

(1998) 12 AHC CK 0035
In the Allahabad High Court
Case No : C.M.W.P. No. 22727 of 1990

Hind Majdoor Sabha, U.P.

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 09-12-1998

Acts Referred:

Limitation Act, 1963 — Section 4, 5
Payment of Wages Act, 1936 — Section 15, 15(2), 15(3), 17
Representation of the People Act, 1951 — Section 29(2), 97(1)

Citation : (1999) 1 AWC 126 : (2000) 2 LLJ 583

Hon'ble Judges : Aloke Chakrabarti, J

Bench : Single Bench

Advocate : Devendra Dahma, for the Appellant;

Judgement

Aloke Chakrabarti, J.—Two tube-well operators filed an application u/s 15(2) of the Payment of Wages Act through the present petitioner contending that respondent-employers illegally made deductions from their wages for the period between 11.10.1998 and 31.7.1989 and prayed for refund of the said amount together with compensation. The application was allowed by order dated 21.12.1989 directing refund of deductions and compensation. After the recovery was in progress u/s 15(3) of the said Act and recovery warrants had been issued, the respondent Nos. 2 and 3 preferred an appeal u/s 17 of the said Act on 21.3.1990. As there was delay of about two months, an application u/s 5 of the Indian Limitation Act supported by an affidavit was filed. Employees filed objection to the application for condonation of delay. The respondent No- 5 by his order dated 12.7.1990 allowed the said application upon condoning the delay and the appeal was admitted. Challenging the said order, this writ petition was filed.

2. Learned counsel for the petitioner on behalf of the employees contended that in respect of such an appeal u/s 17 of the said Act, the provision of Section 5 of the Limitation Act is not available. Law has been referred to on behalf of the

petitioner, workmen as decided in the case of *Shri Anwari Basavaraj Parti v. Sri Siddaramaiah* JT 1993 (I) SC 328 ; *Union of India v. Aftab Hussain* 1966 ALJ 806 and *U. P. State Electricity Board and others v. 7th Additional District Judge, Faizabad and others* 1997 (76) FLR 354 , Reference was also made to the cases of *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, ; *Mukri Copalan v. C. P. Aboobacker* JT 1995 (15) SC 296 and *Vidyacharan Shukla Vs. Khubchand Baghel and Others*, .

3. It has been contended that law has been decided in the case of *Shri Anwari Basavaraj Patil* (supra) wherein question of applicability of provisions of Limitation Act in respect of a proceeding under the Representation of Peoples Act. 1951 was being considered. It has been held therein that the period for notice under proviso to sub-section (1) of Section 97 of the said Act does not permit condonation of delay under the Limitation Act. Considering the provisions of the said Act as also the effect of Section 29(2) of the Limitation Act and also the law as explained in the case of *H. N. Yadau* (supra), it has been held that if on an examination of the relevant provisions of the Special Act, it is clear that the provisions of the Limitation Act are necessarily excluded then the benefits conferred by the Limitation Act cannot be called in aid to supplement the provisions of the Special Act.

4. It has been further contended that the specific provision for condonation of delay has been made in the second proviso to subsection (2) of Section 15 of the said Act although no such provision is there in Section 17 and, therefore, the aforesaid interpretation of law becomes applicable.

5. On behalf of the respondent-employers, it has been contended that the authority acted u/s 15 of the said Act is *persona designata* and, therefore, the specific provision empowering condonation of delay had to be made whereas the authority u/s 17 is a regular Court having all its incidental power and, therefore, Section 29(2) of the Limitation Act cannot be interpreted-in the aforesaid manner as contended by the petitioner-employees.

6. Reliance has been placed on the law decided in the cases referred to above as also on the cases of *Smt. Lata Kamat Vs. Vilas*, , and the *State of West Bengal and others Vs. Kartick Chandra Das and others*, .

7. In the case of *Vidya Charan Shukla* (supra), law in this connection was settled considering the Limitation Act as it then stood as also the question came for consideration therein. The said law was again considered in the case of *H. N. Yadav* (supra), and it was laid down there that if the scheme of special law and the nature of the remedy provided therein amount to a complete Code in itself, then the provisions of the Limitation Act must be held to be necessarily excluded.

8. In the case of *Mukri Gopalan*. (supra), the two judges Bench while considering a law of the State of Kerala interpreted Section 29(2) of the Limitation Act and the case of *Vidya Charan Shukla*. (supra), was followed. The change indicated by a three Judges Bench in *H. N. Yadav's* case (supra), and followed in the case of

Shri Anwari Basavaraj Patil (supra), was not taken note of. Therefore, in view of above circumstances, the law decided in the case of H. N. Yadav (supra) by a larger Bench remains binding. The aforesaid case of Lata Kamat (supra), and State of West Bengal v. Kartick Chandra Das (supra) also did not consider the change in interpretation of law as settled in the case of H. N. Yadav (supra), and, therefore, is not having a binding effect.

9. In view of the aforesaid law as decided in the case of H. N. Yadav (supra) and followed in the case of Shri Anwari Basavaraj Patil (supra), only thing to be considered is as to whether in the present case, the provisions of Payment of Wages Act on examination make it clear that the provisions of the Limitation Act are necessarily excluded so far as appeal under provision of the said Act is concerned.

10. A comparison of the language used in Section 15 and Section 17 of the said Act clearly indicates that for the purpose of proceeding u/s 15, the power has been provided categorically for entertaining an application even after the period prescribed for filing such application. But, in the case of an appeal u/s 17 of the said Act, such provision for condonation of delay has been omitted. Such specific omission on the part of the Legislature has to be interpreted as withholding the power of condonation of delay from the appellate authority. The provision of sub-section (2) of Section 17 also indicates finality of the order passed u/s 15(2) same as provided in Section 17(1), i.e., an appeal filed within thirty days.

11. The contention of the respondents that specific provision for condonation of delay has been provided as the authority u/s 15 of the said Act is persona designate and the same was not required in case of appellate authority being a civil court, does not appear to be acceptable. In the present case, in the absence of any indication that for deciding the appeal u/s 17 of the said Act, powers of civil court are available, the said contention of the respondent-employers cannot be "accepted".

12. Moreover, in cases of U. P. State Electricity Board and Union of India v. Aftab Hussain, position in respect of appeal u/s 17 of the said Act had been considered holding finally that the Tribunal being not a Court within the meaning of Sections 4 and 5 of the Limitation Act, such power of condonation of delay u/s 5 of the Limitation Act is not available.

13. In view of the aforesaid findings, the writ petitioner succeeds and is allowed. The impugned order dated 12.7.1990 is hereby quashed. There will be no order as to costs.