

(2016) 02 AHC CK 0231
In the Allahabad High Court
Case No : Service Single No. 860 of 1995

Branch Manager, Central Bank of India and Others	APPELLANT
Vs	
Vth Additional District Judge, Gonda and Others	RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 78, Section 79
Payment of Wages Act, 1936 — Section 15(2)
Uttar Pradesh Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 — Section 10, Section 11, Section 13,

Citation : (2016) 3 ADJ 365 : (2016) 149 FLR 227 : (2016) 34 LCD 777

Hon'ble Judges : Sudhir Agarwal, J.

Bench : Single Bench

Advocate : N.K. Seth and Gopal K. Srivastava, for the Appellant; R.S. Mishra, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—1. Heard Sri Gopal Kumar Srivastava, learned counsel for the petitioner and Sri Radhey Shyam Mishra-respondent 3, in person.

2. This writ petition, under Article 226 of Constitution of India, has come up against order dated 08.04.1988 passed by Prescribed Authority under Section 15(2) of Payment of Wages Act, 1936 (hereinafter referred to as the "Act, 1936") in D.C.P.W. 84 of 1985, directing petitioner-employer to pay Rs. 2257.50 towards leave encashment wages and five times compensation, i.e., Rs. 11287.50 (a total sum of Rs. 13545.00); and against appellate order dated 14.12.1994 passed by Sri R.P. Lawania, Vth Additional District Judge, Gonda dismissing Misc. Revenue Appeal No. 18 of 1988.

3. The brief facts necessary to understand the dispute are that respondent 3- Sri Radhey Shyam Mishra was employed as Clerk in Central Bank of India (hereinafter referred to as the "Bank") and was posted at Lal Bahadur Shastri

Degree College Extension Counter, Gonda. On account of certain alleged act constituting misconduct, respondent 3 was placed under suspension and ultimately dismissed from service w.e.f. 28.04.1985. Respondent 3 filed application dated 23.08.1985 before Prescribed Authority appointed under Act, 1936, stating that 31 days earned leave was due to him and on the date of his dismissal he was entitled to get wages in lieu of said earned leave under Section 10(7) of U.P. Shops & Commercial Establishment Act, 1962 (hereinafter referred to as the "U.P. Act, 1962"), which was not paid by Bank, therefore, value of 31 days earned leave i.e. Rs. 1568.51 be directed to be paid to him alongwith compensation.

4. Bank contested the matter by filing written statement dated 25.10.1985 contending that under Third Bipartite Settlement para 25(I), facility of encashment of accumulated leave was available to a workman at the time of his retirement or if one dies-in-harness but since respondent 3 was dismissed from service and did not belong either of two categories mentioned above, he was not entitled for encashment of accumulated leave.

5. The respondent 3 sought amendment of his application dated 23.08.1985 vide application dated 04.01.1986 wherein amount of Rs. 1568.51 was amended as Rs. 2257.50 and he added a prayer of payment of said amount with compound interest of 18% w.e.f. 30.04.1985 till the date of payment.

6. Another amendment was sought by him by filing application dated 26.07.1986 wherein he sought payment of 10 times compensation as Rs. 22575/-. He also pleaded by addition in the application that 31 days unavailed earned leave was liable to be encashed under Sections 78 and 79 of Factories Act, 1948 read with para 460 of Sastri Award and para 9.33 of Desai Award.

7. Prescribed Authority accepted claim of workman to the extent of encashment of accumulated leave and five times compensation vide order dated 08.04.1988. Thereagainst Bank preferred Misc. Revenue Appeal No. 18 of 1988 but the same has been dismissed by Vth Additional District Judge, Gonda vide appellate order dated 14.12.1994.

8. Learned counsel appearing for petitioner-Bank contended that Prescribed Authority under Act, 1936 has no jurisdiction to entertain the said application in 1986 since by notification dated 23.05.1985, issued by State Government, all provisions of U.P. Act, 1962 were exempted in respect of all the "Schedule Banks" as defined in Reserve Bank of India Act, 1934 (hereinafter referred to as the "Act, 1934"), which included Central Bank of India also. He further submitted that several provisions of U.P. Act, 1962 were exempted by notification dated 15.12.1982 and, therefore also U.P. Act, 1962 was not applicable. It is said that there is no notification issued under Act, 1936 to apply the same to Central Bank of India, therefore, impugned orders are patently without jurisdiction.

9. Respondent 3 who has appeared in person drew attention of this Court to Section 18 of U.P. Act, 1962 which empowers Prescribed Authority under Act,

1936 to adjudicate claim of wages payable under U.P. Act, 1962. He also drew attention of this Court to Section 10(7) of U.P. Act, 1962 wherein workman can claim encashment of accumulated leave where employer has terminated his service.

10. I have heard rival submissions and perused the record.

11. The only question up for consideration in this petition is "whether orders passed by Appellate Authority and Prescribed Authority under Act, 1936 are within jurisdiction?"

12. Bank is admittedly covered by the term "commercial establishment" as defined under Section 2(4) of U.P. Act, 1962, which reads as under:

"(4) "commercial establishment" means any premises, not being the premises of a factory, or a shop, wherein any trade, business, manufacture, or any work in connection with, or incidental or ancillary thereto, is carried on for profit and includes a premises wherein, journalistic or printing work, business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, or which is used as theatre, cinema, for any other public amusement or entertainment or where the clerical and other establishment of a factory, to whom the provisions of the Factories Act, 1948, do not apply, work."

(emphasis added)

13. The definition of "wages" under Section 2(18) of U.P. Act, 1962, reads as under:

"(18) "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 an employee, and includes--

(a) any bonus;

(b) any sum payable to the employee by reason of the termination of his employment; and

(c) any additional remuneration payable under the terms of his employment."

(emphasis added)

14. It is not in dispute that the term "wages", as defined under Section 2(18) of U.P. Act, 1962, includes the sum payable to employee by reason of his termination and also includes any additional remuneration payable under the terms of his employment. Learned counsel for the Bank could not dispute that encashment of accumulated leave after termination would constitute wages under Section 2(18) of U.P. Act, 1962.

15. Section 3 makes provisions to certain persons, shops and commercial establishments to which the U.P. Act, 1962 would not apply. Sub-section (3) of

Section 3, reads as under:

"3. The provisions of the Act not to apply to certain persons, shops and commercial establishments-

....

(3) Powers of the Government to exempt any class of shops or commercial establishment from the operation of the Act.--The State Government may, in public interest, by notification in the Gazette, exempt, subject to such conditions as it may impose in this behalf, any shop" or commercial establishment or any class of shops or commercial establishments from the operation of all or any of the provisions of this Act."

(emphasis added)

16. Learned counsel appearing for petitioner-Bank pointed out that commercial banks situate in State of U.P. were exempted from operation of certain provisions of U.P. Act, 1962 by State Government's notification dated 15.12.1982, issued under Section 3(3) of U.P. Act, 1962. The said notification reads as under:

"Notification No. 3802/XXXVI-3-708-76, dated December 15, 1982 Commercial banks.--In exercise of the powers under sub-section (3) of Section 3 of the U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 (U.P. Act No. XXXVI of 1962), the Governor is pleased to exempt, in public interest, all commercial banks situated in the state of Uttar Pradesh from the operation of the provisions of Sections 8, 9, 10, 11, 13, 14, 19, 20, 32 and 38 of the said Adhiniyam."

(emphasis added)

17. Apparently all the provisions of U.P. Act, 1962 were not exempted and exemption granted was only in respect of Sections 8, 9, 10, 11, 13, 14, 19, 20, 32 and 38. In the present case we are concerned with Sections 2(18) read with 18 of U.P. Act, 1962, which reads as under:

"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."

18. Admittedly neither Section 2(18) nor Section 18 were exempted by notification dated 15.12.1982. It leads to the conclusion that despite notification dated 15.12.1982, an employee of Bank, if not paid wages by or under U.P. Act, 1962, he can proceed for recovery thereof in the manner provided in Act, 1936, as if said wages are payable under that Act.

19. It is also evident from record that respondent 3 claimed encashment of accumulated leave which accumulated before his dismissal from service on 22.04.1985. Therefore, dues are of the period prior to 22.04.1985. At that time Section 18 of U.P. Act, 1962 was duly applicable. By notification dated 23.05.1985, State Government in exercise of power under Section 3(3) of U.P.

Act, 1962, granted exemption from all the provisions of U.P. Act, 1962 to all "Scheduled Banks" as defined in Act, 1934. Notification dated 23.05.1985 is prospective and has no application to the dispute relating to period earlier to 23.05.1985. Neither any attempt has been made by learned counsel for the Bank to argue that notification dated 23.05.1985 is retrospective nor this Court has any manner of doubt that exemption of all the provisions of U.P. Act, 1962 vide notification dated 23.05.1985 would apply prospectively and would govern matters which are subsequent thereto and not to earlier ones.

20. Moreover, workman filed application under Section 15(2) of Act, 1936 on 23.08.1985. It was contested by Bank by filing written statement dated 25.10.1985. No objection with regard to jurisdiction of Prescribed Authority was taken in written statement dated 25.10.1985. For the first time this objection was taken before Appellate Court which has negated and found that in respect of dispute prior to date of dismissal, i.e., 22.04.1985, Prescribed Authority had jurisdiction to entertain application under Section 18 of U.P. Act, 1962 read with Section 15(2) of Act, 1936 since complete exemption came to be made by Government Notification dated 23.05.1985. Therefore, it cannot be said that Prescribed Authority had no jurisdiction to entertain application under Section 15(2) of Act, 1936.

21. So far as otherwise merit of the issue is concerned, it is not disputed that under provisions of Third Bipartite Settlement there was no specific exclusion that a workman if entitled for encashment of earned leave under earlier settlements, that would render inoperative after aforesaid settlement. Petitioner-Bank is attempting to read the aforesaid as if it has the effect of making all other existing provisions inoperative but there is nothing to support the same contained in Third Bipartite Settlement. Para 25 thereof reads as under:

"25. Encashment of Privileged Leave

(i) Parties agree that workmen could be entitled to encash the accumulated leave to his credit at the time of retirement.

(ii) Parties further agree that if a workman dies in service, his heirs will be paid salary for the leave accrued to him at the time of the death."

22. The aforesaid clause only shows agreement of parties for encashment of accumulated leave at the time of retirement or when workman dies-in-harness. It nowhere shows, if in any other circumstances workman would be entitled for encashment, those provisions should stand superseded. It is admitted by Bank in para 14 of writ petition that in addition to Third Bipartite Settlement, existing awards, i.e., Shastri Award and Desai Award as also First and Second Bipartite Settlements are binding upon Bank or its workmen. In view of above admission of Bank, I find no hesitation in holding that Workman was entitled for encashment of accumulated leave after his termination under Sastri Award Desai Award and has rightly been so granted by courts below.

23. No other issue has been argued.

24. The above discussion leads to inescapable conclusion that the judgments and orders passed by courts below, impugned in this writ petition, are just, valid and in accordance with law and warrant no interference.

25. In view thereof, I find no reason to take a different view than what has been taken by the courts below that the workman is entitled for encashment of accumulated earned leave.

26. The writ petition is accordingly dismissed.

27. Interim order, if any, stands vacated.