

(1972) 03 AHC CK 0001
In the Allahabad High Court
Case No : Civil Rev. No. 1500 of 1971

Ram Asrey Lal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 08-03-1972

Acts Referred:

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

Citation : (1972) 42 AWR 527

Hon'ble Judges : Gyanendra Kumar, J

Bench : Single Bench

Advocate : P.C. Gupta and P.N. Tewari, for the Appellant; B.N. Roy and Lalji Sinha, for the Respondent

Final Decision : Allowed

Judgement

Gyanendra Kumar, J.—This case was originally heard and decided by me ex parte on 7-5-1971, while sitting at Lucknow Bench, as Shri N. Banerji, learned Counsel for the Union of India (which is the sole opposite party), did not turn up at the time of the hearing of the case. It was then numbered as Civil Rev. No. 112 of 1968. However, on 10-5-1971 an application was filed on behalf of the Union for netting aside the ex parte judgment and decree aforesaid. By his order dated 15-7-1971 O.P. Trivedi, J. allowed the application of the Union of India and set aside the ex parte judgment and decree. Later on, by his order dated 26-11-1971, the Hon'ble the Chief Justice transferred this case to Allahabad (which has now been numbered as Civil Rev. No. 1500 of 1971). This is how it has again come up for hearing before me.

2. I have heard learned Counsel for both the parties at some length. Mr. Lalji Sinha, appearing for the sole opposite party (Union of India), has not been able to make out any case so as to persuade me to take a view different from the one which I had taken on the previous occasion.

3. Briefly stated the facts of the case are that the Applicant is an employee of the N.E. Railway. The Railway Admn. suspended him and stopped payment of his full wages. The result was that the Applicant filed C.M.W. Petition No. 1241 of 1962 in the High Court of Judicature at Allahabad. By its judgment and order dated 29-7-1964 the High Court allowed the writ petition and quashed the order of the Applicant's suspension. In spite of the order of the High Court, the Railway Admn. did not pay the arrears of his wages, hence the Applicant on 29-6-1965 made an application u/s 15(2) of the Payment of Wages Act, 1936 (hereinafter called the Act) against the Union of India, through the General Manager, N.E.R., Gorakhpur, claiming his delayed wages for the period November 1960 to December 1964, as per details given in the statement, Annexure "A" attached to the said application. The total amount of his claim was for Rs. 8,096. 30P.

4. The Union of India filed a written statement, inter alia, contending that the application as filed was not maintainable inasmuch as the General Manager was not the person responsible for payment or wages to the Applicant under the Act and that the person responsible for such payment was the Financial Adviser and Chief Accounts Officer, N.E. Railway, Gorakhpur, who had not been impleaded as a party to the aforesaid application.

5. Issue No. 6 framed by the learned City Magistrate, who was the Prescribed Authority under the Act, was to the effect whether the application was maintainable against the General Manager. N.E.R., Gorakhpur or was it also necessary to implead the Financial Adviser and Chief Accounts Officer of the Railway as an opposite party, even at the initial stage.

6. For proper appreciation of the controversy it will be useful to quote Sub-section (3) of Section 15 of the Act, which runs as under:

15(3). 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 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 compensation, as the authority may think fit, not exceeding twenty-five rupees.

7. From the above quotation it is abundantly clear that before making the requisite direction, the Prescribed Authority shall hear the Applicant and the employer or other person responsible for the payment of wages u/s 3 of the Act or grant them an opportunity of being heard. Thus apart from the Applicant, it is not necessary for the Authority to hear both the employer as well as the other

person responsible for the payment of wages. It is enough if one of them is heard or is granted an opportunity of being heard before the necessary directions. Therefore, it is either the employer or the person responsible for payment of wages who has to be impleaded as opposite party. The section does not require that both of them should be so impleaded.

8. It is not disputed that u/s 3(c) of the Act, the N.E.R. Admn. had nominated in this behalf its Financial Adviser and Chief Accounts Officer, Gorakhpur as pay Master for the payment of wages to the Railway employees. But, as pointed out earlier, Section 13(3) of the Act only requires the employer or any other person responsible for the payment of wages to be heard or being granted an opportunity of being heard, before making necessary direction in the matter. It cannot be doubted that the Union of India, through the General Manager, N.E.R., Gorakhpur, is the employer of the Applicant. The Union of India through the General Manager N.E.R., Gorakhpur, has already been impleaded as an opposite party to the application and was actually heard in the matter. It has also filed a written statement, inter alia, saying that the application was not maintainable for want of impleadment of its Financial Adviser and Chief Accounts Officer, as opposite party.

9. In this connection reference may be made to Rule 8 of the U.P. Payment of Wages (Procedure) Rules, 1958, which throws considerable light on the question as to which person is to be impleaded or heard as an opposite party to an application u/s 15 of the Act. The relevant portion of Rule 8 of the above Rules is worded thus:

(1) If the application is entertained, the Authority shall call upon the employer by a notice in Form E to appear before him on a specified date together with all relevant documents and witnesses, if any and shall inform the Applicant of the date so specified.

(2) If the employer or his representative fails to appear on the specified date, the Authority may proceed to hear and determine the application exparte.

10. The above rule clearly contemplates that the notice of the application would go to the employer and none else. It may be that in response to the notice, the employer may ask his nominee or representative to appear on his behalf to contest the application, if necessary. The reason for sending a notice to the employer alone is obvious, for the employer on service of notice may appear and accept the claim, then the necessary directions can be issued forthwith by the Authority. But if the employer satisfies the Authority that some other person has been made responsible for the payment of wages, then in that case the Authority may issue citation upon that person as well, before finally disposing of the case. Nevertheless, as to whether there is a pay Master responsible for the payment of wages u/s 3 of the Act can only be determined after the employer has put in his appearance, in pursuance of the notice issued to him and placed necessary material in support of his contention.

11. Needless to say that even in a case where the employer has nominated a Pay Master, the liability of the employer as such for payment of illegally deducted or detained wages never ceases. The nominee is only his agent or an officer under the employer, whom he has made responsible for the payment of wages and who obviously acts under the control and authority of the employer. That being so, it would be wrong to assume that the application u/s 15 of the Act would be initially non-maintainable simply because the employer alone has been made a party to the application and not his nominee. Therefore, the failure to implead the Financial Adviser and Chief Accounts Officer would not make the application inherently defective so as to entail its dismissal. It may be that the final direction may have to be made against the Pay Master, if he is found to have made illegal deduction or delayed the payment of wages. But as indicated earlier, it does not absolve the employer from the liability of payment of wages to his employee. That being the legal position, it cannot be said that even at the preliminary stage the application u/s 15 of the Act should necessarily be made against the nominee of the employer and if not so made the application could be held untenable, depriving the Authority to grant necessary redress to the aggrieved Railway employee. A similar view was taken by a division Bench of the Patna High Court in *A. Hasan Vs. Mohammad Shamsuddin and Another*, with which I am in respectful agreement.

12. The Prescribed Authority and the Addl. District Judge of Lucknow were obviously in error in holding that the application of the Petitioner u/s 15 of the Act was untenable simply because he had only impleaded the Union of India through the General Manager, N.E.R., Gorakhpur and had not made the pay Master, viz. Financial Adviser and Chief Accounts Officer, as an opposite party thereto.

13. Consequently, I allow the revision with costs, set aside the orders of the Courts below and direct that the application be laid before the Authority concerned for disposal according to law.