

(1962) 01 BOM CK 0013

Bombay High Court (Nagpur Bench)**Case No:** Special Civil Application No. 62 of 1961

Namdeo Shrawan Lokhande

APPELLANT

Vs

Chocks Canning and Mining Ltd.
and OthersRESPONDENT

Date of Decision: Jan. 9, 1962**Acts Referred:**

- Central Provinces and Berar Industrial Disputes Settlement Act, 1947 - Section 16, 40, 41
- Payment of Wages Act, 1936 - Section 15, 2

Citation: AIR 1962 Bom 303 : (1962) 64 BOMLR 481 : (1962) ILR (Bom) 516 : (1962) 2 LLJ 323**Hon'ble Judges:** Kotval, J; Abhyankar, J**Bench:** Division Bench**Advocate:** C.S. Dharmadhikari, for the Appellant;

Judgement

Kotval, J.

(1) The petitioner Namdeo Shrawan Lokhande was employed by the opponent No. 1, the Chocks Canning and Mining Ltd., Motibagh, Nagpur. He was dismissed from service by an order passed on 6-6-1956 with effect from 1-6-1956. The petitioner took no steps to get the order set aside u/s 16 of the C. P. And Berar Industrial Disputes Settlement Act, 1947, nor did he claim back wages within six months as provided by sub-section (2) of section 16. But the petitioner made an application to the District Industrial Court for a declaration that the dismissal amounted to an illegal change and that the change should be declared to be illegal. This declaration was granted to the petitioner. Consequent upon the declaration that the change was illegal, the petitioner filed an application u/s 15 of the Payment of Wages Act before the Payment of Wages Authority at Nagpur claiming wages for the period from May, 1956 to the end of November 1958, that is to say, the date on which he

made his application to the Payment of Wages Authority.

(2) The application u/s 15 was dismissed by the Payment of Wages Authority on 30-11-1959 on the short ground that the petitioner had not obtained any order of reinstatement nor an order for back wages and that therefore the petitioner was not entitled to receive wages for a period for which he had not worked. The Authority referred to the definition of wages contained in section 2(vi) of the Payment of Wages Act. That view of the Authority was confirmed by the appellate authority, the Extra Assistant Judge, Nagpur, on his order passed in Misc. Civil Appeal No. 250 of 1959 on 11-8-1960. It was against those orders of the Authorities below that the present petition was filed on 9-1-1961.

(3) No doubt, there has been some delay in the filing of the petition in so far as the appellate order which is the operative order before us was passed on 11-8-1960 while the petition was filed on 9-1-1961. But the delay has been explained by the petitioner in paragraph 6 of the petition which has been supported by an affidavit. For the reasons stated in paragraph 6 supported as they are by an affidavit we accept the explanation. There has been no appearance on behalf of the opponents and no counter-affidavit filed. The delay in our opinion cannot affect the prosecution of the present petition.

(4) Turning to the merits of the petition, it has been urged by Mr. Dharmadhikari on behalf of the petitioner that since the dismissal was held illegal by the District Industrial Court, the petitioner has a right to urge that he continued in the employment of the respondent Company and that therefore he should be held to be in the employment of that Company. We think that this contention is sound and ought to be upheld.

(5) The definition of "wages" in section 2(vi) of the Payment of Wages Act, as it originally stood, was as follows:

" "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable. . . . " No doubt, the definition as it originally stood referred to the terms of the contract of employment, express or implied, and if the matter had stood at that, we might have held that any term or condition which was introduced by operation of law might not have been included. But the definition has undergone a radical change by the amendments effected by the Amending Act 68 of 1957 which came into force on 1-4-1958. As amended the definition runs as follows:

" "wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and included-

Therefore, the words "if the terms of the contract of employment, express or implied, were fulfilled" have been substituted by the words "if the terms of employment, express or implied, were fulfilled". It seems to us that the amendment makes a crucial difference in so far as previously that amount alone would fall within the definition of wages which was payable in terms of the contract of employment, express or implied, whereas now all remuneration payable if the terms of employment, express or implied, were fulfilled, would be included. In our opinion, having regard to the provisions of sections 40 and 41 of the C. P. And Berar Industrial Disputes Settlement Act if a declaration be obtained by a worker that the charge made in dismissing him is illegal then that declaration could well fall within the ambit of the expression "terms of employment, express or implied" in the amended definition. Therefore, since the petitioner had obtained a declaration that the change effected by his dismissal was illegal, the declaration can be taken into account as being one of the terms of his employment within the amended definition, and therefore the order of the District Industrial Court would operate to show that he continued in the employment of his master the respondent No. 1. In that view, the orders of the Authorities below cannot be sustained. The petitioner is entitled to have his application tried and if he succeeds in proving the quantum of the wages due to him, the Authority under the Payment of Wages Act would be entitled to grant him those wages. As to any other point that may be raised, other than the one decided by this judgment, we express no opinion.

(6) The petition is allowed. The matter will now go back to the Payment of Wages Authority for the decision of the application of the petitioner u/s 15 of the Payment of Wages Act, according to law. There shall be no order as to costs. (7) Petition allowed.