Lachhmi Narain Tewari vs District Judge, Lucknow And Ors. on 17 September, 1953

Equivalent citations: AIR1954ALL198, (1954)ILLJ447ALL, AIR 1954 ALLAHABAD 198

JUDGMENT

Randhir Singh, J.

1. This is a petition under Articles 226 and 227 of the Constitution of India and the petitioner prays that the order passed by the Magistrate and upheld by the District Judge under Section 15, Payment of Wages Act (4 of 1936) be quashed as they acted with material irregularity in rejecting the application made by the applicant under Section 15, Payment of Wages Act.

2. The applicant was a ward keeper in the office of the District Controller of Stores, Alambagh, Lucknow. He was in charge of certain stores and some items of the stores were found missing whereupon he was asked to make good the deficiency and the price of the articles lost which amounted to Rs. 883/2/- was ordered to be deducted in monthly instalments of Rs. 49/1/- extending over a period from 1-6-1947 to 30-11-1948. The deductions were made. On 13-7-1950, an application was made under Section 15, Payment of Wages Act to the City Magistrate Lucknow claiming that the deductions from his wages were improper and that the amount deducted should be paid back to him. This application was transferred by the City Magistrate to the Additional City Magistrate (II). It was again transferred to the City Magistrate and was ultimately disposed of by him. He rejected the application as time barred and the applicant then went in appeal to the District Judge. The District Judge held that no appeal lay against the order passed by the Magistrate and dismissed the appeal. The applicant has now come up to invoke the jurisdiction of this Court by a petition of writ.

3. It has been contended on behalf of the applicant that the Magistrate was not within his jurisdiction to admit the plea of limitation, once the application had been admitted and that the subsequent order of dismissal of the application on a point of limitation was incompetent. The proviso to Section 15(2), Payment of Wages Act is as follows :

> "Provided that every such application shall be presented within six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be : Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period."

4. It would thus appear that an application under Section 15 should be made within six months from the date on which the deduction from the wages is made. In the present case the deductions began on 1-6-1947, and the last deduction was made from the salary for the month of November, 1948. The application was made on 13-7-1950, about one and a half years after the last deduction had been made. The application was therefore prima facie barred by limitation but the Magistrate had jurisdiction to entertain it even after the expiry of six months if he was satis-fled that there was sufficient cause for not making the application within such period. When the application was presented on the 13th July, it appears that it was transferred by the City Magistrate to the Additional City Magistrate for disposal and on the 15th July, the Additional City Magistrate passed the following order :

> "Send copy of this plaint to each of the defendants and ask them to submit a written reply within 30 days of the date of this order."

When the replies were filed an issue was framed on 17-3-1951, as follows :

> "Is there any sufficient cause for the applicant not filing the application within six months of the alleged deductions."

The preliminary issue, it appears, was refrained on 1-5-1951 in the following words:

> "Did the applicant have sufficient cause for not making his application in this Court within the prescribed period of six months from the date on which the alleged deduction from the applicant's wages was made."

The Magistrate then heard the parties and came to a finding that the applicant had not sufficient cause for not making the application within six months. On this finding the application was rejected.

5. The main contention on behalf of the applicant now is that the order for the issue of notices to the opposite party should be deemed to imply that the Magistrate had admitted the application and had accepted the cause shown by the applicant for the delay in making the application. No doubt it is within the discretion of the Magistrate under Section 15, Payment of Wages Act to admit an application even after the expiry of the period of six months if he is satisfied that there was sufficient cause for not making the application within time. This admission should however be a conscious admission and a mere order to issue notice to the opposite party can hardly be deemed to be an implied admission in all cases, If the Magistrate thought that before deciding the point of limitation which was based on facts connected with the opposite party, it was proper for him to hear the opposite party and issued notice to the opposite party, he cannot be said to have acted against the principles of natural justice or in an improper manner. There is no order of admission of the application or any order to show that the Magistrate had taken into consideration the grounds given by the applicant in ordering the issue of notice and it cannot be inferred under these circumstances that the Magistrate had satisfied himself about the sufficiency of the cause of the delay and had in fact admitted the application before the order of issue of notice was made.

A supplementary affidavit has now been filed to show that the Magistrate had in fact questioned him about para 4 of his application before Issue of notice, but it appears from the judgment of the Magistrate that no objection was taken before him that the question of limitation had already been decided or that the applicant had already been questioned about the sufficiency of the cause for the delay before the issue of notice. No objection was even taken at the time when the issue was framed in the month of March or when it was reframed on 1-5-1951. We are unable therefore to give credence to the allegations of the applicant that the Magistrate had questioned him about the sufficiency of the cause for the delay. Admission of an application referred to under Section 15 would not mean only the physical act of taking the application and issuing an order but should be a conscious admission of the application. In the present case we are satisfied that the Magistrate had not considered the cause of delay at all when notice was issued and we are unable, therefore to infer that the mere act of ordering issue of notice implied the admission of the application.

6. The jurisdiction of the High Court in matters in writ is limited to cases in which there has been manifest injustice due to non-observance or to the wrong observance of laws regarding procedure or jurisdiction. In the present case no injustice has resulted from the procedure adopted by the learned Magistrate. It was entirely within the jurisdiction of the Magistrate to admit or not to admit the application and if he refused to admit the application after hearing the opposite party he cannot be said to have exercised a jurisdiction not vested in him or to have exercised his jurisdiction wrongly. The petition has also been made with considerable delay. The order of the District Judge dismissing the appeal was made in April 1952 and the present application was made on 11-9-1952. There is no force in this petition and it is accordingly dismissed. We make no order as to costs.