
Gh.Rasool Wani Vs Gh.Mohd.Wani

Civil Revision No. 119 of 1975

Court: Jammu & Kashmir High Court

Date of Decision: Dec. 4, 1979

Acts Referred:

Constitution of India, 1950 " Article 227#Constitution of Jammu and Kashmir, 1956 " Section 104#Jammu and Kashmir Civil Procedure Code, 1977 " Section 115#Payment of Wages Act, 1936 " Section 15, 17(2)

Citation: (1980) JKLR 1 : (1980) KashLJ 173

Hon'ble Judges: Mian Jalal-Ud-Din, C.J; G.M.Mir, J and Mufti Baha-Ud-Din Farooqi, J

Bench: Full Bench

Advocate: P.L.Handoo, M.L.Bhat, Advocates appearing for the Parties

Judgement

Mir, J.

In view of the importance of the questions and because of the divergence of opinion amongst various High Courts in the country on

the points involved, the defence has been made by a Division Bench of this court to this Bench for determination by the Full Bench, the questions

as to, whether the Authority appointed by the State Govt under sec : 15 Payment of Wages Act, is a civil court; and, whether the said Authority is

subject to revisional jurisdictional of the High Court under sec : 115 C.P.C

2. The facts of the cases are brief and simple. On an application filed by Gh Mohd Wani before the Asst Labour Commissioner, Anantnag for

recovery of the arrears of wages from one Gn. Rasool Wari, a summons was issued to the respondent through a local Newspaper for his

presence. The respondent was then summoned by a notice in registered coverbut he remained absent and the Authority proceeded against him in

exparte and after recording statements of some of the witnesses gave a direction in terms1; of sub section 3 of the Sec : 15 of the Payment of

Wages Act, for the recovery of an amount of Rs. 5400/ from the said respondent on 2.4.1975. It was on 11.4.1975 that the respondent presented

himself before the Authority and submitted an application for setting aside the ex parte direction against him and prayed that he may be heard. The

Authority, however, rejected his application. That order of the Authority is impugned in this petition.

3. The petition in the beginning was lodged both under section 115 CPC as well as under Art. 227 of the Constitution of India read with Section

104 of the Constitution of J&K. State, but at the time of admission of the petition, it was submitted and the court agreed with the submission that

the petition be treated only as an application in revision and not a writ petition under the Constitution. This was repeated during the arguments and

therefore, hearing was confined to maintainability of the petition under the Code of Civil Procedure.

4. Before proceeding further let me examine the relevant provisions of the payment of wages Act (hereinafter referred to as the Act).

By virtue of Sec : 15 (1) of the Act, the State Govt may by Notification in the official Gazette appoint any officer with experience as a Judge of a

civil court or a stipendiary Magistrate or a Commissioner for workman's Compensation to be the 'Authority' to hear and decide claims arising out

of the deduction from the wages of persons employed by any employer. The Authority is empowered to hear the appellant and the employer on an

application by any person to the effect that an illegal deduction has been made by the employer from his wages and may without prejudice to any

other penalty to which such employer or other person may be found liable, give a direction for the refund to the employee of the amount found

deducted. The Authority may even allow such compensation as it may think fit in its discretion. The Authority may under subsection 4 of Sec; 15 of

the Act, if it is satisfied that the application was malicious or vexatious, give a direction for an amount of penalty to be paid to the employee. The

amount deducted to be paid u/s 15 may be recovered in two ways. If the Authority is a Magistrate by the Authority itself as if it were a fine

imposed by him as a Magistrate, and if the Authority is not a Magistrate, to whom the authority makes application in this behalf. The said

Magistrate thereupon would proceed to recover the amount as if it was a fine imposed by such Magistrate himself, Sec. 17 of the Act provides for

an appeal both by the employer and by the employee under certain conditions. The right of appeal to the employer is given only in cases where the

direction for the payment of an amount exceeding Rs. 300/ is given: and the employee could file an appeal to the District Court of the total amount

of wages claimed to have been withheld from him exceed Rs 50/. Section 17 subsection (2) lays down that ' Save as provided before any direction

made by the Authority shall be final". S. 18 lays down as follow :

'Every Authority appointed under Subsection (1) of Sec. 15 shall have all the powers of a civil Court under the Civil Procedure Code 1908 for the

purposes of taking evidence and of enforcing attendance of witnesses and compelling the production of documents and every such "Authority" shall

be deemed to be a civil court for all purposes of S. 195 of Chapter XXXV of the Code of Criminal Procedure.

Sec : 22 of the Act enacts that no court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so

claimed forms the subject of an application u/s 15 of the Act The State Govt is empowered to make rules to regulate the procedure to be followed

by the Authority in matters brought before it u/s 15 of the Act. The State Govt has therefore, made rules and a reference to these shows that the

Authority may dismiss an application for the applicant's failure to attend on a specified date. If the employer fails to appear, the Authority is

empowered to decide the application exparte. The Authority has to maintain a record of the proceedings and in cases where an appeal lies, the

Authority has to make a record of the substance of evidence produced before it. The Authority is next asked to abide by the orders given in the

1st. Schedule of Code of Criminal procedure with such alternations as the authority may consider fit but such an alternation should not have the

effect of affecting the substance of the order in the Schedule Specimen copies of the forms of application and forms in other proceedings are

appended to the Rules. Each specimen form opens with the words "In the court of Authority appointed under the payment of wages Act, 1936.

5. The contention of the respdt is that the Authority under the Act was not a court within the provisions of Code of Civil procedure, and therefore,

no revision against any order of the Authority was maintainable by the High Court under Sec. 115 C.P.C He contended that the Act itself refers to

the authority as "Authority" and its decisions as directions and not as judgments as the final of the courts are called. It was further contended that a

person to be appointed as the authority under the Act need not necessarily be a judicial officer or a Magistrate. Next contention raised by the

Respdt : was that under the Act rule making power was Legislature been that the Authority would be a court in the sense the term in used in the C.

P. C., the rule making powers could have been conferred on the High Court instead of the State Govt. It was next urged that under Sec 18 of the

Act only powers exercisable by a court under the Code of Civil Procedure have been specifically conferred on the Authority and as such it was

argued that had the intention of the Legislature been to confer on the Authority under the Act the status of a court, there was no need for the

Legislature to confer upon it only a few of the powers exercisable by a court under the C. P. C. It was, according to the respondent, therefore

obvious that by enacting Sec: 18, the Legislature should be construed to have clearly given notice of its intention and spelled out the position in law

of the Authority under the Act. Next argument submitted was that the Authority under the Act would be able to order execution of its directions

only if the Authority itself was a Magistrate. In other cases the Authority for enforcing its directions has to request for assistance from a local

Magistrate in this regard. It was urged that in enacting the special Act the intention of the Legislature was to provide a machinery for the speedy

and purposeful and effective remedy for disposal of matters arising under the Act and keeping that purpose in view the Legislature said that ""Save

in certain matters of appeal the order of the Authority shall be final"" and therefore, if not directly and in so many words yet certainly and surely the

Legislature has given out its intention that the orders or directions of the Authority would be final and that no revision from its orders would lie to

any court

6. On the other hand it was contended by the petitioner that the Authority under the Act was a court for all purposes and if in the Act the

expression 'direction' is used for its judgments and the word 'Authority' is used for the word 'Court', the same were not such consequence as the

Authority under the Act exercise its jurisdiction by reason of the sanction of law and can take cognizance of a lies and was bound to deal with

applications under the Act in judicial manner. The next contention was that the sample of forms attached to the Schedule under Rules enacted

under the Act indicate by using the word ""court"" in regard to the Authority that the rule making powers intended the Authority to be a court.

7. On a perusal of a large number of judgments on the points under reference it is apparent that there was sharp divergence of opinion amongst

various High Courts as to whether the Authority under the Act was a court and whether it was amendable to revisional jurisdiction of the High

Court u/s 115 CPC. AIR : 1946 Lahore : 316 (FB) is a leading authority in favour of the proposition that the authority was a court within the

meaning of Sec : 115 of the CPC. The same view is expressed in AIR 1942 Pat: 33 and AIR : 1951 Pat : 140. On the ether hand in AIR 1949

Bombay 88 AIR : 1950 : Allah : 80, AIR 1970 : Ori : 121 a contrary view has been taken and it has been laid down that the Authority was not a

court with in the meaning of Sec : 115 of the CPC and as such the revision against an order of the Authority was not maintainable. In a later case in

Bombay reported in AIR : 1963 : Bombay : 254 in a writ petition, it was held that the authority under the Act was a court. In some other High

Courts also the matter has been subject matter of arguments and diverse views have been expressed.

8. On reading the provision of the Act and on considering the interpretation placed on these provisions by the High Courts cited above and on

consideration of all other material cited at the Bar such as Supreme Court judgment reported in AIR : 1950 : SC : 188 and AIR : 1951 Cal : 29

AIR : 1970 : Ori: 76. I have reached the humble conclusion that the authority under the Act is not a civil court and as such not amendable to the

revisional jurisdiction of the High Court under Section 115 of the Code of Civil Procedure.

9 For arriving at a proper conclusion with regard to the question as to whether the authority was a court or not it is incumbent to scrutinise various

relevant and important provisions of the Act, such as sections 15, 16, 11, 21 and 22. The provisions of Sec 22: may very likely become handy as

guideline in an attempt to arrive at a reasonable conclusion on the questions raised in the reference. Though in the Act in several sections, such as.

S. 21, word 'Court' has been used but nowhere in the Act the word 'Court' has been defined. For the matter of that the word 'Court' contains its

definition in section 3 of the Evidence Act only. According to that definition it includes all Judges, and Magistrates or persons, except arbitrators,

legally authorised to take evidence. The definition obviously is only an inclusive one. It has been held in a Bombay case that evidence Act and that

it should not be extended beyond its legitimate scope. I agree with this conclusion. No doubt, the Act and the Rules framed thereunder direct the

authority to follow the procedure of a Court of Civil jurisdiction as nearly as possible in ^dealing with matters under the Act but that alone 's

sufficient to conclude that it confers upon that Authority the Status of a court. It could not be denied that there are Tribunals with many trappings

and attributes of a court which nevertheless are not courts in the sense the word 'court' is used in the C. P. C. As pointed out in vol : VII of

Halsbury's Laws of England"" at page 526 and quoted in AIR 1949: Bombay 188:

There are tribunals with many of the trappings of the court which nevertheless are not courts in the sense of exercising judicial power. A Tribunal

is not necessarily a court in the sense of exercising judicial power because it gives a final decision, hears witnesses on oath, two or more parties

appears before it gives decisions which affect the rights of the subjects, there is an appeal to a court.

(10) For a body or a board or for a Tribunal or for any authority the only requirement for holding it to be a court under the C. P. C is not that it

should be styled as such by the Legislature either directly or indirectly, but a further requirement is that it should be a civil court. There are courts

which are not civil courts. There are courts of enquiry and nobody would claim that they are civil courts under the Code of Civil Procedure.

Merely because a person or an authority or an officer is styled as court would not attract application of Sec. 115 CPC to its orders or directions

Sec 17 of the Act gives a right to appeal in certain cases, Sub sec. 2 of Sec: 17 directs that ""save in cases where right of appeal is given under sub

section (1) the direction made by the Authority under SubSection (3) or Section (4) of that section shall be final."" The word 'final' as used in

subsection (2) of Sec ; 17 deserves deep consideration and proper appreciation. It could not be said that the word used in the subsection is

redundant or has no meaning or has a limited connotation. True, it bars a further appeal against an order of the appellate court. In AIR : 1956 :

Mad 79, the word 'Final' has been interpreted in that sense. The judgment says that the word 'final' prohibits a further appeal and not an

application for revision. With respects, I would say that this is not the true and correct interpretation of the word 'final'. The word 'final' in my view

not only prohibits a further appeal but also a revision to the High Court from the directions of the Authority. The aggrieved could file an appeal

against the order of Authority in certain conditions, and the order of the appellate court being a 'case decided' within the meaning of section 115 of

the CPC and the Appellate court itself being under the supervisory jurisdiction of the High Court, the revision against its order was maintainable

under section 115 CPC. The question as to whether a revision was or was not maintainable against an order of the Appellate court under the Act

was not directly involved herein; so I need not dwell on this aspect any further but the Authority under the Act not being a civil court its directions

or orders are not 'case decided' in terms of sec : 115 C. P. C. and therefore, the orders of the Authority were final subject only to appeal to

District Judge or to any other given authority.

(11) In a Bombay case reported in AIR 1946: Bombay : 200 the point that fell for consideration was as what were the powers of Debt

Adjustment Board under the Bombay Agricultural Debtors Relief Act Section 7 of that Act provided that the Board shall have the same powers as

are vested in civil courts under the CPC. It was argued that the Board was a court within the meaning of Code of Civil Procedure. ChaglaJ, as he

then was, observed as follows :

The very fact that the legislature had to vest the Board with powers which the Civil court possess goes to show that the Board is not a court. The

fact that similar powers which a civil court possesses are given to this Board by the Statute does not constitute it a 'court'.

The Board in this case had been vested with all the powers of a civil court but all the same it was not held to be a court for the reasons given The

Authority under the Act has been vested not with all the powers under the Code but only with some powers with regard to summoning of

witnesses etc and surely, makes a difference and may be viewed in proper perspective,

(12) In AIR : 1950 : Nag : 14 which was a case under the Act, while delivering the judgment on behalf of the Division Bench Justice Hidayat Ullah

(as he then was) has observed as follow :

The power in England is based upon the prerogative writ which in India are not available to some of the High Courts The power also exists in

India in an attenuated form in S. 115 CPC and is exercisable only in respect of subordinate courts of civil jurisdiction. This limited power cannot

be extended and can only be exercised if it is clear that the action is required to be taken in respect of a decision of an inferior court of civil

jurisdiction. It cannot be maintained that (barring an issue of a prerogative writ where that bar exists) a general subordination of all tribunals of

whatever kind is, in the nature of things, an incident of the High Court's powers in India and no exclusive jurisdiction can ever be created. The rule

undoubtedly is that the duster of the powers of the High court is not to be readily inferred But where the legislature by clear words creates a new

tribunal, self contained and exclusive, then the matter which need to be considered is not whether the jurisdiction of the High Court is taken away

but whether it was at all there.

Speaking about S. 115 CPC and its application it was observed in the same judgment as follow :

This section (sec 115 CPC) can have application in respect of the courts mentioned in Sec : 3 but not in respect of those courts which have been

given exclusive jurisdiction by express provision of law or by necessary implication."" In the same judgment it has been observed as under :

It is true that under the Rules the Authority can dismiss an application for default of appearance, maintains a record of its proceedings and that

court fees have to be paid and that the Authority also awards costs, but these are by no means the essential attributes of a court of Civil Judicature.

Most administrative tribunals prescribe fees and the appearance of counsel necessitates the award of costs but for the reasons these tribunals do

not become 'Civil Courts'. Nor does the provision about appeal to the Dist : Court constitute the Authority into a 'civil Court'.

It was further said :

If the Authority was a civil court there would be no need to create so many fictions. There would be no need to give it powers under the Civil

Procedure Code . for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents.

Then again :

The power to summon witnesses etc. is not unique to the authority appointed under the payment of Wages Act. Such directions are found in

scores of Acts and in particular reference may be made to the Trade Marks ACT (S. 70). the Patents and Designs Act (S. 65) : the Industrial

Employment (Standing Orders) Act (Sections 5,6 and 11) and the Naturalization Act. (S. 11). It cannot be contended that High Court has

revisional jurisdiction over these officers by reasons of such provisions ...

(13) Division Bench at Nagpur after referring to and discussing a number of authorities on the point came to the conclusion that the Authority

appointed under the payment of Wages Act, is not C. P. C. but an administrative Tribunal and as such not subject to the revisiooal jurisdiction of

the High Court u/s 115 C. P'C.

(14) Similar views have been expressed in AIR : 1970 : Ori: 76 and AIR 1970 : Ori: 121.

(15) Section 20 of the Act provides penalties that may be imposed for offences under the Act. S. 21 gives the procedure in trial of such offences.

It specifically bars the courts to take cognizance of a complaint against any person for an offence under subsection (1) of Sec 20. What is

significant for our purpose is that the expression used in subsection (1) of Sec 21 is 'Court' and not 'other courts'. This subsection begins with and

other subsections of the same section also says that 'No court shall take cognizance'. By employing words 'no court' r and not 'No other court' the

intention of the Legislature appears to be clear inasmuch as that the Authority was not a court as otherwise even if it was intended that only the

Authority should take cognizance of a complaint under the Act, the words used would have been 'no other court'. By using words 'no court', the

legislature may be reasonably inferred to have given out its intention to the effect that the Authority was not to be a court.

(16) The reasoning adopted by their lordships of the Lahore High Court in AIR : 1946 : Lah : 346 for holding the Authority a court has come up

for discussion? and consideration and comments in a number of cases such as, AIR: 1949 Bom: 188, AIR : 1950 : Nag : 14 AIR : 1970 : Ori :

Pages 76 & 121 and has not been followed. The learned Judges of Lahore High Court appear to have reached the conclusion as 'they have

apparently influenced by a decision of the Patna High Court given in a matter before that court arising under the workmen's Compensation Act,

1928 wherein the Patna High Court had held that the Commissioner appointed under the Workmen's Compensation Act was a court. According

to the learned Judges of the Lahore High Court:

The provisions of the payments of Wages Act are almost identical with the provisions of the Workmen's Compensation Act It was held by a Full

Bench of the Patna High Court in ILR : 194. : Pat : 373 that a Commissioner appointed under the Workmen's Compensation Act constitutes an

independent Tribunal and his function is to judge and decide and merely to enquire and advise and in judging or deciding the matters before him he

has to decide judicially and not arbitrarily.

(17) Though the Lahore judgment mentions that the provisions of the Act as well as workmen's Compensation Act were almost identical in terms

and character yet on a simultaneous perusal of both the Act it would be clear that there are provisions which differ. In my view if I may say so with

respects the comparison of the provisions of the Act of Legislature on a particular subject to the other of a different character and on a different

subject and on the basis of the comparison to reach the conclusion that the authority or the Board or the person, as the case may be, appointed

under one Act already held to be a court would similarly and automatically confer upon the authority or the Board or the officer, as the case may

be, empowered under the other Act, status of a court also was not an appropriate method to find out as to whether the latter was also a court or

not. For ascertaining whether a particular authority was a civil court it was incumbent and necessary to look into the provisions of the Act alone

creating that authority as otherwise comparisons may mislead. Industrial Tribunal as also the Labour Court may be courts but it would be apparent

from the various decisions of High Courts on this point that these Tribunals were held to be courts for the reason and on the basis of several

provisions contained in the respective Acts The comparisons are always odious. I am in respectful agreement with the observation in 1950 : Nag

14 to the effect that 'the decisions on the workmen's Compensation Act are by no means uniform and it is little to the purpose to examine these

cases. Nor it is helpful to consider those cases in which the constitution and functions of other Tribunals have been examined to see whether they

are subordinate to the High Court in its revisional jurisdiction under S. 115 C P.C Nothing is more misleading than an argument based on certain

resemblance which, though apparently there may not be fundamental to this issue, what we have to do is to find out the points on which a

particular Tribunal either resembles the ordinary civil courts or differs from them

(18) Under Sec. 11 of the Act an appeal by the employer would lie only if the direction for the payment exceeds Rs. 300 and, in the case of

employee if the total amount of wages deducted from the employee, exceed Rs. 50/. It is argued in Lahore case that the conditions so laid leave it

to the sweet will of the Authority to permit an appeal or otherwise, inasmuch as it may direct payment of an amount of Rs. 2991 only from the

employer and in the case of employed the total amount of wages to be deducted may not exceed Rs. 50/ In such cases no appeal would lie. On

account of these conditions and restrictions, however it could not be said, with fairness, that the Authority should be held to be a Court. Keeping in

view the intention of the Legislature in framing a special Act, a line has to be drawn some where beyond which and below which no appeal may be

permitted to the Distt. Court. Then this is not solitary Act where such restrictions are found. The authority is enjoined to follow the principles of

equity, good conscience and justice in dealing with matters that may arise under the Act and the matter is, therefore, to be left to the authority itself

to be decided in accordance with these principles.

The Lahore judgment then says :

'One of the fundamental tests whether a certain tribunal is a court or is not so is whether it exercises jurisdiction by reason of the sanction of the law

or whether jurisdiction is given to it by the voluntary submission of the parties to the dispute.

(19) If this test were considered and adopted as basic and fundamental then all the Tribunals created would automatically be courts and have to be

necessarily regarded as such But that would not and should not be

(20) Reference was made at the bar to a judgment of this court reported in AIR 1971 : J&K. 76 in which the question that fell for consideration

was whether appointment of C J. M. as Rent Controller under the Houses and Shops Rent Control Act was as a person designata or as a court.

The Full Bench held that the Rent Controller (CJM) was a court and therefore, any inter locutory order passed by him was revisable by the High

Court u/s 115 C. P. C. From the facts of the case it appears Revenue Minister who was empowered under the Said Act appointed CJM Jammu

as Controller under the Houses and Shops Rent Control Act. The court held that the CJM appointed Control lei not by name, not in his individual

capacity, but by designation and the court of CJM was under the revisional jurisdiction of the High Court the appointment was not as a persona

designata but as a court. Some other reasons for holding the controller as court were also enumerated On a perusal of the Houses and Shops Rent

Control Act, it would be apparent that its provisions vastly differ from those contained in the Act in matters of review, revision and appeal There is

no provision in that Act to the effect that orders of the Controller shall be final. The Controller is given powers of review as that of a civil court. But

the Authority under the Act has no such powers. There are several other distinguishing features in the Houses and Shops Rent Control Act. On a

scrutiny of the various provisions of the Houses and Shops Rent Control Act, the Full Bench came to the conclusion as it has. The assertion made

at the Bar that because the Controller under that Act has been held to be a court therefore, the Authority under the Act be also held so cannot,

however, be entertained The Full Bench judgment referred to above was binding in so far as the status of the controller under the Houses and

Shops Rent Control Act was concerned and to no other authority or board or tribunal or person created and empowered under any other

enactment.

21. 1950: S C. 188 referred to at the Bar deals with a matter that had arisen under the Industrial Disputes Act and 1955: SC; 153 also mentioned

at the Bar as containing the Supreme Court observations with regard to the requirements for an authority to constitute a court, appears to have

been wrongly mentioned as the judgment of the Supreme Court that starts from page 123 does not appear to discuss or deal with the point at

issue. In this view of the matter, I hold that the Authority under the payment of wages Act is not a civil court and is not therefore, amenable to the

jurisdiction of the High Court under section 115 C. P. C. The revision, therefore' is incompetent and as such is rejected.

Srinagar

4th Dec: 1979 Sd/Mir J.

Per Hon'ble C. J.

(22) My learned brother Mir J has exhaustively dealt with the law on the subject, I concur with the view taken by him that the Authority under the

Payment of Wages Act is not a civil court and is not therefore, amenable to the jurisdiction of the High Court under section 115 of the Code of

Civil Procedure.

(23) The revision being, there, incompetent is liable to be dismissed, which is accordingly dismissed, Srinagar.