

P.C. Velayudhan Vs The Authority under the Payment of Wages Act and Another

None

Court: High Court Of Kerala

Date of Decision: Dec. 16, 1971

Acts Referred:

Payment of Wages Act, 1936 " Section 1, 15

Citation: (1972) 2 LLJ 304

Hon'ble Judges: M.U. Isaac, J

Bench: Single Bench

Judgement

M.U. Isaac, J.

This writ petition has been filed by an employer who has been directed by the first respondent, the Authority under the

Payment of Wages Act, Kerala, by its order, Ext. P-1, dated 24th July, 1969, to pay to his dismissed employee, the second respondent, a sum of

Rs. 468 being the wages payable to him in respect of the period from 1-4-1968 to 15-10-1968. This order has been made on an application

made u/s 15 of the Payment of Wages Act, 1936.

2. The second respondent was admittedly an employee of the petitioner, who dismissed him on 15-10-1968, after conducting an enquiry against

him for misconduct. The second respondent filed an application under the Kerala Shops and Commercial Establishments Act, 1960, questioning

the dismissal, and claiming reinstatement with back wages. That application is pending. The petitioner contended before the first respondent that

the second respondent's application u/s 15 of the Payment of Wages Act, 1936, was not maintainable, since at the time of presenting that

application, the second respondent was not an employee, as he had been already dismissed from his employment. That contention was rejected by

the first respondent. In this writ petition, the petitioner questions the correctness of that decision. He has also raised another contention, viz., that

the application before the first respondent was not maintainable as the second respondent was prosecuting another proceeding for the same relief

under the Kerala Shops and Commercial Establishments Act, 1960.

3. In support of the first contention that an ex-employee is not entitled to relief under the Payment of Wages Act, counsel for the petitioner relies on

a single Bench decision of the Madras High Court in Wakefield Estate (by Hitchi Gowder) Vs. Maruthan Uchi and 31 Ors. (Neelamalal Plantation

Workers" Union), . That decision holds that the summary remedy available under the above Act is available only for a person who is in

employment, and that an ex-employee is not entitled to any relief under the Act. This decision certainly supports the petitioner. But the above view

has been dissented from by This Court in Chacko v. Varkey (1961) KLT 840. Counsel for the petitioner submits that the decision of This Court

arose under the Minimum Wages Act; and that, therefore, that decision does not apply to the instant case. I am unable to accept the above

contention. It is true that the decision of This Court arose under the Minimum Wages Act, but the decision states the reasons for not accepting the

view taken by the Madras High Court. I am in full agreement with the reasons stated in the said decision.

4. The second respondent"s claim was one arising out of ""delay in payment of the wages of a person employed in the establishment"" , and he is,

therefore, entitled to apply u/s 15(2) of the Payment of Wages Act for an order directing the payment of the said wages. The petitioner was a

person employed""; and what he claimed is delayed wages. These two requirements are sufficient to attract the application of Section 15. Counsel

for the petitioner refers me to Section 1(4) of the Payment of Wages Act; and contends that the Act would not apply to an ex-employee. Section

1(4) reads:

(4). It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a

factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway

administration.

I am unable to agree with the argument that the expression ""persons employed"" means only persons in employment, and that it would not take in

persons who were employed. I do not also find any reason why in the matter of enforcement of a claim for wages wrongly deducted or delayed,

an ex-employee should be treated differently from a person in employment. The Act is intended to give a speedy remedy for recovery of wages

due to an employee ; and as I read the relevant provision in the Act, I do not find anything therein to exclude an ex-employee from the benefits

thereof.

5. There is no force in the contention that the second respondent"s claim u/s 15 of the Payment of Wages Act is not maintainable in view of the

action which he has taken under the Kerala Shops and Commercial Establishments Act, 1960, which includes the claim for back wages. The latter

proceeding is for a larger relief; and the only effect of the action taken by the second respondent u/s 15 of the Payment of Wages Act is that he

would not be entitled to get any relief in respect of that matter in the action taken by him under the Kerala Shops and Commercial Establishments

Act.

6. In the result, this writ petition is dismissed. The petitioner will pay the costs of the second respondent.