

BOMBAY HIGH COURT

Anthony Sabastin Almeda

Vs.

R.M. Taylor

Spl. C. A. No. 367 of 1956

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

26.07.1956

JUDGMENT

Chagla, C.J.

1. his petition challenges a decision of the Chief Judge of the Small Cause Court, Bombay by which he held that the Authority under the Payment of Wages Act had no jurisdiction to entertain the application made by the petitioner and 116 other against the Naval Dockyard for payment of part of their wages illegally deducted. The facts briefly are that these 117 persons were employed as lorry drivers in the Indian Naval Dockyard and from May 1945 to July 1947 their wages were Rs. 100/- per month. In August 1947 their wages were reduced from Rs. 100/- to Rs. 70/-. On 31-12-1947 rules were framed by the Governor General under Section 241(2), Government of India Act and these rules were issued in a notification and under this the wage scale for the lorry drivers was fixed at Rs. 60-75. It appears that these lorry drivers were asked to elect as to whether they would accept this wage scale and also if they did accept, the wage scale was to operate from 1-1-1947. They elected to accept this wage scale. As a result of the election they were given the top of the grade viz. Rs. 75/- and Rs. 25/- were given to them as personal pay. The result was that their wages were brought up to the wages they were getting on 1-1-1947 viz. Rs. 100/- per month. The grievance of these employees was that from August 1947 their wages were reduced to Rs. 80/- and they were paid Rs. 75/- and only Rs. 5/- as personal pay and, therefore they went before the Authority under the Payment of Wages Act, contending that the deduction of Rs. 20/- every month was an illegal deduction and that the employer should be asked to refund this amount. The Authority, after considering the evidence before him, came to the conclusion that the contract between the parties was that the employer was liable to pay only Rs. 80/- and not Rs. 100/- as claimed by the employees. The employees went in appeal to the Small Cause Court and the learned Chief Judge came to the conclusion that in view of the contention raised before the Authority, he had no jurisdiction to decide the application made by the employees on merits. He, therefore, dismissed the appeal. It is against that order that the

employees have now come on this petition.

2. Mr. Sule's contention before us is that the Chief Judge should have heard the appeal on merits and should not have dismissed it on the preliminary ground that the Authority had no jurisdiction to entertain this particular application.

In order to decide this question we have carefully to bear in mind the nature of the jurisdiction that the Authority under the Payment of Wages Act exercises. He constitutes a Court or a Tribunal of summary jurisdiction and the clear object of the Legislature in setting up this Court or Tribunal was to give facilities to the employee to recover his wages as expeditiously as possible. Gross delays in a Civil Court are notorious and it was but proper that a workman getting small wages should not be prevented from recovering them merely because the employer took up a refractory attitude and drove the employee to a civil Court, to litigate his rights. Therefore, it could never have been the object of the Legislature that the Authority under the Payment of Wages Act should try and decide complicated questions which should ordinarily and normally be heard by a Civil Court. What the authority has to determine is whether there has been an illegal deduction of wages. In order to determine that he has to determine what are the wages to which the employee is entitled and again to determine that, he must decide what the contract between the employer and the employee is which entitles the employee to receive wages. Under these circumstances, there is no dispute between the employer and the employee as to the contract which regulates the conditions of service of employment. The dispute is as to what the employee is entitled under that contract. The employer may take up the contention that a certain amount is not due to the employee under the contract. It would be open to the Authority to decide what is the quantum of wages due and whether that quantum has been paid or not. We considered the ambit of the jurisdiction of the Authority under the Payment of Wages Act in '*A.R. Serin v. B.C. Patil*', and we laid down that 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. In that case the question that arose was whether the Authority had the jurisdiction to determine whether the contract was terminated as alleged by the employer or the contract was still subsisting as alleged by the employee and we held that the Authority had no such jurisdiction. The question that now arises is in a sense different from the question that arose in Serin's case. What the authority is now asked to decide is not what is the contract between the employer and the employee but which is the contract which regulates the terms of employment between the parties. In our opinion, the jurisdiction of the Authority is limited to decide what is contract in the sense of construing the contract in order to determine the liability of the employer to pay wages. But when the employer and the employee come before him and rely on different contracts it is not within his jurisdiction to decide which of the two contracts holds the field, which of them is subsisting and under which of them the employer is liable to pay wages. It is only when there is no dispute as to the contract that subsists and regulates the rights and liabilities of the parties that the jurisdiction of the Authority arises to determine the quantum of wages. But when the very basis of the relationship is in dispute and in controversy, the legislature did not intend that a Court of

summary jurisdiction should decide that important question. Now, in this case it is clear that the parties are not agreed as to the contract which regulates their rights or liabilities and under which the liability of the employer arises to pay wages. According to the employee, he is entitled to receive Rs. 100/- by reason of the notification issued on 31-12-1947 and by reason of the election made by him by which he was to receive Rs. 75/- as wages and Rs. 25/- as personal pay. According to the employer, there was a new contract entered into prior to August 1948 and under that contract the liability of the employer was to pay only Rs. 57/- as personal pay and not Rs. 25/-. It would be noticed that there is no

¹⁵³ Bom. L. R. 674 : (AIR 1951 Bom 423)

dispute as to the quantum of wages. If the subsisting contract is that of 31-12-1947, then, it is clear that the quantum of wages is Rs. 100/-. If, on the other hand, the subsisting contract is the subsequent contract of 1948, then it is equally clear that the quantum of wages is Rs. 80/-. Therefore, what the Authority is called upon to decide is not the quantum of wages under the contract, nor the question of illegal deduction under the contract but what it is called upon to decide is which is the contract subsisting between the master and the servant under which the liability to pay wages arises and in respect of which he has to determine the quantum of wages. When the rival contracts are in the field and the question is under which contract the liability of the employer arises, in our opinion, the Legislature has not conferred the jurisdiction upon the Authority to decide the question. It should also be borne in mind that in this case the employee challenges the factum of the subsequent contract. He also challenges the validity of that contract, assuming that that contract was arrived at. Therefore, the Authority has been called upon to decide not only the factum of the subsequent contract but also its validity. These are questions which, according to us, do not fall within the ambit of the jurisdiction of the Authority.

3. We wish to make it clear in coming to this conclusion we do not for a moment suggest that the employees are without a remedy. Our decision merely amounts to this that this particular summary remedy given to the workmen under the Payment of Wages Act is denied to them in view of the issue that arises for determination. It is always open to the workmen to go to the Civil Court and litigate this question. Mr. Sule has drawn our attention to the fact that the question of limitation may arise and that may defeat the claim of the employees. We are sure that the civil Court to which the employees win go win take into consideration the fact that the employees have been *bona fide* prosecuting the claim for wages in a Court which has now been held has no jurisdiction.

4. The result is that the petition must fail and is dismissed with costs.

Petition dismissed.