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Ramnarayan Vs. Authority Under Payment of Wages Act and ors.

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Court : Rajasthan

Decided On : Oct-12-2004

Reported in : [2005(105)FLR264]; (2005)IILLJ116Raj; 2005(1)WLC370

Judge : Sunil Kumar Garg, J.

Acts : [Constitution of India](#) - Articles 226 and 227; [Payment of Wages Act, 1936](#) - Sections 15(2) and 17; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : S.B.C.W.P. No. 2702/2003

Appellant : Ramnarayan

Respondent : Authority Under Payment of Wages Act and ors.

Advocate for Def. : Girish Sankhla, Adv. for Respondent No. 3

Advocate for Pet/Ap. : K.S. Yadav, Adv.

Disposition : Petition dismissed

Judgement :

Sunil Kumar Garg, J.

1. This writ petition under Articles 226 and 227 of the [Constitution of India](#) has been filed by the petitioner on May 28, 2003 against the respondent with the prayer that by an appropriate writ, order or direction, the order dated September

11, 2000 (Annex. P/2) passed by the respondent No. 1 Authority under the Payment of Wages Act, Sri Ganganagar (hereinafter referred to as 'the Authority') by which the claim of the respondent No. 3 Baldeo Singh filed under Section 15(2) of the [Payment of Wages Act, 1936](#) (hereinafter referred to as 'the Act of 1936') for Rs. 9500/- was decreed be quashed and set aside and similarly, the appellate Judgment dated December 9, 2002 (Annex. P/3) passed by the learned District Judge, Sri Ganganagar (respondent No. 2) by which the order (Annex. P/2) dated September 11, 2000 passed by the respondent No. 1 Authority was upheld, be also quashed and set aside.

2. It arises in the following circumstances:

On January 8, 1997, the respondent No. 3 Baldeo Singh filed an application under Section 15(2) of the Act of 1936 before the respondent No. 1 Authority claiming that Rs. 24,000/- had been illegally deducted by the present petitioner as he had performed the job of labour with the petitioner in the field for the period from April 1, 1996 to September 30, 1996.

A reply to the claim of the respondent No. 3 was filed by the present petitioner before the respondent No. 1 Authority stating inter alia that no work was performed by the respondent No. 3 under the petitioner and therefore, there was no question of deducting any wages. Hence, it was prayed that the claim application of the respondent No. 3 be dismissed.

Thereafter, the respondent No. 3 produced evidence in support of his claim. However, no evidence was led by the present petitioner despite several opportunities given to him.

After hearing both the parties and considering the entire materials and evidence available on record, the respondent No. 1 Authority through impugned order (Annex. P/2) dated September 11, 2000 came to the conclusion that the respondent No. 3 was entitled to get Rs. 9000/- from the petitioner and further, the respondent No. 3 was also entitled to get compensation of Rs. 500/- and thus, the claim of the respondent No. 3 was decreed for Rs. 9500/-.

3. Aggrieved from the said order dated September 11, 2000 (Annex. P/2) passed by the respondent No. 1 Authority, the petitioner preferred an appeal before the respondent No. 2 learned District Judge, Sri Ganganagar and the learned District Judge, Sri Ganganagar (respondent No. 2) through impugned judgment dated December 9, 2002 (Annex. P/3) dismissed the appeal of the petitioner and upheld the order dated September 11, 2000 (Annex. P/2) passed by the respondent No. 1 Authority.

4. Aggrieved from the said appellate judgment dated December 9, 2002 (Annex. P/3) passed by the learned District Judge, Sri Ganganagar (respondent No. 2), this writ petition has been riled by petitioner.

5. The main case of the petitioner is that the respondent No. 3 in his cross-examination has admitted that he did not know in which month he had worked with the petitioner and he also did not know for which his wages were due and therefore, the findings of both the Courts below awarding Rs. 9500/- to the respondent No. 3 are wholly perverse and erroneous one and thus, the same cannot be sustained and liable to be set aside.

6. No reply to the writ petition was filed by the respondent No. 3. However, during the course of arguments, a preliminary objection was raised by the learned counsel appearing for the respondent No. 3 about the maintainability of this writ petition under Articles 226 and 227 of the [Constitution of India](#) on the ground that against the impugned judgment of the learned District Judge, Sri Ganganagar dated December 9, 2002 (Annex. P/3), passed on appeal under Section 17 of the Act of 1936, only civil revision under Section 115 CPC lies and no writ petition would lie. Hence, this writ petition is not maintainable and the same be dismissed as such. In support of this submission, he has placed reliance on the Division Bench Judgment of this Court in *Bhonwri Singh v. Dy. C.M.E. Loco Shops, W. Rly., Ajmer* 1958 RLW 420 and the decisions of the Kerala High Court in *Surendranathan Nair and Ors. v. Senior Divisional Personnel Officer (Rlys)*, 1988-I-LLJ-227 and Gauhati High Court in *French Motor Car Co. Ltd. Workers' Union v. French Motor Car Co. Ltd.* 1991-I-LLJ-107.

7. On the other hand, the learned counsel appearing for the petitioner has submitted that the judgment of the District Judge passed on appeal under Section 17 of the Act of 1936 can be challenged through writ petition under Articles 226 and 227 of the [Constitution of India](#) and thus, this writ petition is maintainable and in support of this submission, he has placed reliance on the decision of the Andhra Pradesh High Court in Managing Member, Nirmal Industries v. Naseemuddin and Ors. AIR 1967 AP 370 and judgment of this Court in Kailash Chandra Sharma v. Union of India and Ors., 1984 RLR 740.

8. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent No. 3 and gone through the materials available on record.

9. So far as the point that a revision lies against the judgment of the District Judge passed on appeal under Section 17 of the Act of 1936 is concerned, there is no dispute on that point as the District Judge when he acts under Section 17 of the Act of 1936, is not a persona designata, therefore, a revision can lie to High Court under Section 115 CPC. Thus, a revision under Section 115 CPC against the judgment of the District Judge passed on appeal under Section 17 of the Act of 1936 is maintainable. This is one of the aspects of the matter.

10. The question for consideration is when an aggrieved person does not file revision against the judgment of the District Judge passed on appeal under Section 17 of the Act of 1936, whether a writ petition under Articles 226 and 227 of the [Constitution of India](#) is maintainable or not and for that, scope under Articles 226 and 227 of the [Constitution of India](#) has to be kept in mind.

11. Article 226 of the [Constitution of India](#) empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari - (a) for the enforcement of any of the rights conferred by Part III, and (b) for any other purposes. Under the first part, a writ may be issued under the Article only after a decision that the aggrieved party has a fundamental right and that it has been infringed. Similarly, under the second part, it may be issued only after a finding that the aggrieved party has a legal right which entitles him to any of the aforesaid writs and that such right has been infringed. 'Any other

purpose', in short, means 'the enforcement of any legal right and the performance of any legal duty.'

12. Article 226 of the [Constitution of India](#) confers on all the High Courts very wide powers in the matter of issuing writs which they never possessed before. There are only two limitations placed upon the exercise of these powers by a High Court under this Article -(a) that the power is to be exercised 'throughout the territories in relation to which it exercises jurisdiction', that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction; (b) that the person or authority to whom the High Court is empowered to issue the writs 'must be within those territories', and this implies that they must be amenable to the jurisdiction of the Court either by residence or location within those territories, except where the cause of action arises, in whole or in part, within the territorial jurisdiction of that High Court.

13. Apart from this, the Court, under Article 226 of the [Constitution of India](#) has also the power to give consequential reliefs, such as ordering repayment of money realised without the authority of law or under an invalid law. Under the residuary prayer, the Court may grant an applicant the proper relief which he should get. But, there is no dispute on the point that the exercise of power under Article 226 of the Constitution is discretionary.

14. The Andhra Pradesh High Court in the case of Managing Member, Nirmal Industries (supra) has held that the order of the District Judge passed on appeal under Section 17 of the Act of 1936 can be challenged by writ petition under Article 226 of the [Constitution of India](#).

15. In the case of Kailash Chandra Sharma (supra) this Court has clearly held that the writ petition is maintainable against the order passed by District Judge on appeal under Section 17 of the Act of 1936.

16. In my considered opinion, the order passed by the District Judge as Appellate Authority prescribed under the Act of 1936 is amenable to the High Court's writ jurisdiction and this power of the High Court is not ousted merely because a revision lies under Section 115 CPC against the order of the District Judge passed

on appeal under Section 17 of the Act of 1936.

17. Thus, both the remedies of revision under Section 115 CPC as well as writ petition under Article 226 of the [Constitution of India](#) against the order of the District Judge passed on appeal under Section 17 of the Act of 1936 are available, but the aggrieved person has to choose either one of them.

18. Apart from this, under Article 227 of the [Constitution of India](#), every High Court shall have superintendence over all Courts and Tribunals through out the territories in relation to which it exercises jurisdiction and the District Court is subordinate to the High Court and, therefore, from this point of view also, this writ petition against the judgment of District Judge is maintainable.

19. So far as the Division Bench judgment of this Court in Bhonwri Singh's case (supra) is concerned, in that case, the Division Bench of this Court came to the conclusion that a revision lies against the order of the District Judge passed in appeal under Section 17 of the Act of 1936, but in that case, writ petition was found not maintainable because of the fact that the petitioner of that case had earlier filed revision petition in the High Court though it was dismissed as withdrawn and in these circumstances, the Division Bench of this Court held that it was not open to the petitioner of that case to file a writ application in the same Court when he did not pursue the remedy open to him by way of revision and voluntarily allowed the revision to be dismissed. The position in the present case is otherwise as the present petitioner has not filed revision petition and he has filed only writ petition and thus, from this point of view, the Division Bench Judgment of this Court in Bhonwri Singh 's case (supra) can be distinguished.

20. For the reasons stated above, it is held that the present writ petition under Articles 226 and 227 of the [Constitution of India](#) is maintainable against the judgment of the learned District Judge, Sri Ganganagar dated December 9, 2002 (Annex. P/3) passed on appeal under Section 17 of the Act of 1936.

21. Now the case is being considered on merits.

22. A bare perusal of the impugned order (Annex. P/2) dated September 11, 2000 passed by the respondent No. 1 Authority clearly reveals that though the petitioner was given many opportunities to produce evidence, but no evidence was led by him before the respondent No. 1 Authority, From the side of the respondent No. 3, he himself had appeared before the respondent No. 1 Authority and his statement was recorded by the respondent No. 1 Authority and the same is (Annex. P/1) and no doubt, in cross examination, he has admitted that he did not know for which month his wages were due etc. etc., but the learned Authority (respondent No. 1), after considering and discussing the entire materials and evidence produced by the respondent No. 3 and looking to the fact that there was no evidence in rebuttal from the side of the petitioner, came to the conclusion that the respondent No. 3 has proved the fact that he had worked with the petitioner for the period from April 1, 1996 to September 30, 1996 and wages for six months to the tune of Rs. 9000/- were due to the respondent No. 3 as the same were not paid by the petitioner. Thus, the respondent No. 1 Authority came to the conclusion that the respondent No. 3 was entitled to get Rs. 9000/-, which were illegally deducted by the petitioner and furthermore, the learned Authority (respondent No. 1) awarded Rs. 500/- as compensation to the respondent No. 3. Thus, in all, claim for Rs. 9500/- was decreed by the respondent No. 1 Authority in favour of the respondent No. 3.

23. The above findings of facts recorded by the learned Authority (respondent No. 1) were confirmed by the learned District Judge, Sri Ganganagar (respondent No. 2) through impugned appellate judgment (Annex. P/3) dated December 9, 2002.

24. The question for consideration is, whether the above finding of facts recorded by both the Courts below can be said to be erroneous or perverse one requiring interference by this Court under Articles 226 and 227 of the [Constitution of India](#) or not.

25. Before proceeding further, scope of interference by this Court under Articles 226 and 227 of the [Constitution of India](#) may be discussed here.

26. It may be stated here that under Article 226 of the [Constitution of India](#), the High Court does not sit or act as an appellate authority over the actions of the subordinate authorities or Tribunal. The exercise of power under Article 226 of the

[Constitution of India](#) is discretionary one.

27. The High Court can interfere under Article 227 of the [Constitution of India](#) when there is error of law apparent on the face of the record and the findings are perverse and based on no material.

28. The power of general superintendence conferred by Article 227 involves a duty on the part of the High Court to keep all Courts and Tribunals within its territorial jurisdiction within the bounds of their authority, to see that they do what their duty requires and they do it in a legal manner. This means that the High Court can interfere in cases of. -

(a) Erroneous assumption or excess of jurisdiction.

(b) Refusal to exercise jurisdiction.

(c) Error of law apparent on the face of the record, as distinguished from a mere mistake of law or error of law relating to jurisdiction.

(d) Violation of principles of natural justice.

(e) Arbitrary or capricious exercise of authority, or discretion.

(f) Arriving at a finding which is perverse or based on no material.

29. In my considered opinion, the concurrent finding of facts recorded by both the Courts below that wages to the tune of Rs. 9000/- were illegally deducted by the petitioner from the wages of the respondent No. 3 and thus, the respondent No. 3 was entitled to get Rs. 9000/- from the petitioner and further, he was also entitled to get Rs. 500/- as compensation total Rs. 9500/-, cannot be said to be erroneous or perverse one or based on no evidence or material and rather they are based on correct appreciation of material and evidence produced by the respondent No. 3. The petitioner was given several opportunities to produce evidence, but he did not produce any evidence. Hence, no interference is called for with the above concurrent findings of facts recorded by both the Courts below.

30. Apart from this, the amount, which was decreed by the Courts below, had already been paid to the respondent No. 3 as stated by the learned counsel for the respondent No. 3. Therefore, from this point of view also, since the compliance of the impugned judgment and order passed by both the Courts below has been made by the petitioner and the exercise of power under Article 226 of the [Constitution of India](#) is discretionary one, therefore, at this stage, this Court does not want to interfere with the impugned judgment and order and this writ petition deserves to be dismissed.

31. Accordingly, this writ petition filed by the petitioner is dismissed. No order as to costs.

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