

(1999) 07 P&H CK 0030

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 981 of 1999

Cement Corporation of
India Limited

APPELLANT

Vs

Smt. Chander Kala and
Others

RESPONDENT

Date of Decision: July 9, 1999

Acts Referred:

- Constitution of India, 1950 - Article 227
- Workmens Compensation Act, 1923 - Section 30

Citation: (1999) 123 PLR 368

Hon'ble Judges: Iqbal Singh, J

Bench: Single Bench

Advocate: Abha Rathore, for the Appellant; B.R. Vohra, for the Respondent

Final Decision: Dismissed

Judgement

Iqbal Singh, J.

The only question that requires determination in this case is whether a petition filed under Article 227 of the Constitution of India can be entertained when equally efficacious remedy by way of filing appeal u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") is available.

2. To decide this point, the following facts are necessary to be noticed:-

Vishnu Kumar (deceased) was working as a Clerk in the Tool Room of the Cement Corporation of India Limited, Charkhi Dadri, District Bhiwani, (hereinafter referred to as the petitioner-Corporation). On 7.1.1997, Vishnu Kumar died on the premises of the petitioner-Corporation. According to the post-mortem report, the cause of his death was heart failure. The respondents being heirs of the deceased, made an application before the Commissioner, Workmen's Compensation Act, Bhiwani (hereinafter referred to as

"the Commissioner") for grant of compensation to the extent of Rs. 5 lacs on account of the death of Vishnu Kumar, which was contested by the petitioner-Corporation.

3. The petitioner-Corporation, in the written statement, admitted the deceased to be working as a Clerk, Grade-II. His death was also admitted. It was stated that the death of Vishan Kumar was due to heart failure as is revealed from the post-mortem report conducted on 8.1.1997. It was further stated that the nature of work of the deceased did not cause any strain to him and the death was not due to any such strain. It was further stated that it was not a case of accidental death. The petitioner-Corporation denied its liability to pay compensation.

4. Additional objections that the claim application is false and frivolous and the claimants are liable to special costs; that the application is not maintainable; and that the claimants have no locus standi to file the claim application and the same is liable to be dismissed, were also taken by the petitioner-Corporation.

5. From the pleadings of the parties, the Commissioner framed the following two issues besides that of relief:-

"1. Whether the death of Shri Vishnu Kumar caused by accident arising out of and during the course of employment?

2. Whether the applicants are entitled to the claimed amount or not? If so, what extent?"

6. The Commissioner, vide order dated 25.1.1999, decided both these issues in favour of the claimant-respondents and granted compensation of Rs. 1,56,470/- along with interest at the rate of 12 per cent per annum from the date it fell due upto the date of actual payment. It was further ordered that the compensation amount be paid within one month from the date of order in equal shares to the claimants. The petitioner-Corporation has challenged this order by way of filing this revision petition under Article 227 of the Constitution of India.

7. I have heard the learned counsel for the parties and have gone through the records of the case.

8. The main thrust of the argument of the learned counsel for the petitioner-Corporation is that the deceased was not a workman and the Commissioner, therefore, had no jurisdiction to try the claim application and award compensation and that, therefore, this Court should take cognizance of the matter exercising its jurisdiction under Article 227 of the Constitution of India. To support her contention, she relied on the following cases:-

"1. [A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another](#), ;

2. [Shyam Sunder Azad Vs. Transport Appellate Tribunal, Rajasthan, Jaipur and Others](#), ;

3. *M/s Raza Textiles Limited Rampur v. The Income Tax Officer, Rampur* AIR 1973 SS 1362; and

4. [Bimal Sahoo, Secretary, Basudebpur Girls" High School and others Vs. Gouri Rani Pahari and others, ."](#)

9. To buttress her argument on the basis of above authorities. The learned counsel for the petitioner-Corporation further argued that powers of this Court under Article 227 of the Constitution of India are very wide and can be exercised in matters like the present one. There is no dispute with the proposition of law laid down in the cases referred to by the learned counsel for the petitioner-Corporation, but the question is whether the petitioner has a right to approach this Court under Article 227 of the Constitution of India instead of resorting to the remedy of appeal provided u/s 30 of the Act. A person, who is aggrieved by an order of the Commissioner, cannot be permitted to abandon resort to the statutory remedy of appeal and to invoke the constitutional jurisdiction of this Court. It is true that, despite the existence of an alternative legal remedy, the High Court may interfere in favour of a petitioner under Article 227 of the Constitution, but the present case is certainly not one of such extraordinary cases. It is, therefore, not proper for this Court to entertain a petition under Article 227 of the Constitution against the order of the Commissioner when the procedural law allows an appeal against it and that appeal lay to this Court itself. The jurisdiction under Article 227 of the Constitution is an extraordinary jurisdiction which is to be exercised sparingly and in appropriate cases and it is not to be exercised as if it were an appellate jurisdiction or as if it gave unfettered and unrestricted power to the High Court. (See [Miss Maneck Gustedji Burjarji Vs. Sarafazali Nawabali Mirza,](#)). It is a case where the Commissioner cannot be said to have not the authority to decide the matter. So far as the argument of the learned counsel for the petitioner-Corporation that the deceased was not a workman is concerned, a perusal of the copy of the written statement filed by the petitioner-Corporation before the Commissioner, which has been placed on the record of this case, does not show that any such point was raised by the petitioner-Corporation before the Commissioner. Therefore, no such issue in this regard was framed by the Commissioner. The question regarding jurisdiction involves inquiry and evidence for determination and cannot be legitimately raised at the appellate stage. The petitioner-Corporation cannot be allowed to take a volte face stand now and raise the point of jurisdiction in this petition filed under Article 227 of the Constitution. It cannot be said that the Commissioner lacked jurisdiction to entertain the matter.

10. u/s 30(1)(a) of the Act, an appeal shall lie to the High Court from an order awarding compensation. The proviso to this Section further lays down that no appeal by an employer under clause (a) ibid shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against. The Act is for the welfare of the workmen and it is a salutary provision prescribed therein. The remedy provided under Article 227 of the Constitution is not intended to supersede the mode of

obtaining relief under the Act. The petitioner-Corporation, instead of being sympathetic to the legal heirs of its deceased employee, is trying to delay the payment of compensation by resorting to file this petition under Article 227 of the Constitution and by circumventing the mandatory provision contained in the proviso to Section 30(1)(a) of the Act to deposit the amount payable under the order before filing the appeal under the Act.

11. For the aforesaid reasons, I do not find any merit in this petition and the same is hereby dismissed.