

CASE NO.:
Appeal (civil) 5371 of 2005

PETITIONER:
Hotel and Restaurant Karamchari Sangh

RESPONDENT:
M/s Gulmarg Hotel and Ors.

DATE OF JUDGMENT: 08/06/2006

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J

Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court allowing the Writ Petition filed by respondent No.1 (hereinafter referred to as the 'employer').

The High Court by the impugned order quashed the order passed by the Deputy Labour Commissioner, Lucknow Region, Lucknow. The said authority had issued a certificate for recovery of Rs.60,810.76 from respondent No.1 in terms of Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 (in short the 'Act').

Background facts filtering out unnecessary details are as follows:

On the basis of a complaint received from the appellant, the Assistant Labour Commissioner issued a notice to respondent No.1 stating that it had not paid outstanding wages to the employees/workmen of the establishment amounting to more than Rs.60,000/-. The authority asked the respondent No.1-employer to show cause as to why recovery under the Act shall not be made as arrears of land revenue by issuance of certificate of recovery. Respondent No.1-employer submitted a reply stating that nine employees were absconding and out of total 22 employees, 8 employees had been paid their wages and the amount to be payable was less than Rs.50,000/-. It was, therefore, submitted that the provisions of the Act cannot be applied. The Assistant Labour Commissioner considered the plea of the employer and rejected the same by holding that the claim was instituted on 16.10.2000, notice was issued on 19.10.2000 and the response was filed on 14.12.2000. At the time of initiation of the proceedings, the amount was admittedly more than Rs.50,000/-. Merely because a part of the amount claimed had been paid subsequently, that cannot affect the jurisdiction of concerned authority to issue a certificate for recovery. The employer filed a Writ Petition before the Allahabad High Court questioning correctness of the order. The High Court came to hold that at the time of adjudication, the amount in default did not exceed Rs.50,000/- and, therefore, proceedings were not maintainable. Reference was made to a decision of this

Court in *Modi Industries Ltd. v. State of U.P. and Ors.* [1994 (1) SCC 159] to hold that the certificate for recovery could not have been issued. The writ petition was accordingly allowed.

In support of the appeal, learned counsel for the appellant submitted that *Modi Industries'* case (*supra*) has no bearing on the subject matter of controversy. The Assistant Labour Commissioner was right in his view that at the time the claim was lodged, the amount was admittedly more than Rs.50,000/-. By adopting a subterfuge the employer cannot in law be permitted to take away the jurisdiction of the authority to issue certificate for recovery.

Learned counsel for the State, respondent No.2 and the concerned authority-respondent No.3 supported the stand. There is no appearance on behalf of respondent No.1-employer.

In order to resolve the controversy between the parties, it is first necessary to examine the provisions of the Act. As the title of the Act itself suggests it has been enacted to secure industrial peace by ensuring timely payment of wages to the workmen. The preamble of the Act states that it is an Act to provide "in the interest of maintenance of industrial peace, a timely payment of wages in bigger industrial establishments and for matters connected therewith". The statement of objects and reasons of the Act states that delays in payment of wages of workmen lead to simmering discontent among them. Sometimes a grave threat to law and order is also forced on this account. The provisions of the Payment of Wages Act, 1936 (in short 'Wages Act') have been found to be inadequate to ensure timely payment of wages. The incidence of disturbance of industrial peace being greater in comparatively bigger establishments, it was considered necessary to provide that if the wage bill in default exceeds Rs.50,000/-, the amount should be recoverable as arrears of land revenue. Further, in order to curb the tendency of the employers to keep large amounts of wages in arrears, it was also necessary to make it a penal offence to be in default of a wage-bill exceeding Rs.1 lakh.

It will thus be clear from the preamble, the statement of objects and reasons and the provisions of the Act that, firstly the Act has been placed on the statute book to ensure timely payment of wages by the bigger establishments, the incidence of disturbance of industrial peace being greater in such establishments on account of the default in payment of wages. Secondly, the Act deals with defaults in payment of the wage-bill of all the workmen in the establishment. It is not meant to provide a remedy for the default in payment of wages of individual workmen. That can be taken care of by the provisions of the Wages Act which provisions are found inadequate to ensure timely payment of wages of the whole complement of workmen in an establishment. Thirdly, it is not in respect of the default in payment of every wage-bill; but only if a wage-bill exceeds Rs.50,000/- the Labour Commissioner can be approached under the Act for redressal of the grievance. Fourthly, the Act is not applicable to all establishments but only those establishments which produce, process, adopt or manufacture some articles. It will, therefore, be evident that the Act does not supplant or substitute the Wages Act but supplements the said Act, in the limited area, viz., where the establishment, as stated above, (i) produces, processes, adopts or manufactures some articles, (ii) where there is a default in the wage-bill of the entire such establishment and (iii) where such wage-bill exceeds

Rs.50,000/-. The object of the Act as stated above is not so much to secure payment of wages to individual workmen but to prevent industrial unrest and disturbance of industrial peace on account of the default on the part of the establishment in making payment of wages to their workforce as a whole. It appears that many establishments had a tendency to delay the payment of wages to their workmen and were playing with the lives of the workmen with impunity. This naturally led to a widespread disturbance of industrial peace in the State. Hence the legislature felt the need for enacting the present statute. This being the case, the inquiry by the Labour Commissioner contemplated under Section 3 of the Act is of a very limited nature, viz., whether the establishment has made a default in timely payment of wages to its workmen as a whole when there is no dispute that the workmen are entitled to them.

The inquiry under Section 3 being thus limited in its scope, the Labour Commissioner's powers extend only to finding out whether the workmen who have put in the work were paid their wages as per the terms of their employment and within the time stipulated by such terms. If the Labour Commissioner is satisfied that the workmen, though they have worked and were entitled to their wages, had not been paid the same within time, he has further to satisfy himself that the arrears of wages so due exceed Rs.50,000/-. It is only if he is satisfied on both counts that he can issue the certificate in question. Under the Act, the Labour Commissioner acts to assist the workmen to recover their wages which are admittedly due to them but are withheld for no fault on their behalf. He does not act as an adjudicator if the entitlement of the workmen to the wages is disputed otherwise than on frivolous or prima facie untenable grounds. When the liability to pay the wages is under dispute which involves investigation of the questions of fact and/or law, it is not the function of the Labour Commissioner to adjudicate the same. In such cases, he has to refer the parties to the appropriate forum.

The powers conferred on the Labour Commissioner under Section 3 of the Act are to prevent apprehended or present breach of industrial peace. That is why the inquiry contemplated is of a summary nature. The exercise of the said powers by the Labour Commissioner does not prevent either party from approaching the regular forum for the redressal of its grievance. Construing a more or less similar provision of Section 3 (b) of the U.P. Industrial Disputes Act, 1947 in State of Uttar Pradesh v. Basti Sugar Mills Co. Ltd. (AIR 1961 SC 420), this Court had taken the same view. The provisions of the said Section 3(b) read as follows:

"3. Power to prevent strikes, lockouts, etc. -- If, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision -

(a) x x x x x x x

(b) for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;

x x x x x x x"

The above position was highlighted in Modi's case (supra).

The Assistant Labour Commissioner was justified in taking the view that the determinative date is the date on which the claim is lodged. Otherwise, the very purpose of the enactment would be defeated. The relevant provisions i.e. sub-section (1) of Section 3 of the Act reads as follows:

"3- Recovery of wages in certain Industrial establishments as arrear of land revenue:(1) Where the Labour Commissioner is satisfied that the occupier of an industrial establishment is in default of payment of wages and that the wage-bill in respect of which such occupier is in default exceeds fifty thousand rupees, he may, without prejudice to the provisions of Sections 5 and 6, forward to the Collector, a certificate under his signature specifying the amount of wages due from the industrial establishment concerned."

Though the expression used is "is in default of payment of wages" it is relatable to the date on which the claim is lodged. Otherwise, to overcome action contemplated under Section 3(1) of the Act i.e. issuance of certificate for recovery by making a part payment to see that the amount comes below Rs.50,000/-, a crafty and unscrupulous employer can defeat the legislative intent. The act as noted above is a beneficial one intended to give help to the workers who are not being paid their wages. The High Court completely lost sight of the relevant factors and relied on the decision in Modi's case (supra) which had not decided the issue under consideration.

Therefore, the order passed by the Assistant Labour Commissioner is restored and the impugned order of the High Court is quashed. The appeal is allowed but in the circumstances there will be no order as to costs.