

CALCUTTA HIGH COURT

Jogendra Nath Chatterjee

Vs.

Chandreswar Singh

Civil Rule No. 373 of 1950

(Sen and K.C. Chunder, JJ.)

JUDGMENT

Sen, J.

1. This is an application under Section 115, Civil Procedure Code, and also under Article 227 of the Constitution of India against an order passed by the Court of Small Causes sitting on appeal against an order passed by the Authority appointed under the Payment of Wages Act (Act IV [4] of 1935). We might mention at once that learned advocate appearing for the petitioner at the very inception stated that he was not going to urge that Article 227 of the Constitution applied inasmuch as the Constitution was not in force at the time the judgment of the appellate Court was passed. So we shall treat this application as one under Section 115, Civil Procedure Code.

2. The facts which need be stated briefly are as follows : The petitioner is the Manager of Messrs. Jogendra Nath Chatterjee and Sons, a partnership firm carrying on business in engineering goods. The firm employed the opposite party Chandreswar Singh at a monthly salary of Rs. 47. He worked from 16-6-1947 till 13-2-1948 and went home on leave. He rejoined on 17-9-1948 and worked till 15-12-1948 when it is alleged he left without notice. Disputes arose between the workers and the proprietor of the firm and the disputes were referred to the Industrial (Engineering) Tribunal under the Industrial Disputes Act, (Act XIV [14] of 1947). On 4-6-1948 the Tribunal made an award fixing the basic wages of an unskilled labourer at Rs. 30 and the dearness allowance at a maximum of Rs. 25. This award was to take effect from 1-4-1948 and would remain in force for a period of one year. As stated before on 15-12-1948 the opposite party left service of his own accord and joined another firm. This is the case of the petitioner. The petitioner's further case is that he did not further appear for receiving payment of the period between 16-11-1948 to 15-12-1948. On 2-3-1948 the opposite party applied for payment under Section 15, Payment of Wages Act, claiming Rs. 158 on various counts. The petitioner admitted that the sum of Rs. 47 was due and denied liability for the rest. The Authority held that it had no jurisdiction to entertain the application of the opposite party but passed an order for the admitted amount of Rs. 47 and rejected the application with respect to the balance. From this there was an

appeal taken to the Court of Small Causes under Section 17, Payment of Wages Act. The learned Judge of the Small Cause Court allowed the appeal and the claims in full. Against this order the present application has been filed.

3. A preliminary objection has been taken that no revision under Section 115, Civil P. C, lies inasmuch as Section 17, Payment of Wages Act, provides that the decision of the Authority appointed by the Payment of Wages Act shall be final subject to an appeal. It was argued by learned advocate for the opposite party that there has been an appeal and that the petitioner has no further remedy. We are unable to accept this contention. All that the word "final" means in Section 17, Payment of Wages Act, is that no further appeal would lie from the decision of the appellate Court. It is quite clear that an appeal from the authority lies to a Court, namely, the Court of Small Causes. The appeal is not made to a "persona designata" but to a Court. Now, the Court of Small Causes is certainly subordinate to this Court and, therefore, by virtue of the provisions of Section 115, Civil Procedure Code, this Court has the power to revise its orders passed as a Court. This view was taken in the case of *Gobinda Chandra v. Rashmoni Dasya*¹, We would refer specially to the passage at page 477. That case deals with the provisions of the Bengal Agricultural Debtors Act. Under Section 40 (6), Bengal Agricultural Debtors Act, the orders of the Appellate Officer have been declared to be final subject to the provisions of Section 40a. Under Section 40a revision lies from the Appellate Officer's order to the District Judge. It was held that the District Judge there was not a 'persona designata' but a Court and that consequently any decision by the District Judge on revision was subject to the revisional jurisdiction of this Court. The position here is exactly the same and we hold that there is no substance in the preliminary objection.

4. Learned advocate appearing for the petitioner had various contentions to make as regards the maintainability of the order passed by the Judge of the Court of Small Causes. It is not necessary for us to deal with all the points raised as there is one vital point on which this application must succeed. As stated before the application made by the opposite party for payment of the amount alleged to be due to him was made under Section 15, Payment of Wages Act. Now, no application under Section 15 of the aforesaid Act can lie except for the payment of wages. "Wages" has been defined in the Payment of Wages Act in Section 2, sub-section (vi) in the following terms :

"'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 behavior 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....."

It is quite clear from this definition that wages consist of the amounts fixed by the parties by an agreement between them which resulted in a contract. It is true that the words used are "express or implied". It is well known that the terms of a contract may be express as well as implied. Express terms are those which are expressed in words and implied terms are those which may be attached to the contract by implication that the parties agreed to those terms. As an example we would point out that if there was a well known existing mercantile usage at the time of the contract between the parties it would be inferred that when the parties entered into the contract they agreed to be bound by this mercantile

¹47 C.W.N. 473 : (AIR 1943 Cal 470)

usage unless they express themselves to the contrary in the terms of the contract, but in the present case we find it difficult to conceive how it can be said that the parties when they entered into the contract of employment agreed that if there was any industrial dispute between the employers and the employees and if the dispute was referred to the arbitration of an Industrial Tribunal and if the Industrial Tribunal increased the amount payable to the workman, the employer would pay such increased amount. It seems to us that it would be very far-fetched if we are to take the view that those matters were in the minds of the parties when they entered into the contract. An implied term must be a term which was in the minds of the parties at the time of the contract and which although they did not so express they had agreed to carry out.

5. If there was no remedy left to the parties it may have been difficult for us to accept this view although it is quite possible that we would hold the same view irrespective of there being no remedy; but in this case the employee has a remedy. He can realize his dues awarded by the Industrial Tribunal by suit. Further, the Industrial Disputes Act provides that if any employer does not carry out the terms of the award he is liable to fine. In these circumstances it cannot be said that the employee is without remedy. There is no provision in the Industrial Disputes Act for the recovery of the amount awarded by any application under the Payment of Wages Act and as we have pointed out the Payment of Wages Act (provides?) only for the method of recovery of wages as defined in Section 2 (vi), Payment of Wages Act. As the amount awarded is not "wages" as defined in Section 2 (vi), Payment of Wages Act, we are of opinion that the original Court was right in holding that it had no jurisdiction to give relief to the opposite party.

6. We accordingly set aside the order passed by the Court of Small Causes and restore the order passed by the Authority appointed under the Payment of Wages Act.

7. In the somewhat peculiar circumstances of this case we direct that each party will bear his own costs in this Rule.

Chunder, J.

8. I agree.

Order accordingly.