Mohd. Matin Kidwai vs District Executive Engineer, N.E. ... on 18 October, 1954

Equivalent citations: AIR1955ALL180, (1955)ILLJ669ALL, AIR 1955 ALLAHABAD 180

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. Mohammad Matin Kidwai, an employee of the Oudh Tirhut Railway, was dismissed from service sometime in 1945. He instituted a suit against the dismissal alleging it to be wrongful, and also for the arrears of salary due to him. The suit was decreed with respect to the alleged wrongful dismissal. It was decreed that his dismissal was wrongful. His suit for the arrears of the salary was dismissed. That litigation came to an end when this Court disposed of the second appeal in September 1952.

Thereafter, the applicant was reinstated from 1-10-1952. He was not paid any salary or wages for the period from the date of dismissal to 30-9-1952. He filed an application under Section 15, Payment of Wages Act, 1936 to the proper authority claiming these unpaid wages amounting to over Rs. 12,000/-. This application was rejected by the authority in view of his opinion that the claim for the period 3-2-1945 to 23-4-1952 was time barred and that there was bona fide dispute with respect to the remaining claim.

Against this dismissal of his application he went up in appeal to the District Judge. This appeal was dismissed on the ground that no appeal lay to the District Judge under Section 17, Payment of Wages Act, against that order of the authority. He had, therefore, filed this application in revision against the order of the District Judge.

2. We have heard learned counsel for the applicant at length and are of opinion that the order of the court below was perfectly correct. It is fully supported by the case decided in -- P. Kumar v. Running Shed Foreman, E. I. Rly.', AIR 1946 Oudh 148 (A).

A contrary view is expressed in -- 'Mahomed Haji Umar v. Divisional Superintendent, N. W. Bly.', AIR 1941 Sind 191 (B). The question was not directly before the court. But the opinion expressed in.-- 'Khema Nand v. East Indian Rly.', AIR 1943 All 243 (C) is also against the applicant. The question was left open in. -- 'Triloki Nath v. Lord Krishna Sugar Mills Ltd., Saharanpur', AIR 1946

All 276 (D). On the other hand, the case reported in -- 'C. S. Lal v. Shaikh Bad-shah', AIR 1955 Bom 75 (E) supports the applicant. But the expression of opinion in this case was as much 'obiter dicta' as it was in the case reported in AIR 1943 All 243 (C). We are Inclined to agree with the view expressed in AIR 1946 Oudh 148 (A). Section 17, Payment of Wages Act is-

> "(1) An appeal against a direction made under Sub-section (3) or Sub-section (4) of section 15 may be preferred, within thirty days of the date on which the direction was made, in a Presidency town before the Court of Small Causes and elsewhere before the District Court-
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> (a) by the employer or other person responsible for the payment of wages under Section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or
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> (b) by an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees, or
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> (c) by any person directed to pay a penalty under Sub-section (4) of section 15.
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> (2) Save as provided in Sub-section (1), any direction made under Sub-section (3) or Subsection (4) ot section 15 shall be final."

It is clear that an appeal is allowed under this section against a direction made under Sub-section (3)1 of Section 15 in certain circumstances which are mentioned in its Clauses (a) and (b). We are not concerned in the present case with the provisions of Sub-section (4) of Section 15. It was held in AIR 1946 Oudh 148 (A) that an appeal is against a direction which is given, and when no direction is given and an application under Section 15 is rejected no appeal can lie against the rejection of the application. This position is not really disputed by the Sind Chief Court in AIR 1941 Sind 191 (B). But considering the illogical position that an employee could appeal against an order rejecting his. claim partially, that is, allowing his claim to some extent and giving direction to the employer to make payment of the amount allowed and disallowing the application for the balance of the claim and yet no appeal be allowed against the total rejection of the employee's claim, it was held that the expression "direction" in Section 17 should not only apply to positive direction to the employer to make a certain payment, but should include an order which may be said to be a negative direction to the employer not to make the payment of the amount claimed by the employee. It is not necessary to elucidate this logical position for the purpose of this case, as we are of opinion that even if the interpretation of the precise language used in the statute leads to that conclusion the court is not to interpret the precise language in any different manner merely because the Legislature had not been logical in providing for all the eventualities in connection with the certain dispute. It was pertinently remarked in AIR 1943 All 243 (C) :

> "It may be hard that there should not be an appeal in certain cases, but I find it difficult to hold that a refusal to make a direction is a direction."

3. It has been strenuously urged that if such an interpretation be given to the provisions of Section 17, then it may be possible to urge that Section 15, Sub-section (3) did not contemplate the rejection of the application, as Sub-section (3) provides that after making the. necessary 'enquiry the authority may direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit. The authority has to make an enquiry not for making the pretence of enquiry but for coining to a conclusion how far the claim is justified and no provision giving an authority power to decree the claim in full can be interpreted to mean that it has no power to decree the claim in part or to dismiss it in full if the enquiry shows that nothing be due. Sub-section (3) itself does not enjoin the authority to make the order in favour of the employee in all. circumstances. He is given discretion to pass that order, and it seems to mean that he is to pass an order which he considers to be just. He could, therefore, in our opinion, reject the application on merits if he is not satisfied that it should be allowed wholly or in part.

4. Again, it is not for us to consider at this stage what would be the effect of Section 22 on such a claim as that of the employed when that claim is rejected by the authority.

5. We are clearly of opinion and accordingly hold that no -appeal lies when an authority under the Payment of Wages Act rejects an application by an employee under Section 15(3) and does not make any order or direction to the employer for making any payment to the employee. We, therefore, reject this application.