

(1962) 12 PAT CK 0012
In the Patna High Court
Case No : Civil Revision No. 331 of 1960

Manager, Bokaro Colliery

APPELLANT

Vs

Udai Singh and Others

RESPONDENT

Date of Decision : 17-12-1962

Acts Referred:

Payment of Wages (Procedure) rules, 1937 — Rule 7
Payment of Wages Act, 1936 — Section 15(2)

Citation : AIR 1964 Patna 73 : (1963) 7 FLR 410 : (1963) 2 LLJ 327

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Lal Narayan Sinha and Bindabashni Prasad Sinha, for the Appellant;
Brajkishore Prasad, No. 2, for the Respondent

Final Decision : Partly Allowed

Judgement

Untwalia, J.—An application u/s 15(2) of the Payment of Wages Act, 1936 (Central Act IV of 1936) -- hereinafter referred to as the Act -- was filed on behalf of the four opposite parties of this civil revision application before the Authority under the Act to direct the petitioner employer to pay the delayed wages for the period August 14, 1956 to July 11, 1958, together with compensation, The said application was filed on the 12th of July, 1958. The opposite parties were involved in a criminal case instituted on August 7, 1958, were arrested in connection with that case and were ultimately convicted by the Criminal Court. The conviction was maintained even by the, High Court on the 24th of February, 1958 when their application in revision failed.

During the pendency of the criminal case, they were suspended on the 14th of August 1956 and the suspension order continued even after the dismissal of the application in revision by the High Court. It is on that account that a claim was made on behalf of the opposite parties for payment of wages for the period aforesaid." The Magistrate, 1st class who was the Authority under the Act, by his order dated the 12th January, 1959, held that the application was time barred

and no explanation was furnished by the opposite parties for the late filing of the application and no sufficient cause was made out within the meaning of the second proviso to Sub-section (2) of Section 15 of the Act. He further held that, in view of Clause 28 of the Standing Orders of the petitioner (colliery) even on merits, the opposite parties were not entitled to the relief sought for on behalf of them.

2. Against the dismissal of the application by the learned Magistrate, an appeal was preferred u/s 17 (as amended by Act 68 of 1957) of the Act before the District Judge of Hazaribagh. The learned District Judge, by his judgment "and order dated 5-2-60, held that the claim for the period of 6 months prior to the filing of the application u/s 15(2) of the Act was not barred by limitation and that, by the admission of the application and direction for the issue of the notice to the petitioner by the Authority, the delay in filing the application in regard to the earlier period must be deemed to have been condoned within the meaning of the second proviso to Sub-section (2) of Section 15. He, therefore, found that the opposite parties were entitled to get a sum of Rs. 7973/8/8 as arrears of wages for the "entire period; and Clause 28 of the Standing Orders is no bar to their claim. The petitioner has obtained a rule from this Court against the opposite parties to show cause why the said order of the learned District Judge be not set aside.

3. The learned Government Advocate, who appeared on behalf of the petitioner, conceded that the claim for the period 12th of January, 1958 to 11th of July, 1958, i.e., the period of 6 months prior to the filing of the application on 12-7-58 is not barred by limitation if on merits the opposite parties are entitled to get a direction" against the petitioner for payment of arrears of wages for the said period. He, however, submitted that an ex parte order of admission of the application u/s 15(2) of the Act did not have the effect of either holding that the application was not barred by limitation or that, if it was so, the delay in filing the application was explained on the ground of sufficient cause within the meaning of second proviso to Sub-section (2) of Section 15 to the satisfaction of the Authority concerned. In support of his argument, he placed reliance on a decision of the Privy Council in Krishnasami Pandikondar v. Ramasami Chettier 45 Ind App 25 : (AIR 1917 PC 179). Mr. Brajkishore Prasad No. 2, learned advocate for the opposite parties, endeavoured to distinguish it with reference to the language of Section 15 (2) and (3) of the Act and Rule 7 of the Payment of Wages (Procedure) Rules, 1937. In my opinion, the argument put forward on behalf of the petitioner is correct, Section 15(2) of the Act runs thus:

"Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the Authority appointed under Sub-section (1), may apply to such authority for a direction under Sub-section

(3):

Provided that every such application shall be presented within six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period."

In Sub-section (3) it is provided --

"When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages u/s 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 ten rupees in the latter"

I would now read Rule 7 of Payment of Wages (Procedure) Rules --

"(1) The Authority may refuse to entertain an application presented under Rule 6, if after giving the applicant an opportunity of being heard, the Authority is satisfied, for reasons to be recorded in writing that:

(a) the applicant is not entitled to present an application; or

(b) the application is barred by reason of the provisions in the provisos to Sub-section (2) of Section 15; or

(c) the applicant shows no sufficient cause for making a direction u/s 15.

(2) The Authority may refuse to entertain an application which is insufficiently stamped or is otherwise incomplete and, if he so refuses, shall return it at once with an indication of the defects. If the application is presented again after the defects have been made good, the date of re-presentation shall be deemed to be the date of presentation for the purposes of the provisos to Subsection (2) of Section 15."

In the Privy Council case referred to above, Sir Lawrence Jenkins, delivering the opinion of the Judicial Committee, repelled a similar argument with reference to the provisions of Section 5 of the Limitation Act in the following words:

"It has been argued that the admission of the appeal by Sankaran Nair J. was final, and that the Division Bench had no jurisdiction at the hearing of the appeal to reconsider the question whether the delay was excusable. But this order of admission was made not only in the absence of Ramasami Chettiar, the contesting respondent, but without notice to him. And yet in terms it purported

to deprive him of a valuable right, for it put in peril the finality of the decision in his favour, so that to preclude him from questioning its propriety would amount to a denial of justice. It must, therefore, in common fairness be regarded as a tacit, term of an order like the present that, though unqualified in expression, it should be open to reconsideration at the instance of the party prejudicially effected; and this view is sanctioned by the practice of the Courts in India."

I find no material difference in the language of Section 5 of the Limitation Act and that of the second proviso to Section 15(2) of the Act and Rule 7 of the Rules nor any in principle to warrant the taking of a view different from the one expressed by the Judicial Committee in the case aforesaid. In my opinion, the ex parte admission of the application by the. Authority did not debar it from going into the questions of limitation and of condonation of delay at the instance of the petitioner on his appearance. The application was obviously barred under the first proviso to Sub-section (2) of Section 15 and no facts were stated in the application filed on the 12th of July, 1958 or at any time thereafter to make out any case of sufficient cause for not making the application within the period of 6 months. The first Authority, therefore, was clearly justified in holding the application to be barred by time and in not condoning the delay. The judgment and order of the learned District Judge in this regard suffer from an error of jurisdiction as, by taking an obviously wrong view of the law, he has held the application to be in time in respect of the entire period, in AIR 1949 239 (Privy Council) , it has been observed by Sir John Beaumont:

"The cases of Babu Ram and Another Vs. Munna Lal and Others, and Hari Bhikaji v. Naro Vishwanath, ILR 9 Bom 432, may be mentioned as cases in which a subordinate Court by its own erroneous decision (erroneous that is in the view, of the High Court), in the one case on a point of limitation and in the other on a question of res judicata, invested itself with a jurisdiction which in law it did not possess, and the High Court held, wrongly their Lordships think, that it had no power to interfere in revision to prevent such a result".

Following this decision, it has been pointed out by a Bench of this Court in Dwarka Prasad and Another Vs. Union of India(UOI), , that, if the subordinate Court erroneously finds that the suit or the appeal or the application is not barred by limitation, that finding upon limitation will lead either to failure to exercise jurisdiction or wrong assumption of jurisdiction; in either case, the matter will relate to jurisdiction and the High Court u/s 115 of the Code will be entitled to interfere.

4. Reliance was placed on behalf of the opposite parties on the decision D/- 4-12-1958, of Ahmad, J., sitting singly, in Civil Revn. No. 583 of 1958 (Pat) where, In regard to the point of limitation and condonation of delay u/s 15(2) of the Act, it was said --

"It is true that in the present case no such condonation seems to have been made by the original Court, at least, in terms. The appellate Court, however,

thought that the same had been, if not specifically, at least by implication condoned. On that ground, it proceeded to consider the matter on merit. Prima facie, there seems to be sufficient force in the contention raised by Mr. Lalnarain Sinha that the way in which the finding has been arrived at by the appellate Court on the question of limitation is not one consistent with law. That means, there is no discussion as to the reasons which led to the delay, nor as to the grounds on which the delay could be condoned; but, in my opinion, the order howsoever erroneous is an order on merit which was within the power and jurisdiction of the Court to do. As such, I, sitting in revision, cannot interfere with it".

With great respect, I would say that the view of law expressed by the learned Judge is contrary to the pronouncement of the Privy Council and the enunciation of law by the Bench of this Court consisting of Sinha and Choudhary JJ., in the cases mentioned above, and is not sound. The decision of Dhavan J. sitting singly in Union of India (UOI) Vs. Babu Ram, , cited by the learned advocate for the opposite parties is clearly distinguishable, as in that case, the learned District Judge, on appeal, had held that the employee had sufficient cause for not making his application within the prescribed period of 6 months and had! condoned the delay. In the instant case, it is clear that neither the first Authority nor the appellate one had condoned the delay finding any sufficient cause within the meaning of the second proviso to Sub-section (2) of Section 15 of the Act. As I have said above, the learned District Judge on a wrong view of the law has held that after the admissions of the application, it was not open to the Authority to go into the questions of limitation and of condonation of delay. I, therefore, hold that the application filed on behalf of the opposite parties for a direction to the petitioner for payment of arrears of wages for the period -- August 14, 1956 to January 11, 1958 -- was barred by limitation and no relief can be given to the opposite parties in respect of that period.

5. I am, however, of the opinion that the opposite parties are entitled to a direction against the petitioner for payment of arrears of wages for the period -- January 12, 1958 to July 11, 1958. The certified Standing Orders of the petitioner (colliery) are in the records of this case and were referred to by the parties. Clause 26 of the Standing Orders provided --

"An employee may be suspended, fined or dismissed without notice or any compensation in lieu of notice if he is found guilty of misconduct, provided that suspension without pay, whether as a punishment, or pending an, enquiry, shall not exceed one month."

As many as 20 items are mentioned in Clause 26 to denote misconduct. Clauses 27 and 28 are these --

"27. No orders of punishment by way of suspension, dismissal or fine shall be made unless the employee concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged

against him. The approval of the Agent or the Chief Mining Engineer, Railway Board is required in case of dismissal and when circumstances appear to warrant that Officer shall institute separate independent enquiries before dealing with the charges against an employee. During the period of enquiries are (sic) being made on account of alleged misconduct the employee concerned shall be suspended.

For the purpose of this rule the Superintendent of Collieries, Asst. Superintendent of Collieries, Colliery Managers and the Contractors may be treated as Agents within the powers given to them from time to time by the Chief Mining Engineer, Railway Board".

"28. If on enquiry the order is confirmed or modified the employee shall be deemed to be absent from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order is rescinded, the employee shall be deemed to be on duty during the full period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended.

Provided persons working on time-rated basis from a date prior to 12-547 shall in the event of suspension pending enquiry be paid subsistence allowance in accordance with such Rules as were applicable to them in this respect before these orders came into force and such amendments in the said Rules as may be ordered by the Central Govt. from time to time".

It was admitted on behalf of the petitioner that there is nothing in the records of this Case to show that the procedure prescribed in clause 27 was followed and, therefore, in my opinion, the provision of Clause 28 of the Standing Orders disentitling the employees to any remuneration for the period of suspension was not attracted; rather according to clause 26 "suspension without pay" was not to exceed one month.

6. In the result, I allow the application in part arid, in modification of the order of the Court of appeal below, direct the petitioner (colliery) to pay to the opposite parties their arrears of wages for the period of 6 months, i.e., for the period -- January 12, 1958 to July 11, 1958. On the facts and in the circumstances of the case, I will make no order as to cost.

Ramaswami, C. J. 7. I agree.