
(2010) 03 UK CK 0038

In the Uttarakhand High Court

Case No : Writ Petition No. 1059 of 2002 (M/S)

State

APPELLANT

Vs

1st Addl. District Judge and Others

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 7

Citation : (2010) 03 UK CK 0038

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Subhash Upadhyaya, for State of Uttarakhand, for the Appellant;
None, for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—List of hearing cases has been revised. No one appears for the workers. Sri Subhash Upadhyaya, the learned Brief Holder for the State of Uttarakhand/Petitioner is present.

2. The present writ petition is against the order dated 08-05-1991 passed by the Respondent No. 2 - prescribed Authority as well as the order dated 19-06-1995 passed by the Respondent No. 1 appellate authority under the Payment of Wages Act.

3. It transpires that the Respondent Nos. 3 to 17 - workers were working on muster roll basis in the Kosi Construction Division, Ramnagar for several years and were being paid the wages given to muster roll employees. The workers filed a claim application u/s 15 of the Payment of Wages Act praying that they should be given the wages as per the Minimum Wages Act, which was paid to unskilled and semi-skilled workers @ Rs. 25/- per day and Rs. 40/- per day respectively. It further transpires that during the pendency of the claim application, the workers moved an amendment application praying that they should be given wages as per the minimum wages paid to the regular employees. The prescribed authority,

after considering the evidence, allowed the claim application holding that the workers are entitled for the wages as paid to regular workers on the principle of equal pay for equal work. The Petitioner, being aggrieved, filed an appeal, which was rejected against which the Petitioner has filed the present writ petition.

4. Having heard the learned Brief Holder for the State of Uttarakhand, this Court is of the opinion that the impugned orders passed under the Payment of Wages Act cannot be sustained and is liable to be quashed. A claim under the Payment of Wages Act can be considered, if there has been a wrongful deduction of the wages of a workman by the employer. The fact that a workman is liable to be given equal pay for equal work will not come within the ambit of a wrongful deduction as defined u/s 7 of the said Act. The fact that the workers were doing same kind of work as regular workers of the Construction Division is a question of fact, which is required to be adjudicated in an appropriate forum, especially under the Industrial Disputes Act. Such questions cannot be adjudicated in the summary proceedings under the Payment of Wages Act. Even otherwise, the prescribed authority has nowhere considered nor given any finding that the workers in question were performing the same work as was being performed by the regular workers. The mere fact that the workers in question were working in the Construction Division for the past 15 years will not entitle them to become regular workers of the construction division nor can they claim regular wages given to the regular workers of the Petitioner.

5. In the light of the aforesaid, the impugned orders cannot be sustained and are quashed. The writ petition is allowed. In the circumstances of the case, there shall be no order as to cost.