District Judge has also stated that this finding of the Authority has not been challenged before him by the employees.

12. Though during the course of the arguments, it is seen that the employees appear to have urged that the management have not closed down the factory but were really continuing the same, and, therefore, the employees are entitled to retrenchment compensation, the learned District Judge was not prepared to accept this plea. Ultimately, the learned District Judge, after a due consideration of the case set up by the employees themselves, as well as on the evidence on record, agrees with the finding recorded by the Authority that the factory was closed down in February 1956. It is the view of the learned District Judge that when once it is held that the factory has been closed down the employees are not entitled to retrenchment compensation, because at the material time, section 25 FFF of the Industrial Disputes Act was not in force. Therefore, he set aside the finding of the authority granting retrenchment compensation.

13. Then the various other claims which had, no doubt, been accepted by the Authority in favour of the employees are again gone into by the learned District Judge; and on facts, the District Court disagrees with those findings and set aside the reliefs granted in respect of those claims also.

14. Ultimately, the learned District Judge set aside in toto the order of the Payment of Wages Authority and dismissed the application filed by the petitioners under the Payment of Wages Act.

15. It is this order of the learned District Judge that is challenged, in this revision u/s 115 of the Code of Civil Procedure, By Mr. Viswanatha Menon, learned counsel for the petitioners.

16. At the outset, Mr. T.K. Kurien, learned counsel for the respondent-management, has raised a preliminary objection that no revision u/s 115 of the CPC can be entertained by this court, against an order passed by the District Court, on appeal u/s 17 of the Act. According to the learned counsel, the order in appeal passed by the District Court u/s 17 of the Act must be considered to be an order passed under sub-section (3) of sub-section (4) of section 15 and such an order is stated to be final under subsection (2) of section 17 of the Act. This is a convenient stage to refer to subsection (2) of section 17 of the Act which is as follows:

(2) Save as provided in sub-section (1), any order dismissing either wholly or in part an application made under sub-section (2) of section 15, or a direction made under subsection (3) or sub-section (4) of that section shall be final.

Section 17(1) gives a right of appeal against a direction made u/s 15 within the

period mentioned therein. Such an appeal will lie, in a Presidency Town to the Court of Small Causes, and elsewhere before the District Court. In this case, as I have already stated, the appeal was to the District Court of Alleppey.

17. In view of the fact that the directions given under sub-section (3) or sub-section (4) of section 15 are stated to be final, according to Mr. T.K. Kurien, the order passed on appeal by the District Court, cannot be challenged either in a further appeal or in revision before this Court.

18. It can be accepted straightaway that there will be no further right of appeal against the order of the District Court, passed on appeal u/s 17 of the Act. It is a well recognised principle that a right of appeal must be specifically conferred by the statute. But the question is whether the contention of the learned counsel for the respondent that no revision lies u/s 115 of the Code of Civil Procedure, against such a decision is to be accepted.

19. This stand taken by the learned counsel for the respondent is controverted by Mr. Viswanatha Menon, learned counsel for the petitioners. According to Mr. Viswanatha Menon, the jurisdiction to hear an appeal u/s 17 of the Act, is given, not to a District Judge persona designata but to a court, namely, the District Court. The District Court is a court subordinate to this court; and inasmuch as no appeal lies against an order of the District Court, there is a right of revision u/s 115 of the Code of Civil Procedure. As to under what circumstances this court will interfere with an order passed by the District Court u/s 17 of the Act, when its jurisdiction is invoked u/s 115 C. P.C. is a totally different matter. When jurisdiction is conferred on a court, the learned counsel urged, all the other legal results flowing from such conferment of jurisdiction on a court follows, and one such incident, will be a right to challenge the decision of such a court, when no appeal lies, by a revision to this Court.

20. Mr. T.K. Kurien, learned counsel for the respondent, relied upon a decision of Joseph and Mathew, JJ. reported in *Govindan Nambiar v. Sooppi Kutty Haji* (1963 KLT 975) in support of his contention that no revision lies against the order of the District Court in view of sub-section (2) of section 17 wherein, according to him, finality has been attached to such orders.

21. The particular provision which the learned Judges had to consider in the decision referred to above, was section 23 A of the Kerala Agriculturists Debt Relief Act, 31 of 1958, wherein it was provided that an appeal against the orders referred to therein will lie to the court to which appeals ordinarily lie and it also provided that "the order passed in appeal shall be final". In view of the specific provision contained in the said section giving finality to the order passed in appeal by an appellate court, the learned Judges held that a revision, against such an appellate order, is not maintainable.

22. But in my view, that decision does not assist the learned counsel for the respondent. Sub-section (2) of section 17 of the Act, which I have already extracted, does not provide for any finality being attached to the order passed in

appeal by the District Court u/s 17 of the Act. It is now well settled by the decision of the Supreme Court reported in *Collector of Customs, Calcutta Vs. East India Commercial Co. Ltd.*, that the operative order under such circumstances, is the order of the appellate authority, whether it has reversed the original order or modified it or confirmed it. In this case, the District Court has reversed the original order of the Authority under the Act and, therefore, the operative order is that of the District Court. Sub-section (2) of section 17 of the Act does not in any manner, so far as I could see, attach finality to the orders passed on appeal by the District Court which is the operative order in this case.

23. In my view, the jurisdiction u/s 17 of the Act to hear and dispose of an appeal is given to a court, namely, the District Court and the District Court, it cannot be disputed, is a court subordinate to this Court. There is no further right of appeal against the order passed by that court and, therefore, section 115 of the Code of Civil Procedure, stands attracted and this Court has got jurisdiction to exercise its revisional powers u/s 115 of the Code of Civil Procedure. As to what interference is necessary in a given case, is an entirely different matter.

24. I am supported in the view that I have taken regarding the maintainability of a revision u/s 115 of the Code of Civil Procedure, by two decisions of other High Courts. A Division Bench of the Madhya Pradesh High Court, in its decision reported in *Hindustan Journals v. Govindram* (1962 (2) L. L. J. 242) has taken the view that the jurisdiction conferred u/s 17 of the Payment of Wages Act is on a civil court, already functioning under the CPC and it is a court subordinate to the High Court and as such the High Court has jurisdiction to entertain a revision u/s 115 of the Code of Civil Procedure.

25. Again, a learned Single Judge of the Mysore High Court in the decision reported in *Codialabail Press Vs. Monappa (K.)*, has taken the view that since the District Court hearing an appeal u/s 17 of the Act, is a court subordinate to the High Court, the revisional power of the High Court u/s 115 C. P.C. clearly extends to its decisions and to the proceedings before it and, therefore, the High Court has got jurisdiction to exercise revisional jurisdiction u/s 115 of the Code of Civil Procedure. I am in respectful agreement with the views expressed by the learned Judges of the Madhya Pradesh and Mysore High Courts in the decisions referred to above. Therefore, the preliminary objection raised by Mr. T.K. Kurien, learned counsel for the respondent, regarding the non-maintainability of this revision, u/s 115 of the CPC has to be overruled.

26. Before I consider the contentions raised by Mr. Viswanatha Menon, learned counsel for the petitioners, on the merits, it is necessary to refer to a decision of my learned brother Mr. Justice Joseph reported in *Kuriakose v. Thomas* (1959 K.L.J. 341). It will be seen that the order of the Authority under the Payment of Wages Act itself was directly challenged before the High Court u/s 115 of the Code of Civil Procedure. Objection was taken that no revision lies against the order of the Authority as the latter is not a civil court. The learned Judge accepted this objection and ultimately held that the revision is incompetent. But

the learned Judge has observed at page 342 of the reports to the effect that:

It may be that the High Court has revisional jurisdiction in respect of such appellate decisions of the District Courts, but this does not mean that the original Authority itself is a civil court.

If I may say so with respect, these observations of the learned Judge seem to indicate that the order passed, on appeal by the District Court, u/s 17 of the Act can be scrutinised in revision by the High Court u/s 115 of the Code of Civil Procedure. No doubt, it must be stated that the learned Judge had no occasion to directly decide that aspect.

27. As I mentioned earlier, the preliminary objection raised by the respondent will have to be overruled.

28. Coming to the merits, Mr. Viswanatha Menon, learned counsel for the petitioners, in particular raised two contentions, namely, that the disallowance of notice pay and the claim for retrenchment compensation by the learned District Judge, in any event, are erroneous. So far as the other findings are concerned quite naturally the learned counsel found considerable difficulty in attacking them because they are findings on facts recorded as against the petitioners by the learned District Judge.

29. Regarding notice pay, Mr. Viswanatha Menon, learned counsel for the petitioners, invited my attention to a decision of the Supreme Court reported in Express Newspapers (P) Ltd. Vs. Michael Mark and Another, wherein their Lordships had recognised the claim for notice pay. But a careful reading of the decision of the Supreme Court will clearly show that the learned Judges recognised the right, in view of the Standing Order 28 (1) of the management which provided for termination of the employment of a permanent employee by giving one month's notice or on payment of one month's wages in lieu of notice. In order to sustain the plea that notice pay will come under the definition of "wages" u/s 2 (6) of the Act, the petitioners will have to satisfy this Court that it is a remuneration which is payable under the contract of employment, express or implied. In this case, the finding of the learned District Judge is that even according to the petitioners the contract of service does not provide either in express terms or by necessary intendment for the payment of any sum on termination of service, without notice. If that is so, in my view, the decision of the Supreme Court relied upon by the learned counsel for the petitioners does not assist him and the rejection of this claim by the learned District Judge will have to be accepted.

30. Then the learned counsel urged that the disallowance of retrenchment compensation by the learned District Judge is again illegal. The learned counsel urged that the plea of the workmen was that there has been only a retrenchment, namely, a discharge of surplus labour and that the management was continuing the business. This plea has been, according to the learned counsel for the petitioners, totally, misunderstood by the learned District Judge.

31. Here again, I am not inclined to accept the contention of the learned counsel for the petitioners. The Authority itself had categorically held that even according to the case of the employees, the factory was closed down in February 1956 and the finding of that authority is also to the effect that the factory had closed down in February 1956. This finding of the Authority has been accepted by the learned District Judge also. The plea that the Authority has misunderstood the case set up by the employees was raised before the learned District Judge; and the latter has after a careful consideration of the materials bearing on this aspect, come to the conclusion that there has been no such misunderstanding by the Authority of the case set up by the employees themselves. The finding regarding the closure is a concurrent finding of facts, by both the Authority as well as the District Court and those findings are binding on this Court, sitting in revision u/s 115 of the Code of Civil Procedure. If that is so, it follows that the claim for retrenchment compensation was rightly disallowed by the learned District Judge.

32. As I pointed out earlier, the various other reliefs, no doubt, granted by the Authority have been considered by the learned District Judge and findings on facts recorded as against the petitioners and the decision on those aspects by the Authority have been reversed. In the result, the revision fails and is dismissed with costs of the respondents.