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Court : Rajasthan

Decided On : Oct-27-1961

Reported in : AIR1962Raj173; (1963)IILLJ56Raj

Judge : I.N. Modi and; P.N. Shinghal, JJ.

Acts : [Payment of Wages Act, 1936](#) - Sections 15, 15(2) and 17(1); Payment of Wages (Amendment) Act, 1957

Appeal No. : Civil Writ Petition No. 248 of 1959

Appellant : Loona Ram and ors.

Respondent : Authority Appointed Under S. 15(1) Payment of Wages Act and ors.

Advocate for Pet/Ap. : R.K. Rastogi and; J.S. Rastogi, Advs.

Disposition : Petition allowed

Judgement :

Modi, J.

1. This is a writ application by the petitioners Loonaram and four others in a matter under the Payment of Wages Act.

2. The petitioners' case was that one Gopal Singh had taken a contract from the Government of Rajasthan for constructing a wing of the building of the Maharaja College, Jaipur and had in that connection, employed about a hundred persons for the said construction work. Their case further was that, among the persons so employed, more than 20 'Sangatrash' (masons) had been employed by him and the petitioners belonged to this class of workers. As for the work which these persons were called upon to do it was mentioned that they had to cut stone-slabs and dress them, and do carving work thereon, if and as, it was necessary. The grievance of the petitioners was that Gopal Singh had paid them their Wages upto July, 1958, but failed to pay the same for the month of August, 1958, with the result that a sum of Rs. 391/12/- was payable to them as per details given below:

1. Lonnam 21days @ Rs. 4/- per day=Rs. 84
2. Nanu Lal 22days @ Rs. 4/4- per day=Rs. 88
3. Chooteylal 23days @ Rs. 4/4- per day=Rs. 97/12
4. Lonnam 24days @ Rs. 4/- per day=Rs. 102
5. Nanagram 5days @ Rs. 4/- per day=Rs. 20

Total Rs. 391/12

Aggrieved by this state of affairs, the petitioners made an application to the Authority under the [Payment of Wages Act, 1936](#) (Act IV of 1936) under Section 15(2) praying for recovery of their unpaid wages, as set out above. This application was opposed by Gopal Singh, the plea being that although the petitioners had been employed as masons and worked as such, their dues for the month of August, 1958, had been paid to the 'mistri' through whom they had been engaged, and so nothing was to be further paid to them on that account. It further appears that the question of the jurisdiction of the Authority under the payment of Wages Act to take cognizance of the petitioners' application was also taken up

before the said Authority, the argument being that the petitioners were not employed in any factory within the meaning of Sub-Section (4) of Set. 1 of the Act. This contention prevailed with the Authority, and, consequently, the petitioners' application was dismissed by the Authority.

3. The petitioners then went up in appeal to the learned Pistrict Judge, Jaipur, under Section 17 of the Act. The learned District Judge dismissed the appeal on the ground that the Authority had not decided the petitioners' application on the merits and therefore, no appeal was maintainable under Section 17(1). The petitioners assail this decision by the present writ application.

4. The short question for determination before us, therefore, is whether the order of the Authority under the Payment of Wages Act, dismissing the petitioners' application on the ground of jurisdiction, was appealable? We may point out in this connection that the learned District Judge, in coming to the conclusion to which h6 did, placed reliance on *Sitaram Rajncharan v. M. N. Nagrashna*, AIR 1954 Bom 537 and a case of our own Court, *Anant Ram v. District Magistrate, jodhpur*, 1956 Raj LW 288 : ((S) AIR 1958 Raj 145). We have no hesitation in saying that this was the correct view to take on Section 17 as it stood at the time these decisions were given. Where the mistake crept in, however, was that this Section came to be amended by Payment ot Wages (Amendment) Act, 1957 (Act No. 68 of 1957), which came into force on the 1st of April, 1958 vide notification No. S. C. 353 dated the 19th March, 1958, published in the Gazette of India, Part II, Section, 3(ii) dated the 29th March, 1958 at page 228, and this fact was unfortunately not brought to the notice of the Court below. The relevant portion of Section 17, as amended, reads as follows:

'An appeal against an order dismissing either wholly or in part an application made under subSection (2) of Section 15, or againsjt 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 Smalt Causes and elsewhere before the District Court.

(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 1, or a direction made

under Sub-section (3) or Subsection (4) of that Section shall be final.'

We should like to point out that the scope of appeal under this Section as a result of the amendment has been considerably widened. Under the Section, as it stood before the amendment, one of the essential conditions for the maintainability of an appeal was that the order of the Authority under the Act must have fallen under Sub-section

(3) or Sub-section

(4) of Section 15, or, putting it broadly, it must have been an order on the merits, and if the order passed by the Authority was founded otherwise such as on the ground of want of jurisdiction or the like, it was not appealable by virtue of Sub-section

(2) of Section

17. The section, as now amended, however, is not so narrow, and the decisions given on the Section, as it stood before, have obviously become obsolete, and cannot be accepted as laying down good law on the wording of the Section as amended. The Words added in Section 17(1) namely, 'against an order dismissing either wholly or in part an application made under Sub-section

(2) of Section 15' must be given their natural meaning; and that meaning is that any order by which an application made under Sub-section

(2) of Section 15 is dismissed wholly or even partially would be appealable, provided, of course, the other conditions mentioned in the Section are satisfied, with which we are not concerned for the purposes of the present writ application. In other words, it is not necessary for the maintainability of an appeal under this Section that the order sought to be impugned must have been passed on the merits in the sense that it fell necessarily within Sub-sections

(3) and

(4) of Section 15 and an appeal has now been made to lie even where an application under Section 15(2) may have been dismissed for any reason, such as

jurisdiction or the like. That being the state of law as it obtained when the petitioners made their application on the 1st of October, 1958, we have no hesitation in coming to the conclusion that the order of the Authority under the Payment of Wages Act was appealable to the learned District Judge, and the view of the latter that no appeal lay to him because the primary Authority had dismissed the application on the ground of jurisdiction, cannot be sustained as correct.

5. The result is that we allow this writ application, set aside the order of the learned District Judge, and hereby direct that he shall dispose of the appeal of the petitioners on the merits. Under the circumstances, we make no order as to costs.

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