HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Reserved on: 28.08.2023
Pronounced on : 09.11.2023

Case No. :- OWP No. 338/2019
CM Nos. 1679/2019 [1/2019]
CM No. 4798/2019

Davinder Kumar Batra
S/o Sh. Dharam Vir Batra
R/o 49-A/D Green Belt Park,
Gandhi Nagar Jammu.
Partner M/s Jay Kay Automobiles,
Gurudwara Kalgidhar Building,
Rehari Chowk, B.C. Road, Jammu. …Petitioner

Through: Mr. S. S. Ahmed, Adv with Mr. Rahul Raina, Adv.

v/s

1. The Authority Under Payment of Wages Act 1936
   (Assistant Labour Commissioner), Jammu
2. Vidhya Sagar (Mechanic) S/o Sh. Beli Ram
   R/o Ghari, P.O. Purkhoo, Tehsil and District Jammu
3. Jag Mohan (Mechanic) s/o Sh. Buloo Ram
   R/o Village Chak Sardar Desa Singh
   P.O. Mandal Jhajjar Kotli, district Jammu.
4. Mohan Lal (Mechanic) S/o Sh. Mani Ram
   R/o Village Jagti, P. O. Nagrota Tehsil Nagrota District Jammu
5. Kishori Lal (Mechanic) S/O Sh. Birbal,
   R/o Village Paragpur P.O. Amroh Tehsil Jaswan District Kangra (H.P.)

…Respondents

Through: Mr. Ajay Gandotra, Adv.

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

1. The present petition has been preferred under Article 226 of the Constitution of India for issuance of writ, direction or order in the nature of Certiorari seeking quashment of order dated 31.12.2018

passed by the Assistant Labour Commissioner, Jammu (Authority under the Payment of Wages Act, 1936), respondent No. 1 herein, whereby the petitioner has been directed to pay retrenchment compensation @ 15 days salary for every completed year to respondents No. 2 to 5, besides directing the petitioner to deposit an amount of Rs. 3,10,230/- with the authority.

BRIEF FACTS

2. The present petition has been preferred by the partner of M/s Jay Kay Automobiles who was the authorized dealer of LML Limited in Jammu and was carrying out the business of sale and service of two wheelers manufactured/produced by LM Limited, Kanpur (U.P) in Jammu Division.

3. It is the specific case of the petitioner that the order passed by the respondent No. 1 is beyond jurisdiction and the provisions of the Payment of Wages Act, 1936 (for short, **'Act of 1936'**) as the authority below has exercised the power which is not vested in it and thus, the order impugned cannot sustain the test of law and is liable to be set aside.

4. It is averred in the petition that the principal company- LML Limited has stopped the production of two wheelers in August 2015 and subsequently went into liquidation under the court order. It is also averred that since the supply of two wheelers from the principal company i.e. LML Limited Kanpur was stopped due to its liquidation/closure, the petitioner firm/establishment decided to close

the business of sale and service of two wheelers manufactured/produced by LML Limited w.e.f. 31.03.2017.

5. It is stated that since the decision to close the business of sale and service of two wheelers of LML Limited was taken by the establishment, therefore, establishment served two months advance notice to its employees on 01.02.2017 by conveying the reasons for such closure of business, as a consequence whereof, the production/manufacturing of two wheelers by LML limited Kanpur has been stopped and the employees working with the petitioner were relieved from the employment/services of the establishment on 31.3.2017.

6. It is urged that respondent No. 2 to 5, who were the erstwhile employees of the petitioner-firm preferred a joint application under the Act of 1936 on 16.10.2017 before the respondent No. 1, being the Authority under Act of 1936 and sought the following reliefs:

> ***i. Retrenchment compensation;***
>
> ***ii. Leave with wages; and***
>
> ***iii. Bonus under Bonus Act and prayed that a direction may be issued under Section 3 for payment of estimated Rs. 4,29,750/- along with interest under law and costs and other relief as delayed/deduction of wages***

7. It is also urged in the petition that pursuant to the filing of the aforesaid application by the respondents No. 2 to 5 herein, the petitioner filed detailed objections to the said application along with a

cheque dated 10.01.2018 drawn on Oriental Bank of Commerce, Branch B. C. Road, Rehari Chungi, Jammu for Rs.95,330/- in the name of Assistant Labour Commissioner, Jammu (Authority under Payment of Wages Act, 1936) towards settlement of the claims of the applicants/ respondents No. 2 to 5 herein as Leave with Wages and Bonus under Bonus Act.

8. It is also stated in the petition that in response to the claim of retrenchment compensation, the petitioner had specifically raised the objection and submitted that the applicants/respondents No. 2 to 5 herein are neither entitled to the retrenchment compensation nor the Authority has the jurisdiction to entertain or adjudicate upon such claim.

9. It is further stated in the petition that the respondent No. 1 i.e., the Authority under the Payment of Wages Act had finally decided the application of the applicants/respondents No. 2 to 5 herein and passed the order dated 31.12.2018 which is impugned in the present petition whereby, the Authority had directed the petitioner to pay the retrenchment compensation @ 15 days salary for every completed year to the applicants/respondents No. 2 to 5 herein. The Authority had also directed the petitioner to deposit an amount of Rs. 3,10,230/- with the Authority.

GROUNDS:

10. The petitioner has challenged the order impugned on the following grounds:

(i) **That the order impugned has been passed without jurisdiction as claim for retrenchment compensation can be adjudicated upon by the Industrial Tribunal as per the provisions of Industrial Disputes Act, 1947;**

(ii) **That the Authority below has not acted in accordance with the provisions of the enactment in question i.e., Act of 1936 and**

(iii) **That the order has been passed without the application of mind as the applicants/respondents No. 2 to 5 herein have filed the application under Section 3 of the Act of 1936 which deals with the claims of payment of wages and deductions made from wages whereas issue of retrenchment compensation falls in the jurisdiction of Industrial Tribunal under the Industrial Tribunal Disputes Act, 1947 as such the Authority has passed the impugned order without perusing the contents of the application and without the application of mind.**

ARGUMENTS ON BEHALF OF PETITIONER

11. The argument of Mr. S. S. Ahmed, learned counsel appearing for the petitioner in the instant petition confines to the jurisdiction and entitlement of the applicants/respondents No. 2 to 5 for retrenchment compensation. In this regard, learned counsel has referred to the Third Schedule as envisaged under Section 7A of the Industrial Dispute Act 1947, (for short, the Act of 1947) wherein, details have been given about the matters which fall within the jurisdiction of the Industrial Tribunal which are as under:

"Matters within the Jurisdiction of Industrial Tribunals
1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;

6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalization;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

12. He further argues that in spite of the fact that a specific objection has been raised before the appropriate Authority with respect to the jurisdiction and the entitlement of the applicants/respondents No. 2 to 5 herein but no finding has been recorded by the said Authority while passing the order impugned.

13. Learned counsel for the petitioner further submits that the petitioner could not prefer an appeal under Section 17 of the Act of 1936, within a stipulated period of 30 days as the Manager of the petitioner's firm suffered paralytic stroke and was undergoing medical treatment at that point of time and all the documents pertaining to the case was lying in his custody, and this was precisely the reason that the petitioner has not availed the alternate efficacious remedy and has straightway come to this Court by way of instant petition.

14. Learned counsel for the petitioner further submits that since the legal question is involved in the present petition, therefore, his case falls within exceptions carved out by the Apex Court in bypassing the alternate and efficacious remedy and thus, he has filed the instant petition without availing the alternate and efficacious remedy provided under the statute.

15. Learned counsel for the petitioner with a view to fortify his claim has placed reliance on a definition of 'Wages' as defined under Section 2(vi) of the Act of 1936 with a view to establish that "wages" does not include the retrenchment compensation. As per the learned counsel, the issue of retrenchment of the workman and the closure of the establishment falls within the jurisdiction of Industrial Tribunal as laid down in clause 10 of the Third Schedule of the Act of 1947. Thus, according to him, it was within the domain of the Industrial Tribunal which ought to have adjudicated the issue of retrenchment compensation, and not the Authority under Payment of Wages Act.

ARGUMNETS ON BEHALF OF RESPONDENTS

16. Per contra, reply has been filed by Mr. Ajay Gandotra, learned counsel appearing for respondent No. 2 to 5 has taken a preliminary objection with respect to the maintainability of the instant petition. He submits that the instant petition is not maintainable against the order impugned passed under Section 15 of Act of 1936 by the Assistant Labour Commissioner in view of the mandatory provisions of Section 17 which provides the remedy of an appeal and that too, when the memorandum of appeal has to be accompanied by a certificate issued by the Authority with regard to the deposit of the amount payable under the direction in the order which is appealed against. Learned counsel further points out that the petitioner with a view to avoid the payment of statutory amount for filing the appeal

has filed the instant petition which is not maintainable and is barred by alternate efficacious remedy provided under the statute.

17. Learned counsel for the respondents further submits that the plea taken by the petitioner that an appeal could not be filed owing to ill health of Manager (Legal) of M/s Jay Kay Automobiles is absolutely absurd on the ground that as from the record appended with the petition, it would manifestly reveal that objections to claim petition was signed by Sh. Davinder Kumar Batra who has filed even the petition under reply appending annexures as part of petition which was the record of file of learned counsel.

18. Learned counsel disputes the closure of the establishment and submits that the closure was not on account of unavoidable circumstances and therefore, the respondents/workmen were entitled to retrenchment compensation which is 15 days average pay for every completed year of continued service. By placing reliance on 25-F of the Industrial Disputes Act, 1947 (for short, '**Act of 1947'**), he further submits that merely showing that establishment has been closed does not suffice the purpose, when in fact, it was incumbent on the part of the establishment who have closed the institution to have followed detailed procedure as envisaged under 25-O of the Act of 1947.

19. The learned counsel for the respondents has taken a specific stand that the Assistant Labour Commissioner, Jammu is the only competent authority for the purpose of deciding the claims of respondents/claimants with regard to their wages, as per the term "Wages" defined under Section 2(vi) of the Act of 1936, in exercise

of the power as vested in it under Section 15 read with Section 3 & 5(2) of the Act.

20. He further submits that the order impugned is absolutely legal and has been passed by Authority having jurisdiction to pass an order and there is no manner of doubt that the order would not sustain going by the provision of Section 15 r/w Section 3 & 5 of Act of 1936 as the claim of Retrenchment Compensation owing to closure of business undertaking as provided u/s 25(FFF) of the Act of 1947 falls within the definition of "Wages" as contained in Section 2(iv)(d) of Payment of Wages Act and against an order passed by Authority, only Appeal lies before District Judge by appending therewith, Certificate for deposit of the amount ordered which is condition precedent. According to him, the writ petition is not maintainable in view of an alternate and efficacious remedy available under the Act.

LEGAL ANALYSIS

21. Heard learned counsel for the parties at length and perused the record.

22. With the consent of learned counsel for the parties, the instant petition was taken up for final disposal.

23. Ordinarily, if the petitioner was aggrieved of the order passed by the Assistant Labour Commissioner passed under the Act of 1936, then the remedy for the petitioner was to file an appeal within the stipulated period before the appellate authority as per Section 17 of

the Act of 1936. The petitioner while arguing the matter has specifically projected that since his case falls within the exceptions carved out by the Hon'ble Supreme Court in **Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 11** (although the said ground has not been taken in the writ petition), the petitioner accordingly, prays that he has challenged the very jurisdiction of the Assistant Labour Commissioner, exercising the powers under the Payment of Wages Act, 1936, to grant retrenchment compensation and thus, according to him, this Court has the jurisdiction to decide the instant petition. The issue has been raised by the petitioner in the instant petition that the jurisdiction to grant retrenchment compensation can be adjudicated by the Industrial Tribunal under the provisions of the Industrial Tribunal Act and since the petitioner has challenged the very jurisdiction of the Assistant Labour Commissioner to pass the order impugned, the petitioner has preferred the instant writ petition and not availed the alternate and efficacious remedy by way of an appeal as provided under the Statute. Since, important questions of law have been raised in the instant writ petition, accordingly, this Court deems it proper to decide the same on merits with a view to answer the questions. Accordingly, this Court proceeds to decide the following issues raised in the instant petition.

24. The moot questions which arise for consideration in the instant petition are as under:

(i) Whether the petitioner in the facts and circumstances of the instant case can bypass the alternate and efficacious remedy provided under Section 17 of the Act of 1936 and that too when memorandum of appeal is to be accompanied by a Certificate issued by the Authority with regard to deposit of amount payable under the directions against which the appeal is preferred?

(ii) Whether the retrenchment compensation falls within the ambit of "Wages" defined under the definition clause of the Act of 1936?

(iii) Whether the Assistant Labour Commissioner exercising the powers under Section 15 of the Act of 1936 has the jurisdiction to decide the application under Section 15 of the Act of 1936 by awarding retrenchment compensation?

(iv) Whether the respondents No. 2 to 5 are entitled for the retrenchment compensation after the closure of the establishment?

(v) Whether the petitioner establishment has followed the procedure as envisaged under the statute while closing the establishment?

25. With a view to answer Issue No. (i), it would be apt to refer to the reply filed by the respondents 2 to 5, wherein, they have challenged the maintainability of the petition on the ground that the remedy for the petitioner was to file an appeal under Section 17 of the Act of 1936 and not the writ petition. For facility of reference, Section 17 of the Act is reproduced as under:

17. Appeal.—

(1) [An appeal against an order dismissing either wholly or in part an application made under sub-section (2) of section 15, or against a direction made under sub-section (3) or

sub-section (4) of that section] may be preferred, within thirty days of the date on which [the order or direction] was made, in a Presidency-tow[1] [***] before the Court of Small Causes and elsewhere before the District Court—

(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees [or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees], or

[b] by an employed person or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the authority to make an application under sub-section (2) of Section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees or

[c] by any person directed to pay a penalty under [sub section (4) of section 15.

[(1A) No appeal under clause (a) of sub section (1) shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

[2] Save as provided in sub section (1) any order dismissing either wholly or in part an application made under sub section (2) of section 15, or a direction made under sub section (3) or sub section (4) of that section shall be final.

[3] Where an employer prefers an appeal under this section, the authority against whole decision the appeal has been preferred may and if so directed by the court referred to in sub section (1) shall pending the decision of the appeal withhold payment of any sum in deposit with it.

[4] the court referred to in sub section (1) may, if it thinks fit, submit any question of law for the decision of the High Court and if it so does, shall decide the question in conformity with such decision."

26. A bare perusal of the aforesaid statutory provision reveals that an appeal against an order dismissing an application, made under sub-section (2) of section 15, or against a direction made under sub-section (3) or sub-section (4) of that section] may be preferred within 30 days of the date on which the order or direction was made, which has not been done in the instant case by the petitioner.

27. I am conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law. The petitioner has tried to make out his case by challenging the very jurisdiction of the Assistant Labour Commissioner, Jammu exercising the power under Section 15 of the Act of 1936 by way of filing the instant petition in this Court instead of filing of an appeal before the appropriate forum. Thus, the petitioner has tried to project that his case falls within the exceptions carved out by the Hon'ble Supreme Court in "**Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and ors"** reported in **(1998) 8 SCC 11**, accordingly, this Court is of the view

that petitioner succeeds in making out his case as his case falls within the exceptions carved out by the Apex Court in Whirlpool's case (supra). For facility of reference, the relevant paras of the said judgment are reproduced as under:

> **"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".**
>
> **"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternate remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rightds or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.**

28. It would be apropos to refer to a judgment of the Apex Court in **M/s Magadh Sugar and Energy Ltd vs. The State of Bihar** reported in 2021 SCC Online SC 801, wherein the Apex Court in paragraph 25 of the said judgment observed as under:

"25. While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in Whirpool Corporation v. Registrar of Trademarks, Mumbai and Harbanslal Sahni v. Indian Oil Corporation Ltd. Recently, in Radha Krishan Industries v. State of Himachal Pradesh & Ors a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:

> **"28. The principles of law which emerge are that:**
>
> **(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;**
>
> **(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;**
>
> **(iii) Exceptions to the rule of alternate remedy arise where**
>
> **(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;**
>
> **(b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;**
>
> **(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;**

(vi) **When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory**

> **remedies is a rule of policy, convenience and discretion; and (1998) 8 SCC 1 (2003) 2 SCC 107 2021 SCC OnLine SC 334 (vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with**."

29. Keeping in view the aforesaid settled legal position coupled with the peculiar facts and circumstances of the case, the case of the petitioner falls in the exceptions carved to the rule of alternate remedy by the Apex Court mentioned supra and thus, this Court has the jurisdiction to adjudicate the instant writ petition.

Thus, the issue No. (i) is decided in favour of the petitioner.

30. While deciding the issue No. (ii) as to whether the compensation falls within the purview of definition of **"Wages"** or not has to be gone into at the first instance. For facility of reference, it would be apt to reproduce Section 2 (vi) of the Payment of Wages Act, 1936:

> ***"2 (vi) "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 includes-***
>
> ***(a) any remuneration payable under any award or settlement between the parties or order of a court;***
>
> ***(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;***

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court.

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of [the appropriate Government];

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)].”

31. This court in order to answer the question mentioned supra has placed reliance upon the judgment of the High Court of Calcutta titled “***B N Elias & Co. Pvt Ltd. V/s The Authority Appointed under the***

Payment of Wages Act and ors" reported as ***AIR 1960 Cal 603,*** wherein the Court has held thus:-

> ***"7. While agreeing with this view, I think that the matter is abundantly clear, so far as the old definition is concerned, from the definition itself, even without going into the question of an implied contract. In defining the word "wages" it was Stated expressly in the old definition that it would judge 'any sum payable to such person by reason of the termination of his employment'. This brings the compensation payable under section 25-F(b) of the Industrial Disputes Act directly within the definition of 'wages' in the Payment of Wages Act, because it is clearly a sum payable to the workman by reason of the termination of his employment…***
>
> ***…I, therefore, see no conflict the final position is, therefore, as follows: If a workman is retrenched then a certain compensation has to be paid under section 25-F(b) of the Industrial Disputes Act. This being a compulsory payment under the statute, must be taken to be an implied term of the contract of employment. It will, therefore, come within the definition of 'wages' under the Payment of Wages Act as originally defined, as well as under the amended definition. I am, therefore, of the opinion that the respondent No. 1 had jurisdiction to entertain an application under the Payment of Wages, Act, 1936"***

32. Further, with a view to answer the above question, it would be apt to place reliance upon the view taken by the High Court of Orissa in ***Rameshwar Lal Vs Jogendra Das*** reported as ***AIR 1970 Ori 76.*** In the said judgment, the High Court of Orissa as held thus:

> ***"13. It is true that in this case we are not concerned with a case of retrenchment compensation payable either under Section 25-FF or Section 25-FFF of the Industrial Disputes Act, but with a claim of compensation made under Section 25-F of the Industrial Disputes Act. In cases where retrenchment itself is not disputed or is clearly indisputable, there can be no doubt that a claim for retrenchment compensation as per Section 25-F of the Industrial Disputes Act can be entertained by the Authority under the Payment of Wages Act as***

retrenchment compensation comes within the definition of "wages". There are no materials in this case from which it can be inferred that it is a clear case of retrenchment. The employer disputes the claim that the termination of service was by way of retrenchment. The question, therefore, is whether under such circumstances, it is within the province of the relevant Authority under Section 15 of the Act to investigate into this question as a matter incidental to the claim arising out of deduction from wages.

14.This specific question came up for consideration before the Mysore Court in Manager, Codialabail Press V/s K Mohappa AIR (1963) Mys 128, and the learned Judge held-

"Even if retrenchment compensation payable under S. 25-F of the Industrial disputes Act can be regarded as wages - an order for its payment can be made under S. 15 only when the retrenchment is not disputed or is clearly indisputable. But if the employer who admits the termination of the employment disputes that the termination was by the process of retrenchment, there being no provision in the Payment of Wages Act for an adjudication on that matter, the foundation for a complaint under S. 15 that wages though due were withheld would be unavailable, since the purpose of the Act is to enforce payment of wages in a case where the facts admitted by the employer clearly establish the liability to pay the wages and it is complained that there is non-payment or incomplete payment"

33. Keeping in view the aforesaid settled legal position, this Court is of the view that if a workmen is retrenched then a certain compensation has to be paid under Industrial Disputes Act. This being a compulsory payment under the statute, must be taken to be an implied term of the contract of the employment and thus, the same falls within the definition of 'wages' under the Act of 1936 as originally defined as well as under the amended definition.

Thus, the Issue No. (ii) is decided in favour of the respondents No. 2 to 5 accordingly.

34. The next question which has come for consideration of this court in the instant petition is whether the respondent No 1 (Authority Under Payment of Wages Act, 1936) has rightly exercised its jurisdiction in awarding compensation to the retrenched employees (respondents No. 2 to 5 herein). While deciding the point of jurisdiction, the question of conflict is who has the appropriate jurisdiction/powers to adjudicate upon the matter of retrenchment compensation.

35. Keeping in view the submissions of the ld. Counsel for the petitioner and the Respondents 2 to 5, this Court is of the opinion that respondents 2 to 5 having moved an application before Respondent No 1 under section 15(2) of payment of wages Act under the head "***Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims"*** wherein one of the authorities to be appointed for adjudication of claims is Assistant Labour Commissioner and that the Respondent No 1 has rightly entertained the application within the ambit of his jurisdictional powers.

36. For facility of reference, Section 15 of the Act of 1936 is reproduced as under:

> ***15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.—***
> *(1) The appropriate Government may, by notification in the Official Gazette, appoint—*
> *(a) any Commissioner for Workmen's Compensation; or*

(b) any officer of the Central Government exercising functions as,—
(i) Regional Labor Commissioner; or
(ii) Assistant Labor Commissioner with at least two years' experience; or
(c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or
(d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or
(e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims: Provided that where the appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.]
(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):
Provided that every such application shall be presented within [twelve months] from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:
Provided further that any application may be admitted after the said period of [twelve months] when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

[(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the

disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees:

Provided that a claim under this Act shall be disposed of as far as practicable within a period of three months from the date of registration of the claim by the authority:

Provided further that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just manner:

Provided also that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or

(c) the failure of the employed person to apply for or accept payment.]

[(4) If the authority hearing an application under this section is satisfied—

(a) that the application was either malicious or vexatious, the authority may direct that a penalty 5[not exceeding three hundred seventy five rupees] be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or

(b) that in any case in which compensation is directed to be paid under sub-section (3), the applicant ought not to have been compelled to seek redress under this section, the authority may direct that a penalty[65] [not exceeding three hundred seventy five rupees] be paid to 6[the appropriate Government] by the employer or

other person responsible for the payment of wages.

(4A) Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person, the decision of the authority on such dispute shall be final.

(4B) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860).]

(5) Any amount directed to be paid under this section may be recovered—

(a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and

(b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate."

37. Further, the court is of the view that while deciding on the point of jurisdiction, the question of conflict is who has the appropriate jurisdiction/powers to adjudicate upon the matter of retrenchment compensation. While deciding on the point of jurisdiction, the question as to whether the compensation falls within the purview of definition of wages is to be looked into.

38. Keeping in view the legal position discussed above, this court is of the view that retrenchment if not disputed as is the case in present petition, where the factum of retrenchment has been admitted by the petitioner by bringing the fact of closure of the establishment on

account of liquidation before this court, an order for the payment of retrenchment compensation could be made under **section 15 of the Act of 1936.**

Thus the issue No. (iii) is also decided in favour of the respondents No. 2 to 5, accordingly.

39. The other issue which is raised by the petitioner is whether the respondents No. 2 to 5 are entitled for retrenchment compensation or not after the closure of the establishment.

40. After hearing both the counsel for the parties and perusing the record, this court is of the opinion that termination of respondents was the consequence of closure of the business and the petitioner is liable to compensate the respondent as Closure of business for the reason mentioned is not covered under section 25 FFF of Industrial Disputes Act Therefore respondents claim of seeking Retrenchment Compensation couldn't have been denied by their employer.

41. **In Manager, Codialabail Press V/S VK Monappa (Supra),** *it was observed that even if the retrenchment compensation payable under section 25-F of 1947 Act can be regarded as wages, as defined under section 2 (vi) of the payment of wages act, an order for the payment can be made under section 15 only when the retrenchment is not disputed, or is clearly undisputable.*

42. Further, the Apex Court in ***Pipraich Sugar Mills Lid. Pipraich Sugar Mills Mazdoor Union*** reported as ***AIR 1957 SC 95*** has observed as under:

> ***"15….we are unable to agree with these observations. Though there is discharge of workmen both when there is retrenchment and closure of business, the compensation is to be awarded under the law, not for discharge as such but for discharge on retrenchment, and if, as is conceded, retrenchment means in ordinary parlance, discharge of the surplus, it cannot include discharge on' closure of business."***

43. Keeping in view the observations in the cases citied above, this Court is of the considered view that the retrenchment of employees is admitted by the petitioner in the instant petition by bringing the fact of closure of the establishment as the establishment went into liquidation.

44. As section 25-F provides the compensation to workmen in case of closing down of the undertakings provided, where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workmen under Clause B of section 25-F shall not exceed his average pay of thirty days for every completed year. For facility of reference, Section 25-F is reproduced as under:

> ***25-F. Conditions precedent to retrenchment of workmen***.- *No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—*
>
> *(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the*

period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for [every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

45. The explanation to the section 25-FFF of Industrial Dispute Act provides that where an undertaking is closed down due to financial difficulties which is the case in the present petition, shall not be deemed to be closed down on account of unavoidable circumstances beyond control of the employer. The explanation is reproduced as under:

Sec 25-FFF: Compensation to workmen in case of closing down of undertakings.-

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub- section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.-- An undertaking which is closed down by reason merely of--

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on;

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.]

46. In the present petition, the termination of the employees was not a consequence of unavoidable circumstances; therefore the claim of respondents for retrenchment compensation is valid under law and respondent No. 2 to 5 are entitled for retrenchment compensation after the closure of the establishment.

Thus the issue No. (iv) is also decided in faovur of the respondents No. 2 to 5, accordingly.

47. The last contention raised by the respondent 2-5 is that the establishment/petitioner has not complied with the procedure laid down in ***section 25-O of Industrial Disputes Act, 1947*** for closing down an undertaking of an industrial establishment. For facility of reference the said section is reproduced as under:

"25-0. Procedure for closing down an undertaking.-
(1) An employer who intends to close down an

undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, rods, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub- section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of section (5) be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub- section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

48. However, in the present petition, the petitioner has not complied with the procedure provided for closing down an undertaking and has

clearly flouted the provisions envisaged therein the Industrial Disputes Act. The Industrial Disputes Act has provided a penal action against the employer who doesn't follow the procedure mentioned hereinabove for closing down an establishment. The section is reproduced as under:

> ***[25R. Penalty for closure.--(1) Any employer who closes down an undertaking without complying with the provisions of sub-section (1) of section 25-O shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.***
>
> ***(2) Any employer, who contravenes [2][an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-O or a direction given under section 25P], shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.***

49. On this count also, this Court holds that the petitioner has not followed even the provisions of the Industrial Disputes Act for closing down the establishment.

Thus, the issue No. (v) is also decided in favour of the respondents No. 2 to 5, accordingly.

CONCLUSION

50. In the light of the discussion hereinabove coupled with the settled legal position, this Court is of the view that this petition is devoid of any merit and is liable to be dismissed and the same is, accordingly, dismissed and the order passed by the Authority under Section 15 of the Payment of wages Act, 1936 by the Assistant Labour Commissioner dated 31.12.2018 is upheld and the petitioner is liable to compensate the private respondents 2 to 5 by way of retrenchment compensation @ 15 days salary for every completed year at the rate specified in the order passed by the Assistant Labour Commissioner, Jammu, within a period of one month from today, failing which the same shall be recovered as a fine by invoking Section 15(5) of the Payment of Wages Act or by freezing the official accounts of the establishment or by confiscating and selling the articles of the establishment or by any other mode as provided under law.

51. The writ petition is **dismissed** accordingly for the aforesaid reasons along with the connected applications.

(Wasim Sadiq Nargal)
Judge

JAMMU
09.11.2023
Naresh, Secy.

Whether the order is speaking: Yes
Whether the order is reportable: Yes

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