

(1963) 05 CAL CK 0002
In the Calcutta High Court

Judhistir Kodel

APPELLANT

Vs

Authority under Payment of Wages Act and Others

RESPONDENT

Date of Decision : 03-05-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Payment of Wages Act, 1936 — Section 15

Citation : (1963) 2 LLJ 473

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

Bench : Single Bench

Judgement

B.N. Banerjee, J.—This rule is directed against an order, made by an Authority under the Payment of Wages Act, West Bengal, overruling the point of limitation taken by the petitioner and also refusing, at that stage, to decide a preliminary objection as to jurisdiction.

2. The following facts are not disputed in this rule. Respondent 2 had been an employee of All India Spring Manufacturing Company. For certain alleged misconduct, he was suspended on 9 August 1957, and, thereafter, dismissed from service on 17 October 1957. Over the dismissal of the respondent 2 there arose an industrial dispute and the dispute was ultimately referred, by the State of West Bengal, to the first labour court for adjudication. The labour court found that the dismissal was wrongful and directed that the respondent be reinstated in service, if he reported for duty within ten days of the publication of the award. The award was published in the Calcutta Gazette on 15 January 1959.

3. Against the award of the labour court, the All India Spring Manufacturing Company moved this Court, under Article 226 of the Constitution, for quashing of the order and obtained a rule on 28 January 1959, being Civil Revision Case No. 249 of 1959. The said rule was discharged on 7 July 1961. After the discharge of the aforesaid rule, respondent 3 advocate, acting on behalf of respondent 2 workman, wrote a letter to the All India Spring Manufacturing Company claiming

reinstatement and back-wages from the date of dismissal of respondent 2 up to date. On receipt of the letter, the All India Spring Manufacturing Company asked the said respondent 2 to resume his duties forthwith. The said letter is dated 27 July 1961. Respondent 2, however, did not rejoin his duties as asked. On the contrary, he caused respondent 3 to write to the All India Spring Manufacturing Company to the effect that payment of arrears of wages should be made to the said respondent 2 first of all and about resumption of duties a reply may be sent later on. Since the petitioner did not rejoin his duties, no payment was made to him. In these circumstances, on 29 September 1961, the petitioner applied before the Authority under the Payment of Wages Act claiming his arrears of salary.

4. Before the Authority under the Payment of Wages Act, the present petitioner, who is works manager of the All India Spring Manufacturing Company, raised two preliminary objections. The first preliminary objection was that the claim was barred by limitation, under the provisions of Section 15 of the Payment of Wages Act, and the other preliminary objection was that the sums due to the petitioner, if any, after his dismissal were not wages and the Authority under the Payment of Wages Act had no jurisdiction to make any award in favour of respondent 2 in respect of the aforesaid sums. The Authority under the Payment of Wages Act negatived the objection of the petitioner on the point of limitation. He also overruled the objection as to jurisdiction, at that stage, on the ground that the said objection was premature and unless the original application was admitted, it was impossible for him to enter into the merits of the objection.

5. Aggrieved by the aforesaid order of the Authority under the Payment of Wages Act, the petitioner moved this Court, under Article 226 of the Constitution, praying inter alia for a writ of certiorari for the quashing of the order and obtained this rule.

6. Mr. P.K. Sanyal, learned advocate for the petitioner, contended that the arrears of wages, if they are wages at all, became due to the petitioner only from the date of publication of the award of the labour court. Under the first proviso to Section 15(2) of the Payment of Wages Act, an application before the Authority under the Payment of Wages Act, for recovery of such wages, should have been made within six months from the date on which payment of the wages were due to be made. Calculated from 15 January 1959, when the award was published, the application, presented on 27 September 1961, was filed too late and should not have been dismissed in limine as barred by limitation. He further contended that in trying to condone the period of limitation, under second proviso to Section 15(2) of the Act, the authority proceeded on an offhand manner and did not consider the grounds for condoning of delay as pleaded in a proper manner. He strongly relied on the decision of *Sitaram Ramcharan and Ors. v. M.N. Nagrashna and Ors.* 1930-I L.L.J. 29 in which the Supreme Court laid down that the second proviso to Section 15(2) was in substance similar to the provisions of Section 5 of the Limitation Act and each day's delay must be sufficiently

explained before an application, filed after the prescribed time, may be entertained. In my opinion, in the facts and circumstances of the case, respondent 2 could not approach the Authority under the Payment of Wages Act till 7 July 1961, because there was an order of stay issued by this Court restraining the operation of the award. The application before the Authority under the Payment of Wages Act was made on 29 September 1961 a little over two months from that date, During this period correspondence passed between respondent 2 and the All India Spring, Manufacturing Company, the employer, for realization of arrears of wages. The authority considered all these facts and circumstances and found that sufficient cause had been made out for condonation of the delay in making the application. In view of that I am reluctant to interfere with the finding as to sufficient cause for delay, as arrived at by the authority.

7. In the instant case the authority has not decided the objection as to jurisdiction. That should be the first issue, which should be decided as a preliminary issue, and if that issue is answered against the present petitioner, then only the authority will proceed to decide the case on its merits. With the above observations I discharge this rule but make no order as to costs.