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Court : Rajasthan

Decided On : Jan-03-1963

Reported in : (1963)IILLJ187Raj

Judge : Jagat Narayan, J.

Appellant : Bal Krishna

Respondent : District Traffic Superintendent, Western Railway (by Divisional Personnel Officer) and ors.

Judgement :

ORDER

Jagat Narayan, J.

1. These are connected revision applications arising: out of two claims preferred by Bal Krishna, applicant, under Section 15 of the Payment of Wages Act.

2. Bal Krishna was employed as a clerk in grade I in the B. B. & C. I. Railway on 5 October 1936 in the scale of Rs. 30-4-50-5-80 on a minimum salary of Rs. 40 per month. There were three grades of clerks. The salary of clerks in grade II was Rs. 100 and of those in grade III was Rs. 140. Bal Krishna officiated in grade II with effect from 2 April 1946 and in grade III with effect from 26 December 1946. On 1

January 1947 his substantive appointment was in grade I and his substantive pay was Rs. 80 per month. New scales of pay came into force in 1947 and in place of grades II and III one grade with a scale of pay of Rs. 80-5-120-E.B.-8-160 was introduced. An option was given to the clerks concerned to get their salary fixed in this grade either with effect from 1 January 1947 or with effect from 16 August 1947. Bal Krishna elected the new scale with effect from 1 January 1947, His salary was fixed by the office at Rs. 152 per month in the new scale with effect from 1 January 1947. It was subsequently discovered that there was an error in this fixation and that his salary should have been fixed at Rs. 105 instead of being fixed at Rs. 152. The fixation was accordingly corrected and salary was paid to him at Rs. 105 per month with effect from 14 February 1947. Dearness allowance was also paid to him on this salary at the prescribed rate of 17½ per cent. He continued to draw salary and dear-ness allowance at the rates at which it was paid to him by the railway but preferred claims from time to time under Section 15 of the Payment of Wages Act against the railway for the difference between the salary and dearness allowance actually paid to him and that which would have been payable to him if the earlier fixation of his salary at Rs. 152 per month had not been revised.

3. The first claim was preferred on 20 July 1950. This claim was allowed by the prescribed authority and the appeal preferred by the railway under Section 17 was dismissed by District Court.

4. The second claim was preferred on 7 July 1952 for the period 1 July 1950 to 30 June 1952 and the third claim on 18 February 1953 for the period 1 July 1952 to 31 January 1953. These claims were allowed by the prescribed authority but were rejected by the District Court. Against the orders of rejection the present revision applications have been filed.

5. In these two claims salary was claimed at Rs. 160 per month and clearness allowance at Rs. 60 per month. The claims were dismissed by the appellate authority. One of the grounds on which this was done was that as the wages amounted to more than Rs. 200 per month, no claim lay under the Payment of Wages Act in view of the provision of Section 1(6) which ran as follows when

these claims were filed:

Nothing in this Act shall apply to wages payable in respect of a wage-period which, over such wage-period, average two hundred rupees a month or more.

6. The case of the applicant on this point before this Court is, that although he claimed dearness allowance also in his application, this part of his claim is untenable as recovery of dearness allowance is beyond the limited scope of an application under Section 15 of the Payment of Wages Act. If the claim to dearness allowance is knocked off, the remaining claim will be at an average rate of Rs. 200 only in all the three applications.

7. When the present applications were filed, the definition of 'wages' as contained in Section 2(vi) of the Act stood, as follows;

'Wages' means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include (a) the value of any house-accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the State Government;

(b) any contribution paid by the employer to any pension fund or provident fund;

(c) any travelling allowance or the value of any travelling concession;

(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(e) any gratuity payable on discharge.

Firstly, it is contended that dearness allowance is a gratuitous payment and is not part of remuneration payable to an employee under the terms of the contract of his

employment. Secondly, that it is an amenity within the meaning of Clause (a) of the definition of the term 'wages' and is therefore not recoverable under the Act. Lastly, that even though dearness allowance may be recoverable as of right by suit, its recovery is beyond the limited scope of an application under Section 15 of the Act.

8. With respect to the first contention reliance is placed on headnote (a) appended to the A.I.R. report of the decision of their lordships of the Supreme Court in *State of Madhya Pradesh v. G.C. Mandawar* 1954-II L.L.J. 673 which runs as follows:

Grant of dearness allowance at a particular rate is, under Rule 44 of the Fundamental Rules, a matter of grace and not a matter of right and hence a claim against the Government for the grant of such allowance at a particular rate is not justiciable.

9. Their lordships observed in the judgment that under Rule 44 of the Fundamental Rules it is a matter of discretion with the local Government whether it will grant dearness allowance and if so, how much. Only to that extent it is a matter of grace and not a matter of right. But once dearness allowance is granted at a particular rate, the payment of it is no longer a matter of grace, but becomes a part of the contract of employment. Dearness allowance can be recovered by suit in the same way as salary. Their lordships went on to observe in the abovementioned case that they were not concerned with any debt payable by the Government and that the claim before them was not to recover the arrears of dearness allowance which had accrued due under the rules in force relating thereto. The claim which was put forward before their lordships was to compel the Government to grant dearness allowance at a particular rate and they observed that under Rule 44 of the Fundamental Rules such a claim was a matter of grace and not a matter of right.

10. In the present case dearness allowance was granted to the employees of B.B. & C.I. Railway under dearness allowance rules published in B.B. & C.I. Railway weekly gazette No. 23 of 1945-46, dated 7 September 1945. Under Rule 8 of these rules dearness allowance was classified as compensatory and it was provided that being fit compensatory allowance it shall not count for State railway

provident fund subscriptions, gratuity, leave-salary, running allowance, etc. When such an allowance is admissible under the rules, it is part of the salary. In *Srinivasan v. Padmasini Ammal* 1958-I L.L.J. 318 in which it was held that dearness allowance was part of salary within the meaning of Section 60, Civil Procedure Code, the following observation was made:

The character of the dearness allowance differs in no respect from the character of pay, except in its temporary nature, as an addition to pay which may be decreased or increased, according to circumstances, or abolished altogether. 'Dearness allowance' will be part of a man's salary like acting allowance, when a man is discharging the duties of a higher office for the prescribed period under the rules and is entitled to it. Names may differ, but the character of the payment is the same. Dearness allowance fulfils the very same function as basic pay, and must therefore be deemed to be part of the 'salary,' unlike travelling allowance, house allowance, etc., which are meant for particular purposes and are confined to particular occasions, and sometimes to particular areas.

11. In *Godavari Sugar Mills v. Shakuntala* A.I.R. 1940 Bom. 168, Stone, C.J., observed:

The dearness allowance is in no sense a bonus but is something which attaches continuously to the wages in order to enhance it, so as to be on a more comparative basis with the cost of living.

12. The next contention is based on the ground that dearness allowance was granted to railway employees in lieu of the facility for purchasing grain from railway grain-shop at concessional rates. In *General Manager, Northern Hallway v. Sajjan Raj* A.I.R. 1957 Rajas. 70, this concession was held to be an amenity under the above definition. I am unable to accept the above contention. The facility of purchasing grain at cheap rates is no doubt an amenity. But for reasons which have been given above dearness allowance which is payable in cash is part of wages payable to an employee under the contract of his employment and is not an amenity.

13. In support of the last contention that even though dearness allowance may be recoverable by suit it is not recoverable on an application under Section 15 of the Payment of Wages Act, reliance is placed on the following decisions:

Divisional Engineer, G.I.P. Railway v. Mahadeo 1955-I L.L.J. 359.

A.V. D'Costa v. B.C. Patel 1955-I L.L.J. 363.

Bala Subrahmanya v. B.C. Patil 1958-I L.L.J. 773.

Madhya Bharat Government v. Bramhodatta Singh A.I.R. 1956 M.B. 152.

Jogendra Nath v. Chandreswar Singh 1951-I L.L.J. 217.

I have carefully perused the above decisions. None of them is of any help to the applicant in the present case.

14. In Divisional Engineer, G.I.P. Railway v. Mahadeo 1955-I L.L.J. 359 (vide supra), the respondent was a gangman in the railway and was in receipt of a house-rent allowance. He was offered quarters on 18 August 1948 but he refused to occupy the same.

15. On his refusal the house-rent allowance was stopped with effect from 19 August 1948. On 8 June 1951 he put in his claim under Section 15 of the Payment of Wages Act for the payment of house-rent allowance from 19 August 1948. Their lordships held that he was not entitled to this allowance as the rules distinctly provided that the allowance would not be admissible to those to whom 'Government quarters have been offered, but who have refused to take advantage of the offer. They observed:

Once an employee of the description given above has been offered suitable house-accommodation and he has refused it, he ceases to be entitled to the house-rent allowance and that allowance thus ceased to be 'wages' within the meaning of the definition in the Act, because it is no more payable under the terms of the contract.

16. In *A.V. D'Costa v. B.C. Patel* 1955-I L.L.J. 363 (vide supra), the respondent was working as a temporary carpenter/mason in the railway on daily wages. Orders were received for making 20 carpenter-masons permanent in the scale of Rs. 55-3-85-4-125-5-130. The respondent was superseded and persons junior to him were taken on the permanent cadre. The respondent preferred a claim under Section 15 of the Payment of Wages Act in respect of the difference between the wages which he actually received and the wages which he would have received if he had been taken in the permanent scale of Rs. 55-130. Their lordships held that this claim did not fall under the scope of Section 15. It was observed at pp. 367-368:

The allegations made by the respondent only amount to saying that he had been paid his actual wages as fixed by the railway administration but that after the introduction of the scheme of upgrading of persons employed under the daily wages scheme, others who were junior to him had been placed on the monthly wages scheme whereas his claim to be so placed had been ignored....* * *

17. 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 lastly have claimed the redress of his grievance from the authority under the Act, as it would have amounted to an underpayment.

18. But in the present case, on the case as made on behalf of the respondent, orders of the superior officers were necessary to upgrade him from a daily wage earner to a higher cadre. The authority under the Act has not been empowered under Section 15 to make any such direction to those superior officers. The appellant is responsible to pay the respondent only such wages as are shown in the relevant register of wages presumably maintained by the department under the provisions of the Act, but he cannot be directed to pay the respondent higher wages on the determination by the authority that he should have been placed on

the monthly wages scheme.'

In *Bala Subrahmanya v. B.C. Patil* 1958-I L.L.J. 773 (vide supra), a dispute arose about a claim made by the operatives of the mills for bonus for the year 1948. This was referred to the industrial court at Bombay which made an award on 23 April 1949 and awarded a bonus equivalent to four and a half months' wages subject to the condition that a claim in writing was made to the manager of the mills by 30 November 1949. The operatives who made a claim before the date fixed were duly paid, but payment was refused to respondent 3, who applied much later, on the ground that the condition subject to which the award was made was not fulfilled. Respondent 3 then made an application under the Payment of Wages Act. Their lordships held that the claim could not be entertained as the bonus claimed did not fall within the definition of 'wages' under the Payment of Wages Act as that definition expressly excludes under Clause (1) any bonus which does not form part of remuneration payable under the terms of employment. They held that the bonus in Question was awarded by the industrial court independently of any contract, merely to settle an industrial dispute.

19. In *Madhya Bharat Government v. Bramhodatta* A.I.R. 1956 M.B. 152 (vide supra) it was held that standard wages fixed by Government did not come within the purview of the definition of 'wages' contained in Section 2(vi) of the Payment of Wages Act as they could not be regarded as remuneration payable under the contract of employment entered into between the employer and the employee. The decisions in the *Divisional Engineer, G.I.P. Railway v. Mahadeo* 1955-I L.L.J. 359 (vide supra) and *A.V. D'Costa v. B.C. Patel* 1955-I L.L.J. 363] (vide supra) were followed.

20. In *Jogendra Nath v. Chandreswar Singh* 1951- I L.L.J. 217 (vide supra) it was held that a claim to increased remuneration granted by the industrial tribunal could not be made under Section 15 of the Payment of Wages Act as ' it could not be considered part of remuneration payable to an employee under the contract of his employment.

21. It will thus be seen that none of the above decisions has any bearing on the question as to whether dearness allowance is ' wages ' within the meaning of the

definition of the term as contained in Section 2(vi) of the Payment of Wages Act before its amendment in 1957 and whether it is not recoverable on an application under Section 15.

22. The learned Counsel for the applicant tried to draw some inferences from the stray observations made in the above decisions. That is not permissible. In this connexion the following remarks made at p. 506 in *Quinn V. Leathern* 1901 A.C. 495 may profitably be cited:

Now, before discussing the case of *Allen v. Flood* 1898 A.C. 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before that every judgment must be read as applicable to the particular facts proved or, assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all. My lords, I think the application of these two propositions renders the decision of this case perfectly plain, notwithstanding the decision of the case of *Allen v. Flood* 1898 A.C. 1.

23. For reasons given above I find that dear-ness allowance is part of 'wages' under the Payment of Wages Act. As wages claimed in the present applications exceeded Rs. 200, the Authority under the Payment of Wages Act had no jurisdiction to entertain the present claims.

24. An application was moved on behalf of the applicant that as the jurisdiction of the Authority under the Payment of Wages Act has since been extended to claims in respect of the average wages at Re. 400 after the amendment of the Act in 1957, the present applications can be entertained now. Reliance was placed on *Lachmeshwar v. Keshwar Lal* A.I.R. 1941 F.C. 5. That case is distinguishable. There a mortgage suit was instituted in the proper Court. Relief in the rate of

interest was claimed under the then Bihar Money-lenders Act which was held to be ultra vires by the High Court. On account of that decision the Act was repealed and was replaced by another Act which did not suffer from the defects pointed out by the High Court in the earlier Act. Their lordships of the Federal Court held that relief could be granted to the mortgagor on the basis of the new Act which came into force after the decision of the case by the High Court. The present claims were filed before the Authority under the Payment of Wages Act which it was not competent to entertain at the time when they were filed. These claims could only be preferred to the civil Court at that time. There was thus inherent lack of jurisdiction in the tribunal before which the claims were preferred. The subsequent extension of pecuniary jurisdiction of the authority cannot be availed of by the present applicant.

25. When the present claims were filed, the District Traffic Superintendent, Western Railway, Abu Road, was the paymaster of the applicant. The claims were filed against him and when they were allowed by the authority, the District Traffic Superintendent preferred appeals against them. During the pendency of the appeals there was a change in the administrative organization of the railway as a result of which the Divisional Personnel Officer, Ajmer, became his paymaster. The appeals were however continued by the District Traffic Superintendent. On behalf of the applicant it was argued that the District Traffic Superintendent had no longer any right to prosecute the appeals and that the Divisional Personnel Officer should have got his name substituted in place of that of District Traffic Superintendent as appellant. It is contended that failure to do so has rendered the decision of the appellate Court illegal. This argument is wholly untenable. The provision of order 22, Rule 10, Civil Procedure Code, is only an enabling one. The trial of a case cannot be arrested merely by reason of a devolution of the interest of a party in the subject-matter of the suit. The person acquiring the interest may continue the proceeding with the leave of the Court. If however he does not choose to do so, the proceedings may be continued with the original party and the person acquiring the interest can have the benefit of the decision. In this connexion the decision of their lordships of the Supreme Court in *Jugalkishore v. Raw Cotton Company* A.I.R. 1955S.C.376 may be referred to. The Divisional Personnel Officer can therefore have the benefit of the decision given by the

appellate authority.

26. I accordingly dismiss both the revision applications. In the circumstances of the case, I direct that parties shall bear their own costs of these revision applications.

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