

Abdul Waheed Vs. Authority, Payment of Wages Act and ors.

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Court : Rajasthan

Decided On : Feb-10-1994

Reported in : (1995)IILLJ1079Raj; 1994(1)WLC545

Judge : Rajesh Balia, J.

Acts : [Payment of Wages Act, 1936](#) - Sections 15(2)

Appeal No. : S.B.C.W.P. No. 184/1994

Appellant : Abdul Waheed

Respondent : Authority, Payment of Wages Act and ors.

Advocate for Def. : Mohd. Ayub, Adv. for Respondent No. 1

Advocate for Pet/Ap. : H.C. Jain, Adv.

Disposition : Petition allowed

Judgement :

Rajesh Balia, J.

1. The petitioner seeks quashing of order dated November 4, 1993 Annx. VII passed by Authority under Payment of Wages Act, Nagour, and for a writ of prohibition against respondent No. 1 from proceeding further in the matter.

2. The respondent No. 2 Mohd. Ayub, claiming himself as an employee of M/s. Mohd. & Sons, filed a claim for recovery of alleged illegal deduction of his wages before the Authority under the Payment of Wages Act Nagour. He impleaded Yusuf respondent No. 3 as defendant describing him as partner of M/s. Mohd. and Sons. Having come to know about the proceedings Abdul Waheed, another partner and Receiver appointed by this Court to manage the affairs of the firm by its order dated January 5, 1992 (vide judgment reported in RLW 1982 116)(I) applied for being impleaded in the claim petition. The said application has been rejected by the Authority vide order dated January 4, 1993 on the ground that application raised complicated questions of law and fact about relationship between claimant Mohd. Ayub and Mohd. Yusuf defendants which the Authority has no jurisdiction to decide. Hence this writ petition.

3. Respondent No. 2 appearing in person has moved an application that the matter be referred to a larger Bench as the issue raised in the petition has been decided against him on an earlier occasion by a Division Bench in a case reported in 1988 (1) RLW 664 (2). I do not find any reason to entertain this prayer. On the contrary as will appear from the facts to be noticed hereinafter it is yet another attempt to protract this litigation which has become final between the parties vide Ex. 2, at the instance of Yusuf with whom the respondent No. 2 has been found in collusion. The prayer as will be apparent from the facts to be noticed presently, is frivolous and is clearly intended to protract the litigation and avoid that effect of judgment between parties, which has become final in this obtrusive manner.

4. Mohd. Ayub claims to be an employee of Mohd. & Sons, a partner ship firm since 1962. His services were terminated on May 10, 1971. He raised an industrial dispute about termination of his services. By the award dated April 20, 1973 the termination was upheld. There were disputes between partners of Mohd. & Sons Yusuf, father-in-law of Mohd. Ayub instituted a suit for rendition of accounts on March 27, 1978 against other partners of the firm which included Abdul Waheed, present petitioner and Mohd. Rafiq s/o Yusuf and brother in law of Mohd Ayub, respondent No. 2. In those proceedings the contesting partners took the plea that original firm stood dissolved on December 31, 1975 four contesting defendants constituted a new firm with effect from January 1, 1976 in which Yusuf was not a

partner. In these proceedings the matter came before this court and by order dated January 5, 1982 Abdul Waheed present petitioner was appointed as Receiver of the firm. The judgment is reported in RLW 1982, 116 (supra).

5. Meanwhile after the said Yusuf father-in-law of Mohd. Ayub had filed the suit for rendition of accounts, against other partners; the respondent No. 2 lodged a claim for recovery of alleged illegal deduction of his wages before the Authority under Payment of Wages Act, Nagour on June 19, 1978, claiming himself to be continuing an employee of Mohd & Sons, under some alleged settlement having taken place between him and Yusuf, his father-in-law and partner of the firm. The notices of application were served on Yusuf and the party impleaded was Mohd. Rafiq as partner of the firm, who is son of Yusuf and brother-in-law of claimant. Application of Abdul Wahid and Hamidullah, other partners of the said firm, for being impleaded was rejected on May 30, 1979. Thereafter the Authority directed the firm to make payment to the claimant, when the said order was sought to be executed through Chief Judicial Magistrate, M/s. Mohd & Sons approached this Court under Article 226 through a writ petition No. 927/79 alleging that aforesaid facts that no relationship of employer and employee existed between the present firm and the claimant that claimant has ceased to be employee of previous firm as well since 1971 and he was never in service of the firm for the period for which claim has been made. It was also pleaded that Yusuf father-in-law is not the partner of the new firm, and the order has been obtained by the claimant in collusion with Yusuf. Their contentions found favour with the court in its order dated April 26, 1988 (reported in 1988 RLW 664) (supra). The order of the Authority dated March 28, 1979 was set aside on the ground that order suffers from the vice of breach of principles of natural justice. The Court also observed:

'The way in which the whole thing has proceeded gives an impression of plain and simple collusion between the father-in-law and son-in-law for obtaining the award from the Authority under the Payment of Wages Act against the Firm.'

6. Meanwhile the claimant has filed 5 other claims for different periods before the Authority on the same premise.

7. In spite of aforesaid directions the claimant did not implead the receiver Abdul Waheed as party to the claims and insisted to proceed with impleading Yusuf or Mohd. Rafiq only as parties. Ultimately it was only after orders passed by this Court in various proceedings referred to in the petition that Abdul Wahid was impleaded as party in all the six claim petitions.

8. Thereafter hearing the parties, all the claims were rejected by the Authority on the ground that dispute raised in the proceedings required determination of complicated questions of fact and law, which the Authority having limited jurisdiction has no jurisdiction to decide. These orders were affirmed by the District Judge Merta in appeals against respective order of the Authority. Aggrieved with those orders the claimants preferred six separate Revisions No. 20/93, 35/93, 36/93 37/93, 38/93 and 39/93 in which Mohd. & Sons and Abdul Wahid were parties. Those revisions were dismissed by this court vide its judgment dated February 16, 1993 which is Annexure 2 enclosed with the writ petition. Apart from merit of the order under revision the claimant again sought to challenge the locus of Abdul Wahid participating in the proceedings. The court dismissed all the revisions by holding that the Authority had no jurisdiction to entertain and decide the claim which raised the complicated issues of law and facts. The Court also observed about the possible nexus between the claimant and his father-in-law and brother-in-law for obtaining orders through revision as under:

'The fact also cannot be lost sight of that the delinquent has persistently sought Receiver of the Firm from participating in the present proceedings before the orders passed by this Court on April 26, 1988 in Mohammed & Sons v. Authority under the Payment of Wages Act (6) (D.B.Civil Writ Petition No. 927/79), and even thereafter as has been noticed while detailing the facts hereinabove.

This contention was also raised before me that Receiver should not have been permitted to participate in the proceedings by the Authority and appellate Court also in permitting the Receiver to participate, the Authority below, have committed illegality in exercise of their jurisdiction. This argument has been raised in spite of inter party decision referred to above in which a finding about collusion between the claimant and his father-in-law Yusuf and brother-in-law Mohd. Rafiq has also

been recorded and the persistent plea by the claimant that the Court should exclude the Receiver from participating in the proceedings and act on the conclusion of these persons lends further support to the existence of the collusion between the claimant and Yusuf.'

Regarding locus of Receiver to participate in the proceedings the court held as under:

'The petitioner also urged that respondent Abdul Wahid could not have participated in these proceedings, because a Receiver cannot litigate without the direction of the court who has appointed him. The Court has not given such permission to Abdul Wahid. This contention has no force. Very foundation of the contention is non-existent. It has been noticed above that in a proceeding arising out of petitioner's claim, this Court directed Abdul Wahid as Receiver of Firm Mohd. & Sons to be impleaded as party in claim petition filed by the present petitioner. Moreover where a person has been appointed as Receiver to manage a business of Firm, such authority to defend the interest of the Firm in a proceedings instituted against Firm is implicit in it.'

9. All these findings about lack of jurisdiction of the Authority to entertain the dispute between the respondent No. 2 and Mohd. Yusuf and necessity of Receiver, so long as he continues to be Receiver, to be impleaded, has become final between the parties yet the claimant had filed two applications once again before the Authority, one carrying the very same period which was the subject matter of claim petition in judgment Ex. 2 dated February 16, 1993, and is subject matter of writ petition No. 184/94 and another for subsequent period which is subject matter of writ No. 116/94. Both the claims have again been filed without impleading Abdul Wahid as party to claims when Abdul Wahid moved the applications to be impleaded the same were rejected by separate orders dated November 4, 1993 by upholding the objection that dispute between Receiver and claimant raised complicated issues relating to relationship of father-in-law and son-in-law, which cannot be decided by the Authority. It is in these circumstances that two petitions have been filed for the quashing of the order dated November 4, 1993 and prohibiting the Authority to proceed in the matter.

10. It is a common ground that no appeal against the aforesaid judgment of this Court dated February 16, 1993 Annexure 2 was preferred and the order had become final.

11. It is in the aforesaid circumstances that Mohd. Ayub again filed claim petition before the Payment of Wages Authority for the very same period for which the earlier claim petitions were rejected by the payment of Wages Authority by holding that it has no jurisdiction to decide upon the claim of the said Ayub and that in such proceedings the Receiver appointed by this Court namely Abdul Wahid was directed to participate in the proceedings before the Payment of Wages Authority. That too without impleading the Receiver Abdul Wahid as a party to the claim petition.

12. Having come to know about the fresh proceedings to the same period Abdul Wahid, as Receiver for the Firm, applied to be impleaded as party. That application has been rejected on the ground that the dispute between the Receiver and the claimant raises complicated question of fact and law which Payment of Authority has no jurisdiction to decide and that the question relating to relationship of father-in-law and son-in-law between the claimant and said Yusuf are not the question which can be decided in this claim petition. It is this order dated November 4, 1993 that has led the petitioner to file this petition for the following reliefs:-

'It is, therefore, respectfully prayed that your Lordship may be pleased to quash the impugned order dated November 4, 1993 (Annex VII) and issue a writ of prohibition, or certiorari or any other appropriate, writ, direction or order against the respondents befitting the circumstances of the case. Costs of this writ petition may kindly be awarded to the petitioner.

In the aforesaid facts and circumstances when the issue has been decided by this Court by holding that the Payment of Wages Authority has no jurisdiction to enter into the controversy raised in relation to the claim of Mohd. Ayub against Mohammed & Sons and that in such proceedings Receiver Abdul Wahid is the proper person to participate and that when Receiver has been appointed to manage the business of the Firm, authority to defend the interest of the Firm in the

proceedings instituted against the Firm is implicit in it.

13. Decision on these issues has become final between the parties and authority i.e. Payment of Wages Act has no jurisdiction to entertain and decide the same on the principle of res-judicata. Not only the fact that the respondent No. 2 in spite of constant decisions by this Court in the matter did not implead the Receiver in his fresh attempt and contested the application of the Receiver for being impleaded to keep him away from the proceedings, but the very filing of the application before the Payment of Wages Authority for the very same period is clearly abuse of the process of the Court. The Payment of Wages Authority on its own finding as affirmed by this Court had no jurisdiction to entertain the claim between Mohd. Ayub and Mohammed & Sons raising the same issue. The rejection of application by the Receiver to be impleaded was on the face of it unjustified in the facts and circumstances speaking on record. It may also be noticed that the only ground on which the petitioner present in person claims to have filed the application before the Payment of Wages Authority afresh is on the purported reason that partner of Mohd. & Sons, Mr. Yusuf has given his consent to approach the authority under Payment of Wages Act, therefore, the decision of this Court, Annx. 2 has become infructuous by consent of parties. It will be interesting to note that this court in its order dated April 26, 1988 1988 (1) RLW 664 (supra) and order dated February 10, 1993 Annex. 2 between these very parties for that very claims has found that proceedings by Mohd. Ayub are result of collusion with him and his father-in-law. Yusuf, as apparent from observations from two judgments quoted hereinbefore.

14. All the aforesaid facts are borne out from inter-parties, judgment Annexure-2. To allow the proceedings to continue in the face of aforesaid facts and circumstances would be to allow the petitioner to continue to abuse the process of the Court by invoking the jurisdiction of the very same authority again and again who has been found to have no jurisdiction to entertain the claim of the petitioner and the petitioner himself has been found to be in collusion with his father-in-law,

15. In view of the aforesaid, the petition is allowed. The impugned Annexure 7 dated November 4, 1993 is quashed and the respondent No. 1 Authority under the Payment of Wages, Nagour is prohibited from entertaining and from proceeding

with the claim of respondent No. 2 in respect of the claim for recovery of alleged deduction of wages by Mohd. Sons for the period covered by the decision of this Court Annexure 2, dated December 16, 1993 rendered in Mohd. Ayub v. Mohd. & Sons (S.B. Civil Writ Petition No. 28/93) and connected petitions and for any period thereafter. In view of the conduct of the respondent No. 2, he is persisting with the vexatious litigation before the Payment of Wages Authority, the petitioners are entitled to the cost from the respondent No. 2 which is quantified as Rs. 1,000/-.

16. Before parting with the case it may be observed that from the chequered history of case and facts and circumstances noticed in the various judgments which have come into existence between the parties, there appears strong likelihood that it is Yusuf, father-in-law of the petitioner, is the person who behind the curtain is instigating this litigation to harass and settle the score with his estranged partners by machinations of inducing Mohd. Ayub to file claim after claim against the firm, when his service was admittedly terminated way back in 1971 and he failed in the dispute raised under Industrial Disputes Act as well. Consistently, he or his son-in-law has either allowed the claim to be accepted by remaining ex-parte or by filing reply of admission, when since the termination of service, the other partners are consistently contesting the claim of the respondent No. 2 on the basis of alleged settlement arrived at between son-in-law and father-in-law as partner of the firm M/s. Mohd. & Sons. The present claim has also been filed as per statement of respondent No. 2 before this Court on the basis of consent of Yusuf to approach the authority once again by agreeing to treat the order passed by the Court, in which , Receiver also was a party, as infructuous. Said Yusuf has not chosen to appear inspite of service lest he may have to take any stand. This shows the scant respect for the authority of law on the part of respondent No. 2 as well as respondent No. 3. Persisting with such sort of vexatious litigation for ulterior motive, it is warned, may compel this Court to have recourse to state action in future.