

(1987) 08 AHC CK 0005

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 8891 and 8894 of 1985

Divisional Railway Manager, Northern Railway and Others

APPELLANT

Vs

Prescribed Authority under the Payment of Wages Act and
Another

RESPONDENT

Date of Decision : 26-08-1987

Acts Referred:

Payment of Wages (Procedure) Rules, 1937 — Rule 8, 8(3)
Payment of Wages Act, 1936 — Section 15

Citation : (1987) 08 AHC CK 0005

Hon'ble Judges : B.N. Misra, J

Bench : Single Bench

Advocate : K.D. Pandey, for the Appellant; Prakash Krishna, for the Respondent

Judgement

B.N. Misra, J.—Writ Petition No. 8891 of 1985 is directed against the Award dated 11.09.1984 in direction case No. 22 of 1983 and order dated 09.04.1985 in Application No. 22 of 1983 passed by the Deputy Labour Commissioner-Cum-Prescribed Authority under the Payment of Wages Act, 1936 (hereinafter referred to as the Act). Writ Petition No. 8894 of 1985 is directed against the Award dated 11.09.1984 and order dated 09.04.1985 in Application No. 14 of 1984. While the former writ petition relates to the claim of wages of Respondent No. 2 for the period from 05.10.1982 to 4.02.1983, the latter writ petition relates to the Wages for the period from 05.02.1983 to 04.05.1983. Both the writ petitions have been heard analogously as the point involved are the same. Learned Counsel for the parties have been heard at length. This present order will govern both the writ petitions.

2. Respondent No. 2 filed two applications before the Prescribed Authority u/s 15 of the Act for a direction to the Petitioners for payment of his wages. The Petitioner had appeared before the Prescribed Authority pursuant to notice issued to it. However, the Petitioner having failed to file written statement or take any further steps, was set ex-parte and by order dated 11.09.1984 ex-parte Awards

were passed in favour of Respondent No. 2. Though the Awards in both the cases were given on 11.09.1984, the Petitioner filed applications in the two cases for recall of the ex-parte Awards on 10.01.1985. An affidavit was also filed along with the applications. Copy of this affidavit has been filed as Annexure-III to the writ petition.

3. In this context it would be useful to refer to Rule 8 of the Payment of Wages (Procedure) Rules, 1937 which provides that in the event of employer or his representative failing to appear on the specific date, the authority may proceed to hear and determine the application ex-parte and this is what happened in this case. The proviso appended to Rule 8 after Sub-Rule 3 provides that an order passed Under Sub-Rule 2 or 3 may be set aside and the application re-heard on good cause being within a month of date of the said order, notice being served on the opposite party of the date fixed for re-hearing.

4. In the present writ petition it has been stated that the Awards in question were received by the Petitioner in the second week of December, 1984. The expression second week is rather vague as it does not give any clue as to the actual day in the week on which the Award was received. Further, the assertion as to late receipt of the awards is made for the first time in the writ petition. In the affidavit filed in support of the applications Under Rule 8 there is no mention at all that the Awards in question were received by the Petitioner in the second week of December, 1984. On the other hand in the order dated 09.04.1985 passed by the Prescribed Authority, copy of which has been filed as Annexure-IV, to the writ petition, it has been clearly observed that copies of the Awards dated 11.09.1984 had been duly despatched to the Petitioner by registered post vide receipt No. 16377/80 dated 01.09.1984. In these circumstances Petitioner's that it received the Awards in the second week of December, 1984 is not acceptable. Learned Counsel appearing for the Petitioner submitted that the Petitioners plea who are the Railways being a part of the Government are entitled to lenient treatment from the courts in the matter of condonation of delay. In support of this submission learned Counsel cited Nav Rattanmal and Others Vs. The State of Rajasthan, . The principles decided by the Supreme Court in the aforesaid decision do not help the Petitioner. Challenge before the Supreme Court was to the difference between the periods of limitation prescribed for the claims of the Government and claims of individuals. This question does not at all arise for consideration in this case. The contention of the learned Counsel for the Petitioner that even when the period of limitation is prescribed by law, the Government would be entitled to a preferential treatment, is not a sound proposition and hence it is rejected.

5. As already stated the Petitioner's applications for recall of the ex-parte Awards had not been filed within the prescribed period and as such have been rightly rejected by the Prescribed Authority. In the result these two writ petitions are dismissed with costs.