

(1991) 11 AHC CK 0020

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 5470 of 1991

U.P. State Road Transport Corporation

APPELLANT

Vs

VIIth Additional District Judge (Appellate Authority under the
Payment of Wages Act) and Others

RESPONDENT

Date of Decision : 16-11-1991

Acts Referred:

Payment of Wages Act, 1936 — Section 10, 11, 12, 13, 15

Citation : (1991) 2 AWC 510

Hon'ble Judges : S.C. Verma, J

Bench : Single Bench

Advocate : S.K. Sharma, for the Appellant; V.K. Burman, for the Respondent

Final Decision : Allowed

Judgement

S.C. Verma, J.—Raja Ram Yadav and 38 other being Respondents 3 to 41 filed an application u/s 15(2) of the Payment of Wages Act being case No. 95 of 1979 on 11th June, 1979 before the Prescribed Authority claiming deducted of wage; of Rs. 1.45 per day per employee from June, 1978 to 31st May, 1979 amounting to Rs. 17643,60 as also compensation amounting to Rs. 1,76,443.00.

2. The Respondents claimed to be daily wage employees who were paid Rs. 5 per day whereas according to the order No. 1766 dated 8-5-1975, they were entitled to daily wages at the rate of Rs. 5.45 with effect from 1-3-1975. According to the Respondents, they were working at the Workshop of U.P. State Road Transport Corporation, Gorakhpur, hereinafter referred to as "the Corporation.

3. The claim of the Respondents was contested by the corporation and it was alleged that the employees in question were working at the rate of Rs. 120/- per month and not as daily wage employees at the rate of Rs. 4/- per day. It was further alleged that they were actually part time employees on monthly basis and were given weekly rest day in accordance with the terms of the employment. The Respondents accepted the terms of employment and received their salary

without any objection. Moreover, the Respondents have filed their case under the U.P. Industrial Disputes Act for increase of their wages which is pending and as such the present proceedings under the Payment of Wages Act are not maintainable.

4. The Prescribed Authority under the Payment of Wages Act firstly condoned the delay in filing the application u/s 15 of the Act and further held that the claim is maintainable under the provisions of the Payment of Wages Act as the present dispute is not in regard to determination of wages but the claim of the employees was for the amount of unlawfully deducted wages to which they were otherwise entitled under the Order dated 8 5 1975. The Prescribed Authority allowed the application and held that the Respondents are neither part time employees for they were employed on monthly wages. On the other hand, they were full time employees and were given Rs. 4/- per day as daily wages. It has further been held that according to Order No. 1766 dated 8-5-1975, the Respondents are entitled to Rs. 5.45 per day as daily wages and since they have been paid wages at, the rate of Rs. 4/- per day only, they are entitled to Rs. 1.45 per day as deducted wages. The Prescribed Authority granted the relief of deducted wages of Rs. 452.40 and Rs. 2262.00 as five times compensation plus Rs. 10/- as costs to each of the employees by the impugned orders dated 18-2-1980 and 6-5-1990, filed as Annexures "6" and "7" to the writ petition.

5. The Corporation, being aggrieved against the aforesaid orders, filed Miscellaneous Appeal No. 135 of 1980 before the District Judge. Gorakhpur which has also been dismissed by order dated 1-1-1981. The learned VIIth Additional District Judge modified the amount of cost and fixed total cost of Rs. 10/- to all the employees instead of Rs. 10/- to each employee. The t orders dated 18-2-1980 and 6-5-1980 passed by the Prescribed Authority and the order dated 1-1-1981 passed by the appellate authority have been impugned in the present writ petition filed by the Corporation.

6. The Petitioner has challenged the jurisdiction of the Prescribed Authority under the Payment of Wages Act to entertain the present dispute which mainly related to the determination of wages and the nature of employment of the employees. According to the learned Counsel for the Petitioner Sri S.K. Sharma, since the employee have already taken recourse to remedy under the U.P. Industrial Disputes Act which was pending, the initiation of proceedings under the Payment of Wages Act were not maintainable. The learned Counsel for the Petitioner further contended that the terms of appointment are established from the appointment letter itself and the Respondents being part time monthly employees and having accepted the employment and the salary without any objection, they can not subsequently claim their employment on daily wage at the rate of Rs. 5.45 per day. He further submitted that the main dispute to be determined is whether the employees were part time workers or full time workers as also whether they were daily wage employees or were working on monthly basis at the rate of Rs. 120/- per month. The learned Counsel for the

Petitioner lastly argued that even if the present dispute is treated to be covered under the provisions of Section 15 of the Payment of Wages Act, it would not be a case of deduction of wages but a case of delay in payment of wage as there was a bonafide dispute as to the amount payable to the employed persons. Reliance has been placed on the decision *O.P. Goel v. Lakshmi Ratan Engineering Works Ltd* 1973 ALJ 538.

7. In reply to the aforesaid contentions, the learned Counsel for the Respondents Sri V.K. Burman submitted that the employees were never served with the appointment letters and the appointment letter which has been brought on record relate only to employment of one month whereas from the material on record and the findings by the authorities below, it is established that the Respondents were full time employees on daily wages. Since the employees were not paid their normal daily wages, this would be a case of deduction of wages not covered by the provisions of Sections 7 to 13 of the Act and as such the Respondents are entitled for their claim in accordance with the provisions of Section 15(3) of the Act.

8. As regards the question as to whether the employees were on daily wages or were employed on monthly basis or as to whether they were full time employees or part time employees, the Prescribed Authority and the appellate authority, on the basis of material on record, have recorded a concurrent finding of fact that the employees were working 8 hours per day and were treated as daily wage employees at the Rate of Rs. 4/- per day. The authorities did not accept the nature of employment of Respondents 3 to 41 as contained in the appointment letter, as from the material on record and the witnesses who have come forward to depose, it was established that the Respondents were in full time employment and were given consolidated wages of Rs. 120/- for one month with weekly holidays. In the case of absence, the daily wages were also deducted.

9. I have perused the appointment letter as also the material on record and I see no reason to take any contrary view to the findings recorded in this regard by the Prescribed Authority and the appellate authority.

10. The next question for determination is as to whether the present claim is maintainable under the provisions of Payment of wages Act. It has to be seen that the rate of daily wage employment has been prescribed by Order No. 1766 dated 8-5-1975 laying down Rs. 5.45 as daily wages for unskilled employees since 1975. This has not been disputed by the Petitioner. The Respondents had been held to be full time employees on consolidated daily wage of Rs. 120/- per month. The daily wages were paid by a consolidated sum of Rs. 120/- per month with weekly holidays and the daily wages were deducted in case of absence at the rate of Rs. 4/- per day. Merely because the Respondents have laid their claim for enhanced wages under the U.P. Industrial Disputes Act would not disentitle them to claim even the normal wages to which they were legally entitled and which have not been paid to them. There possibly can not be any dispute that a daily wages unskilled employee in the establishment would be entitled to Rs.

5.45 per day as wages. The Respondents have made their claim for the unpaid wages and, as such, in my opinion, the present claim is maintainable under the Payment of Wages Act.

11. The next question which arises for consideration is whether in the circumstances it was a case of delayed payment of wages or a case of deduction of wages. In the present case, the deductions, if any, admittedly were not covered under the prescribed deductions as contained under the provisions of Sections 7 to 13 of the Act. The word "deduction" in Section 15 appears to be used in a wide sense so as to include the entire deficiency which the employee alleges to have caused in the payment of wages, as a result of the withholding of the same by the employer whether partially or wholly. In the case before me, the Respondents who were treated as part time employees and were paid monthly wages by the employers have ultimately been found to be full time employees on daily wage basis on a consolidated sum of Rs. 120/- per month. The proviso to Sub-section (3) makes the position clear which is set out as under:

Provided that no direction for payment of compensation shall be made in the case of delayed wages if the Authority is satisfied that the delay was due to:

- (a) a bonafide error or bonafide dispute as to the amount payable to the employed person, or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of wages was unable, though exercising reasonable diligence, to make prompt payment, or
- (c) the failure of the employed person to apply for or accept payment.

12. I have already held that there was a dispute as to the nature of employment and the rate of wages. If on an enquiry by the authorities, it is found that the employees were entitled to a particular amount of wages which were not paid to them under a bonafide dispute, it would be a case of delayed payment of wages and in that situation the authority had no jurisdiction to award compensation under Sub-section (8) of Section 15 of the Act. Clause (a) of the Proviso to Sub-section (3) makes it clear that where the wages are not paid to the employee during the period when it is due on account of a bonafide dispute regarding the employee's right to the wages, it would be a case of delayed wages. The enactment of the proviso to Sub-section (3) indicates the legislative intent that where the employer disputes the claim for "ages of the employee in a bonafide manner and he provides a justification for payment of less wages within the prescribed period, it would be a case of delayed wages.

13. In the case before me, the employers have denied their liability to pay wages at the rate of Rs. 5.45 per day treating the employees as part time monthly employees. The authorities recorded a finding that the Respondents were full time employees and the employers have wrongfully not paid their full wages as and when due. In these circumstances, it is difficult to hold that the dispute

raised by the employers was not a bonafide dispute. The Respondents have not indicated any reason whatsoever to establish that any portion of the wages were illegally deducted by the employers. In fact the employees had initially accepted the employment and the wages paid to them and it was only later on that they claimed higher wages on the basis of Order No. 1766 dated 8-5-1975. Under these circumstances, the case of the Petitioner that the present case would not be a case of deduction of wages but at best be a case of delayed payment of wages appears to be correct.

14. In *O.P. Goel v. Lakshmi Ratan Engineering Works Ltd.* (Supra), this very question arose for consideration as to whether in the circumstances it was a case of delayed payment of wages or a case of deduction of wages. The learned Judges held that since there was a dispute with regard to the claim of wages by an employee in a bonafide manner and the employers were justified in their action in not paying the wages within the prescribed period, it was treated to be a case of delayed payment of wages. The law laid down is fully applicable in the present case and I am bound by the aforesaid decision.

15. For the reasons stated above, I am satisfied that the Prescribed Authority and the appellate authority were not justified in awarding compensation under Sub-section (3) of Section 15 of the Act. The orders of the Prescribed Authority and the appellate authority dated 6-5-1980 and 1-1-1981 are quashed to this extent and that the Respondents 3 to 41 would only be entitled to difference in wages amounting to Rs. 452.40 per employee and the total cost of Rs. 10/- per case as awarded by the appellate authority. Respondents 3 to 41 shall be liable to refund the amount of compensation of Rs. 2262/- per employee in case the same has been paid to them, in easy instalments to be fixed by the Prescribed Authority under the payment of Wages Act.

16. With the aforesaid directions, the petition succeeds and is allowed. There shall be no order as to costs.