

Neelam Kumari Vs. Vith Additional District Judge, Bareilly and Another

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Court : Allahabad

Decided On : Mar-15-2000

Reported in : 2000(2)AWC1621; [2000(85)FLR647]; (2000)IILLJ549All; (2000)2UPLBEC1422

Judge : R.H. Zaidi, J.

Acts : [Payment of Wages Act, 1936](#) - Sections 15, 15 (1), (2), (3) and (4), 17, 17(1) and 18 - Rules 11 and 12; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 107 and 141 - Order XLI, Rules 27(1) and 28(1); [Constitution of India](#) - Article 226; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 195

Appeal No. : Writ Petition No. 13238 of 2000

Appellant : Neelam Kumari

Respondent : Vith Additional District Judge, Bareilly and Another

Advocate for Def. : S. C.

Advocate for Pet/Ap. : M.A. Qadeer, Adv.

Judgement :

R.H. Zaidi, J.

1. Heard learned counsel for the petitioner and learned standing counsel.

2. By means of this petition filed under Article 226 of the [Constitution of India](#), petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 24.9.1999 passed by the respondent No. 1 (VIth Additional District Judge. Bareilly) acting as appellate authority under Section 17 of the Payment of Wages Act. 1936.(hereinafter for short, 'the Act'), allowed the application filed by the respondent No. 2 for admission of the additional evidence at the appellate stage.

3. Relevant facts of the case giving rise to the present petition. In brief, are that the petitioner who was working as an Office Assistant with the respondent No. 2. filed an application under Section 15 of the Act claiming wages from 1.5.1990 to 31.8.1990. Application filed by the petitioner was opposed by the respondent No. 2. Parties produced evidence in support of their cases. The Prescribed Authority under the Act. after hearing the parties and perusing the evidence on record, allowed the application by its Judgment and order dated 30.3.1995 and awarded Rs. 6,128.00 as arrears of wages and Rs. 6,128.00 as damages in exercise of powers under Section 15 of the Act. Challenging the validity of the order passed by the Prescribed Authority, respondent No. 2 filed an appeal under Section 17 of the Act. During the pendency of the said appeal, an application was also filed by the said respondent which was numbered as 22Ga for admission of additional evidence. By means of the said application the respondent No. 2 wanted to file the statements of the petitioner which were not available at the time when the case was pending before the Prescribed Authority. Application filed by the respondent No. 2 was opposed by the petitioner contending that the appellate authority had no jurisdiction to entertain the application for admission of additional evidence at the appellate stage. The appellate authority relying upon a decision in the B.C.O., Northern Railway v. Regional Labour Commissioner, Jabalpur, 1965 LLJ 78. allowed the application by its judgment and order dated 24.9.1999. Hence, the present petition.

4. Learned counsel for the petitioner. Mr. M. A. Qadeer, Advocate, vehemently urged that the respondent No. 1 had no Jurisdiction to entertain the application for admitting additional evidence at the appellate stage and It has acted Illegally in entertaining the application and allowing the same. It was urged that the provisions

of Order XLI, Rule 27, C.P.C., had no application In the proceedings before the respondent No. 1, therefore, the order passed by the said respondent is wholly without Jurisdiction and is liable to be quashed.

5. On the other hand, learned standing counsel supported the validity of the order. It was urged that the respondent No. 1 exercised the same powers which were being exercised by the Prescribed Authority under Sections 15 and 18 of the Act read with Rules 11 and 12 of the Rules framed under the Act.

6. I have considered the rival submissions made by the learned counsel for the parties and carefully perused the record.

7. Respondent No. 2 filed the appeal against the order passed by the Prescribed Authority, under Section 17 of the Act. Sub-section (1) of Section 17 of the Act provides as under:

'17. Appeal.--(1) An appeal against an order dismissing either wholly or in part an application made under sub-section (2) of Section 15, or against a direction made under sub-section (3) or sub-section (4) of that section may be preferred within thirty days of the date on which the order or direction was made, In a Presidency-town before the Court of Small Causes and elsewhere before the District Court: (a)

.....

(b)'

8. Section 18 of the Act provides for the powers of the authorities appointed under Section 15 of the Act which reads as under :

'18. Powers of authorities appointed under Section 15.--Every authority appointed under sub-section (1) of Section 15 shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a civil court for all the purposes of Section 195 and' of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)'.

9. A reading of the aforesaid section reveals that the Prescribed Authority under Section 15 of the Act has got all the powers of a civil court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses etc. and the same is deemed to be a civil court for the purposes of Section 195 of the Code of Criminal Procedure.

10. It is, thus, evident that the proceedings before the Prescribed Authority are civil proceedings. Against the order passed by the Prescribed Authority appeal lies before the Court of Small Causes in a Presidency town and elsewhere before the District Court. Proceedings before the Court of Small Causes as well as the District Court are the proceedings of a civil nature. At this place, a reference may be made to Sections 141 and 107 of the Code of Civil Procedure which provide as under :

'141. Miscellaneous proceedings.--The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction.

Explanation.--In this section, the expression 'proceedings' Includes proceedings under Order IX, but does not Include any proceeding under Article 226 of the Constitution'.

107. Powers of appellate court.--(1) Subject to such conditions and limitations as may be prescribed, an appellate court shall have power :

(a) to determine a case finally ;

(b) to remand a case :

(c) to frame issues and refer them for trial ;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Authority shall have the same powers and shall perform as nearly as may be the same duties as are conferred and Imposed by this Code on Courts of original jurisdiction in respect of suits Instituted therein'.

11. From a reading of the aforesaid provisions. It is apparent that the provisions of the Code of Civil Procedure apply to all proceedings in any Court of civil jurisdiction and that the appellate court exercises all powers which are being exercised by the Court of original jurisdiction. The proceedings before the respondent No. 1. as stated above, were proceedings of civil nature, therefore. It had the same powers which are being exercised by the Prescribed Authority. Under Section 18 of the Act, as stated above, the Prescribed Authority has got all the powers of a civil court under the Code of Civil Procedure. Further, Rule 11 of the Rules framed under the Act specifically provides that in exercise of powers of a civil court conferred by Section 18, the authority shall be guided in respect of the procedure by the relevant Orders of the First Schedule of the Code of Civil Procedure, 1908. with such alteration as the authority may find necessary not effecting their substance for adopting them to the matter before him. and save where they conflict with express provisions of the Act or these rules. The provisions of the Act and the Rules nowhere specifically or by necessary Implication prohibit the appellate authority from admitting additional evidence at appellate stage. Order XLI, Rule 27, is one of the Orders of the First Schedule of C.P.C. Thus, a joint reading of the provisions of the Act, the Rules framed thereunder and the Code of Civil Procedure, referred to above, clearly demonstrates that the appellate authority had the jurisdiction to admit the additional evidence at the appellate stage, if the case for admission of additional evidence is made out within the four corners of Order XLI, Rule 27, of the Code of Civil Procedure.

12. From the material on record, it is apparent that the statements of the petitioner which were sought to be produced at the appellate stage as additional evidence, were not available by the time the case was pending disposal before the Prescribed Authority, as such a case for admitting additional evidence was fully made out under clause (d) of sub-rule (1) of Rule 28 of Order XLI. Learned counsel for the petitioner also did not urge that the case for admitting additional evidence was not made out.

13. In view of the aforesaid discussion, no case for interference under Article 226 of the [Constitution of India](#) is made out.

14. The writ petition falls and is dismissed in limine.

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