

Shankar Dass Vs. Shankar Singh and ors.

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Court : Jammu and Kashmir

Decided On : Nov-09-1989

Reported in : (1999)IIILLJ335J& K

Judge : R.P. Sethi, J.

Acts : [Payment of Wages Act, 1936](#) - Sections 3 and 17; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Section 115

Appeal No. : Civil Revision No. 50/1986

Appellant : Shankar Dass

Respondent : Shankar Singh and ors.

Judgement :

R.P. Sethi, J.

1. The Authority under the Payment of Wages Act vide its order dated September 3, 1984 directed the payment of sum of Rs. 34,507/- (Thirty four thousand five hundred and seven only) to the petitioner while disposing of a group of applications filed under the provisions of Section 16(2)and Section 15(2) of the Payment of Wages Act. In the appeal filed by the respondent the District Judge, Udhampur set-aside the award of the Authority under the Payment of Wages Act after holding that although there was no illegality in the order impugned yet

because of the fact that huge amount of Rs. 34,507/- was realisable from the Government, the authority under the Payment of Wages Act should not have passed the impugned direction. He held that 'I am conscious of the fact that the authority gave all the facilities and opportunities to the present appellants to rebut the claim of the respondent Shanker Dass and they failed to avail of all those'. It was further held that 'I also feel the conduct of the appellants has been most negligent and unbecoming of a Government Agency,' Despite holding the order to be legal, valid and according to law, the appellate Court accepted the appeal alongwith costs of Rs 500/-.

2. I have heard the learned counsel for the parties and have perused the record.
3. The learned counsel appearing for the respondents have raised a preliminary objection regarding the maintainability of the revision petition in this Court and submitted that the revision petition is liable to be dismissed.
4. It is true that the authority appointed under the Payment of Wages Act is not a civil Court subject to the revisional jurisdiction of this Court under Section 115 of C.P.C. and the orders passed by such Authority cannot be disturbed, set aside or varied by the High Court in the exercise of its revisional jurisdiction. However, when an appeal is preferred under the Payment of Wages Act before the District Judge, the order passed by the appellate Court cannot be equated with the order passed by the authority under the Payment of Wages Act. Section 115 of the C.P.C. empowers this Court to call for the record of any case which has been decided by any Court subordinate to the High Court and if such subordinate Court appears to have exercised its jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity, or to have caused failure of justice, the High Court may make such order in the case as it thinks fit. The Court of District Judge is admittedly Court subordinate to this Court under Section 3 of the Civil Procedure Code. Whether an authority or an officer is persona designata while performing its duties under a particular Statute has to be ascertained with reference to the nature of the duties, the order of appointment and the Statute under which he was so appointed. Where a person who is essentially a judicial officer is conferred power

under a special Statute to be exercised in a judicial manner, he is held to be a Court subordinate to this Court and cannot be called as a persona designata. A Full Bench of this Court in *Surindera Mohan v. Dharam Chand Abrol* AIR 1971 J&K; Page 76 after referring to various judgments of the Supreme Court and the High Courts, laid down the following tests to ascertain whether the person appointed was a persona designata or was a Court subject to the jurisdiction of the High Court.

(1) The question whether an authority has been appointed as a persona designata or as a Court depends on the nature of the duties which the authority performs and the manner in which its appointment is made.

(2) Where the appointment of an authority is made only by name in its individual capacity, the appointment is persona designata and not in the capacity of the post held by such authority.

(3) Where a Presiding Officer of a civil Court is selected as an authority, the selection is not as a persona designata, but as a member of the Court because the authority so appointed to fill in a particular character, e.g. a Chief Judicial Magistrate, District Judge, so on and so forth.

(4) Where the authority has been empowered to act judicially and possesses all the trappings of a Court and has to abide by the rules of evidence then its selection by designation must be presumed to be as a Court and not a persona designata.

5. Section 17 of the Payment of Wages Act makes a provision for filing of the appeal before the District Judge against the order of an authority appointed under the Payment of Wages Act. The appointment of the appellate Court authority by designation implies that appellate forum has been provided to a Court subordinate to the High Court subject to its revisional jurisdiction under Section 115 of C.P.C.

There is no merit in the preliminary objection raised by the learned counsel for the respondents which is rejected.

6. It is regrettable that the District Judge without referring to the provisions of law entertained the appeal in contravention of the provisions of Section 17(1)-A of the Payment of Wages Act as has been alleged by the petitioner and not denied by the respondents. The approach adopted by the District Judge while deciding the appeal under the Payment of Wages Act, clearly shows the flagrant violation of the provisions of law applicable in the case. After holding that there was no illegality in the impugned order and that appellants before him were responsible for delay in allowing the matter and permitting the order impugned to be passed, the District Judge acted in gross-violation of provisions of law in allowing the appeal on consideration which cannot be termed as legal on any count. The order impugned passed in the appeal reflects the immaturity of the District Judge in application of the provisions of law and complete disregard to the purposes and object of the Provisions of Payment of Wages Act which is primarily a social welfare legislation meant for defending the interests of the working class. The District Judge, being appellate authority in the instant case appears to have swayed away by consideration which have been alleged to have been extraneous and not legal and valid.

It is regrettable that on account of the attitude adopted by the learned District Judge Shri K. L. Bazaz and by flouting all the norms and procedure, the poor workers have been deprived of their wages for a period of over six years. The order impugned, therefore being without jurisdiction, against the provisions of law passed in gross violation of the procedure established is hereby set-aside. The order of the authority under the Payment of Wages Act passed on September 3, 1984 is upheld. The petitioner is further held entitled to the payment of Rs. 1,000 (One thousand) as cost to be paid by the respondents. The interim order of this Court dated March 3, 1986 shall stand vacated and the amount deposited with the District Judge shall immediately be disbursed to the workmen individually or through duly authorised agent.