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Court : Mumbai

Decided On : Dec-22-1955

Reported in : AIR1956Bom391

Judge : Shah and ;Vyas, JJ.

Acts : Constitution of India - Article 227; Payment of Wages Act, 1936 - Sections 15 and 17; Code of Civil Procedure (CPC), 1908 - Sections 115

Appeal No. : Civil Revn. Appln. No. 690 of 1954

Appellant : Anant Bhagoji

Respondent : CaptaIn Superintendent Indian Naval Dockyard, Bombay

Advocate for Def. : V.V. Chandrachud and ;D.P. Sethna, Advs.

Advocate for Pet/Ap. : K.K. Singhvi, Adv.

Judgement :

Shah, J.

1. This is an application filed by one Anant Bhagoji against an order passed by the Court of Small Causes at Bombay in Appeal No. 16 of 1953 challenging the order dismissing his application passed by the Payment of Wages Authority.

2. The facts which give rise to this revision application are few and simple. In the year 1940, the petitioner was employed as a painter in the Indian Naval Dockyard on a daily wage of Re. 1-12-0. Prior to the introduction of the prescribed scales laid down in the Ministry of Defence Notification No. 2972 dated 31-12-1947, the petitioner was earning Rs. 2-10-0 per day.

In exercise of the powers conferred by Section 241(2), Government of India Act, 1935, the Government of India published the Civilians in the Defence Services (Revision of Pay) Rules, 1947, by Notification No. 2972 dated 31-12-1917 and the petitioner was asked compulsorily to elect to be governed by those rules. The petitioner elected to be governed by those rules.

As a result of the election made by the petitioner, his pay was fixed with effect from 1-1-1947 at Rs. 70/- in the prescribed scale of Rs. 60-5/2-75-3-105 according to the instructions contained in the Government of India, Ministry of Defence letter dated 2-2-1948. The petitioner earned wages at the rate of Rs. 70/- per month till the end of the year 1948.

Thereafter, the Government of India, by Notification No. 2260/A dated 23-12-1948, ordered, in partial modification of the previous Notification dated 31-12-1947 re-classification of certain workmen in different categories and prescribed new scales of pay for those categories. Instructions were also issued in the Government of India, Ministry of Defence letter dated 27-4-1949 relating to the tests to be applied for classification of workmen in those new categories.

The petitioner did not subject himself to the tests which he was required to satisfy. The petitioner was thereupon re-classified in the category of Brush painters and his pay scale was fixed in the category of Brush painters at Rs. 40-1-50/ E.B. 2-60 and the petitioner's wage was re-fixed at Rs. 65/- per month, Rs. 60/- being his wage and Rs. 5/- being personal wage. That was done in accordance with the Government of India, Ministry of Defence letters dated 2-2-1943 and 15-6-1948.

The petitioner thereafter applied to the Captain Superintendent of India Naval Dockyard, Bombay, and contended that the revision of pay scale resulting in reduction of his wages was illegal and that he was entitled to receive wage

according to the Notification dated 31-12-1947. The respondent refused to accent the demand made by the, petitioner. The petitioner thereupon applied to the Payment of Wages Authority, Bombay for refund of the sum of Rs. 240/- which he alleged had been illegally deducted from the petitioner's wages.

Before the Payment of Wages Authority, it Was urged on behalf of the respondent that the Authority had no jurisdiction to entertain the application inasmuch as the Governor-General had power to revise the pay scales at his will. It was also contended that there was in fact no deduction as contemplated by the Payment of Wages Act.

The Payment of Wages Authority held that he had Jurisdiction to hear the application, but in his view there had been no unlawful deduction made from the wages payable to the petitioner and dismissed the application. Against the order passed by the Payment of Wages Authority dismissing the application, an appeal was preferred to the Court of Small Causes at Bombay under Section 17, Payment of Wages Act.

In appeal, the learned Chief Judge of the Court of Small Causes held that the Payment of Wages Authority had no jurisdiction to entertain the application and there was no unlawful deduction of wages as contended by the petitioner. The learned Chief Judge of the Court of Small Causes on that view confirmed the order passed by the Payment of Wages Authority. The petitioner has come to this Court against the order passed by the learned Chief Judge confirming the order of the Payment of Wages Authority.

This application has been treated as an application in revision under Section 115, Civil P. C. It has however been ruled by a judgment of a Division Bench of this Court reported in -- 'C.T. Daru and Ors. v. Manager, Ahmedabad Spinning and .', : AIR1955 Bom460 that as a matter of practice all decisions under the Payment of Wages Act must be challenged, if at all under Article 227 of the Constitution of India.

We have accordingly allowed this application to be converted into one under Article 227 of the Constitution of India and have heard it in exercise of the

Jurisdiction conferred upon us by the Constitution.

3. Now, the primary question which falls to be determined in this application is whether the Payment of Wages Authority had jurisdiction to entertain the application made by the petitioner contending that he should not have been re-classified as a Brush painter under the Notification dated 23-12-1948, No. 2260/A, and he should have been, paid wages fixed under the earlier Notification dated 31-12-1947.

The question whether the Payment of Wages Authority has jurisdiction to entertain an application claiming to recover the amount of unlawful deduction on the plea that the applicant is entitled to receive wages on the footing that he ought to have been appointed to another post and should have been paid wages as occupying that post has been decided by the Supreme Court in a recent judgment reported in -- 'D'Costa v. B.C. Patel', (S) : [1955]1SCR1353 .

In that case, the employee was employed by the Central Railway Administration as a carpenter on daily wages and treated as a daily rated casual labourer. Subsequently the Administration introduced a scheme which created a cadre of skilled labourers on the scale of monthly rates of pay and admitted to it only those who passed a test. The employee did not pass the test and continued to serve as an employee on daily wages and was regularly paid his wages as such.

The employee thereafter applied to the Payment of Wages Authority under the Payment of Wages Act, 1936, to recover the additional amount of wages that would have become payable to him had he been taken up on the cadre of monthly rates employees, complaining that he was wrongly not treated as such by the Administration.

It was held by a majority decision of the Supreme Court that the dispute of the nature involved in the case did not fall within the purview of the Payment of Wages Act, and that the Authority under the Act had no jurisdiction to decide it. Sinha J., who delivered the majority judgment, observed at p. 416 of the report:

'It is said on behalf of the respondent (employee) that the authority has the jurisdiction not only to make directions contemplated by Sub-section (3) of Section 15 to refund to the employed person any amount unlawfully deducted but also to find out what the terms of the contract were so as to determine what the wages of the employed person were. There is no difficulty in accepting that proposition.

If the parties entered into the contract of service, say by correspondence and the contract is to be determined with reference to the letters that passed between them, it may be open to the Authority to decide the controversy and find out what the terms of the contract with reference to those letters were. But if an employee were to say that his wages were Rs. 100/- per month which he actually received as and when they fell due, but that he would be entitled to higher wages if his claims to be placed on the higher wages scheme had been recognised and given effect to, that would not, ill our opinion, be a matter within the ambit of his jurisdiction.

The Authority has the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages; but the Authority has no jurisdiction to determine the question of potential wages .. ..If the respondent's claim to be placed on the scheme of higher wages had been unduly passed over by the appellant, if indeed he had the power to do so, the obvious remedy of the respondent was to approach the higher authorities of the railway administration by way of departmental appeal or revision. .. .. ..

The question is, has the Authority the power to direct the appellant or his superior officers who may have been responsible for the classification, to revise the classification so as to upgrade him from the category of a daily wage earner to that of an employee on the monthly wages scheme.

If the respondent had been on the cadre of monthly wages and if the appellant had withheld his rise in wages to which he was automatically entitled, without any orders of his superior officers, he might justly have, claimed the redress of his grievance from the Authority under the Act, as it would have amounted to an under-payment. But in the present case, on the case as made on behalf of the respondent orders of the superior officer were necessary to upgrade him from a

daily wage earner to a higher cadre.'

These observations aptly apply to the facts of the present case. Originally, the petitioner was classified as a painter under the Notification dated 31-12-1947 and his wage was fixed on the monthly scale prescribed thereunder. Thereafter, under the subsequent notification, he was re-classified as a Brush painter because he failed to pass the test prescribed and he was paid wages according to the re-classified grade.

If the Payment of Wages Authority is entitled to entertain an application of the petitioner and consider whether there has been an unlawful deduction, the Payment of Wages Authority would necessarily have to go into the question whether the petitioner has unlawfully been re-classified as a Brush painter, even though he was entitled to be classified otherwise. In other words the Payment of Wages Authority would be called upon to decide whether the petitioner should be upgraded to another scale.

That the Supreme Court points out the Payment of Wages Authority has no jurisdiction to do. Following the judgment of the Supreme Court in 'D'Costa's case (B)' we hold that the learned Chief Judge of the Small Cause Court was right in holding that the Payment of Wages Authority had no jurisdiction to entertain the application filed by the petitioner. It is, therefore, unnecessary for us to consider whether there has been any unlawful deduction in the wages payable to the petitioner.

4. Mr. Singhvi who appears on behalf of the petitioner contended before us that not only there has been a re-classification, but retrospective operation has been given to that re-classification and the petitioner has been compelled to refund wages which had been actually paid to him when occupying the post of a painter under the original Notification. Mr. Chandrachud on behalf of the respondent says that there has been no retrospective-operation given to the Notification dated 23-12-1948.

Mr. Chandrachud also says that in fairness to the petitioner if there has been any such retrospective operation given and any deductions from the wage payable to

the petitioner have been made such deductions will be refunded to the petitioner.

Mr. Chandrachud has pointed out. that some attempted deductions made from the wage of the petitioner have been ultimately rectified and he said that he had a receipt with him for the payments made to the petitioner. We do not think it is necessary for us to go into the question on the assurance given to us by Mr. Chandrachud on behalf of the respondent.

5. On the view taken by us, we are of the view that the application filed by the petitioner was not maintainable. Rule is therefore discharged with costs.

6. Rule discharged.

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