

(1987) 08 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Appeal No. 1705 of 1987

Union of India

APPELLANT

Vs

Kameshwar Dubey and Others

RESPONDENT

Date of Decision : 12-08-1987

Acts Referred:

Citation : (1987) 33 DLT 143 : (1988) 2 LLJ 302

Hon'ble Judges : R.N. Aggarwal, J; Jagdish Chandra, J

Bench : Division Bench

Advocate : Rajender Dutt and A.S. Vir, for the Appellant;

Judgement

Jagdish Chandra, J.

(1) Rule D.B. Respondent No. 1 Kaineshwar Dubey (hereinafter to be referred to as "workman") was a railway employee employed as Khalasi (casual labor)with effect from 20-12-1969 and was dismissed from service by an oral order dated 29-5-1974. He brought a suit being Suit No. 233 of 1975 against the petitioner Union of India through the General Manager, Northern Railway, Baroda House, New Delhi for a declaration that his dismissal was illegal, void, inoperative, mala fide and a nullity and that he continued to be in service of the railway as. if he was not dismissed at all and was further entitled to all other benefits of the service. The decree for the aforesaid declaration was granted on 13-10-1981 by Shri Z. S. Lohat, Sub Judge 1st Class as a result of which his dismissal from service was held as void and was further-held to have continued in service and also entitled to all the service benefits. This decree was passed after contest by the petitioner

(2) The first appeal (RCA No. 13/82) of the petitioner Union of India through General Manager, Northern Railway against the aforesaid judgment and decree dated 13-10-81 of Shri Z. S Lohat, She was dismissed on 27-9-1983 by others Shri J. B. Goel, Additional District Judge, Delhi. Even the second appeal of the petitioner was dismissed by the High Court vide order dated 8-8-1984 in Rsa 32

of 1984. Even the SLP of the petitioner against the said decree and judgment was dismissed by the Supreme Court on 20-1-1986.

(3) After having failed to be reinstated in service and not being paid his arrears of wages and other service benefits despite the aforesaid litigation ending every time in his favor, the workman filed a petition under S. 15 of the Payment of Wages Act, 1936 (in short the Act) against the petitioner on 3-6-1985 and Shri M. K. Seth the authority under the Act made a direction on 7-8-1985 to the petitioner-Union of India to pay to the workman within one month of the order a sum of Rs. 80,591.42 on account of wages and allowances besides another sum of Rs. I lac as compensation for deduction of wages. This direction of the authority Shri N. K. Seth was ex parte as the petitioner-Union of India did not put up appearance despite service. The application of Union of India for setting aside the aforesaid ex-parte direction of the authority Shri M. K. Seth was dismissed on 3-1-1986 by Shri M. K. Seth as highly frivolous and not maintainable at all. The petitioner Union of India then filed objections under S. 47 of the Code of Civil Procedure on 15-4-1986 against the recovery of the amount and payment of the same to the workman but those objections were dismissed on 29-4-1986.

(4) Appeals under S. 17 of the Act against the judgment dated 7-8-1985 and the order dated 3-1-1986 both passed by the authority Shri M. K. Seth were filed by the Union of India on 28-4-1986 before Shri Lokeshwar Prasad, then Additional District Judge, Delhi.

(5) On the stay application filed along with the appeals of Union of India under S. 17 of the Act, order was passed on 6-5-1986 directing deposit of the amount within a week with a further order that the amount shall not be released to the decree-holder workman till further orders.

(6) The workman moved an application on 1-4-1987 for immediate release of the amount deposited as the appeals against the order of the authority Shri M. K. Seth had been dismissed on 28-3-1987 by Shri Lokeshwar Prashad. Additional District Judge on the ground that the appeals were not competent before him as he had no jurisdiction to entertain the same, but that application was dismissed on 2-4-1987 by the successor authority Shri Asharfi Lal. The civil writ No. 1042187 was filed in the High Court by the workman against Shri Asharfi Lal, authority under the Act for the quashing of the order dated 2-4-87 and that writ petition was disposed of on 27-5-1987 with the direction that the amount lying in deposit be paid to the workman forthwith and that order was" passed as the learned counsel appearing for the authority under the Payment of Wages Act conceded that the impugned order dated 2-4-1987 was illegal inasmuch as the interim order dated 6-5-1986 passed by Shri Lokeshwar Prashad no longer stood once the appeal in which it was passed, stood disposed of. The present writ before us being Civil Writ No. 1705187 had been filed in the mean time by Union of India through General Manager, Northern Railway, Baroda House, New Delhi seeking to quash the order dated 28-3-87 by Shri Lokeshwar Prashad, Additional

District Judge (Appellate Authority under the Payment of Wages Act) along with an application being C.M. 2404187 for stay in respect of the Realizing of deposited amount of Rs. 1,80,591.42 by the workman and on that application partial restraint order was passed by us on 27-5-1987 whereby it was directed that the compensation amount of Rs. 1 lac awarded by the authority Shri M. K. Seth to the workman be not paid to the workman whereas the remaining sum of Rs. 80,591.42 which was due to the workman on account of wages and allowances was ordered to be paid to him forthwith, and it was not brought to our notice by the counsel for the petitioner Union of India that the order of release for the entire amount including the compensation amount of Rs. lac had been passed on "that very day, i.e. 27-5-1987 by another Division Bench of this Court in favor of the workman in Civil Writ No. 1042 of 1987 filed by the workman.

(7) The main question falling for determination in this petition whether the wages in question paid to the workman under the direction of the authority Shri M. K. Seth was on account of wages deducted or wages delayed, because if it is a case of wages deducted then under sub-section 3 of S. 15 of the Act the authority could, in addition to the payment of wages, also direct the payment of such compensation as the authority thinks fit not exceeding ten times the wages deducted but if it were the case of delayed wages the amount of compensation which the authority could order" besides the delayed wages, could not exceed twenty-five rupees. As in the case in hand the authority has held the amount of wages as deducted wages, compensation to the tune of Rs. 1 lac was also awarded by the authority under sub-section 3 of S. 15 of the Act besides the wages, to the petitioner, and it is on account of the huge amount of compensation that the question of wages being deducted wages or delayed wages assumes great importance. The determination of this question necessarily depends upon the intention of the employer. If his intention is to deny the liability to pay the wages or to deny the right of the workman to receive the same, it would be a case of "wages deducted". But if the employer concedes his liability to pay the wages to the workman and does not dispute the workman's right to the same, the case would be one of "delayed payment". This view of ours finds support from the decision of a Division Bench of Calcutta High Court reported as *Delta Forging Works v. Manik Karmakar* 1977 Lic 207(1) and *K.P. Mushran Vs. B.C. Patil and Another*, .

(8) The learned counsel for the petitioner Union of India contended that the Act contemplated only those deductions from wages which were recognised by Ss. 7 , 12A and 13 of the Act and not the ones in the case in hand. This contention cannot be accepted and the word "deduction" has to be taken as having been used in the Act in the wider sense meaning "to take away" denying the liability to pay the wages to the employee [vide-*Delta Forging's case (Supra)*] The meaning of the word "deduction" appearing in S. 15 of the Act had also come up for consideration in the case of *The Upper India Coupar Paper Mills Co. Ltd. Vs. J.C. Mathur*, before the Lucknow Bench of Allahabad High Court wherein it was

held as follows :- "Deductions may relate to the specific heads mentioned in the particular sections of the Act or they may be deductions resulting from other causes. They may be the result of withholding of part of the Wage or of the entire amount of wages. The word "Deductions" in Section 15 appears to be used in a wide sense so as to include the entire deficiency which the employee alleges, as a result of the withholding of the same by the employer whether partially or wholly."

(9) Anant Ram and Others Vs. District Magistrate, Jodhpur and Another, it was told as under :- ".....In the cases before are the applicants were dismissed on one date, and were reinstated on a later date. They were not paid their wages for the period between the dismissal, and the re-instatement. Their claim is for wages for this period. Their reinstatement clearly implies that the Authority deducted their wages wholly or in part for the period between dismissal and re-instatement,".

(10) As already pointed out above, in the case in hand the workman was not paid his wages for the period since his removal from service on 29-5-1974 and it was only on 27-5-1987 that this Court ordered the payment of the wages amounting to Rs. 80,591.42 to be made to the workman and this payment order was made after the passing of the decree by Shri Z.S. Lohat, Sub Judge and the dismissal of the two appeals of Union of India and the direction of the authority Shri M. K. Seth under the Payment of Wages Act and the appeal against the order of the authority and the filing of the writ petitions. Even though the petitioner-Union of India deposited the amount under the orders of Lokeshwar Parshad, Additional District Judge in appeal against the order of the authority, it was further ordered that the deposited amount was not to be paid to the workman till further orders and this order of non-payment must have been made only at the instance of the petitioner-Union of India, It would be further seen from the order dated 7-8-1985 of the authority Shri M. K. Seth that a number of notices were given by the workman to the petitioner-Union of India (through General Manager, Northern Railway, Baroda House, New Delhi) requesting for his re-instatement and payment of the arrears of wages to him after the passing of the decree in his favor by Shri Z. S. Lohat, Sub-Judge but the petitioner-Union of India did not care to give any reply to any of these notices, nor made the payment. These notices are dated 16-10-81. 14-10-81. 12-12-81, 29-5-82. 28-2-84, 4-4-84 and 23-1-85. He also gave the notice dated 14-7-1986 to the Union of India for the said purpose but to no effect. These notices were given on different stages of the litigation, i.e. after the decree of the learned sub judge, after the dismissal of the first appeal of the petitioner, after the dismissal of the second appeal of the petitioner and after the direction from the authority. The total omission on the part of the petitioner-Union of India to pay the wages to the workmen was a clear indication on its part to deny its liability to pay the same to the workman as also the denial of the workman's right to receive those wages from the petitioner and this already clear position of the Union of India stands further clarified from the order of Shri Lokeshwar Parshad, Additional District Judge (the Appellate

Authority under the Act) whereby the amount deposited in pursuance of the stay application of the petitioner was ordered not to be released to the workman till further orders" and, as already pointed out above, such direction must have been passed only at the instance of the petitioner. Even in the prayer clause of the present writ petition dated 25-5-1987 the petitioner while seeking the quashing of the orders dated 7-8-1985 and 28-3-1987 passed respectively by the authority and the appellate authority under the Act, does not even hint at its conceding the right of the workman to receive his wages, nor its liability to pay the same. The prayer for the whole-sale quashing of these two orders leaves no doubt in the position taken up by the petitioner regarding the denial of its liability to pay the wages to the workman and his right to receive the same from it. and when that is the animus of the petitioner-Union of India there is no escape from the conclusion that this is a case of deducted wages and not of mere delayed wages with the result that the authority under the Payment of Wages Act was fully Justified in holding these wages as "deducted wages" and consequently directing; the petitioner to pay the same together with the compensation amount of Rs. 1 lac to the workman.

(11) The next contention raised on behalf of the petitioner-Union of India is that the workman did not implead either the Chief Project Manager, Railway Electrification. Mathura or the General Manger, Western Railway Bombay the person responsible for making payment in terms of S. 3 of the Act with the result that the notices sent to the office of the General Manager. Northern Railway could not be connected and the same remained ill transmission from one office to another This contention can- not be accepted because it would be seen that no such plea was taken by the petitioner in the written statement filed in the suit in the court of Sh. Z. S. Lohat, Sub Judge, Delhi, as conceded at the Bar during the course of arguments by Shri Dutt learned counsel for the petitioner, even though that suit was filed by the workman against Union of India through the General Manager, Northern Railway, Baroda House, New Delhi. This plea could have been taken in reply to any of the various notices sent by the workman to the General Manager, Northern Railway and in the face of no reply to any of the various notices sent by the workman, this plea of the petitioner cannot be accepted.

(12) No other point was urged and in view of the above discussion the writ petition fails and is dismissed with costs. The compensation amount of Rs. 1 lac be released in favor of the workman forthwith.