
(2003) 09 AHC CK 0224
In the Allahabad High Court
Case No : C.M.W.P. No. 18846 of 2003

Union of India (UOI) and Others

APPELLANT

Vs

Ram Murti and Others

RESPONDENT

Date of Decision : 19-09-2003

Acts Referred:

Payment of Wages Act, 1936 — Section 17

Citation : (2003) 4 AWC 3409 : (2004) 1 LLJ 669

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Govind Saran and S.C, for the Appellant; S.K. Mehrotra and B.B. Jauhari, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. By means of the present writ petition, the petitioners have challenged the judgment dated 29.7.1991, passed by respondent No. 3, Annexure-1 to the writ petition and the order dated 24.2.2000, passed by respondent No. 2 Annexure-7 to the writ petition arising out of an order passed by the Prescribed Authority on 29.7.1991.

3. The brief facts of the case are that Ram Murti, respondent No. 1 filed P.W. Case Nos. 3 of 1985 and 12 of 1985 before the Prescribed Authority under Payment of Wages Act/Assistant Labour Commissioner, Bareilly under the Payment of Wages Act, for payment of his wages. The aforesaid cases were decided by the prescribed authority. Payment of Wages Act/Assistant Labour Commissioner. Bareilly, vide Judgment and order dated 29.7.1991 directing the "General Manager, Northern Railway, Baroda House, New Delhi for making payment of Rs. 74,700 to the respondent No. 1.

4. Aggrieved by the aforesaid order dated 29.7.1991, the petitioners filed O.A. No. 895 of 1991 and O.A. No, 897 of 1991 before the Central Administrative

Tribunal. Allahabad Bench, Allahabad. The Central Administrative Tribunal vide judgment and order dated 11.8.1992, quashed the judgment and order dated 29.7.1991.

5. Aggrieved by the aforesaid order dated 11.8.1992, respondent No. 1 challenged the aforesaid order before the Hon"ble Supreme Court. The Apex Court vide judgment and order dated 4.10.1996, quashed the judgment and order dated 11.8.1992, passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad, directing to file an appeal before the competent court.

6. The petitioners filed an appeal u/s 17 of the Payment of Wages Act before the District Judge, Bareilly challenging the order dated 29.7.1991, passed by the Prescribed Authority/Assistant Labour Commissioner, Bareilly in P.W. Case Nos. 3 of 1985 and 12 of 1985. It was registered as Payment of Wages Appeal No. 100 of 1997, Union of India and Ors. v. Ram Murti. The memo of appeal was filed along with the delay condonation application and affidavit u/s 17 of the Payment of Wages Act. Section 17 of the Payment of Wages Act, 1936 is as under :

"17. Appeal.--(1) (An appeal against an order dismissing either wholly or in part an application made under Sub-section (2) of Section 15, or against the direction made under Sub-section (3) or Sub-section (4) of that section) may be preferred, within thirty days of the date on which the order or direction was made, in a presidency-town before the Court of Small Causes and elsewhere before the District Court :

(a) by the employer or other person responsible for the payment of wages u/s 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees (or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees), or

(b) by an employed person, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the authority to make an application under Sub-section (2) of Section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees, or)

(c) by any person directed to pay a penalty under (Sub-section (4)) of Section 15.

7. The appellate court dismissed the appeal of the petitioners on the following three grounds :

(1) No certificate of deposit was filed accompanying the memo of appeal.

(2) There was no sufficient ground in the appeal for interference of the order.

(3) The application u/s 5 of the Limitation Act for condonation of delay in filing the appeal was not applicable.

8. The counsel for the petitioner contends that 50% amount of Rs. 74,700 was paid to the worker in pursuance of the order dated 29.7.1991 and the remaining 50% amount was recovered from the petitioners by recovery proceedings. Hence the appellate authority has committed illegality in dismissing the appeal on the ground that no certificate of deposit was accompanying the memo of appeal. The contention of the petitioners has no force. Admittedly, the Prescribed Authority had passed an order on 29.7.1991. u/s 17 of the Payment of Wages Act, the appeal has to be filed within 60 days, which was not filed by the petitioners. The petitioners deposited Rs. 37,350 of the total amount of Rs. 74,700 on 14.8.1997 through Cheque No. 981307, but the appeal did not accompany any certificate of deposit within the prescribed period and as such in the eyes of law, the appeal without accompanying any certificate of deposit is no appeal.

9. Counsel for the petitioners have relied upon the case of U.P. State Electricity Board and Others Vs. District Judge and Others, , by which the learned single Judge has held as under :

"From the perusal of Section 17 of the Payment of Wages Act, 1936, it is abundantly clear that the Act does not specifically contemplate eschewal application of Section 5 of the Limitation Act. Section 29(2) of the Limitation Act contemplates in no uncertain terms that if any special or local law prescribes for any suit, appeal or application, a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 would apply as if said period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law.

There is nothing which crystallises specific exclusion as to applicability of Section 5 of the Limitation Act by virtue of Payment of Wages Act, 1936, being a special law.

From the expression "may be preferred within 30 days" employed in Section 17 of the Payment of Wages Act it necessarily follows that intention of the Legislature while enacting Section 17 of the Payment of Wages Act was not excluded the limitation Act from applicability expressly to the proceeding under the Payment of Wages Act. Thus, it is clear that the provisions of Payment of Wages Act is not a complete Code in itself so far as Limitation Act is concerned and it is necessarily to be supplemented by Section 29(2) of the Limitation Act. The appeal to be preferred under the Payment of Wages Act.

There is no exclusion of Section 5 for application to the provisions of Payment of Wages Act, 1936. The Act prescribes the period of 30 days as limitation for the purpose of filing the appeal. From the combined reading of the relevant provisions of the special Act, i.e., Payment of Wages Act, it is indubitably clear that the provisions of Limitation Act are not excluded and therefore the same

shall be deemed to be supplementing the provisions of the Special Act, i.e., Payment of Wages Act.

As a result of foregoing discussion, the order impugned here thereby rejecting the application preferred u/s 5 of the Limitation Act for filing appeal u/s 17 of the Payment of Wages Act is set aside."

10. From the aforesaid narration of facts, it is clear that the workman has been paid the whole amount awarded by the Prescribed Authority. The Central Administrative Tribunal has no jurisdiction in the matter and the appeal ought to have been filed by the petitioners within a period of 60 days, before the District Judge, Bareilly. The appellate court has rightly held that sufficient cause has not been shown by the petitioners for not filing an appeal in time and the respondent had to go into the litigation upto the Hon"ble Supreme Court merely because the respondent chooses to challenge the order before the Administrative Tribunal which had no jurisdiction for setting aside the order to hear such case. The delay in filing the appeal has not been explained to the satisfaction of appellate court. It is discreting matter.

11. The only ground for consideration before this Court is that respondent-workman is entitled for interest, which is part of decree and cannot be allowed at this stage.

12. For the reasons stated above, the writ petition is dismissed. No order as to costs.