BOMBAY HIGH COURT

A.R. Sarin

Vs.

B.C. Patil

Misc. Appln. No. 67 of 1951

(Chagla, C.J. and Tendolkar, J.)

20.04.1951

JUDGMENT

Chagla, C.J.

1. By this petition the petitioner, who is the Controller of Stores, B. B. and C. I. Rly., seeks for a writ of certiorari against the Authority under the Payment of Wages Act. Respondent No. 2 was an employee of the B. B. and C. I. Rly. He was employed on May 19, 1944. On January 6, 1950, the District Controller of Stores made an order suspending him from service with effect from January 7, 1960, and on February 4, 1950, the District Controller of Stores passed an order removing respondent No 2 from service. On April 10, 1950, respondent No. 2 filed an application in the Court of the Authority under the Payment of Wages Act for a direction to the petitioner under Section 15 of the Act to pay a sum of Rs. 253-10-0 as delayed wages for the period February 4, 1950 to March 31, 1950. Subsequent to that other applications were filed for the payment of delayed wages by respondent No. 2 for periods subsequent to March 31, 1950. An objection was taken on behalf of the petitioner that the Authority under the Payment of Wages Act had no jurisdiction to decide the applications of respondent No. 2 in view of the contentions raised by the petitioner. That contention was rejected and the Authority adjudicated upon the claim of respondent No. 2 and passed orders directing the petitioner to pay wages as claimed by respondent No. 2.

2. In this case the contention of the petitioner is that the contract of service between respondent No. 2 and the B. B. and C. I. Rly. was validly terminated on February 4,1950, and the petitioner's further contention is that after February 4, 1950, respondent No. 2 ceased to be a servant of the B. B. and C. I. Rly., and the relationship of master and servant between them came to an end or, in other words, after February 4, 1950, there was no subsisting contract of service between the B. B. and C. I. Rly. and respondent No. 2. The contention of respondent No. 2, on the other hand, was that he being a Government servant his tenure in office was protected and he could not be

dismissed in the manner in which the B. B. and C. I. Rly. had purported to dismiss him. Therefore, he contended that he continued to be in the service of the B. B. and C. I. Ely. and he was entitled to payment of wages.

3. The question which arises for our consideration is whether looking to the terms of the Payment of Wages Act (IV of 1936), it is competent to the Authority under the Payment of Wages Act to direct payment of wages when it is disputed that there is a subsisting contract of service between the employer and his employee. Is it open to the Authority to decide whether a contract of service has been properly and validly terminated? Is it open to him to decide that the dismissal of a servant by his master is wrongful? In order to decide this question, it is necessary to look at the purpose of the Payment of Wages Act and also its general provisions. As the preamble itself says, the purpose of the Act was to regulate the payment of wages to certain class of persons employed in the industry, and the application of the Act was restricted to wages payable in respect of a wage period which over such wage period averaged Rs. 200 a month or less. "Wages" are defined as meaning all remuneration capable of being expressed in terms of money which would, if the terms of the contract of employment expressed or implied were fulfilled, be payable whether conditional 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. Therefore it is clear that as far as this part of the definition is concerned wages are to be construed as remuneration due to a person who is employed and it is remuneration which is payable under the terms of the contract whether express or implied. The definition goes on to mention certain other attributes which according to the Legislature would also constitute remuneration to a person as wages, and that further inclusive definition is:

> "Wages 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."

Emphasis is laid on behalf of the respondents on the expression 'any sum payable to such person by reason of the termination of his employment.' Now "such person" is the person employed, and any sum which is payable by reason of the employment of such person coming to an end is also wages for the purpose of this Act. Looking to the whole scheme of the Act and looking to the earlier part of the definition, in my opinion, the sum payable by reason of the termination of his employment is not any damages or compensation to which a servant would be entitled on a wrongful termination of his service. The sum payable here referred to is only a sum payable under the terms of the contract. A term of the contract may well provide that a servant is entitled to a salary for a month on the termination of his contract without notice. If the contract so provides, then the sum payable to the employee on termination of his service without notice would be wages in lieu of that one month's notice and such a sum payable to him would undoubtedly come under the definition of wages as amplified by the subsequent part of Section 2 (vi). Such remuneration in lieu of notice may even be an implied term of the contract of service.

If it is an implied term it would be as much wages within the meaning of this definition. Then Section 3 provides for responsibility for payment of wages and it deals with cases where the employer is directly responsible and cases where a person other than an employer may be made responsible for payment of wages. Then Section 5 deals with time for payment of wages. Section 7 deals with deductions which may be validly made from the payment of wages. Sections 8 to 13 deal with different kinds of deductions. Section 14 deals with Inspectors with which we are not concerned. Then we come to Section 15 which is the section directly in question, and that provides:

> "The Provincial Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area."

Therefore the jurisdiction of the Authority appointed under this section is clearly limited to (1) all claims arising out of deductions from wages and (2) delay in payment of the wages. It must be borne in mind that Section 22 ousts the jurisdiction of civil Courts in respect of all claims which can be entertained by the Authority under Section 15. Therefore, the scheme of the Act is to set up a special tribunal, confer a special jurisdiction upon that tribunal, and to the extent that special jurisdiction is conferred upon that tribunal, to oust the jurisdiction of ordinary civil Courts. Therefore the jurisdiction conferred upon the special tribunal must be strictly construed, and Section 15 itself clearly limits the jurisdiction only to the two points to which reference has just been made, and this jurisdiction conferred upon the authority under Section 15 must be read in the light of the previous sections of the Act. Jurisdiction with regard to delay in payment of the wages must be read in connection with Section 5 which lays down the time for payment of wages. Therefore if there is delay in reference to the point of time indicated in Section 5, then an employee is entitled to make a grievance of that fact and the Authority is entitled to order wages which have not been paid and which should be paid in accordance with Section 5. Further, there is jurisdiction to adjudicate with regard to deductions from the wages and this must again be read with reference to Section 7 which permits certain deductions and which makes it illegal for the employer to make deductions other than those provided in the Act. Therefore if an employer makes certain deductions from the wages of an employee, he is entitled to go to the Authority and complain of unauthorized deductions and get an order from the authority compelling the employer to make good the deductions wrongly made by the employer. There is also a provision for appeal under Section 17, but that right is restricted to cases where the total sum directed to be paid by way of wages and compensation exceeds Rs. 300. In cases where the payment is less than Rs. 300, there is no right of appeal at all and the decision of the Authority is final.

4. Now, what is contended by Mr. Seervai on behalf of the Authority and supported by Mr. Vakharia on behalf of respondent No. 2 is that it is competent to the Authority to decide whether a contract of service was terminated or not, because if he comes to the conclusion that the contract of service was not validly terminated, then the employee continues in service, and what

the Authority directs the employer to pay his wages within the meaning of the definition in the Act. It is further pointed out that in this particular case the employee is a Government servant and in the light of decisions of the Privy Council if the proper procedure is not followed for terminating the services of a Government employee, the Government employee continues in service and he is entitled to the payment of his salary. Therefore, what is urged is that all that the Authority has decided in this case is that the employee being a Government servant and proper procedure not having been followed in terminating his services, he continues to be a Government servant still employed by the B. B. and C. I. Rly. and as such servant he is entitled to the payment of wages, and as there has been delay in payment of wages, the employer is bound to pay those wages.

5. Now, if that were the true construction of Section 15, I must say that the Legislature has used most inappropriate language to convey that intention. Delay in payment of wages can only mean delay in payment of wages which are admitted. Wages are due but for some reason or other those wages have not been paid at the time when they should have been paid under the law. Mr. Seervai wants us to read "delay in payment of wages" as if it meant the same thing as refusal to pay wages. In this case there is no delay on the part of the petitioner to pay wages. He has refused to pay wages, rightly or wrongly, contending that respondent 2 is not his employee, he has dismissed him and therefore nothing is due to him. Therefore, the issue which really arises and which the Authority has assumed jurisdiction to decide is whether the refusal of the petitioner to pay wages is justified or is valid in law. If the Legislature wanted to confer such a jurisdiction upon the Authority, it would certainly have done so by appropriate language. Really Mr. Seervai goes to the utmost length by suggesting that all questions arising out of a contract of personal service and all questions arising out of relationship of master and servant, have all been transferred from the civil Courts to this special tribunal. Mr. Seervai says that the expression "any sum payable to such person by reason of the termination of his employment" is wide enough even to cover a claim for damages for wrongful dismissal. If the intention of the Legislature was what Mr. Seervai says it is, nothing could have been easier than for the Legislature to have indicated in clear explicit language that the jurisdiction of civil Courts to adjudicate upon the quantum of wages, to adjudicate upon the question whether a contract of service has terminated or not, the jurisdiction to adjudicate upon the question whether a dismissal by a master of his servant was wrongful or not and the jurisdiction to adjudicate upon the damages which the servant is entitled to on a wrongful dismissal, all these questions and all these jurisdictions have been transferred from the civil Courts to the special tribunal set up under the Act. As I said before, one would have expected very different language, much more appropriate language, to oust the jurisdiction of the civil Courts and to confer that jurisdiction upon the special tribunal. The jurisdiction of a special tribunal cannot be inferred by implication. Jurisdiction must be expressly given and we must find from the language of the statute itself that there is express ouster of the jurisdiction of the civil Courts and an express conferment of such jurisdiction upon the special tribunal set up under the Act.

6. We would like to make it clear, as the matter is of considerable importance, as to what we think is the jurisdiction of the Authority under the statute. It is certainly competent to the Authority to construe the terms of the contract of employment in order to determine what wages are to be paid, and even if the contract of employment has been terminated, it is open to him to construe its terms in order to determine whether any sums are payable by reason of the termination. It would also be open to him to determine whether a person has been employed or not, because the question of contract of employment and the terms of the contract can only arise provided the person seeking relief was employed. The mere denial of the factum of employment cannot oust the jurisdiction of the Authority. If the employer denies or disputes the fact that the servant was employed by him, it will be for the Authority to decide that question, and it is only after the question of employment has been decided that the question would arise as to what are the terms of the contract and what is the liability of the master under the terms with regard to wages. It has been suggested by Mr. Seervai that this construction of the statute really confines the jurisdiction of the Authority only to cases where wages are admitted, and Mr. Seervai says that if the Legislature intended that the Authority should only try cases of admitted wages, there was nothing easier than for the Legislature to have so stated. It is not correct that our decision leads to the conclusion that the jurisdiction of the Authority is so limited or restricted because there may be various cases within its jurisdiction where the liability to wages is denied or disputed and which the Authority would still be competent to decide. The question as to whether X amount or Y amount is due under the terms of the contract is a case where wages may not be admitted. The employer may say that X amount is due and the servant might say that Y amount is due, and the Authority would have to decide on a true construction of the terms of the contract as to what is the amount due. Therefore, the jurisdiction of the Authority really is to determine the terms of the contract in so far as they relate to the payment of wages and in so far as he has to decide the liability of the employer to pay wages under the terms of the contract. But that jurisdiction does not extend to determining the question as to whether the contract has terminated as alleged by the employer or the contract is still subsisting as alleged by the servant.

7. Mr. Vakharia has contended that this petition is not maintainable inasmuch as a specific legal remedy was open to the petitioner and he should have availed himself of that remedy rather than come to this Court on a petition for a writ of certiorari, and reliance is placed on Article 227 of the Constitution which confers upon the High Court powers of superintendence not only over all Courts but also over all tribunals throughout the territories in relation to which the High Court exercises jurisdiction. We have already taken the view that the superintendence of the High Court is not confined to administrative superintendence, it also includes judicial superintendence, and undoubtedly the High Court has power to correct any decision of a tribunal within its jurisdiction through its powers of superintendence. But in order that a petition for a writ of certiorari would not lie, the petitioner must have a specific legal remedy, and specific legal remedy in this context can only mean that he must have a right to approach a Court and he must have a right to a remedy if his case was just. Article 227 only deals with the power of the High Court and not with the rights of litigant. A litigant may approach the High Court, but he has no right to do so, nor

has he a right to a remedy because the High Court may refuse a remedy under Article 227. Therefore the mere power of superintendence conferred upon the High Court does not disentitle a petitioner seeking a writ of certiorari from coming to this Court and asking for that writ. It cannot be said under the circumstances of the case that he had an alternative specific legal remedy open to him which he should have availed of before he asked for a prerogative writ.

8. The result is that in our opinion the order passed by the Authority was an order without jurisdiction. Therefore, that order must be corrected by a writ of certiorari. We, therefore, direct the issue of a writ of certiorari.

9. Mr. Seervai very fairly stated to the Court that as this was a test case and respondent 1 wanted a decision on the point raised which was of considerable importance, he himself should bear the costs of this petition. We, therefore, order that respondent 1 should pay the costs off the petition.

Order accordingly.