
(1987) 02 RAJ CK 0101

In the Rajasthan High Court

Case No : Civil Revision No. 507 of 1985, 60 of 1986 and Civil Writ Petition No. 896 of 1986

Prem Chand

APPELLANT

Vs

Administrator, Municipal Council and vice versa

RESPONDENT

Date of Decision : 25-02-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Payment of Wages Act, 1936 — Section 15, 17

Citation : (1988) 1 RLW 239 : (1987) 2 WLN 381

Hon'ble Judges : Navin Chandra Sharma, J

Bench : Single Bench

Judgement

Navin Chandra Sharma, J.—This order will decide Civil Revisions Nos. 507 of 1985 and 60 of 1986 filed respectively by Premchand Jain and Municipal Council, Udaipur and S.B. Civil Writ Petition No. 896 of filed by Premchand Jain by a common order as they arise from the same order of the District Judge, Udaipur dated August 9, 1985.

2. Facts leading to the filing of these revision petitions and the writ petition may be narrated first. Premchand Jain was employed in daily wages in the construction department of Municipal Council, Udaipur on March 13, 1973 for a period of 28 days. However, Premchand Jain continued to be employed in the construction Department of the Municipal Council Udaipur by giving break of some days in between upto September 24, 1975 when his services were terminated by order No. 1779 dated September 24, 1975 with effect from that date. Even after periodical gaps Premchaad Jain (here in after, for short "the petitioner") actually worked for 273 days in 1973, 336 days in 1974 and 253 days in 1975. The petitioner challenged the termination of his employment and the dispute was referred to the Industrial Judge, Udaipur who by his award dated September 20, 1983 enclosed as Annx. R. 6 to the writ petition held that the termination of the employment of the petitioner was illegal, ft was ordered that

the petitioner will be re-instated and would be treated to have continued in the employment of the Municipal Council, Udaipur continuously and would be paid his wages and other consequential benefits from the date of illegal termination of his employment (i.e. 24-9-1975) to the date of his reinstatement. After the decision of the Judge Industrial Tribunal, the petitioner riled a separate application before the Authority under the Payment of Wages Act claiming wages from 24-9-1975 to June 1984. After the award made by the Industrial Judge, the petitioner was paid by the Municipal Council, Udaipur an amount of Rs. 15,076/-as wages for the said period. However, before the Authority under the Payment of Wages Act, the petitioner claimed an amount of Rs. 58,572.49. According to him, he was governed by the Work Charged Rules of 1964. His contention was that as a matter of fact he had been employee on the post of Mistry from the very beginning. His further contention was that his services with the Municipal Council, Udaipur were governed by the provisions of the Rajasthan PWD (B & R) including Garden, Irrigation, Water Works and Ayurvedic Department Work Charged Employees Service Rules, 1964 (for short, here in after "the Work Charged Rules"). According to Rule 3 of the Work Charge Rules, an employee in continuous service for 2 years or more was eligible for the status of semi-permanent employee and the employees who had been in service for 10 years were eligible for the status of permanent Work-charged employee provided their record of service was, in the opinion of the Competent Authorities, satisfactory. According to the petitioner, the amount of Rs. 15, 904/- paid to him was calculated at a rate less than the rate at which he was being paid his wages before the termination of his employment. The Authority under the Payment of wages Act did not allow to the petitioner wages for the period from September 24 to June, 1984 on the basis of the grade that may be admissible to him in accordance with the Work-charged Rules. The petitioner was required to submit a statement showing the due wages calculated on the basis of Basic Schedule of Rates of Public Works Department of the post of Mistry, which was submitted by him. On that basis, the Authority under the Payment of Wages Act directed the Municipal Council Udaipur to pay to the petitioner a further sum of Rs. 37,862/- apart from counsel's fee and litigation expenses amounting to Rs. 500/- within a period of 30 days with effect from the date of the order i.e. December 7, 1984. The petitioner was not awarded interest and no penalty was imposed on the Municipal Council, Aggrieved by this order, the petitioner filed an appeal before the District Judge, Udaipur which was registered as Civil Miscellaneous Appeal No. 28 of 1985. The Administrator Municipal Council its Commissioner & the Executive Engineer also filed an appeal u/s 17 of the Payment, of Wages Act, 1936 (here in after, for short "the Act") before the District Judge. Both these appeals were heard and decided by the District Judge, Udaipur by a common order dated August 9.1985. The District Judge dismissed the appeal filed by the petitioner. The learned District Judge held that the Authority under the Act cannot go into the question whether the petitioner was entitled to semi-permanent or permanent status under the Work-charged Rules and that he was only entitled to the wages which he was getting as Mistry at the time of

termination of his employment. Calculated on that basis, the amount of wages came to Rs. 52,938/-out of which the petitioner had been paid the Municipal Council an amount of Rs. 15 076/- and he was only entitled to the balance amount of Rs. 37, 862/- which had been awarded to him by the Authority under the Act. So far as the appeal of the Municipal Council, Udaipur was concerned, it was dismissed by the District Judge as barred by limitation.

3. Aggrieved by this order of the District Judge, Udaipur, the petitioner has filed Civil Revision No. 507 of 1985 and also the Writ Petition No. 896 of 1986. The Municipal Council Udaipur also, being aggrieved by the order of the District Judge, Udaipur, dated August 9, 1985, has filed Civil Revision Petition No. 60 of 1986. It may be mentioned that before the Authority under the Act the petitioner had submitted a Schedule in the form of a chart calculating the wages due to him as Mistry and Beldar at the BSR rates from September 24, 1975 to March 13, 1984 and he had shown in that schedule that the total amount of wages payable to him was Rs. 50,496/-upto March 13, 1984 and he had only received Rs. 15,076/- from the Municipal Council and after adjusting this amount, wages due to him upto March 13, 1984 were to the tune of 35,420/-. As already stated the Authority under the Act calculated the wages payable to the petitioner according to the BSR rates and found that an. amount of Rs. 37 862/- was due to the petitioner after adjusting the amount already paid to him. He further awarded Rs. 500/-as litigation expenses to the petitioner and directed the Administrator Municipal Council, its Commissioner and Executive Engineer to pay the amount of Rs. 38,362/- to the petitioner within 30 days of the date of the order.

4. So far as the Municipal Council, Udaipur is concerned, it along with Administrator, Commissioner & Executive Engineer of the Municipal Council have filed Civil Revision No. 60 of 1986 in this Court. Their contention before this Court is that their appeal was wrongly dismissed as barred by limitation by the District Judge and the District Judge erred in not condoning the delay in filing the appeal which was satisfactorily explained. The revision filed by the petitioner is opposed by the Municipal Council, Udaipur on the ground that he has already been awarded more than what was due to him. It was urged on behalf of the Municipal Council that the petitioner was not entitled to get wages at the BSR rates. The petitioner, on the other hand, has claimed in his revision petition that under the Work-charged Rules, he became semi-permanent employee and according to the award given by the Judge, Industrial Tribunal he was entitled to all benefits not only of the wages but also of the Work-charged Rules and his wages should be calculated in accordance with those Rules. It has been held by the Supreme Court in its decision reported in A.V. D'costa Vs. B.C. Patel and Another, that the Authority under the Act has the jurisdiction to decide what actually the terms of contract between the parties were, that is to say, to determine the actual wages of the employee, but it has no jurisdiction to determine the potential wages. Reference may also be made to the decision in the case of Divisional Personnel Officer, Western Railway, Ajmer Vs. Brijkishore Khanna and Others, In that case Brijkishore Khanna has made an application

before the Authority under the Payment of Wages Act u/s 15 and he claimed that the order of fixation at Rs. 110/- was not proper and that the order of deduction of Rs. 15/- per month from his salary was illegal, the case of the Railway was that the petitioner was not entitled to be fixed at Rs. 136/- per month and he was only entitled to receive a salary of Rs. 110/- in his new grade Rs. 80-160/-. The question, therefore, that arose for consideration was whether the matter regarding fixation of salary in accordance with the Rules that were applicable to the case of Brijkishore would fall under the scope of Section 15 of the Act. It was held by Bench of this Court that a question of fixation of pay cannot be treated as tantamount to deduction of the salary and it can also not be regarded as incidental to the proceedings u/s 15 of the Act. Fixation of pay in accordance with Rules is in fact determining the terms of the employment of a person. Once pay is so determined, further deduction or delay in its payment would bring the case under the purview of Section 15 of the Act. His Lordship Ranawat, C.J., who delivered the judgment of the Bench, observed that the question of fixation of pay pure and simple does fall within the purview of Section 15 of the Act and the Authority under the Payment of Wages had no jurisdiction to deal with this question and to issue directions where arrears of excess payment were being calculated by the Railway Authorities and no deductions what so ever were made in the wages. In *Union of India v. Vishwa Deo* RLW 1961 SC 241 the applicant claimed that he was entitled to be treated as a clerk recruited with stipulation of a minimum qualification of University degree. The claim was not allowed by the Departmental Officers. He made a claim u/s 15 of the Payment of Wages Act alleging that he was entitled to get wages in the scale of Rs. 80-220. His claim was opposed by the Railway Administration on the ground that the Authority under the Act could not go into the question as to whether the applicant was or was not recruited as a graduate clerk. His Lordship Jagat Narayan, J. referred to the decision of the Supreme Court in *A.V. D'Costa Vs. B.C. Patel and Another*, and held that the said decision of the Supreme Court was applicable to the facts of the case before him. In the Supreme Court case the applicant was a casual labour employed in the Railway. When 20 posts were made permanent in the grade of Rs. 55-130, he claimed that he was entitled to be made permanent in one of those posts. He was, however, not promoted to any of those posts and some other persons junior to him were confirmed. He filed a claim u/s 15 of the Act. The Authority allowed the claim. The matter ultimately came before the Supreme Court and it was held that the applicant being a daily rated casual labour charged to work, the directive of the Railway Board did not apply to him. Even if it be applied to a person in the situation of the applicant, he was not entitled to be brought on to the monthly rates of pay in the skilled grade without his previously passing a trade test. It was held that a claim of a higher potential wage cannot be brought in under the category of the claims arising out of the wages in daily payment of the wages, if that wage depended on the determination by a superior Department or by other authority, as to whether or not a trade employee is entitled to higher wage the determination of which involved the exercise of administrative judgment or discretion or certification,

and which would, in such a situation, be a condition of payability of the wage. The majority of the Judges of the Supreme Court held that the claim could not be treated as deduction and the grievance of the applicant really was that he had not been paid wages on the scale to which he claimed that he was entitled. This was held to be beyond the scope of the Payment of Wages Act. Following this decision of the Supreme Court, his Lordship Jagat Narayan, J. held that the claim of the applicant in that case was not covered by the Payment of Wages Act. In view of the above decisions, the case of the petitioner cannot be said to be of any unauthorised or impermissible deduction and the Authority under the Act as well as the District Judge, Udaipur rightly refused to go into the question whether the petitioner was entitled to become semi permanent after two years or permanent after ten years and whether he was entitled to wages calculated on that basis. Civil Revision No. 507 of 1985 filed by Premchand has, therefore no face in it and it is hereby dismissed.

5. Coming to Civil Revision No. 60 of 1986 filed by Municipal Council, Udaipur along with its Administrator Commissioner and Executive Engineer, the learned Counsel for the Municipal Council contended that application u/s 5 of the Limitation Act had been filed in which delay in filing the appeal was sufficiently explained. The Authority under the Act had given its decision on December 7, 1984. The Municipal Council had applied for obtaining certified copy of the order on December 15, 1984, and the certified copy was delivered on February 1, 1985. Period of limitation for filing an appeal u/s 17 of the Act is 30 days from the date on which the order was made. In computing the period of limitation, the period from December 15, 1984 to February 1, 1985, which was the time requisite for obtaining certified copy of the order of the Authority under the Act will have to be excluded. After excluding this period, the appeal was filed by a delay of 5 days. According to Sub-section (1)(a) of Section 17 of the Act no appeal under Clause (a) of Sub-section (1) of Section 17 at the instance of the employer was maintainable unless the memorandum of appeal was accompanied by a certificate by the Authority under the Act that the appellant had deposited the amount payable under the direction appealed against. The Municipal Council had to deposit an amount to the tune of Rs. 38,362/- before an appeal at its instance could lie. The Municipal Council had explained that it took some time to obtain the sanction of the Director of Local Bodies and in obtaining the amount for making the deposit. The deposit was made on February 28, 1985. The above cause was sufficient for explaining 5 days" delay in filing the appeal, by the Municipal Council. However, no remand is necessary in view of the fact that, in the alternative, the District Judge also examined the appeal filed by Municipal Council on its merits. The District Judge held that as per award Ex. 13, the amount specified came within the definition of wages & the Authority under Act was competent and had jurisdiction to award the wages according to Ex. 13. was the award of the Judge of the Industrial Court Udaipur. In this award the Judge of the Industrial Court held that the termination of employment of the petitioner was illegal and consequently the petitioner was entitled to get wages with effect

from September 24, 1975 to the date he was allowed to rejoin according to Rules with consequential benefits and that it would be treated that the petitioner was in continuous employment with effect from September 24, 1975. It has been contended on behalf of the Municipal Council, Udaipur that the petitioner was employed as a casual labour and the Authority under the Act was wrong in allowing wages to the petitioner according to the B.S.R. rates. According to the learned Counsel, the petitioner could either have continued as casual labour and entitled to minimum wages at rate of Rs. 9/- per day or he would have been made semi-permanent after 2 years and permanent after 10 years in accordance with the Work Charged Rules, which had been made applicable to the Municipal Council by a subsequent order. It was argued that in any case the petitioner was not entitled to the wages of the Mistry. All these questions could not be decided in an inquiry u/s 15 of the Act as had been held by the District Judge himself while deciding the appeal of the petitioner. It was contended that the B.S.R. as such does not provide any scale. It only provides a guide line and that too applicable in the case where there is a specific construction object. The petitioner had not been appointed against any specific work and, therefore, the B.S.R. had absolutely no relevance.

6. It is quite clear from the schedule filed by the petitioner before the Authority under the Act that on the date the employment of the petitioner was terminated, he was getting wages at rate of Rs. 9/- per day. In para 3 of the Writ Petition No. 896 of 1986 filed by the petitioner he has stated that he was initially appointed on March 13, 1973 as work charged work agent for a period of 28 days at a fixed salary of Rs. 3.25 per day which was later on by an order dated April 10, 1973 fixed at Rs. 4/- per day from April 12, 1973 to April 30, 1973. As and when the petitioner was employed after break, his wages were fixed per day. They were increased from Rs. 4/- to Rs. 4.50 in June 1973 and to Rs. 5/- in September 1973, to Rs. 6/- from February 1974, to Rs. 7/- from March 1974 and then to Rs. 8/- from February 1, 1975. It was increased to Rs. 9/- per day by order dated September 3, 1975. It is thus, clear and it is an admitted position on behalf of the petitioner that on the date of the termination of his employment by the Municipal Council, Udaipur, he was getting wages at rate of Rs. 9/- per day. There is nothing to establish that these daily wages to the petitioner, who was employed as work-charged employee, were being paid according to the alleged B.S.R. rates. As a matter of fact, the petitioner was being paid the minimum wages and the minimum wages was Rs. 9/- per day on the date the petitioner's employment was terminated. The petitioner was reinstated on September 20, 1983. Nothing has been brought on record to show that the minimum wages had increased on September 20, 1983. It appears that the minimum wages were increased to Rs. 11/- per day some time in 1984 or 1985. The Authority under the Act was, therefore, wrong in awarding to the petitioner wages according to the B.S.R. rates, The petitioner was only entitled to be paid by the Authority under the Act at rate of minimum wages prevalent at the relevant time. They were not more than Rs. 9/- per day on September 20, 1983 on the date on

which the award was given. The petitioner was awarded wages upto June 1984. He could get wages at rate of Rs. 9/- per day upto the time the minimum wages were that rate. He could get wages at rate of Rs. 11/- per day from the date the minimum wages were increased from Rs. 9/ to Rs. 11/-. Consequently, Revision No. 60 of 1986 filed by the Municipal Council, Udaipur and others deserves to be allowed and the order of the District Judge. Udaipur as well as the Authority under the Act respectively dated August 9, 1985 and December 7, 1984 deserve to be set aside and it is clear that the petitioner Prem Chand Jain was entitled to wages from September 24, 1975 to the date of his filing application before the Authority under the Act at rate of minimum wages in force during the period. As already stated, the Municipal Council had already paid to the petitioner an amount of Rs. 15,904/- during the pendency of the proceedings under the Act before the Authority.

7. I may next deal with the Writ Petition No. 896 of 1986 filed by the petitioner under Article 226 of the Constitution. In para 6(c) of its memorandum of revision No. 60 of 1986, the Municipal has stated that at the time of termination of his employment, the petitioner was a casual labour and there could be only two eventualities, i.e. either he would have continued as casual labour and "entitled to minimum wages at rate of Rs. 9/- per day or he would have been made semi-permanent after two years and permanent after 10 years in accordance with the provisions of the work-charged Service Rules 1964, which had been made applicable to the Municipal Council by a subsequent order. In that event he would have been entitled to the wages as provided under Work-charged Rules of 1964 However, it was also stated that in any case he was not entitled to the wages of Mistry.

8. Let me therefore, examine the Rajasthan P.W.D.(B & R) including Gardens, Irrigation, Water Works and Ayurvedic Department Work-charged Employees Service Rules, 1964, which according to the averments of the Municipal Council in the revision petition filed by it, had been made applicable to the Municipal Council by a subsequent order. The term "wages" is defined in Rule 2(k) of the Work-charged Service Rules as meaning "remuneration, whether by way of salary allowance or otherwise expressed in terms of money or capable of being so expressed which would if terms of employment express or employed were fulfilled be payable to a person employed in respect of his employment or of work done in such employment and includes any remuneration to which a person employed may be entitled to in respect of overtime work or holidays or any leave period." Rule 3 of the Work-charged Service Rules divides the work-charged employees" in three categories namely casual semi-permanent and permanent status. Employees in continuous service for two years or more, except those covered by Sub-Rule (1), are eligible for the status of semi-permanent work-charged employees or semi-permanent regular technical staff provided their record of service in the opinion of the competent authority is satisfactory. Sub-rule (2) of Rule 3 states that employees who have been in service for 10 years or more, shall be eligible for the status of permanent work-charged employees

provided their record of service in the opinion of the competent authority is satisfactory. The petitioner was a casual work-charged employee of the Municipal Council, Udaipur since March 13, 1973 and have continued as such as has been maintained by the award of the Industrial Court. There is a proviso to Sub-rule (1) of Rule 3 which states that nothing in these Rules shall entitle any work-charged employee categorised permanent or semi permanent to claim the status or benefit of permanency or semi permanency to which a regular Government employee is entitled under the Rajasthan Service Rules.

9. One thing here deserves to be mentioned. It is that the petitioner alleged in his statement of claim before the Industrial Court in para 1 (Ex. 1) that he was employed as a Mistry. This fact was admitted by the Municipal Council in its reply Ex. 2 filed before the Municipal Council. A part from that in various appointment orders Ex. 17 to Ex. 20 issued by the Municipal Council Udaipur he has been described as a Mistry. Before the Authority under the Payment of Wages Act, the petitioner had filed his employment order Ex. 17 on the file of the Authority under the Payment of Wages Act, which goes to show that by order dated February 91, 1974, the petitioner was employed as Mistry. No order of employment prior to that date has been produced by the petitioner. It would, therefore, be held that the petitioner was employed as Mistry by the Municipal Council Udaipur with effect from February 21, 1974 and which employment was continued by Ex. 18, Ex. 19 and Ex. 20 and in all of them the petitioner was shown as Mistry. The petitioner was, therefore, employed as Mistry with effect from February 21, 1974 and not from March 13, 1973. The learned Counsel for the petitioner relied upon Annx. 3 which is a certificate from Shri I.K. Bali who happened to be Administrative Municipal Council, Udaipur on September 4, 1975. It is a wrong certificate which the petitioner was able to obtain from Shri I.K. Bali soon before his services were terminated. The best evidence for the petitioner was to produce his employment order dated March 13, 1973 to show that he was initially appointed as Mistry on that day. The certificate Annx. 3 cannot be substituted for the employment order.

10. I may next mention the most significant thing and it is that in Sub-rule (3) of Rule 3 of the Work-Charged [Service Rules, there are the words "except those covered by Sub-rule (1)". These words have much significance. The significance of these words is that employees who are covered by Sub-rule (1) Rule 3 are not eligible for the status of semi-permanent work charged employee under Sub-rule (3) of Rule 3 of the Rules. I may, therefore, examine whether the petitioner is covered by Sub-rule (1) of Rule 3. In case he is covered by Sub-rule (1) of Rule 3, he would not be eligible for status of semipermanent work-charged employee or of semi-permanent regular technical staff under Sub-rule (3) of Rule 3 and consequently he would also not be eligible to become a permanent work-charged employee. Sub-rule (1) of Rule 3 covers within its field work-charged employees (including the regular technical staff of Water Works Department) who are having permanent status, semi-permanent status and casual. The expression "work-charged employee" is defined in Rule 2(a) of the Rules which states that

expression means "any person actually employed for area executive and/or supervision of works both original and maintenance, supervision of Departmental labour, Stores, Machinery and workers etc. paid on daily or monthly basis." Then the term "employee" has been defined in Rule 2(e) of the Rules which states that this term means "any person employed in work-charged establishment to do any skilled or unskilled, manual supervisory or technical work for hire/or reward and shall include "Beldars" Gangman, Mates, Carpenters, Fitters...Mistries, work-agents and the regular technical staff of the Water Works Department." An "employee" as defined in Rule 2(e) is paid for his skilled or unskilled manual supervisory or technical work hire/or reward. It is not the case of the petitioner that he was employed in a work-charged establishment for hire or reward. On the contrary, his case is that he was work-charged employee and was paid on daily basis. He was, therefore, "a casual work charged employee" falling within sub-category (iii) of the categories specified-in Sub-rule (1) of Rule 3 of the Rules. Consequently he was an employee covered by Sub-rule (1) of Rule 3 of the Rules and such employees, who are covered by Sub-rule (1) of Rule 3 of the Rules, are not eligible for status of semi-permanent work-charged employee or to the status of permanent work-charged employees. Both Sub-rule (2) and Sub-rule (3) use the word "employee" and not "work-charged employee". Rules make a distinction between "work-charged employee" and "employee" for the purpose of the Rules. It cannot, therefore, be declared that the petitioner was entitled to the status of semi-permanent or permanent work-charged employee under Sub-rule (2) and Sub-rule (3) of Rule 3. The respondent Municipal Council, Udaipur cannot, therefore, be directed to treat the petitioner as semi-permanent work-charged Mistry since March 12, 1975 and permanent Mistry since March 12, 1983 or from any subsequent date till the date of the filing of the writ petition Under Sub-rule (2) or Sub-rule (3) of Rule 3 of the Work-charged Service Rules, 1964, the only relief to which petitioner is entitled is that in consequence of the award of the Industrial Court, he should be taken in employment as Mistry from the date he has joined in the Municipal Council, Udaipur after the quashing of his termination order and should not be made to join as "Beldar. The petitioner is not entitled to an other relief. The writ petition filed by the petitioner is partly allowed and the Municipal Council, Udaipur is directed by a writ of mandamus that from the date, after the Award of the Industrial Tribunal No. 2, Udaipur dated September 10, 1983, when the petitioner has joined his employment in the Municipal Council, Udaipur he shall be treated as a work-charged Mistry from, that date and shall be paid his wages as work-charged employee as defined in Rule 2(a) of the Work-charged Service Rules, 1964 by the Municipal Council, Udaipur. Rest of the reliefs claimed in the writ petition are disallowed.

11. The net result is that Civil Revision No. 507 of 1985 filed by Premchand Jain is dismissed. Civil Revision No. 60 of 1986 filed by Municipal Council, Udaipur is allowed, the order of the District Judge, Udaipur dated August 9, 1985 confirming the award of Rs. 38,362/- to the petitioner as balance of wages upto June 1984 by the Authority under the Payment of Wages Act, 1936 is set aside and it is

directed that till June 30, 1984, the petitioner shall be paid at the minimum wage rate as in force during the period. The Writ Petition No. 896 of 1986 is partly allowed to the extent indicated above.