(1996) 01 AHC CK 0028

In the Allahabad High Court

Case No : C.M.W.P. No. 22491 of 1994

Mohd. Bux — APPELLANT

Vs

District Judge and Others — RESPONDENT

Date of Decision : 08-01-1996

Acts Referred:

Payment of Wages Act, 1936 — Section 15(3)

Citation : (1996) 73 FLR 1657 : (1997) 2 LLJ 372

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Asok Bhushan, for the Appellant;

Judgement

D.K. Seth, J.—The Services of the petitioner, who was appointed as Driver (Road Roller) on November, 1, 1978 in the Irrigation Department of the State of Uttar Pradesh, was terminated by an order dated February 18, 1980. The Petitioner filed claim petition before U.P. Public Services Tribunal, Lucknow. The said claim petition was allowed, directing reinstatement of the petitioner without back wages. Civil Miscellaneous Writ Petition No. 3420 of 1982 moved by the petitioner was allowed on October 9, 1991, holding that the petitioner was entitled to back wages subject to his gainful employment elsewhere. Since no payment was made the petitioner made an application u/s 15 of Payment of Wages Act before the Payment of Wages Authority. The said case was registered as case PW-18/92. By an order dated May 11, 1992 the said claim was allowed and the employer was directed to pay compensation ten times the wages payable.

2. An appeal against the aforesaid Order dated May 11, 1992 being Miscellaneous Civil Appeal No. 78 of 1992 was preferred before the District Judge, Jhansi. The said appeal was allowed partly by an order dated May 13, 1994 passed by the learned District Judge, Jhansi being the Appellate Authority Under Payment of Wages Act, setting aside the Payment of penalty and compensation upholding the payment of salary. It is against this order the present writ petition has been moved.

3. Learned counsel for the petitioner, Sri Ashok Bhushan contends that the payment for the said period amounts to deduction for which ten times penalty is prescribed. In the facts and circumstances of the case the non-payment or withholding of payment of salary by the employer to the employee cannot be termed as delayed payment but is deduction and it has been 50 held in the case of Delta Forging Works v. Manik Karmakar 1977 LIC 207, Divisional Personnel Officer, Northern Railway, Allahabad v. Ambika Prasad and Ors. 1988 (57) FLR 113 (All.), Union of India Vs. Kameshwar Dubey and Others, and Raj Kumar Manohar Lal Vs. Union of India (UOI) and Another, .

4. Learned counsel for the respondents employer on the other hand contends that the order passed by the learned District Judge, Jhansi is correct. In the facts and circumstances of the case payment can never be termed as deduction, it was delayed payment as has been held by the learned District Judge and, therefore, no compensation is payable.

5. In order to appreciate the rival contentions it is necessary to refer to different provisions of Payment of Wages Act, 1972. Section 3 casts upon the employer the responsibility for payment of persons employed by him of all the wages required to be paid under the Payment of Wages Act, 1972 (hereinafter referred to as the said Act).

Section 5 prescribes time for payment of wages as before the expiry of 7th day when employed in Railway, Factory or other establishment, in which thousand persons are employed and before expiry of tenth day, if employed in any other factory or establishment, after the last date of the last wage period in respect of which wages are payable. Section 6 provides that all wages are to be paid in current coin or currency notes or in both except the employee has authorisation to pay him the wages by cheque or by crediting his wages in his bank account. Section 7 prohibits deductions of any amount from the wages except those authorised by or under the said Act namely the deductions specified in the said section. Sections 10, 11, 12, 12-A and 13 of the Act provide various kinds of deduction for recovery permissible un- der the said Act, Section 15 provides the machineries for recovering such deductions made from wages or delayed payment of wages and penalty for malicious or vexatious claims while Section 17 of the Act prescribes for an appeal.6. Now the question remained that payments which have not been made on account of certain dispute can the same be called deduction or delayed payment? Nowhere in the Act it has been provided as to in what manner such payment is to be treated namely deductions or delayed payment. Sub-section (2) of Section 15 of the Act provides that if any deduction has been made or any payment has been delayed contrary to the provisions of the said Act, in that event with permission of the authority appointed under Sub-section (1) of Section 15 employee may apply to such authority for direction under Sub-section (3). Sub-section (3) provides mode how the application so filed is to be treated. By reason of Sub-section (3) Payment of Wages Authority is empowered to direct refund to the employee of the amount so deducted or payment of delayed wages together with payment of such compensation as the authority may deem fit not exceeding ten times of the amount deducted in former case and not exceeding twenty five rupees in the latter. In order to appreciate the situation it is necessary to quote Sub-section (3) of Section 15 of the Payment of Wages Act:

"15. Claims arising out of deductions from Wages or delay in payment of wages and penalty for malicious or vexatious claims-

(1).....

(2).....

(3) When any application under Sub-section (2) is entertained, the authority shall hear the applicant and the employer or other persons 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 twenty five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensations, as the authority may think fit, not exceeding twenty five rupees:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to-

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable though exercising reasonable diligence, to make prompt payment or

(c) the failure of the employed person to apply for or accept payment".

7. In the facts and circumstances of the case the question involved can be divided into two aspects, namely (i) whether payment of wages sought to be recovered in the present case is a eduction or delayed payment and, (ii) if it is deduction then whether the compensation is allowed by the Payment of Wages Authority was justified.

8. A plain reading of Sub-section (3) of Section 15 of the Act clearly lays down that compensation is payable, if the authority may deem fit, not exceeding ten times the amount deducted in the former case and not exceeding twenty five rupees in the case of delayed payment of wages. It further provides that no deduction for payment of compensation shall be made in the case of delayed payment if the delay was due to bona fide error or dispute to the amount

payable. It may be noted that proviso to Sub- section (3) of Section 15 speaks of only compensation relating to the delayed wages. The expression used in the proviso does not include compensation payable on account of deduction.

9. In the circumstances the proviso may be interpreted only in the manner that in case of deduction whether due to bona fide error or dispute there is no discretion in the matter of direction for payment of compensation in case of deduction. The discretion of the Court dealing with the case of deduction is confined only to the extent of deciding the amount of compensation, as it might think fit. The other interpretation which can also be possible is that the discretion to decide the amount of compensation as the authority may deem fit, is wide enough to even disallow compensation altogether or to allow compensation upto the maximum of ten times the amount deducted.

10. The phrase "direct refund to the employed persons of the amount deducted together with payment of such compensation as the authority may deem fit, not exceeding ten times the amount deducted", indicate that such refund is to be accompanied by such compensation as the authority may think fit. This phrase to my mind appears to leave us to the interpretation that the discretion of the authority is confined only to the amount of compensation not exceeding ten times the amount deducted. Such discretion does not culminate into disallowing the compensation altogether. The omission of the case of deduction in the proviso and the use of the expression refund of me amount deducted... together with such compensation clearly implies that payment of compensation while directing refund is mandatory. The discretion is confined only with the quantum of compensation, the ceiling whereof has been prescribed at ten times the amount deducted.

11. In the present case the employer contends that the employee was engaged in a particular project which had come to an end and, therefore, the petitioner''s service was no more required. Now after the order of U.P. Public Services Tribunal, Lucknow, reinstating the petitioner without back wages having reached finality by the affirmation thereof in the order dated October 9, 1991, as passed in Writ Petition No. 3240 of 1982 with the modification that the petitioner would be entitled to back wages subject to his gainful employment elsewhere during the said period. Therefore the said question is no more available to the employer.

12. Admittedly, the petitioner by reason of the order dated October 9, 1991 passed in Writ Petition No. 3420 of 1982 is entitled to payment for the said period provided he was not gainfully employed elsewhere. The amount of back wages has been determined at Rs. 17305.33 paise. The said amount is not being disputed. Now the only question remains to be dealt is as to whether the said amount is refund of deductions or payment of delayed wages. If it is refund of deduction, in that event it is discretion of the authority to pay compensation not exceeding ten times. If it is delayed payment the compensation is fixed at Rs. 25/- that too is subject to the proviso.

13. In the present case learned counsel for the respondents employer contended that employer had terminated the services bona fide but the same was over-ruled by the U.P. Public Services Tribunal, Lucknow, and did not allow back wages while reinstating the petitioner. It is only because of the order passed by this Court on October 9, 1991 the entitlement of the petitioner, was determined. Till then there was a bona fide dispute as to the entitlement of the petitioner. Therefore, it cannot be said that payment of wages payable to the petitioner was withheld, thereby bringing the same within the meaning of deduction. According to him it was only delayed payment. Since the entitlement was determined in the year 1991 and that too after determining whether the petitioner was gainfully employed or not, therefore, by no stretch of imagination the same can be contended to be deduction. It squarely comes within the purview of delayed payment.

14. On the other hand it appears from the decision cited on behalf of the petitioner that the wages not paid to the petitioner and payable by reason of the order of Payment of Wages Authority as affirmed and modified by this Court is nothing but deduction. In as much as in the case of Delta Forging Works, (supra), it has been held :

"5. It will appear from Sub-section (3) of Section 15 of the Act that in case of deduction of wages referred to therein the Authority has the power to direct refund of wages deducted together with compensation not exceeding ten times the amount deducted but in case of delayed wages, there may be an order for payment of delayed wages alongwith compensation not exceeding rupees twenty five only. Of course, the Authority had judicial discretion in the matter of assessment of the compensation. Mr. Gangully submits that the word ''deduct'' means subtract from a whole and the word ''delay'' indicates deferment. According to him as in the present case the whole of the wages for five months was not paid, it was not a case of deduction of wages but one of delayed wages and as such the Authority had no jurisdiction to allow compensation exceeding rupees twenty five. Ordinarily the word ''deduct'' implies subtracting something out of an entity but its general meaning is ''to take away'' or ''withhold''. The word ''delay'' means ''to put off'' or ''to postpone''. Deducted wages and delayed wages have not. been defined in the Act. From the reading of Sub-section (3) quoted above it would appear outwardly that the provision for compensation in two cases is unreasonable because if an employer deducts rupees one hundred from the total wages of rupees one hundred and fifty, he may be liable to pay rupees one thousand whereas if he refuses to pay the entire wages of rupees one hundred and fifty, he is liable to pay compensation not exceeding rupees twenty five only. The Legislature could not have such an intention. If we follow the scheme of the Act and adopt the wider and the general meaning of the words ''deduct'' and ''delay'' with real and proper import, the intention of the Legislature and the real meaning of the words in the proper context will be clear and the difference in the two classes of compensation can be appreciated.

6. In this Act the word ''deduct'' has been used in the wider sense meaning ''to take away'' denying the liability to pay the wages to the employee. This deduction may relate to a part of the wages of the employee or to the whole. In case of ''delayed wages'' the employer puts off or postpones the payment of wages though he admits liability to pay and does not deny the right of the employee to get it. There may be reasons or difficulty for the employer to be late in payment. There may be various reasons to delay in payment of wages. Whether non payment of wages is an instance of ''deducted wages'' or ''delayed wages'' will depend upon the animus of the employer. If he denies liability to pay the wages in question in part or whole it becomes a case of deducted wages but if he admits his liability and does not dispute the employee''s right to the same, it is an instance of ''delayed wages".

15. In the cast of Divisional Personnel Officer, Northern Railway, (supra) it has been laid down that withholding of payment is a deduction in the following expression:

"21. The petitioner was equally withholding the enjoyment of the amount by the respondents. The word ''withhold'' as per the dictionary meaning means as under:

"with-hold, (with, in sense of against, and hold) To hold back; to restrain; to keep from action; to keep back; not to grant; to forebear; to refrain".

Admittedly the petitioner had not paid the amount due to the respondents and was holding it back. The amount due to the respondents was not granted. The words ''deduct'' and "deduction" as per the dictionary mean as under:

"deduct. To subtract or separate, in numbering, estimating or calculating to inter; to take or detract.

Deduction; The act of subtracting; that which is deducted, abatement; the method of deducting - from premises, conclusion derived from the given premises"

From the above reading it is difficult to accede to the submission that if the amount has not been paid to the petitioner (respondent?) it would not be deemed to be a deduction. No amount was paid. The whole of the amount would thus stand denied or withheld and would come within the category of deduction. It would be deemed to be deduction of the entire sum due to the respondents. The Respondent 2 rightly came to the conclusion that the amount has been deducted and awarded compensation one time".

16. In the case of Raj Kumar Manohar Lal, (supra), it was held:

"So far as the first question passed by Dr. Gyan Prakash is concerned he sought Sub-stance for it from the decisions in Anant Ram and Others Vs. District Magistrate, Jodhpur and Another, , and Risal Singh Vs. Union of India (UOI) and Another, . Both these decisions lay down that non-payment of wages to an employee whether wholly or in part, for the period between his wrongful dismissal and his reinstatement is a case of ''deduction'' and was covered by the provisions of Section 15(2) of the Act. The same view it may be mentioned, has also been taken by this Court in the The Upper India Coupar Paper Mills Co. Ltd. Vs. J.C. Mathur, . There is thus abundant authority in support of this contention and as no contrary decision was brought to my notice by Sri Gour Pratap Singh, the learned counsel for the opposite party, the first contention of Dr. Gyan Prakash as stated earlier, must be accepted".

17. In the case of Union of India v. Kameshwar Dubey, (supra) it was held as follows: at pp 304, 305:

"7. The main question falling for determination in this petition is whether the wages in question paid to the workman under the direction of the authority Sri M.K. Seth was on account of wages deducted or wages delayed because if it is a case of wages deducted then under Sub-section 3 of Section 15 of the Act the authority could, in addition to the payment of wages, also direct the payment of such compensation as the authority thinks fit not exceeding ten times the wages deducted but if it were the case of delayed wages the amount of compensation which the authority could order besides the delayed wages could not exceed twenty five rupees. As in the case in hand the authority has held the amount of wages as deducted wages, compensation to the tune of Rs. 1 lac was also awarded by the authority under Sub-section 3 of Section 15 of the Act besides the wages to the petitioner and it is on account of the huge amount of compensation that the question of wages being deducted wages or delayed wages assumes great importance. The determination of this question necessarily depends upon the intention of the employer. If his intention is to deny the liability to pay the wages or to deny the right of the workman to receive the same, it would be a case of ''wages deducted''. But if the employer concedes his liability to pay the wages to the workman and does not dispute the workman''s right to the same, the case would be one of delayed payment. This view of ours finds support from the decision of a Division Bench of Calcutta High Court reported as K.P. Mushran Vs. B.C. Patil and Another, .

8. The learned counsel for the petitioner, Union of India contended that the Act contemplated only those deductions from wages which were recognised by Sections 7 to 12, 12-A and 13 of the Act and not the ones in the case in hand. This contention cannot be accepted and the word ''deduction'' has to be taken as having been used in the Act in the wider sense meaning to take ''away'' denying the liability to pay the wages to the employee (vide Delta Forging''s case (supra)). The meaning of the word ''deduction appearing in Section 15 of the Act had also come up for consideration in the case of Upper India Couper Paper Mitts Co, Ltd. v. G.C. Mathur (supra), before the Lucknow Bench of Allahabad High Court wherein it was held as follows:

"Deductions may relate to the specific heads mentioned in the particular section of the Act or they may be deductions resulting from other causes. They may be the result of withholding of part of the wages of the entire amount of wages. The word ''Deductions'' in Section 15 appears to be used in wide sense so as to include the entire deficiency which the employee alleges, as a result of the withholding of the same by the employer whether partially or wholly".

18. It is by now established that withholding of payment of wages by whatsoever reason when entitlement of the workman is denied, is a deduction unless the liability to pay is admitted. Therefore, in the facts and circumstances of the present case, there cannot be any second opinion that the said, sum of Rs. 17305.33 paise represents a deduction. By reason of Sub-section (3) of Section 15 of the Act such refund is to be directed together with compensation as the authority may deem fit.

19. A reading of the order passed by the Payment of Wages Authority does not indicate as to why maximum amount of compensation has been allowed. It has not indicated any reasons so as to arrive at a conclusion that the amount of compensation awarded by the Payment of Wages Authority was thought fit by it. The appellate Authority is wrong in holding that the same was not a case of wrongful deduction. All deductions are to be refunded together with compensation. It is necessary whether deduction was made wrongfully or whether the same was made due to any dispute or error bona fide or otherwise. The scope for decision is very limited. If there is deduction compensation is mandatory. The only scope of discretion is limited to the satisfaction of the Court as to what amount of compensation within ceiling of ten times would be just and proper and would be fit i.e., just and proper depending upon the fact and circumstances of each case.

20. The finding of the learned Appellate Authority that the order of Payment of Wages Authority is absurd is not warranted. While sitting in appeal judiciary has to exercise some amount of restraint in criticising the authority unless there is a grave situation to warrant the same. The Appellate Authority criticises the judgment and not the Judge. Therefore, such part of observation of the Appellate Authority should be expunged and accordingly so stand expunged.

21. In the present case it appears that mere was really a dispute which was settled by the pronouncement of the Court. Itcannot be said that the refund is so deliberate or the conduct of the employer was so bad when maximum compensation is to be awarded. While interest of the workman is to be looked into at the same time, the conduct of the employer is also relevant factor for determining the quantum of compensation. In order to save the interest of the workman standard that has been adopted in the matter of payment of lump sum amount, as has been held in various cases of compensation is also to be taken into account. For deciding the quantum of compensation factor of earning interest on the amount if paid in time and the agony and sufferance on account of non payment and deduction to which the employee was subjected is also to be taken into account.

22. In the facts and circumstances of the case taking over all view it appears that

compensation should be fixed at twice the amount deducted. In as much as the petitioner has been given the benefit of reinstatement due to which he will be entitled to pay.

23. In that view of the matter the order of the Appellate Authority and that of Payment of Wages Authority, stands modified to the above extent. The respondents shall pay the amount of deduction of the said sum of Rs. 17335.33 paise together with compensation of Rs. 34610.66 paise within a period of eight weeks from the date a certified copy of the order is produced before the respondents.

24. This writ petition is thus disposed of. There will be, however, no order as to costs.

