
(1998) 01 RAJ CK 0047
In the Rajasthan High Court
Case No : Criminal R.P. No. 176 of 1996

Ram Singh

APPELLANT

Vs

Divisional Personnel Officer, Northern Railway and Another

RESPONDENT

Date of Decision : 13-01-1998

Acts Referred:

Payment of Wages Act, 1936 — Section 15

Citation : (1999) 2 LLJ 1353

Hon'ble Judges : Mohd. Yamin, J

Bench : Single Bench

Advocate : S.N. Trivedi, for the Appellant; Ravi Bhansali and V.R. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Mohd. Yamin, J.—This is a revision against the order of learned Additional Chief Judicial Magistrate, Bikaner dated January 23, 1996 passed in Cr. Misc. Application No. 30/95.

2. I have heard the learned counsel for the petitioner as well as learned counsel for the respondent No. 1 and learned Public Prosecutor at length.

3. Facts in brief are as follows: Central Industrial Tribunal, Jaipur passed an award dated July 21, 1988 in case No. 25/85 by which retrenchment of the petitioner was found illegal and he was in railway administration preferred a writ petition being aggrieved by the award before this Court which was registered as SB Civil Writ Petition No. 1195/89, DPOv. CIT, Jaipur, which was finally disposed of on March 20, 1990 by a single Judge of this Court. It was partly accepted and award was modified to the effect that only half of the back wages from the date of termination upto the date of re-engagement of the workman shall be payable to him. However, the petitioner was reinstated in compliance of the award but nothing was paid to him against back wages. Being aggrieved by the order dated March 20, 1990 passed by single Judge, the petitioner preferred a DB Civil

Special Appeal No. 110/90, Ram Singh v. DPO, Northern Railway which was decided by the Division Bench vide order dated July 27, 1990 and the order of single Bench dated March 20, 1990 was affirmed. Thereafter the petitioner filed a claim under the provisions of Payment of Wages Act on October 11, 1990 for implementation of the award dated July 21, 1988 after final decision of the Division Bench. The same application was registered as PWA No. 277/90 and the same was decided on September 30, 1994 by the authority under the Payment of Wages Act. Accordingly half back wages amounting to Rs. 37,872.50 was ordered to be paid by the respondents i.e. Railway Administration along with three times compensation amounting to Rs. 1,13,617 in the Court of authority under the Payment of Wages Act. Thus total amount (sic) the Court of authority under the Payment of Wages Act. Against the order dated September 30, 1994 that respondent railway administration instead of approaching before the learned District Judge in appeal as prescribed by the Payment of Wages Act directly approached before the Central Administrative Tribunal Jodhpur Bench, Jodhpur in case of Original Application No. 244/95, Union of India v. Payment of Wages Act Authority. The Tribunal passed an order on January 18, 1996 by which application was rejected on the ground of jurisdiction and returned the application to the applicant for seeking remedy before the appropriate legal forum. Thereafter the amount was never deposited under the proviso of Sec. 17(A)(I) before the Authority under the Payment of Wages Act nor appeal was filed against the order dated September 30, 1994 within the limitation period before an appropriate legal forum. Thus order dated September 30, 1994 became final u/s 17(2) of the Payment of Wages Act. Thereafter the petitioner moved an application u/s 15(5) of the Payment of Wages Act before the Chief Judicial Magistrate, Bikaner for recovery of the payment in pursuance of the order dated September 30, 1994 passed by the authority under the Payment of Wages Act. The case was transferred to the Court of Additional Chief Judicial Magistrate, Bikaner. Thereupon the railway administration moved an application before the learned Additional Chief Judicial Magistrate Bikaner for staying the recovery in pursuance of the order dated September 30, 1994. The case was registered as Cr. Misc. Application No. 30/95 and notices were issued to the petitioner. In the meantime the railway administration who had also preferred DB Civil Special Appeal before the Division Bench of this Court against the order dated March 20, 1990 passed by single Judge in SB Civil Writ Petition No. 1195/89 and which was decided on September 18, 1995 and the award was modified to the effect that the applicant workman will not be entitled for any back wages. While passing the order on September 18, 1995 in DB Civil Special Appeal the Division Bench did not find any illegality, impropriety or infirmity in the order passed by the single Judge. There was a clear cut error on the face of record, according to the petitioner, to the effect that when one Division Bench upheld the Judgment dated March 20, 1990 of the single Judge then in the circumstances another Division Bench of this Court could not have reversed the earlier decision of another Division Bench of this Court. In case of any difference of opinion with earlier decision of Division Bench in same case then it would have been just and proper to refer the matter

before a larger Bench. On the basis of judgment dated September 18, 1995 passed by the High Court, the learned Additional Chief Judicial Magistrate passed an order on January 23, 1996 by which he stayed recovery of back wages under Sec. 15(5) of the Payment of Wages Act and closed the matter of recovery. Aggrieved by this order this revision has been preferred by the petitioner.

4. Learned counsel for the petitioner submitted that the learned Additional Chief Judicial Magistrate passed an illegal order by not issuing warrant of attachment and the order should be set aside. According to him, the order passed by the Payment of Wages Authority on September 30, 1994 cannot be set aside automatically by the Division Bench judgment. He also submitted that the Division Bench judgment has no retrospective effect and that when the case was heard in Division Bench, none of the parties had an idea about the earlier proceedings. Therefore, this Court should interfere and set aside the order of the learned Additional Chief Judicial Magistrate. My attention goes to Sec. 15 of the Payment of Wages Act. Sub-section (1) of Sec. 15 of the Payment of Wages Act provides that the State Government may, by notification in the official Gazette, appoint any magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages of persons employed or paid in that area including all matters incidental to such claims.

5. On the other hand, learned counsel for the opposite parties has opposed the petition.

6. Undisputedly the amount could be recovered as if it were a fine imposed by a magistrate as per the provisions of sub-section (5) of Sec. 15 of the Payment of Wages Act.

7. Now the question arises whether the order dated September 30, 1994 passed by the Payment of Wages Authority is set at naught in the circumstances of this case by the Division Bench Judgment. Learned counsel for the petitioner cited *Dewa Ram v. State of Rajasthan*, 1983 RLR 754 in which it has been observed that when there are conflicting views of two Division Benches the view taken by the earlier Division Bench must prevail. In the case in hand a very vexing question has arisen. In Special Appeal No. 110/90, *Ram Singh v. DPO, Northern Railway* decided by the Division Bench the order of Single Bench in Writ Petition No. 1195/89 was affirmed. It meant that half of the back wages from the date of termination up to the date of re-engagement of the workman shall be payable. But in the Division Bench judgment dated September 18, 1995 the Bench did not find any illegality, impropriety or infirmity in the order passed by the single Judge and modified the award to the effect that the applicant workman will not be entitled for any back wages. According to the learned counsel, at that time the attention of the Division Bench was not drawn to the earlier Division Bench judgment and, therefore, such an error crept in. He has, while relying on *Dewa Ram v. State of Rajasthan* (supra) has made prayer that the earlier Division Bench judgment should prevail under which award was modified to the effect

that half of the back wages from the date of termination up to the date of re-engagement of the workman shall be payable to him. To me the order of the learned Magistrate appears to be legal as he was not supposed to interpret the orders of the two Division Benches. The remedies before the petitioner are that either he should file a review petition before the Division Bench or should file a SLP so that the matter may be finally decided by a larger Bench. By saying that the learned magistrate has committed illegality by closing the proceedings in view of Division Bench judgment which held that the petitioner was not entitled for any amount, the petitioner does not get any benefit. The magistrate rightly closed the proceedings and there is no force in this revision petition.

8. Consequently, this revision petition stands dismissed.