

CALCUTTA HIGH COURT

Dalmia Jain Airways Ltd

Vs.

Sukumar Mukherjee

Civil Rule No. 326 of 1950

(Harries, C.J., G.N. Das and Banerjee, JJ.)

30.08.1950

JUDGMENT

Harries, C.J.

1. This is a petition praying that an order made by the Court of Authority under the Payment of Wages Act be set aside or varied. The petition is made under Article 227 of the Constitution of India.

2. The petitioners Messrs. Dalmia Jain Airways Ltd., were the employers of the opposite party Sukumar Mukherjee. It seems that by the terms of Sukumar Mukherjee's employment he was entitled to a month's leave on full pay every year. The employers wishing to end Mukherji's services gave him a month's wages and terminated his employment summarily. The employee made a claim in the Court of the Authority under the Payment of Wages Act for a month's pay in lieu of the period of leave which he was unable to make use of. The Court held that he was entitled to the payment of a month's wages in lieu of this period of leave and that is the only question in issue in this petition.

3. Mr. Bagchi who has appeared on behalf of the petitioners has urged that the decision of the Court was clearly erroneous. On behalf of the opposite party, it was contended that this Court had no authority at all to interfere in the matter as the decision or order in this case was not that of a tribunal as that term is used in Article 227 of the Constitution.

4. I do not think it is necessary to consider the question as to whether the Court of Authority under the Payment of Wages Act is or is not a tribunal because it appears to me quite clear that this is a case in which we would never interfere even if we had jurisdiction.

5. Mr. Bagchi's argument on the merits was that his clients were entitled to give the opposite party a month's notice and the latter would be under an obligation to work during that month for his wages. The employers did not insist on that, but paid him a month's wages and told him to go immediately. In other words, they dismissed him summarily and they paid him a month's wages which would be the damages that the workman would be entitled to on being dismissed

summarily without good cause. There is nothing to show that the employers were entitled to dismiss the workman summarily, and the payment of the months' wages in lieu of notice cannot be regarded, as Mr. Bagchi regards it, as giving the man leave on a month's pay. If it could be regarded as giving the man a month's leave on full pay, then of course quite clearly the workman would not be entitled to anything more. The view contended for by Mr. Bagchi does find support from a single Judge decision of the Rangoon High Court in *Theo Lazarus v. E. M. DeSouza and Co¹*. But I do not think it is necessary to discuss this question any further. Even assuming that the payment of the month's wages to the workman without calling upon him to work amounted to giving him wages for the period of leave that he was entitled to, all that Mr. Bagchi can contend is that the Court made a mistake in law. There is no question that under Section 15 (2), Payment of Wages Act, the Court had full authority to entertain this claim made by the workman for delayed wages and the most that can be said is that in deciding the claim the Court erred in law.

6. Though this Court has a right to interfere with decisions of Courts and tribunals under its power of superintendence, it appears to me that that right must be exercised most sparingly and only in appropriate cases. The matter was considered by a Bench of this Court in *Manmathanath v. Emperor²*, In that case a Bench over which Sir George Bankin C. J. presided held that Section 107, Government of India Act (which roughly corresponds to Article 227 of the Constitution), does not vest the High Court with limitless power which may be exercised at the Court's discretion to remove the hardship of particular decisions. The power of superintendence it confers is a power of a known and well-recognised character and should be exercised on those judicial principles which give it its character. In general words, the High Court's power of superintendence is a power to keep subordinate Courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner.

7. The power of superintendence as pointed out by Bankin C. J. in his judgment in this case is not a power given to this Court to correct errors, otherwise, it would be tantamount to a right to entertain appeals on law and fact. The right should be exercised only in cases where the Courts have clearly done something which they were not entitled to do. The power must be used to keep the Courts below within the bounds prescribed by law for such Courts. Here, as I have said, the most that can be said if anything can be said, is that the Court erred in law in treating a month's wages in lieu of leave as due. Further, it appears to me that there is no injustice in this case. The employers, for reasons best known to themselves, desired to get rid of this employee immediately. They made it impossible for him to take his month's leave and the order of the Court below even if it was not legally justified, could never be described as unjust or harsh.

8. In the circumstances I can see no ground for interfering under Article 227 of the Constitution and that being so the petition fails and the rule is discharged with costs - the hearing fee being assessed at three gold mohure.

G.N. Das, J.

9. I agree.

Banerjee, J.

¹ AIR 1933 Ran 85 : (146 I. C. 946)

² 37 C. W. N. 201 : (AIR 1933 Cal 132 : 34 Cr. I. J. 299)

10. I agree.

Petition dismissed.