

(1968) 03 AHC CK 0018
In the Allahabad High Court
Case No : Civil Revision No. 62 of 1965

Raj Kumar Manohar Lal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 21-03-1968

Acts Referred:

Limitation Act, 1908 — Section 12, 5

Payment of Wages Act, 1936 — Section 15(2), 17

Citation : AIR 1969 All 472

Hon'ble Judges : J.N. Takru, J

Bench : Single Bench

Advocate : Gyan Prakash, for the Appellant; Gour Pratap Singh, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Takru, J.—Raj Kumar has filed this revision against the judgment and decree of the learned District and Sessions Judge, Moradabad, whereby he set aside, in appeal, the judgment and direction of Sri M. C. Gupta, the Authority under the Payment of Wages Act.

2. The brief facts giving rise to this revision are as follows: The applicant was employed as a clock-winder in the Moradabad Division of the Northern Railway. He was discharged from service on the 27th of November 1953 by the Divisional Superintendent, Moradabad, Thereupon the applicant filed a suit seeking a declaration that his discharge was unlawful and that he continued to be in service throughout. The suit was dismissed by the trial court, but was decreed, on appeal on the 13th of November, 1957 in the terms prayed for. When the Railway authorities did not reinstate him the applicant made several representations to them for his reinstatement, and, finally by the order dated the 12th September, 1958 the applicant was allowed the work from the next day. Thereafter on the 4th February, 1959 the applicant moved the application giving rise to this application u/s 15 of the Payment of Wages Act (hereinafter called the Act)

alleging that as he was paid lesser wages for the period between the 13th September, 1958, and the 31st January, 1959, and was not paid any wages for the period for which he was held to have been unlawfully discharged, he was entitled to a total sum of Rs. 7952.72 under those two heads from the Railway Administration.

The application was heard by Sri M. C. Gupta, who was the authority appointed under the Act to deal with such an application. He accepted the case of the applicant and issued a direction to the Railway Administration to pay the applicant the sum claimed by him. The Railway Administration preferred an appeal to the learned District Judge, Moradabad and the latter by his judgment in question set aside the judgment and decree of Sri M, C. Gupta and allowed the appeal. Hence this revision by the applicant.

3. In order to appreciate the contention of Dr. Gyan Prakash, the applicant's learned counsel, it is necessary to refer to one further fact. It is common ground that the applicant's application u/s 15 of the Act was filed beyond the period of six months laid down in the first proviso to that, section and Sri M. C. Gupta condoned that delay under the second proviso to that section. The first contention of Dr. Gyan Prakash was that the learned District Judge had no jurisdiction u/s 17 of the Act to set aside that order and to hold the claim to be time-barred. His second contention was that as on a correct appreciation of the law, the case of the applicant was one of illegal deduction, and as the Railway Administration apprised the applicant for the first time on the 27th January, 1959 that they did not propose to pay him the alleged deductions, the period of six months limitation under the first proviso to Section 15 of the Act did not start running before the 27th January, 1959 and as the application in question was made within eight days of the said intimation, it could not be held to have been filed beyond time. I shall therefore proceed to examine the merits of these contentions in the order stated above.

4. Now so far as the first contention is concerned, it is enough to say that whatever force it might have possessed at one time it possesses none after the decision of this Court in Divisional Superintendent, Divisional Superintendent, Northern Railway Vs. Hukum Chand Jain, . In this case a Division Bench of this Court, after considering the relevant provisions of the Act and the various authorities bearing upon it, held that the propriety of an order admitting an application after the prescribed period of six months can be challenged in appeal against the direction made u/s 15(3) of the Act. As I am in respectful agreement with this view, the first contention advanced on behalf of the applicant fails and is dismissed.

5. The second contention of Dr. Gyan Prakash poses two questions. The first question is as to the nature of the applicant's claim, namely, whether it is a case of deduction, and the second question is whether the period of six months limitation for making an application for the realisation of deduction starts running from the date on which the employer intimates his decision of deduction to the

employee or the date on which the amount deducted was payable but was not paid. After hearing the learned counsel for the parties I am satisfied that while the first contention of Dr. Gyan Prakash is well founded the second contention has no merit.

6. So far as the first question posed by Dr. Gyan Prakash is concerned, he sought sustenance for it from the decisions in *Anant Ram and Others Vs. District Magistrate, Jodhpur and Another*, and *Risal Singh v. Union of India* AIR 1958 Pun 155. Both these decisions lay down that non-payment of his 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.

7. This brings me to the consideration of the second question posed by Dr. Gyan Prakash, namely, the date from which the period of limitation laid down in the first proviso to Section 15(2) of the Act is supposed to start running. The contention of Dr. Gyan Prakash, it will be recalled was that it would run from the 27th January, 1959 as that was the date on which the Railway Administration for the first time informed the applicant i.e., disclosed their intention that his wages for the period of his discharge would not be paid to him. The contention was canvassed before the learned District Judge also, but was negatived by him on the finding that limitation would start running from the day on which the applicant's suit was finally decreed by the appellate court, namely, the 13th November, 1957, In my opinion the view taken by the learned District Judge is to be preferred particularly as it is in consonance with the object of the Act i.e., to provide a cheap and expeditious remedy to the employees for recovering illegal deductions made from their wages overcoming delays in the payment of their wages. It will be remembered that the only relief which the applicant claimed in his suit was a declaration that the order discharging him was illegal and void and that he continued to remain in the service of the Railway throughout, and further that his suit was decreed on appeal and he was held to have remained in service of the Railway throughout the period of his wrongful discharge.

The practical effect of this declaration was that the applicant, in addition to reinstatement also became entitled to the payment of his wages for the period of his wrongful discharge and the Railway became bound to pay him the same on the day on which the appellate court's decree in his favour was passed, namely, the 13th November, 1957, The Railway Administration by not promptly paying those wages to the applicant clearly indicated to him by their conduct that they did not propose to pay them to him. In other words the Railway Administration made the deduction of the applicant's wages on the date on which the final

decree in his favour was passed. In this connection it is significant to note that though the applicant, after getting the decree in his favour sent several representations to the Railway Administration for his re-instatement, he did not make a single representation for the payment of his wages for the period of his wrongful discharge, for about a year since it became due. As on the view taken by me the applicant became entitled to his salary for the period of his wrongful discharge on the 13th November, 1957 when the appellate court passed the decree in his favour, he had no cause -- much less sufficient cause--for not making his application u/s 15 of the Act within six months of that day. As the word "deduction" covers cases of deduction in whole or in part the date for computing the period of limitation u/s 15(2) is the date on which the wages became due and were not paid and no further overt act on the part of the employer is necessary to show his intention in that regard.

In normal cases the employees to whom the Act applies are entitled to their wages on the first or some other pre-determined date of the succeeding month. Hence in their case if their wages are not paid on the material date, the deduction takes place on that day and the period of six months starts running from that day. The City Magistrate condoned that delay on the finding that the applicant had all along been making representations for his reinstatement and for the payment of his wages for the period of his wrongful discharge to the Railway Administration, and he had therefore a bona fide reason for waiting for a reasonable time before making his application u/s 15 of the Act. There is however nothing on the record to show, nor was Dr. Gyan Prakash able to bring anything to my notice, that the applicant made any representation for the payment of his wages for the period of his wrongful discharge before the 13th November, 1958. As that was the only ground on which the learned City Magistrate condoned the delay and it has been found to be unsubstantiated, the applicant has completely failed to make out "sufficient cause" for not making his application within six months of the date of the appellate court's decree in his favour. As held in *Sitaram Ramcharan etc. Vs. M.N. Nagarshana and Others*,

"The sufficient cause which has got to be established under the second proviso to Section 15(2) is not any cause which in the personal opinion of the authority is sufficient. The sufficient cause contemplated by the proviso is a cause sufficient in law and the sufficiency of the cause is to be decided not by any discretion of the authority but by proper legal principles."

The City Magistrate's order was therefore, passed with material irregularity and illegality in the exercise of his jurisdiction and the lower appellate court was correct in reversing it. Thus for the reasons stated above this revision fails and is dismissed with costs.