

CRIMINAL MISCELLANEOUS

*Before Gurdev Singh, J.*

OM PARKASH ARORA,—*Petitioner*

*versus*

JASWANT SINGH AND ANOTHER,—*Respondents.*

**Criminal Miscellaneous No. 403-M of 1969**

July 29, 1969.

*Punjab Shops and Commercial Establishments Act (XV of 1958)—Sections 2 (XXVII), 16(2) and 18—Payment of Wages Act (IV of 1936)—Section 2(vi)—“Wages”—Definition of—Salary in excess of Rs. 400—Whether comes within the definition of wages—Claim of wages for a period exceeding a month—Whether maintainable under section 18.*

*Held*, that there is nothing in the definition of word “wages” as given in clause (xxvii) of section 2 of Punjab Shops and Commercial Establishments Act read with section 2(vi) of the Payment of Wages Act which indicates that the salary in excess of Rs. 400 per mensem is not included in this definition. The language of these provisions is unambiguous. Section 1 (6) of the Payment of Wages Act governs cases under that Act and cannot be imported into the Punjab Shops and Commercial Establishments Act, as it expressly says that nothing in that Act shall apply to such wages. The provision cannot be read as forming part of the Punjab Shops and Commercial Establishments Act, or a part of the definition of “wages” as given in section 2(vi) of the Payment of Wages Act. Section 1(6) of the Payment of Wages Act must be read as confined to that Act alone and merely because it limits the remedy available to a workman for realization of wages under that Act it does not follow that the wide language used in defining wages under section 2(vi) of the Payment of Wages Act has to be curtailed by necessary implication in dealing with a case under the Punjab Shops and Commercial Establishments Act. (Para 13)

*Held*, that restriction contained in sub-section (2) of section 16 of the Punjab Shops and Commercial Establishments Act regarding the fixation of wage period does not affect the jurisdiction of the Magistrate under section 18 of the Act. Section 16(2) contains directions to the employer and casts a duty upon him to fix a wage period in accordance with the provision contained therein. There is nothing in this section, or in any other provision of the Shops and Commercial Establishments Act, which lay

down that if an employer in contravention of section 16 fixes a wage period then the employee is not entitled to claim the benefit of the Punjab Shops and Commercial Establishments Act, or is deprived of the remedy available to him under section 18 of that Act to realise his wages in a summary manner by making an application to the Magistrate. On the contrary, section 18 itself refers to section 16 and lays down that in case of contravention of the provisions of section 16, if a Magistrate is satisfied that the employee has not been paid his due wages, he shall direct the employer to pay the wages along with compensation not exceeding eight times the amount of wages withheld. This obviously means that even where an employer fixes a wage period contrary to the provisions of section 16, the Magistrate will be entitled to direct the payment of wages as under section 18 it is in case of contravention of the provisions of section 16 that the order for payment of wages has to be made. The remuneration payable to a workman, which is "wages", as defined by section 2(vi) of the Payment of Wages Act, does not cease to be wages so defined merely because the wage period, on the basis of which remuneration is calculated, is a month. The claim for such remuneration is, therefore, maintainable under section 18 of Punjab Shops and Commercial Establishments Act. (Para 15)

*Petition under Article 227 of the Constitution of India, praying that the order of the learned Chief Judicial Magistrate, Amritsar, dated 10th January, 1969 be set aside and he be directed to proceed with the case on merits.*

KULDIP SINGH, ADVOCATE, for the Petitioner.

R. SACHAR, ADVOCATE, for the Respondents.

#### JUDGMENT

GURDEV SINGH, J.—This petition under Article 227 of the Constitution raises interesting questions of law to appreciate which it is necessary to refer to the facts leading to these proceedings.

(2) The petitioner, Om Parkash Arora is employed as Development Officer in the Life Insurance Corporation of India at Amritsar and is drawing Rs. 565 p.m. He moved the Chief Judicial Magistrate, Amritsar, under sections 16 and 18 of the Punjab Shops and Commercial Establishments Act, 1958, for a direction to the respondent Life Insurance Corporation of India and its Senior Branch Manager Shri Jaswant Singh to pay Rs. 3,892.16 on account of wages and compensation due to him for the period between 26th August, 1968 and 19th September, 1968. He alleged that his salary for the period stated above had been withheld by his employer without justifiable cause and because of oblique motive and in contravention of section 16 of the Punjab Shops and Commercial Establishments Act (hereinafter referred to as the Act).

Om Parkash Arora v. Jaswant Singh and another (Gurdev Singh, J.)

(3) In resisting the claim, the respondent Life Insurance Corporation of India objected that the proceedings were barred under section 47, of the Life Insurance Corporation Act; that the applicant was not an "employee" within the meaning assigned to that term by section 2 (vi), of that Act and as such the application was not competent. It was further pleaded that the Branch office of the Life Insurance Corporation situate in Gandhi Nagar Amritsar was not a commercial establishment to which the provisions of the Punjab Shops and Commercial Establishments Act could apply and that Shri Jaswant Singh Senior Manager of that Branch (respondent 1), could not be personally sued. The learned Chief Judicial Magistrate, however, found that the Branch office concerned of the Life Insurance Corporation was a commercial establishment and the petitioner Om Prakash was an employee to whom the Act was applicable. He, however, threw out the petitioner's application, without trying it on merits, being of the opinion that the claim made by him "would not amount to wages as envisaged by the provisions of the Shops and Commercial Establishments Act."

(4) Feeling aggrieved by this order of 10th January, 1969, the petitioner Om Parkash Arora has approached this Court under Article 227, of the Constitution complaining that the learned Magistrate had refused to exercise jurisdiction on wrong premises and prays that his order be set aside and he be directed to deal with the petitioner's claim on merits. Besides defending the impugned order of the Magistrate dated 10th January, 1969, Mr. Rajinder Sachar appearing for the respondents has raised two preliminary objections. He contends :

- (1) That since the order was passed by a Magistrate, the proper course for the petitioner was to go up in revision against that order to the Court of Session under section 435, Code of Criminal Procedure and if he failed to have recourse to that remedy this Court should refuse to interfere under Article 227, of the Constitution;
- (2) That it is not a fit case for exercise of the power under Article 227, of the Constitution, as at best what can be said is that the Magistrate had committed an error of law; and
- (3) That the petitioner had an alternative remedy available to approach the departmental authorities under the Life Insurance Corporation Regulations 1956.

(5) I, however, find no merit in any of these objections. The application under section 18 of the Act, under which the impugned order was passed, was merely for realization of wages due to the petitioner and the jurisdiction of the Magistrate was not invoked in respect of an offence alleged to have been committed by the respondents or under any provision of the Code of Criminal Procedure. As such, I doubt very much if the petitioner could invoke the revisional jurisdiction of the Court of Session under section 435, Code of Criminal Procedure or of this Court. In any case, the petition which is now before me, being one under Article 227, of the Constitution lies to this Court and not to any subordinate authority. It is true that what is complained of is that the Magistrate had on a wrong interpretation of the relevant provisions refused to entertain the petitioner's application for payment of wages that were due to him but the fact remains that as a result of that decision the Magistrate has refused to exercise jurisdiction which, according to the petitioner, vested in him under section 18, of the Act. The case is thus, covered by the rule laid down by their Lordships of the Supreme Court in *Dahya Lala and others v. Rasul Mahomed Abdul Rahim and others*, (1) wherein it has been held that if the revenue authorities in refusing to give assistance to the petitioner illegally refused to exercise jurisdiction vested in them by law, the question being one of jurisdiction, the High Court was competent to exercise the powers vested in it under Article 227, of the Constitution. Even in *Satyanarayan Laxminarayan Hegde and others. v. Mallikarjun Bhavanappa Tirumale*, (2) upon which the respondent's counsel Mr. Sachar has relied, the rule laid down with regard to the exercise of powers under Articles 226 and 227, of the Constitution is not in any way different. It has been held in that case that though the High Court cannot in exercise of its power under Article 227 of the Constitution assume appellate powers to correct every mistake of law, yet if the authority concerned assumes jurisdiction in excess of that vested in it or refuses to exercise jurisdiction or commits any irregularity or illegality in the procedure or any branch of any rule of natural justice, the High Court can step in to correct an error apparent on the face of the record under section 115 of the Code of Civil Procedure or under Article 227, of the Constitution. I am of the opinion that the present case is one in which the learned Magistrate has refused to exercise jurisdiction and the error committed by him in doing so is an error

(1) A.I.R. 1964 S.C. 1320.

(2) A.I.R. 1960 S.C. 137.

Om Parkash Arora v. Jaswant Singh and another (Gurdev Singh, J.)

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apparent on the face of the record requiring interference of this Court under Article 227 of the Constitution.

(6) The argument that an alternative remedy was available to the petitioner and thus it is a fit case in which the Court should refuse to exercise its extraordinary jurisdiction under Article 227, of the Constitution has no basis. Regulation 47, of the Life Insurance Regulations, 1956, upon which reliance has been placed by Mr. Sachar merely makes provision for an appeal against an order passed by a departmental officer. The order which is assailed by the petitioner before me is not the one passed by an officer of the respondent Corporation but by a Magistrate whose jurisdiction had been invoked under section 18 of the Shops and Commercial Establishments Act. That Act does not make provision for appeal or revision against such an order. Thus, there is no alternative remedy against the impugned order of the Magistrate to which the petitioner can have recourse at this stage. In any case, it is well-settled that existence of an alternative remedy is no bar to the exercise of jurisdiction vested in this Court under Articles 226 and 227, of the Constitution and in my opinion it is a fit case in which the jurisdiction under Article 227, of the Constitution should be exercised. Once it is found that the learned Magistrate had put a wrong interpretation on the relevant provisions of the Shops and Commercial Establishments Act, under which the petitioner invoked his jurisdiction, the refusal of this Court to step in to correct the error of jurisdiction would amount to denial of justice to the petitioner as in the face of the judicial verdict of the Magistrate no other departmental authority can be expected to afford him the relief asked for by him. The power vested in this Court under Articles 226 and 227 of the Constitution is to be exercised to further the ends of justice to keep the Courts within the bounds of their jurisdiction as well as to compel them to exercise jurisdiction, which is wrongly refused, to grant the relief which it is competent to afford.

(7) This brings me to the merits of the case. As has been observed earlier, the learned Magistrate has thrown out the petitioner's application under section 18, of the Act for recovery of wages etc., on the finding that his case did not fall within that provision and the claim made by him was not covered by the definition of "wages". In coming to this finding, the learned Magistrate has held.

- (1) That since the petitioner's salary exceeded Rs. 400 p.m., the amount claimed by him on account of wages was not

“wages” as defined in section 2(vi) of the payment of wages Act; and

- (2) That no claim under section 18 of the Act for recovery of wages for a period not exceeding one month could be made.

(8) Mr. Kuldip Singh, appearing for the petitioner has vehemently attacked both these findings and urges that the Magistrate had committed a grave error in interpreting the expression “Wages” by confusing the provisions of the Punjab Shops and Commercial Establishments Act, 1958, with those of the Payment of Wages Act. To appreciate the argument it is necessary to refer to the relevant provisions of the Punjab Shops and Commercial Establishments Act. Section 16 thereof provides :—

“16 (1) Every person responsible for the payment of wages to an employee shall fix a period in respect of which such wages shall be payable.

(2) No wage period shall exceed one month.

(3) The wages of every person employed shall be paid before the expiry of the seventh day from the date on which the wages became due.

(4) where the employment of any person is terminated by or on behalf of the employer the wages earned by him and the remuneration in lieu of unavailed period of due leave shall be paid before the expiry of the second working day after such termination and where an employee quits his employment on or before the next pay day:

Provided that no claim under this section shall be entertained unless it is preferred within six months from the date of its accruing except under special circumstances at the discretion of the Chief Inspector of Shops and Commercial Establishments, Punjab.

(9) Provision for realization of wages or compensation is made in section 18 of the Act which is in these words :—

18(1) In case of contravention of the provisions of section 16, if a Magistrate is satisfied that the employee has not been

paid his due wages, he shall direct the employer to pay the wages along with compensation not exceeding eight times the amount of wages withheld.

- (2) The amount of wages withheld and compensation payable under this section shall for the purposes of its recovery, be deemed to be a fine imposed under this Act in addition to the penalty imposed under section 26 and shall be realised as such.

(10) It is under this provision that the petitioner had approached the Magistrate to issue a direction to the respondents for payment of wages and compensation due to him. From sub-section (1) of section 18, it is obvious that once the Magistrate is satisfied that the employee has not been paid his due wages, he is to issue a direction to the employer to pay the wages along with compensation not exceeding eight times the amount of wages withheld". Thus the question which remains for consideration is whether the amount which the petitioner claimed was "wages" in respect of which the Magistrate could issue the direction under this section. In clause (xxvii) of section 2 of the Punjab Shops and Commercial Establishments Act, the term "wages" is defined as wages shall have the meaning assigned to it in the payment of Wages Act, 1936 (IV of 1936). The definition of "wages" contained in section 2(vi) of the Payment of Wages Act runs thus:

" 'wages' means all remuneration (whether by way of salary, allowance 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 .....

(11) It is obvious that there is nothing in this definition to indicate that the salary in excess of Rs. 400 per mensem or for more than a month, is not included in this definition of the word "wages". In holding that the petitioner's claim did not fall within "wages" because he was drawing more than Rs. 400 p.m., the learned Magistrate has referred to sub-section (6) of section 1 of the Payment of Wages Act, which lays down:

"Nothing in this Act shall apply to wages payable in respect of a wage-period which, over such wage period, average four hundred rupees a month or more."

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(12) The learned counsel for the respondent, Mr. Sachar, has also referred to this provision in support of his contention that if the claim for salary is made at a rate exceeding Rs. 400 p.m. it is excluded from the definition of the word "wages", even for the purposes of the Punjab Shops and Commercial Establishments Act. He places reliance upon *re K. V. V. Sarma, Manager, Gemini Studios, Madras* (3), wherein it was held that the term "wages" as defined in section 2(vi) of the Payment of Wages Act, 1936, is not intended to apply to persons who receive a fairly good sum of money as monthly salary, and the Payment of Wages Act is not intended to apply to any kind of salaries payable monthly. Apart from the fact that that was a case under the Factories Act and not under an enactment like the one under the Punjab Shops and Commercial Establishments Act, it may be pointed out that the view expressed above has been dissented from by the same Court in its subsequent decisions reported as *Managing Director, T.S.T. Company Ltd., v. R. Perumal Naidu and another* (4): It was further observed in that case that the observations of Menon, J. in *Managing Director, T. S. T. Company Ltd. v. R. Perumal Naidu and another* (4), (*supra*) were *obiter dicta*. In dealing with this matter Rajagopala Ayyangar, J., who delivered the judgment for the Court, observed as follows:

"We do not see how this could be construed as by implication providing that in every case where the remuneration was calculated on the basis of wage periods extending over a month, the employees in receipt of wages so calculated were notwithstanding that the quantum of wages payable to them was less than that provided by "section 1(6) were also outside the enactment. In our judgment the remuneration payable to a workman which is wages as defined by section 2(vi) of the Act does not cease to be wages as so defined merely because the wage period on the basis of which remuneration is calculated is the month."

(13) Apart from this authority, which supports the petitioner's contention that his case cannot be ruled out of consideration and the amount claimed by him does not cease to be wages merely because

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(3) A.I.R. 1953 Mad. 269.

(4) A.I.R. 1958 Mad. 25.



Om Parkash Arora v. Jaswant Singh and another (Gurdev Singh, J.)

the monthly salary exceeds Rs. 400 p.m., I find that the language of the relevant provision itself is unambiguous and supports the contention. In dealing with a claim under the Punjab Shops and Commercial Establishments Act for payment of wages and compensation, this Act adopts the definition of the word "wages" as given in the Payment of Wages Act. That definition is contained in section 2(vi) of the Payment of Wages Act which has been reproduced earlier. It nowhere lays down that the salary due to an employee, if he is drawing more than Rs. 400 p.m., is not included in the word 'wages'. Section 1(6) of the Payment of Wages Act, to which recourse is had to support the contention that word "wages" means the payment due to a person who is drawing less than Rs. 400 p.m., governs cases under the Payment of Wages Act and cannot be imported into the Punjab Shops and Commercial Establishments Act, as it expressly says that nothing in that Act shall apply to such wages. That provision cannot be read as forming part of the Punjab Shops and Commercial Establishments Act, or a part of the definition of "wages" as given in section 2(vi) of the Payment of Wages Act which has been adopted under the Punjab Shops and Commercial Establishments Act. Section 1(6) of the Payment of Wages Act must be read as confined to that Act alone and merely because it limits the remedy available to a workman for realization of wages under that Act it does not follow that the wide language used in defining wages under section 2(6) of the Payment of Wages Act has to be curtailed by necessary implication in dealing with a case under the Punjab Shops and Commercial Establishments Act. The learned Magistrate was thus clearly wrong in holding that the petitioner could not claim the benefit of section 18 of the Punjab Shops and Commercial Establishments Act since he was drawing more than Rs. 400.

(14) The second ground on which he has held that the petitioner's case does not fall within this provision is equally untenable. In holding that where the wage claimed is for a period exceeding a month it cannot be claimed under section 18 of the Punjab Shops and Commercial Establishments Act, the learned Magistrate has referred to sub-section (2) of section 16 of the Punjab Shops and Commercial Establishments Act, which provides that no wage period shall exceed one month. Section 16 fixes the wage period. Sub-section (1) with which this section opens lays down that every person responsible for the payment of wages to an employee shall fix a period in respect of which such wages shall be payable. Thus under this provision it is incumbent upon an employer to fix the wage

period. The wage period has to be fixed in accordance with and subject to the restrictions laid down in section 16 one of them being that no wage-period shall exceed one month. This merely means that every employer must pay the wages due to his employee periodically, but that period shall not exceed one month. In other words, it is open to an employer under section 16 to lay down that wages shall be paid daily, weekly, fortnightly and so on, but the period on the expiry of which the wages are to be paid as required under sub-section (2) of section 16 cannot exceed one month. The expression "shall not exceed one month" means beyond any manner of doubt that it is open to a employee to fix the period of payment of wages as one month which is the maximum. In the case before us it is not disputed that the petitioner was employed on monthly salary and his salary was payable on the expiry of every month. Obviously the period of his wage fixed under section 16 does not exceed a month and accordingly there is no room for the argument that the amount claimed was not a wage being violation of the restrictions laid down in sub-section (2) of section 16.

(15) Be that as it may, I fail to see how this restriction contained in sub-section (2) of section 16 regarding the fixation of wage period can affect the jurisdiction of the Magistrate under section 18, or the definition of the word "wages" as contained in section 1(4) of the Punjab Shops and Commercial Establishments Act read with section 2(vi) of the Payment of Wages Act. Section 16(2) contains directions to the employer and casts a duty upon him to fix a wage period in accordance with the provision contained therein. There is nothing in this section, or in any other provision of the Shops and Commercial Establishments Act, which lay down that if an employer in contravention of section 16 fixes a wage period then the employee is not entitled to claim the benefit of the Punjab Shops and Commercial Establishments Act, or is deprived of the remedy available to him under section 18 of the Punjab Shops and Commercial Establishments Act to realise his wages in a summary manner by making an application to the Magistrate. On the contrary, section 18 itself refers to section 16 and lays down that in case of contravention of the provisions of section 16, if a Magistrate is satisfied that the employee has not been paid his due wages, he shall direct the employer to pay the wages along with compensation not exceeding eight times the amount of wages withheld. This obviously means that even where an employer fixes a wage period contrary to the provisions of section 16, the Magistrate will be entitled to direct the payment of wages as under Section 18 it is in case of contravention of the provisions of

M/s. Kapoor Nilokheri Co-operative Dairy Farm Society v. The Union of India and others (Sodhi, J.)

section 16 that the order for payment of wages has to be made. In *Manager, Searchlight Press, Patna v. Factories Inspector, Patna* (5), a Division Bench of that Court has ruled that the Payment of Wages Act applies even to cases where wages are paid monthly. The remuneration payable to a workman, which is "wages", as defined by section 2(vi) of the Payment of Wages Act, does not cease to be wages so defined merely because the wage period, on the basis of which remuneration is calculated, is a month. The provisions of section 1(6) and 4(2) show that the wage period may extend to a month.

(16) As a result of the above discussion I find that the impugned order of the Magistrate holding that the petitioner's case was not covered by section 16 read with section 18 of the Punjab Shops and Commercial Establishments Act suffers from an error apparent on the record and he has refused to exercise the jurisdiction vested in him in dealing with the petitioner's claim for payment of wages, etc., on untenable premises. I, accordingly, accept the petition and remit the case to him to proceed to deal with the petitioner's case for payment of wages and compensation in accordance with law. The petitioner will be entitled to costs of this petition against the respondents.

K.S.K.

APPELLATE CIVIL

Before Prem Chand Pandit and H. R. Sodhi, JJ.

M/s. KAPOOR NILOKHERI CO-OPERATIVE DAIRY FARM SOCIETY,  
Appellant

versus

THE UNION OF INDIA AND OTHERS,—Respondents.

First Appeal from Order No. 184 of 1965

August 4, 1969

*Evidence Act (I of 1872)—Sections 3, 123 and 124—Arbitration Act (X of 1940)—Section 30—Arbitration proceedings—Question of admissibility, relevancy and claim of privilege of evidence—Arbitrator—Whether has jurisdiction to decide—Sections 123 and 124, Evidence Act—Whether can be disregarded by the arbitrator—Claim of privilege—When should it be refused by the arbitrator—Error committed by arbitrator in deciding the question of admissibility of evidence—Whether amounts to misconduct.*

(5) A.I.R. 1960 Patna 33.