
(1998) 04 CAL CK 0031
In the Calcutta High Court
Case No : C.R. No. 205 of 1988

Personnel Manager, Bata India Ltd.

APPELLANT

Vs

Gourpada Dutta

RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 15(2)

Citation : (2000) 1 LLJ 184

Hon'ble Judges : S.K. Tiwari, J

Bench : Single Bench

Advocate : C.L. Ganguly, D.K. sengupta, B.R. Dutta, B.N. Panda and G.K. Das, for the Appellant; J.C. Consal and S. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

S.K. Tiwari, J.—This petition under Article 227 of the Constitution of India has been directed against the order dated December 23, 1987, passed by learned Chief Judge, Small Causes Court, Calcutta-cum-Appellate Authority u/s 17 of the Payment of Wages Act in R.W.A. Appeal No. 1 of 1987.

2. The opposite party filed an application before the learned Competent Authority and contended that he was an employee of Bata India Limited (petitioner). That the petitioner had not paid his wages from October 24, 1962 to February 19, 1967. The claim petition was filed as late as in 1979. The learned Competent Authority condoned the delay and allowed the application.

3. The petitioner filed an appeal before the learned Appellate Judge and contended that the opposite party was arrested by the police and remained absent from duty for several days without any application for leave. His services stood terminated on account of his wilful absence, as per the Standing Order of the company. After the employee was acquitted by the Criminal Court, he was given fresh appointment with the petitioner-company on compassionate grounds. After his reappointment, the opposite party prayed that his past services should

be taken into account for retiral benefits only. His prayer was granted. The learned Appellate Judge dismissed the appeal. Hence this petition.

4. The first point for consideration is whether the condonation of delay was proper? Under first proviso below Sub-section (2) of Section 15 of the Payment of Wages Act, an application under the section has to be presented within 12 months from the date on which deduction has been made or the payment was to be made. Under the second proviso, the authority may condone the delay if sufficient reason is shown. The employee only stated that after his reappointment he used to meet the Personnel Manager of the company and used to request him to pay his backwages and the Manager used to assure him. This was a lame excuse. The present petitioner is a company and is not bound by so-called oral assurances given by one of its subordinate officers. The opposite party never filed any application in writing. Hence the condonation of delay by the authority was not proper. According to learned Appellate Judge, since no revisional application was filed against the order of condonation, the matter could not be agitated. It is well-settled that all matters decided during the course of proceeding can be agitated in an appeal filed against the final order. Hence the present petitioner was not estopped from raising the point in the lower appellate Court. The petition filed before the learned Competent Authority was clearly barred by limitation and condonation was not proper.

5. The next contention of the learned Counsel for the petitioner is that the learned Competent Authority had no jurisdiction to entertain this petition. In case of *Jalpaiguri Electric Supply Co. v. Authority*, P. W. Act (1984) 49 Fac LR 49 (Cal), it has been laid down that the Competent Authority under Payment of Wages Act may not be lacking inherent authority to entertain a claim of workman relating to question of wages and deduction of such wages but in the facts of case it is necessary to determine as to whether or not the retrenchment in law had taken place. It is essentially necessary to probe a little deeper into the rival contentions made by the parties and in the exercise of limited jurisdiction of the authority under the Payment of Wages Act it is not desirable or expedient that the said authority should entertain such questions. In a similar case under the West Bengal Shops & Establishments Act, reported in (1993) 2 CHN 168 (*Gupta Electric Co. v. Chief Judge*), a Division Bench of this Court held that the referee cannot enter into disputed question of fact as to whether there has been a wrongful termination from service and as to whether the claimant has been wrongfully prevented from attending to his work. In case of *Union of India v. Chhagan* 1974 Lab IC 497 (All), it has been laid down that if wages have been deducted for absence from duty, the authority appointed under the Payment of Wages Act cannot go into the question.

6. I, therefore, find that the question whether the petitioner's service stood terminated because of wilful absence as per the terms of Standing Order and whether his subsequent absence from duty for several years, thereafter should be treated to be as on duty are questions which could only be determined by a

Tribunal established under the Industrial Disputes Act.

7. The petition is, therefore, allowed. The order passed by the Competent Authority, as affirmed by the Appellate Court deserve to be set aside and is hereby set aside and the petition stands allowed.