

(2013) 01 AHC CK 0110

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15520 of 2006

Union of India and Others

APPELLANT

Vs

Additional District Judge Mau and Others

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Limitation Act, 1963 — Section 5

Payment of Wages Act, 1936 — Section 15, 17

Citation : (2013) 3 ADJ 398 : (2013) 2 AWC 1985 : (2013) 137 FLR 64 : (2014) 2 LLN 370 : (2013) 1 UPLBEC 471

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : V.K. Goel, A.K. Gaur and Saral Srivastava, for the Appellant; A.K. Malviya and A.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned counsel for the petitioner and Sri Anil Kumar Pandey, learned counsel for the contesting respondents workmen respondent Nos. 2 to 7. Respondent Nos. 2 to 7, Devnath and others and one Sadik filed a claim petition u/s 15 of Payment of Wages Act against petitioner No. 2, Foreman Loco Shed N.E. Railway Mau (opposite party No. 2 therein) and respondent No. 8, Bhartiya Jeevak Shram Samvida Sahkari Samiti Ltd. Mau described as Raj Nath Sukla Secretary Bhartiya Jeevak Sharam Samvida Sahkari Samiti Limited Mau (opposite party No. 1 therein). The case of the applicants was that even though they had been engaged by respondent No. 8, the contractor but they were in fact the employees of petitioner No. 2 and wages for certain period had not been paid to them. Rajnath Shukla Secretary of respondent No. 8 was opposite party No. 1 and petitioner No. 2 was opposite party No. 2 in the claim case which was registered as case No. PW 24 of 1996 Devnath Ram and sons v. Raj Nath Shukla and another. The authority under payment of wages Act/Deputy Labour Commissioner Azamgarh Mau decided the case on 14.2.2003 directing payment of Rs. 3600/- as unpaid wages alongwith equal amount as damages to

each of the 7 workmen total amount comes to Rs. 50,400/-.

2. Against the said order petitioners filed appeal registered as miscellaneous appeal No. 13 of 2003 u/s 17 of the Act before District Judge Mau which was transferred to A.D.J. Court No. 1 Mau. In the appeal petitioner appellant filed an application on 26.5.2004 mentioning therein that from the endorsement of the postman on the notice which was sent to respondent No. 3 in the appeal it transpired that respondent No. 3, Raj Nath Shukla had died thereafter inquiry was made and it was found that he had died on 11.5.2001. The 1st A.D.J. Mau through order dated 25.2.2006 rejected the substitution application holding that Section 5 Limitation Act did not apply to appeals u/s 17 of Payment of Wages Act. The said order has been challenged-through this writ petition.

3. The question whether the provision of delay condonation as provided u/s 5 of Limitation Act applies to appeals u/s 17 of the Act or not is wholly irrelevant. That question could be relevant only if appeal had been filed beyond time. Provisions/Rules of C.P.C. as contained in order 22 do not apply to the proceedings under the Act. Accordingly, there is no question of automatic abatement. However, application for substitution has to be filed in every case whether order 22 C.P.C. applies or not. The only difference is that in case order 22 C.P.C. applies then substitution application has to be filed within the prescribed time otherwise within reasonable time. As no period for filing substitution application is provided under the Payment of Wages Act hence there is no question of condonation of delay. In the instant case it has been held by the lower appellate Court itself that Rajnath Shukla, the Secretary of Bhartiya Jeevak Shram Samvida Sahkari Samiti had died in 2001 i.e. before the order passed by Prescribed authority. On this ground the entire order of the Prescribed authority deserved to be set aside. Accordingly, it was for the benefit of the workmen that substitution application was filed by the petitioners.

4. Copy of the substitution application dated 26.5.2004 is Annexure 2 to the writ petition. Memorandum of appeal has not been annexed. Rajnath Shukla was Secretary of the Cooperative Society as is evident from Annexure 1 copy of order passed by the authority/Deputy Labour Commissioner. Accordingly substitution could not be sought of his son Jeevan Lal as was done through application dated 26.5.2004. Who is the current Secretary is not clear. Even in the description of respondent No. 8 in this writ petition name of the Secretary has not been given. The workmen by raising extremely unnecessary objection delayed disposal of the matter. Accordingly, writ petition is allowed. Impugned order is set aside, However, petitioner is directed to file fresh application for substitution seeking substitution of the current Secretary of the Cooperative Society respondent No. 8. Said application shall be filed within three months. It is also the duty of the respondent Nos. 2 to 7 to intimate the lower appellate Court about the name of the current Secretary of the Society. After substitution of the current Secretary of the Society appeal shall be decided on merit very expeditiously.