

(1985) 02 AHC CK 0065

Allahabad High Court

Case No: C.M.W.P. No. 8454 of 1982

Jai Prakash

APPELLANT

Vs

VII Additional Dist. Judge and
Others

RESPONDENT

Date of Decision: Feb. 6, 1985

Acts Referred:

- Payment of Wages (Procedure) Rules, 1937 - Rule 12, 17
- Payment of Wages Act, 1936 - Section 17

Citation: (1985) 51 FLR 38 : (1994) 3 LLJ 5

Hon'ble Judges: K.P. Singh, J

Bench: Single Bench

Advocate: S.H. Nigam Murlidhar, for the Appellant; Pradeep Kumar, T.P. Asthana and R.S. Dhawan, for the Respondent

Final Decision: Allowed

Judgement

K.P. Singh, J.

This writ petition arises out of proceedings u/s 15 of the Payment of Wages Act, 1936, initiated at the instance of the opposite party Mo. 3 Ramesh Verma in the present writ petition.

2. The claim of Shri Ramesh Verma was contested by the petitioner through Annexure III attached with writ petition. The prescribed authority gave judgment for the aforesaid Ramesh Verma as is evident from Annexure VII attached with the writ petition. The petitioner preferred an appeal against the judgment of the prescribed authority which was dismissed by the appellate court through Annexure VIII on 18.8.1981. Thereafter an application was moved for recalling the order dated 18.8.1982 and restoring the appeal to its original number but the application was rejected on 12.7.1982 as is evident from Annexure XVII attached with the writ petition. The petitioner in the present writ petition has prayed for quashing

Annexures VIII and XVII.

3. The main grievance of the learned counsel for the petitioner before me is that there is no provision under the Act empowering the appellate court to dismiss the appeal for non-prosecution, hence the appellate court acted illegally in dismissing the appeal on 18.8.1981 and it also committed patent error in not restoring the appeal to its original number through its order, dated 12.7.1982. It has been stressed before me that if the appeal is not heard on merits, the petitioner shall suffer great prejudice and irreparable loss. The learned counsel for the contesting opposite party has submitted in reply that the conduct of the petitioner is such that he is not entitled to invoke jurisdiction of this Court of Article 226 of the Constitution. He has emphasized that sufficient opportunity was given to the petitioner to comply with the order of the Court but the petitioner failed to comply with the same hence he should not be permitted to rake up the controversy again. It is the improper conduct of the petitioner which has brought the impugned orders against him and he should thank himself and the proceeding should not be reopened in the circumstances of the present case. In this connection the learned counsel for the opposite party has mainly relied upon Head Note (a) of the ruling reported in [Asiatic Engineering Co. Vs. Achhru Ram and Others](#), .

4. I have considered the contentions raised on behalf of the parties and I have gone through the provisions of Payment of Wages Act, 1936 and the Payment of Wages Procedural Rules, 1937. Section 17 of the Act provides an appeal against the order passed u/s 15 of the Act and Rule 12 of Payment of Wages Procedural Rules, 1937 provides the manner how the appeal shall be preferred. The bare perusal of Section 17 and Rule 12 would indicate that there is no specific provision under which the appeal could be dismissed for want of prosecution. The learned counsel for the petitioner has invited my attention to an unreported decision Jamail Ram v. H.C. Shukla, wherein it has been laid down that the appeal under the Payment of Wages Act cannot be dismissed in default.

5. In the present case no doubt the petitioner has committed an error in not supplying the requisite copies despite sufficient opportunity given to him. In the order dated, 12-7-1982 the appellate court has observed as below:-

"That the appellant/applicant had gone to Delhi, he could have directed his counsel to furnish the copies as ordered by the court. Not only this the order was initially passed on 30-7-1981 and the compliance was first to be made by 6-8-1981 and then by 13-8-81 and then by 17-8-81. It was only when the appellant failed to comply with the order that the appeal was dismissed. This shows the greatest carelessness and negligence on the part of the appellant. Even in the affidavit the ground mentioned that the application was returned on 20-8-1981 by the court is a fake ground as already discussed above. Thus, under the circumstances I don't think that the application under Order 41, Rule 19, C.P.C. discloses a sufficient ground so as to re-admit the appeal at its original number and the application deserves to be

dismissed".

6. It is noteworthy that when there is no specific provision empowering the appellate court to dismiss the appeal for want of prosecution, the appellate court exceeded its jurisdiction in dismissing the appeal for want of prosecution. The mistake is on the part of the Court in dismissing the appeal and when an application was moved for recalling the order dismissing the appeal it was required of the appellate court to realise its mistake and should have restored the appeal to its original number. In not doing so, the appellate court has not acted reasonably and its order, dated 12-7-1982 deserves to be quashed. In [Smt. K.L. Sehgal Vs. The Commissioner, Allahabad and Others](#), , Division Bench of this Court has observed as below dealing with similar situation in para 13:-

"There is no indication in Section 3 of the Act that the Commissioner may dismiss a revision in default of the applicant. On the other hand, the entire plan of Sub-section (3) indicates that the revision application has to be disposed of on merits. The appellant is, therefore, right in her contention that the Commissioner of Allahabad was wrong in dismissing the revision before him in default of the appellant. Since the Commissioner did not decide the revision in accordance with law, he will have to restore the revision and dispose it of in accordance with law.

7. As I have indicated above that the appellate court could not dismiss the appeal for want of prosecution as there are no provisions empowering the appellate court to proceed with the appeal in .that fashion ana a Division Bench of this Court has also held that the appeal could not be dismissed for default I think that the appellate court should have restored the appeal to its original number.

8. In [\(Lala\) Paras Ram Vs. Smt. Noor Jahan Begum and Another](#), a learned Single Judge of this Court has indicated that where a Court is anxious that its order should be obeyed, it should be careful to provide in its order what consequences "will follow in case it is not complied with. In the present case I do not find that the appellate court has given any warning to the appellant that if the requisite copies were not supplied by the time fixed, the appeal would be dismissed. I think that the appellate court acted illegally and with material irregularity in dismissing the appeal for want of prosecution on 18.8.1981. No doubt two or three opportunities were given to the petitioner to supply the relevant copies but on 13.8.1981 no indication was given to the effect that in case of failure to comply with the order of the Court, the appeal was liable to be dismissed. I think that the order, dated 18.8.1981 dismissing the appeal for want of prosecution is patently erroneous and deserves to be quashed.

9. The learned counsel for the contesting opposite party had suggested that the appeal filed by the petitioner was not a competent appeal, hence it could be dismissed by the appellate court. He had also emphasized that the petitioner did not comply with the order of the Court within the reasonable time and his conduct is

such that this Court should not interfere with the impugned orders passed by the appellate court. In my opinion when the order passed by the appellate court is in excess of its jurisdiction and suffers from patent error of law it deserves to be quashed. The impugned orders of the appellate court will cause great hardship and injustice to the petitioner. The conduct of the petitioner in not prosecuting the appeal with greater diligence in the circumstances of the present case is not such as to disentitle him to invoke the jurisdiction of this Court under Article 226 of the Constitution. The Court is meant for advancing justice between the parties. The order of dismissal of the appeal in the circumstances of the present case is wholly unwarranted and without jurisdiction. I am unable to accept the contention raised on behalf of the opposite party in the present case that there was no proper appeal before the appellate court because necessary copies were not attached with the memo of appeal. It appears that appellate court had admitted the appeal after finding it in order and thereafter it appears that the copies of the memorandum of appeal were wanting due to some mistake on the part of the agent of the petitioner or on the part of the official of the Court. The contention of the learned counsel for the opposite party that there was no appeal before the appellate court in the eye of law is not acceptable to me because the appeal was admitted and thereafter the defect was found out for which the petitioner was granted time to remove that defect.

10. In the result, the writ petition succeeds and the impugned judgments of the appellate court contained in Annexures VIII and XVII to the writ petition are hereby quashed and the appellate court is directed to decide the appeal expeditiously. The parties shall be given reasonable opportunity to do what is necessary in the circumstances of the case and their claims should be decided strictly in accordance with law at an early date. If possible, the appellate court should decide the appeal within two months from the receipt of the order of this Court. In the circumstances of this case I do not make any order as to costs.