
(2009) 11 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 3347 of 2001

Zilla Parishad

APPELLANT

Vs

The Labour Court and Shri Ramesh Talewar

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

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

Citation : (2010) 1 BomCR 236 : (2010) 125 FLR 104 : (2010) 3 LLJ 352

Hon'ble Judges : Vasant A. Naik, J

Bench : Single Bench

Advocate : N.W. Almelkar, for the Appellant; S.B. Ahirkar and B.M. Khan, for the Respondent

Final Decision : Allowed

Judgement

Vasant A. Naik, J.—By this petition, the petitioner impugns the judgment passed by the Authority under the Payment of Wages Act [Labour Court, Chandrapur] on 19.6.1998 allowing the application filed by the respondent No. 2 u/s 15(2) of the Payment of Wages Act 1936 and directing the petitioner to pay the compensation of Rs. 2,25,160/-on the due amount of Rs. 22,516/-.

2. The respondent No. 2 had filed an application before the Authority under the Payment of Wages Act, u/s 15(2) of the Act of 1936. It was the case of the respondent No. 2 that he was working with the petitioner as a Junior Engineer and was on leave on medical ground since the month of January 1992. The respondent joined his duties on 2.5.1992. It was stated in the application that the petitioner without any reasonable cause had not paid the wages for the period from 1.1.1992 to 30.6.1992. The applicant therefore, sought a direction to the petitioner to make the payment of wages with 10 times penalty.

3. The petitioner filed reply to the application and pleaded that the salary of the respondent No. 2 was drawn by the petitioner, but the respondent No. 2 had not withdrawn the same. It was stated in the reply that the leave was sanctioned as

per the official procedure and it was the duty of the respondent No. 2 to collect the amount of salary. It was also stated in the application that the salary was not withheld with ulterior motive, though the petitioner wrote to the respondent No. 2 to withdraw the pending salary by communication dated 22.2.1992. It was stated in the reply that the respondent No. 2 had illegally dragged the petitioner in the court. The parties tendered their evidence and on appreciation of the same, the authority under the Payment of Wages Act allowed the application, by the impugned judgment dated 19.6.1998. This judgment is challenged by the petitioner by filing the instant petition.

4. Shri N.W. Almelkar, the learned Counsel for the petitioner submitted that it was never disputed by the petitioner that the salary was payable to the respondent No. 2 and the respondent No. 2 had not withdrawn the salary in the instant case. The learned Counsel for the petitioner submitted that this was not the case of deduction of wages and at the most it was a case of delayed payment and hence compensation of Rs. 25/-could have been granted. The learned Counsel for the petitioner relied on the provisions of Section 15(3) of the Payment of Wages Act 1936, as they then existed. The learned Counsel for the petitioner then submitted that the authority was not justified in holding that it was the case of the deduction without bonafide reason, because the salary was withheld for a period of six months. The learned Counsel for the petitioner submitted that the amount of Rs. 22,516/-was immediately paid to the respondent No. 2 after filing of the application.

5. Shri B.M. Khan, the learned Counsel for the respondent No. 2 supported the judgment passed by the Authority on 19.6.1998 and submitted that this was a case of deduction of the wages as there was withholding of wages for a period of six months. The learned Counsel for the respondent No. 2 submitted that the Authority had rightly granted compensation, which was 10 times the amount which was payable to the respondent No. 2 as wages as the Authority had come to the conclusion that this was a case of deduction of wages and not delayed payment of wages. The learned Counsel for the petitioner relied on the decisions reported in Union of India Vs. Kameshwar Dubey and Others, ; K.P. Mushran Vs. B.C. Patil and Another, and 1977 Lab. I.C. 207, to substantiate his submission that this was a case of deduction in payment of wages and the compensation was rightly granted. The learned Counsel for the respondent No. 2 then submitted that the authority had rightly considered the examination in chief of the respondent No. 2 and the cross-examination of the witnesses examined on behalf of the petitioner to hold that the withholding of the salary was without bonafide reason. The learned Counsel for the respondent No. 2 sought for the dismissal of the writ petition.

6. Shri Ahirkar, learned AGP for respondent No. 1 supported the judgment passed by the Authority on 19.6.1998 and sought for the dismissal of the writ petition.

7. I have considered the submissions made on behalf of the parties and have

perused the impugned judgment dated 19.6.1998. It is firstly necessary to note that in the instant case, the petitioner had never disputed before the Authority that it was liable to pay the salary of the respondent No. 2 for the period from 1.1.1992 to 30.6.1992. Even in the written statement it was the case of the petitioner that the salary of the respondent No. 2 was drawn by the petitioner, but the respondent No. 2 had failed to withdraw the same with ulterior motive. It is necessary to note that the respondent No. 2 was on leave from the month of January 1992 and had joined his duty only on 2.5.1992. The application was immediately filed by the respondent No. 2 before the court in the month of July 1992. The compensation payable on delayed payment of salary is only to the extent of Rs. 25/- and the compensation payable on deduction of salary is to the maximum of 10 times the amount of salary which is payable to an employee. It is apparent from a reading of the application and the reply filed thereto that this was not a case of deduction of wages and was a case of delayed payment of wages. There was no dispute about the payment of wages at all as it happened in the other reported cases on which the learned Counsel for the respondent No. 2 relied. In fact the judgments reported in *Union of India Vs. Kameshwar Dubey and Others*, and *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, supported the case of the petitioner rather than the respondent No. 2.

It has been held by the Bombay High Court in that case reported in *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, that there was no payment made to the employee at all and therefore, the Authority was justified in holding that there was a delay in making of payment. In the instant case also, wages were not paid at all and it was clear that this was a case of delayed payment and not the case of deduction of wages. It is also observed in the case reported in *Union of India Vs. Kameshwar Dubey and Others*, that if it is the intention of the employer to deny the liability to pay the wages or deny the right of workman to receive the same, it would be the case of "wages deducted", but if the employer concedes his liability to pay the wages to the workman and does not dispute the workman's right to the same, the case would be one of delayed payment. It is apparent that in the instant case, the petitioner had not denied its liability to make the payment of wages sought and in fact it was their case that the wages were drawn but the respondent No. 2 had not withdrawn the same. The Authority gave undue weightage to the evidence of respondent No. 2 in his examination-in-chief and the evidence of the witnesses of the petitioner in his cross examination, when the liability to pay the wages was not disputed and the wages were paid immediately after the application was filed in the court.

8. It is necessary to note that that the Authority has stated in various paras of the impugned judgment, that there was a delay in making the payment of wages and only in paragraph 20, it is mentioned that the wages were deducted without bonafide reason. The authority was surely not justified in imposing the penalty as what is contemplated by Section 15(3) is not a penalty but compensation to the maximum of 10 times the amount of wages payable to an employee in case of deduction of payment of wages and not in a case of delayed payment of wages.

Since this is a case of delayed payment of wages, the maximum penalty imposable and payable by the petitioner was Rs. 25/-only. The authority committed a serious error in imposing penalty of 10 times the wages though it held in paragraph 24 of the impugned judgment that this was a case of delayed payment of wages. The judgment reported in 1977 L.I.C. 2006 is distinguishable on facts as in that case the employer appeared before the authority and clearly disputed the claim of the employee to either receive the wages or the compensation.

9. For the reasons aforesaid the writ petition is allowed. The impugned order passed by the Authority under the Payment of Wages Act, is hereby modified. The order directing the petitioner to pay the amount of Rs. 2,25,160/-towards penalty is quashed and set aside. It appears that during the pendency of the petition, the petitioner had deposited the amount of Rs. 1,10,000/- in the court and the respondent No. 2 was permitted to withdraw the amount of Rs. 40,000/-. The respondent No. 2 has withdrawn the amount of Rs. 40,000/-as per the order passed by this Court on 7.1.2002. In the peculiar facts and circumstances of the case, the petitioner would not be entitled to recover the amount of Rs. 40000/-which is withdrawn by the respondent No. 2 in terms of the order passed by this Court on 7.1.2002. The petitioner is however, entitled to withdraw the amount of Rs. 70000/-with interest accrued thereon. Rule is made absolute in the aforesaid terms with no order as to costs.