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L.I.C. OF INDIA

v

ANWAR KHAN (SINCE DECEASED) THROUGH LRS.

APRIL 23, 2007

B

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

C

Payment of Wages Act, 1936—s. 15(3)—Suit for declaration of age of retirement—Issue Pending in second appeal—In the meantime application under the Act and also under U.P. Dookan Aur Vanijya Adhistan Adhinyam claiming wages and compensation—Entitlement of the claimant to the wages disputed—Compensation granted by the Authorities and Courts below—On appeal, Held; The claimant could not have been granted compensation in view of proviso to s. 15(3) as there existed a dispute about entitlement of the claimant—A claim cannot be raised under the Act as well as under the

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Adhinyam—However, some amount of compensation already paid to the claimant, cannot be recovered—U.P. Dookan Aur Vanijya Adhishtan Adhinyam, 1962—s. 18

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Appellant-Corporation fixed the age of retirement of Field Officer at 58 years. Employee-respondent filed a suit for declaration that in view of the agreement between the field Officers Association and the appellant-Corporation age of retirement should be 60 years. Suit was decreed. During pendency of second appeal in the matter, respondent moved an application under s. 15(2) of Payment of Wages Act, 1936 as also under s. 18 of U.P. Dookan Aur Vanijya Adhistan Adhinyam 1962 claiming compensation Assistant Labour Commissioner held that the claimant was entitled to the wages for the relevant period plus double the amount as compensation. Appellate Authority modified the Award to the extent that the claimant was entitled to the wages claimed along with compensation of amount equivalent to back wages. Appellant- Corporation filed a Writ Petition questioning correctness of the order of Appellate Authority. Single judge of the High Court dismissed the petition. Division Bench of High Court also dismissed the Letters Patent Appeal.

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In appeal to this Court appellant-Corporation contended that compensation could not have been awarded as there was a *bona fide* dispute about the liability.

Respondent contended that appellant-Corporation being a commercial establishment, it is covered by the Adhinyam; and that proviso to s. 15(3) of the Act cannot be pressed into service because the dispute is relatable to amount payable. A

Allowing the appeal, the Court

HELD: 1. The heading of s. 18 of U.P Dookan Aur Vanijya Adhistan Adhinyam 1962, is "recovery of wages " It only provides that once an employee under the Adhinyam is not paid, the procedure for recovery under payment of Wages Act, 1936 is to adopted . Once s. 1(6) of the Act applies, the nature of the job is irrelevant. Whether the Field Officers are workmen or not is really if no relevance in view of s. 1(6) of the Act. Section 15 of the Act is relatable only to claim under the Act The entitlement for compensation is only under the Act and there is no scope for compensation under the Adhinyam The compensation has to be worked out in terms of s.15 of the Act. There cannot be a claim both u/s 15 of the Act and u/s 18 of the Adhinyam B
[Para 12] [455-D, E] C D

2. It cannot be said that proviso to s. 15(3) of the Act cannot be pressed into service because the dispute is relatable to amount payable. The question of payability of an amount arises only when somebody is entitled to an amount. The proviso makes it clear that when there is *bona fide* dispute about the amount payable, compensation cannot be awarded. [Para 13] [455-F, G] E

3. In this case. There exists a dispute about the entitlement of the claimant. The matter is pending before the High Court. Therefore, the amount awarded as compensation is set aside. Pursuant to the directions given a particular sum has been deposited and a sum has been withdrawn therefrom by the legal heirs of the claimant. Though proviso to s. 15(3) has application considering the fact that the amount has been withdrawn it is directed that there shall not be any recovery. [Paras 14 and 15] [455-G; 456-A, B] F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6288-6289 of 2000. G

From the Judgment and Order dated 14.07.2000 & 1.11.1999 of the High Court of Judicature at Allahabad in Special Appeal No. 37 (Defective) of 2000 and C.M.W.P. No. 34897 of 1999 respectively.

K. Ramamurthy and S. Rajappa for the Appellant. H

A Bharat Sangal, R.R. Kumar and Samyadip Chatterji for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by a Division Bench of the Allahabad High Court affirming the order
B passed by the learned Single Judge of the said High Court.

2. Background facts in a nutshell are as follows:

3. Questioning decision taken by the appellant-Life Insurance Corporation of India (in short 'LIC') fixing the age of retirement of Development
C Officer, presently called the Field Officer at 58 years, a suit was filed by respondent-Anwar Khan. The said Anwar Khan has expired in the meantime and his legal representatives are presently the respondents. The suit was filed primarily for declaration that in view of the agreement between the Field Officers Association and the LIC age of retirement is 60 years. The suit was
D decreed on 30.7.1981 and the appeal by the LIC was dismissed on 27.3.1982. The second appeal filed before the High Court is pending. During the pendency of the second appeal, the respondent-Anwar Khan moved the authorities under the Payment of Wages Act, 1936 (in short the 'Act') claiming compensation. Stand of the LIC before the original authority was that the Development Officers are not covered by the Act as they get more than
E Rs.1,000/- p.m. By Order dated 11.6.1993, the Assistant Labour Commissioner held that the claimant was entitled to wages for the relevant period plus double the amount as compensation. An appeal was preferred by the LIC. The Appellate Authority by order dated 7.5.1999 modified the Award to the extent that the claimant was entitled to the wages claimed along with the compensation
F of amount equivalent to back wages. LIC filed a writ petition questioning correctness of the order of the Appellate Authority.

4. The learned Single Judge dismissed the writ petition. The Division Bench of the High Court held that Letters Patent Appeal was not maintainable. As noted above, Anwar Khan died in 1990. Stand before the High Court was
G that the authorities under the Act should not have decided the claim made as the suit filed was merely for a declaration and no consequential relief was granted. In any event, the Act has no application and no compensation is payable. The application was filed under Section 15(2) of the Act. Reference was also made to the U.P. Dookan Aur Vanijya Adhistan Adhinyam, 1962
H (in short the "Adhinyam").

5. The High Court noted that the Assistant Labour Commissioner observed that no evidence was led regarding nature of the job. Therefore, the claim that the applicant was belonging to the supervisory category is not acceptable. With regard to Section 15 of the Act, it was noted that the salary which was being paid to the claimant was factually to be decided. Initially the Assistant Labour Commissioner held that the suit was not maintainable. In appeal, the matter was remanded. A plea was raised that the suit was premature since there was no definite determination as second appeal was pending. The High Court held that even if the Act has no application that does not render the proceedings irregular.

6. It was submitted by the learned counsel for the LIC that the High Court has erred in holding that under Section 18 of the Adhinyam, the Act has application. It was pointed out that undisputedly the claimant was receiving salary of more than Rs.1500/-. The expression "employee" is defined under the Adhinyam in Section 2(6) and "Wages" has been defined under Section 2(18). Section 18 relates to recovery of wages. It is also pointed out that compensation could not have been awarded since there was a *bona fide* dispute about the liability.

7. In response, learned counsel for the respondent submitted that the Field Officers are not workmen. The question of the amount received as wages has to be decided only after it is decided as to whether Section 14 of the Adhinyam has no application. It is only then Section 16 of the Adhinyam which shall have no application. Undisputedly, the LIC is a commercial establishment in terms of Section 2(4) of the Adhinyam. Since it is covered by the Adhinyam, because of non-payment, Section 18 makes the Act applicable. It was pointed out that in the application made it was clearly pointed out that the same was under Section 15 of the Act and under Section 18 of the Adhinyam. It is pointed out that what is under challenge is the entitlement and, therefore, there cannot be any *bona fide* dispute about the amount payable to bring in application of proviso to sub-section (3) of Section 15 of the Act. It is pointed out that pursuant to the direction given by the original authority a sum of Rs.1,28,000/- had been deposited and a sum of Rs.60,000/- has already been withdrawn. It is, therefore, submitted that this is not a fit case for exercise of jurisdiction under Article 136 of the Constitution of India, 1950 (in short the 'Constitution').

8. A few provisions of the Act and the Adhinyam need to be noted. Sections 14 and 15 of the Adhinyam read as follows:

A “14. *Payment of wages for period of earned leave* (1) An employee proceeding on earned leave shall, on demand, be given advance payment of the wages for half the period of the leave, and the wages for the remaining half period of such leave shall be payable to him along with the wages for the first wage period after he resumes duty.

B (2) The wages for the period of sickness leave shall be payable to the employee along with his wages for the first wage period after he resumes duty.

C (15) *Deductions from wages* - No deductions from the wages of an employee shall be made except to such extent, and in such manner, as may be prescribed.”

9. Section 15(3) of the Act with the proviso reads as follows:

D “(3) When any application under sub-section(2) is entertained, the authority shall hear the applicant and the employer or other persons 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 twenty-five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding twenty-five rupees :

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Provided 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-

G (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, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

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

Section 18 of the Adhiniyam reads as follow:

“18. Recovery of wages—The wages of an employee, if not paid as provided by or under this Act, shall be recoverable in the manner provided in the Payment of Wages Act, 1936, as if the same wages were payable under that Act.” B

10. It is to be noted that the original amount of Rs.1,000/- was fixed under Section 1(6) with effect from 15.10.82, it has been increased to Rs.1600/- . There is also no dispute that at the relevant point of time the applicant was getting more than Rs.1500/- C

11. It is only a mechanism for recovery of wages and because the Adhiniyam has application to any employee that does not automatically bring him under the umbrella of the Act.

12. It has to be noted that the heading of Section 18 of the Adhiniyam is “recovery of wages”. It only provides that once an employee under the Adhiniyam is not paid the procedure for recovery under the Act is to be adopted. Once Section 1(6) of the Act applies, the nature of the job is irrelevant. Whether the field Officers are workmen or not is really of no relevance in view of Section 1(6) of the Act. Section 15 of the Act is relatable only to claim under the Act. The entitlement for compensation is only under the Act and there is no scope for compensation under the Adhiniyam. The compensation has to be worked out in terms of Section 15 of the Act. There cannot be a claim both under Section 15 of the Act and Section 18 of the Adhiniyam. D E

13. Learned counsel for the respondent submitted that proviso to Section 15(3) cannot be pressed into service because the dispute is relatable to amount payable. In this case the LIC disputes the entitlement. We find the plea to be without any substance. The question of payability of an amount arises only when somebody is entitled to an amount. The proviso makes it clear that when there is no *bona fide* dispute about the amount payable, compensation cannot be awarded. F G

14. In this case, undisputedly there is dispute about the entitlement of the claimant. The matter is pending before the High Court. Therefore, the High Court’s view holding the claimant to be entitled to compensation is clearly H

A untenable. Accordingly, the amount awarded as compensation is set aside. However, we find that pursuant to the directions given a sum of Rs.1,28,000/- has been deposited and a sum of Rs.60,000/- has been withdrawn by the legal heirs of the claimant.

B 15. Though we have hold that proviso to Section 15(3) has application, considering the fact that the amount has been withdrawn, we direct that there shall not be any recovery. It is made clear that these directions shall not in any way affect the decision in the second appeal.

16. The appeal is allowed.

C K.K.T.

Appeal allowed.