(1959) 07 GAU CK 0003

Gauhati High Court

Case No: Civil Revision No''s. 3 and 4 of 1959

Cachar Cha Sramik Union and Another		APPELLANT
	Vs	
Manager, Majhegram Tea Estate		RESPONDENT

Date of Decision: July 28, 1959

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Constitution of India, 1950 - Article 226, 227
- Minimum Wages Act, 1948 - Section 15, 20, 20(2), 3, 5(1)
- Payment of Wages Act, 1936 - Section 15, 7

Citation: AIR 1960 Guw 123

Hon'ble Judges: C.P. Sinha, C.J; G. Mehrotra, J

Bench: Division Bench

Advocate: N.M. Lahiri, for the Appellant; P. Choudhari, for the Respondent

Final Decision: Allowed

Judgement

G. Mehrotra, J.

These two revisions have been filed u/s 115 of the CPC and Article 227 of the Constitution against the orders passed by Sri K.L. Ray, the appointed authority under the Minimum Wages Act dated 3-10-1958 and 10-10-1958 respectively.

2. The facts giving rise to Revision No. 3/59 are that Atul Chandra Amkura, Petitioner No. 2 is an employee of the Chandighat Tea Estate, Cachar and is a member of the Cachar Cha Sramik Union, -- Petitioner No. 1 in the present petition. He is working as Pharmacist though he is designated as dresser under the Tea Estate and is getting a salary of Rs. 54/- per month. On coming in force or the Minimum Wages Act 1948 in the Tea Industries of Assam, the Government of Assam appointed a Committed u/s 5(1)(a) of the aforesaid Act to hold enquiries and advise them in fixing minimum rates of wages for employees specified in Part I of the Schedule of the Act. After the

Committee submitted its report, the Government of Assam by Notification dated 11-3-1952 fixed the minimum rules of wages and dearness allowances for the employees in the tea plantation in Assam.

3. The grievance of the Petitioner is that he was not getting the minimum wages fixed by the State Government under the aforesaid Notification and he made repeated demands from the opposite party to pay the wages fixed under the aforesaid notification; but no payment was made. The Petitioner No. 2 then made an application u/s 20 of the Minimum Wages Act hereinafter called the Act, through the General Secretary, -- Petitioner No. 1 and claimed thereunder Rs. 1945/- being the difference between his minimum wages and the actual wages paid to him from 1-4-52 to 31-5-57 and further demanded compensation at ten times of the said amount amounting to Rs. 19,450/-. Originally the claim of the Petitioner was based on the ground that he belonged to the class of artisans whose minimum wages have been fixed under the aforesaid notification. But subsequently he made an application praying for an amendment of the petition whereby he based his claim on the ground that he belonged, if not to the artisan class to the clerical and medical staff. The minimum wages fixed for an artisan under the aforesaid notification is Rs. 90/- and for the staff Rs. 60/-. The petition was contested on the ground that the Petitioner was not an artisan.

4. The Additional Deputy Commissioner, by the impugned order rejected the petition on the ground that Petitioner No. 2 was not an artisan. In the present petition, it is urged that the prescribed authority failed to consider the application for the amendment of the ground filed by the Petitioners and did not apply its mind to the case of the Petitioner that he was entitled to the minimum wages fixed for the staff under the aforesaid notification. Even if he is deemed not to be an artisan, the Petitioner, in any case, was a member of the medical staff and was entitled to the minimum wages fixed under the aforesaid notification for the members of such staff.

5. In Revision No. 4/59, Narayan Tantubal, Petitioner No. 2 is in the employment of Majhegram Tea Estate, Cachar and he alleged that he is a carpenter and thus an artisan within the meaning of the notification of 11-3-1932. In para 2 of the petition, the Petitioner states that he was appointed as a carpenter in Majhegram Tea Estate about 30 years ago and has been working as such since then to the satisfaction of the garden authorities and drawing Rs. 1-8-0 per day. An application was made by him u/s 20 claiming a sum of Rs. 1945/- being the difference between his minimum wages and the actual wages paid to him for the period from 1-4-52 to. 31-5-57 and further claimed a compensation of Rs. 19,450/-. The opposite party, the Additional Deputy Commissioner rejected the petition mainly on the ground that one Beni Bhumij is employed as a carpenter in the garden and the applicant''s services were utilised in tea chest making. The Additional Deputy Commissioner further found that after Beni''s joining, the applicant did not prepare chairs, tables and therefore his

work is not of an expert carpenter. He was therefore not entitled to the wages of an artisan.

6. Mr. Choudury, who appears for the Respondent, has taken two preliminary points. He has firstly contended that an authority appointed to hear and decide the claim u/s 20 of the Act has no jurisdiction to determine the class to which a Petitioner belongs and secondly that no revision lies against an order passed by the authority.

7. Reliance was placed in support of the first ground on certain cases dealing with the powers of an authority appointed under the Payment of Wages Act when deciding applications u/s 15 of the Act. Before I refer to the authorities cited in support of the contention, it will be convenient to consider the provisions of the two Acts. Section 3 of the Act gives power to the State Government to fix the minimum wages of certain employees. Section 20(2) of the Act provides that when an employee is paid less than the minimum wages fixed for his class of work under the Act, the employee himself or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, may apply to such authority for a direction under Sub-section (3):

20. (3) When any application under Sub-section (2) is entertained the authority shall hear the applicant and the employer or give them an opportunity of being heard and after such further inquiry if any as it may consider necessary, may, direct the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid.

8. After the notification has been issued, the employee can claim payment of the difference between his wages fixed under the notification and the wages actually paid to him. If an authority has to issue a direction to that effect, it will necessarily have to examine the notification under which the minimum wages of a claimant have been fixed and to determine what is the minimum wage fixed of the claimant under the notification. This power necessarily implies the power to decide to which class the claimant belongs and if it is admitted to which class he belongs, to decide if the wage of that class has or has not been fixed under the notification. When this section is contrasted with the scheme of die Payment of Wages Act, it will be clear that the authorities cited can have no application to the cases under the Act.

Section 7 of the Payment of Wages Act lays down that the wages of an employed person shall be paid to him without deduction of any kind except those authorised by or under the Act. If any unauthorised deduction is made from the wages of an employee, he can apply u/s 15 of the Payment of Wages Act for a direction of the refund to the employed person of the amount deducted. If the payment of the wages has been delayed, then also the employee can apply u/s 15 for a direction for the payment of the delayed wages. Wages have been defined under the Act. The power to direct the refund of the unauthorised deduction and payment of the

delayed wages does not carry with it the power to determine what should be the wages of the employee under the law. But cases where the claim is made for the minimum wage, it will have to be determined by the authority before rejecting or allowing the claim to determine what minimum wage has been fixed under the notification.

9. Reliance has been placed on the case of A.V. D''costa Vs. B.C. Patel and Another, . In that case, an application was made under the Payment of Wages Act. The employee was employed by the Railway Administration as a carpenter on daily wages and had been treated as a daily rated casual labourer and had been paid his wages at the rate of Rs. 3-40 per day. The employee claimed that he should have been placed on a permanent cadre on the scale of monthly rates of pay and as such entitled to certain amount which was wrongfully withheld. The authority decided that the employee was not a casual labourer but a temporary employee and therefore he was entitled to be on the scale of Rs. 55/- and odd. Against this order of the authority, the High Court was moved by an application under Article 226 of the Constitution and it was held that the authority had not exceeded its jurisdiction. In the Supreme Court, the question was raised as to the power of the authority constituted u/s 15 of the Act. It was held that the authority u/s 15 was a Tribunal of limited jurisdiction and its power to hear and determine disputes must necessarily be founded under the provisions of the Act. The following observation at page 416 of the report will however show that the decision in that case was based on the ground that the authority had no jurisdiction to ascertain the potential wages:
If the parties entered into the contract of service, say by correspondence and the contract is to be determined with reference to the letters that passed between them, it may be open to the authority to decide the controversy and find out what the terms of the contract with reference to those letters were. But if an employee were to say that his wages were Rs. 100/- per month which he actually received as and when they fell due, but that he would be entitled to higher wages if his claims to be placed on the higher wages scheme had been recognised and given effect to, that would not, in our opinion, be a matter within the ambit of his jurisdiction.

The authority has the jurisdiction to decide what actually the terms of the contract between the parties were that is to say, to determine the question of potential wages.

This case, to my mind, clearly lays down that even In a case u/s 15 of the Payment of Wages Act the authority has jurisdiction to decide the terms of the contract and the actual wages payable to the employee, but has no jurisdiction to investigate into the claim of the employee in respect of a potential wages. These observations on the other hand, go against the contention raised by the Respondent.

10. The next case relied upon by the Respondent is Anthony Sabastin Almeda Vs. R.M. Taylor and Another, . In that case the order of the Small Cause Court, Bombay

by which it held that the authority under the Payment of Wages Act had no Jurisdiction to entertain the application made by the Petitioners for payment of a part of their wages alleged to have been illegally deducted was impugned. The High Court of Bombay held that the Small Cause Court Judge was right in coming to the conclusion that the authority had no jurisdiction. Dealing with an earlier case -- of A.R. Sarin Vs. B.C. Patil and Another, , it was observed at page 738 of the report that

in that case, the question that arose was whether the authority had 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.

This passage to my mind clearly lays down that it is open to the authority to interpret the contract. In the present case, the authority was called upon to do nothing else than to interpret the notification under which admittedly the minimum wages were fixed. There is no dispute with regard to the notification under which the minimum wages were fixed.

11. In the case of Prafulla Ch. Chakravarty and Others Vs. Manager, Dewan Tea Estate, . it was held by a Bench of this Court that

the authority appointed by the Government has to decide whether the Petitioner is or is not entitled to any payment under the notification issued by the Government u/s 5 which has fixed the wages. This power necessarily implies power to determine whether a particular employee falls within the category of artisans as defined under the notification. That power cannot be taken away by the State Government.

In another unreported decision of this Court, -- Civil Revision No. 61 of 1958 (Assam), this view was again reiterated by another Bench of this Court and it was held that the authority appointed u/s 20 of the Act had power to interpret the notification under which the minimum wages have been fixed. As regards the second preliminary objection that no revision lies u/s 115 of the Code of Civil Procedure, it is not necessary to examine the several authorities under the Payment of Wages Act. The following observation however, in the decision of this Court in the case of H.G. Henson and Others Vs. M. Sultan, Deputy Commissioner and Another will be apposite:

I may as well point out that apart from the powers vested in this Court under Articles 226 and 227 of the Constitution, the order of the authority is subject to the revisional jurisdiction of this Court u/s 115 of the Code of Civil Procedure." For the

purposes of this case however, it is enough to point out that even if no revision u/s 115 lies, there is ample power of this Court to examine the validity of the order under Article 226 of the Constitution.

12. Coming to the merits of the case in Civil Revision No. 3 of 1959, the only ground on which the Additional Deputy Commissioner had rejected the claim of the Petitioner is that he does not come within the category of artisan. The word ''artisan'' as has been rightly pointed out by the Additional Deputy Commissioner has not been defined in the notification. Its, dictionary meaning is as artificer, i.e., skilled workman, mechanic and handicraftsman. The Petitioner who is a pharmacist and designated as dresser will not come under this definition. But the contention of the Petitioner is that he comes under the other category of staff. The minimum wages of the artisans fixed under the notification is Rs. 90/- and that of the staff is Rs. 60/-. The word ''staff'' has also not been defined; but admittedly the Petitioner having been engaged on a monthly salary basis discharging the duties of a dresser was one of the members of the staff of the Tea Garden; he therefore comes within the category of ''staff'' under the notification.

The Additional Deputy Commissioner does not appear to have applied his mind at all to this question in spite of the petition having been filed by the Petitioner in that respect before him. From the order-sheet also, it appears that the petition for the amendment of the ground on which the claim was based was allowed. In these circumstances, the order of the Additional Deputy Commissioner is manifestly erroneous and accordingly. I allow this revision, set aside the impugned order and send back the case to the Additional Deputy Commissioner for disposal according to law. Remand is necessitated because there are other points raised by the parties which have not been decided by the Additional Deputy Commissioner.

13. Coming to Revision No. 4 of 1959, admittedly the Petitioner was an artisan as he was a carpenter at the time when the petition was made. He might have been utilised only for the purposes of making tea chests and the work of preparing chairs and tables might have been entrusted to other employee. But that does not mean that the Petitioner ceased to be an artisan. He is a person who comes, in our opinion, within the definition of an artisan. It is also not the case of the employer that he was not employed as a carpenter. The only thing which the Additional Deputy Commissioner has found is that his work appears not to be that of an "expert carpenter".

The notification does not lay down any qualification nor does it specify that only carpenters who are expert in the opinion of the employer will be entitled to the minimum wages fixed under the said notification. The point however argued by the Respondent is that the Petitioner was employed on a daily wages. He therefore does not come under the second category of the employees whose wages have been fixed under the notification. The notification, according to the Respondent, divides the employees whose wages have been fixed under the said notification into two

broad categories, -- (1) ordinary unskilled labour and (2) staff and artisan. Under the category of ordinary unskilled labour, the minimum wages are fixed on the daily basis. Under the second category, the minimum wages are fixed on the monthly basis. The fact that the Petitioner has been getting wages on daily basis is indicative of the fact that he falls outside the second category, namely, of the staff and artisan and falls under the first category of "ordinary unskilled labour".

The contention is that he may be a carpenter, but-his employment being on a daily basis, he falls under the first category. This argument is countered by the Petitioner''s counsel. He contends that if the Petitioner comes within the category of artisan, he is excluded from the category of ordinary unskilled labour and is entitled to the minimum monthly wage fixed for artisans under the notification. Mr. Choudhuri, counsel for the Respondent in reply contends that if the contention of the Petitioner is accepted the result will be that the authority will also have power to change the category of employment and treat the Petitioner as an employee on monthly basis although in fact he has been engaged on a daily basis, and thereafter determine the minimum wages to which he is entitled under the notification. That will be surely not within the competence of the authority u/s 20. The argument advanced by the opposite party is no doubt plausible on the face of it. But in the present case, we do not think it necessary to decide that question. In answer to the questions put by the Petitioner to the employer in the course of the proceedings before the Additional Deputy Commissioner, the employer admitted that the Petitioner was drawing a monthly salary. The employer was asked to reply to following question -- "That the applicant on the date of application was getting Rs. 1.50 NP per day" and the answer given was as follows:
In view of that admission, it is not necessary to examine the larger question raised by the parties. The decision of the Additional Deputy Commissioner is also based on the assumption that the Petitioner is an artisan and but for the fact that he is not expert carpenter, he would have been entitled to the minimum wages fixed under the notification.

14. I accordingly allow this petition also set aside the order of the Additional Deputy Commissioner and send back the case to him for determination of the other questions raised in the case. In the circumstances of the cases, I make no orders as to costs.

C.P. Sinha, C.J.

15. I agree.