

(1979) 09 AHC CK 0032

Allahabad High Court

Case No: None

General Manager, North Eastern
Railway

APPELLANT

Vs

Surajnath Dubey

RESPONDENT

Date of Decision: Sept. 11, 1979

Acts Referred:

- Constitution of India, 1950 - Article 226
- Payment of Wages Act, 1936 - Section 1, 15

Citation: (1980) 2 LLJ 242

Hon'ble Judges: K.N. Singh, J; B.D. Agarwal, J

Bench: Division Bench

Judgement

B.D. Agarwal, J.

This writ petition under Article 226 of the Constitution of India filed by the General Manager, North, Eastern Railway, Gorakhpur and the two civil revisions filed by Surajnath Dubey challenge the orders passed by the prescribed Authority under the Payment of Wages Act, and the orders passed by the District Judge of Kumaun, Nainital on the two appeals filed by the General Manager, North Eastern Railway, Gorakhpur and Surajnath Dubey against the judgment of the Prescribed Authority.

2. Since these cases raise common questions, they are being decided by a common judgment.

3. The facts, in brief, giving rise to the filing of the above cases in this Court are as under.

4. Surajnath Dubey was posted as Chief Goods Clerk at Ramnagar Railway Station in the N.E. Railway, at the time when his services were terminated. He filed a suit for declaration that the termination of his services was illegal and ultra vires. The civil Court decreed the suit on 31st of May, 1969. In spite of this decree, the railway

authorities did not pay his wages from 1-12-1966 to 19-4-1970. He, accordingly, filed an application on 20th April, 1970 u/s 15 of the Payment of Wages Act, 1936 (hereinafter referred to as the Act). By this application, he claimed Rs. 16,147.30 P. For the period from 1-12-1966 to 19-4-1970, as wages illegally withheld. He further claimed compensation amounting to Rs. 50,000. This application was contested on behalf of the Railway Administration. The case taken up by the Railway Administration was that the application u/s 15 of the Act was barred by time and Shri Dubey had crossed the age of superannuation on 27th of February, 1969, therefore, he had ceased to be an employee of the Railway Administration, hence the application was not maintainable. The Railway Administration further pleaded that the application was barred by the provisions of Section 1(6) of the Act.

5. The Sub-divisional Magistrate, Kashipur District, Nainital, who was the Prescribed Authority under the Act, decided the application partly and held Shri Dubey entitled to a sum of Rs. 4,796 as wages and also a sum of Rs. 2,000 by way of compensation for nonpayment of wages. The Prescribed Authority was of the view that the claim made was partly within time. The claim for the period from 20th April, 1969 to 20th April, 1970 was held within time. He further held that the application was not barred by Section 1(6) of the Act, He also held that Shri Dubey was entitled to continue in service till he has attained the age of 60 years, and to draw wages accordingly.

6. Against the aforesaid order of the Prescribed Authority, appeals were filed by Railway Administration and by Shri Dubey. The District Judge allowed the appeal filed by the Railway Administration so far as the quantum of compensation for non-payment of wages, was concerned. The amount of Rs. 2,000 awarded by the Prescribed Authority was reduced to Rs. 25. The order of the Prescribed Authority was, accordingly, modified to this extent. The appeal filed by Shri Dubey was dismissed. Hence the writ petition and the two revisions have been filed in this Court.

7. We have heard Shri Lalji Sinha, learned Counsel for the Railway Administration and Shri Swaraj Prakash, learned Counsel for Shri Dubey. Having given our anxious consideration to the submission made by the learned Counsel, we are of the opinion that the application u/s 15 of the Act should be sent back to the Prescribed Authority for its decision afresh.

8. The first question which arises for consideration is whether the application filed by Shri Dubey u/s 15 of the Act was barred by time, in view of the 1st proviso to Sub-section (2) of this section which reads thus:

Provided that every such application shall be presented within twelve months from the date on which deductions from the wages was made or from the date on which the payment of wage was due to be made as the case maybe.

9. The point for decision is as to which would be the starting point of limitation in a case where an employee is suspended, removed or dismissed, and later reinstated.

Whether it would be the date of such suspension, removal or dismissal, or would it be the date of decision of the Court declaring such order to be void?

10. The proviso quoted above lays down that the application shall be presented within twelve months from the date on which the payment of wages was due. The Legislature has deliberately not said that this period would start from the date on which payment of wages accrue due. In a case where an employee is suspended, removed or dismissed, wages become due to him only when such action is declared void, and the employee cannot have cause of action before the date of such declaration.

11. In *Divisional Superintendent of Northern Railway v. Pushkar Dutt* (1967) 14 I.F. & L.R. 204, the Supreme Court had occasion to decide this question. In that case, the employee was dismissed on 23rd of December, 1947 and the validity of the order of dismissal was challenged by him in civil suit, which was decreed on 31st of March, 1951 and the dismissal was declared void. On appeal, the decree was set aside and the employee's suit was dismissed on 14th August, 1952. The employee filed an appeal in the High Court, which was allowed and the decree passed by the trial Court was restored by the High Court on 9th January, 1962. Special appeal against this was also dismissed by the High Court on 16th September, 1964. The employee filed an application on 7th July, 1962, u/s 15 of the Act claiming past wages due to him between 24th December, 1947 and 5th July, 1962. The Supreme Court, while holding that the employee was entitled to all wages due to him, took the view, that, it was only when the second appeal was allowed on 9th January, 1962 that the respondent had cause of action.

12. In *Jai Chand Sawhney v. Union of India* (1969) 3 S.C. 642 : (1970) 20 F.L.R. 119 , Article 102 of the Limitation Act was under consideration. It was held that the period of limitation commences to run when the wages "accrue due" and, when in law the servant becomes entitled to wages. The first proviso to Section 15(2) of the Act also came up for consideration before the Supreme Court in case of [Dilbagh Rai Jarry Vs. Union of India \(UOI\) and Others](#), . A reference was made in this case to the case of *Jai Chand Sawhney* (supra). The Supreme Court in this case held that *Sawhney's* case was of no assistance in determining the issue before it, based on the interpretation of the provisions of the Payment of Wages Act. The Court observed that the interpretation of the first proviso to Section 15(2) of the Act never came up for consideration and there the Court was concerned only the expression "accrue due" in Article 102 of the Limitation Act, 1906 which does not govern the application u/s 15(2) of the Act. The case of *Pushkar Dutt* (supra) was also referred to and followed.

13. The Prescribed Authority placed reliance on [Sheo Prasad Vs. Additional District Judge and Others](#), . It was held that the starting point of limitation for preferring claim was the date of suspension or removal and not the date of decision by civil Court, although it may be that it was not practicable to put forward a claim of wages

until a decision from the civil Court was obtained. This view was later departed from and ceases to be good law, in view of decision of Supreme Court in Pushkar Dutt's case (supra).

14. A learned single Judge of this Court in Writ Petition No. 1024 of 1963, Ram Kishore Sharma v. Additional District Judge, Sahaeapur and Ors. (1969) Cri.L.J. 225, referred the case to larger Bench for consideration. The matter was then considered by a Division Bench of this Court. It was held that the law laid down in the case of Sheo Prasad (supra) was no longer good law, in view of the Supreme Court decision in Divisional Superintendent of Northern Railway v. Pushkar Dutt (supra). The application u/s 15 of the Act in that case filed within six months (which period by Act No. 53 of 1964 has been made twelve months), of the decision of the writ petition declaring removal as void, was held to be within time. We are in complete agreement with this view.

15. Similar view has been taken in the case of S.N. Lal v. D.S. Northern Railway (1969) Cri.L.J. 646, as also in Divisional Personnel Officer, W.Railway v. Amar Singh (1978) Labour and Industrial cases page 1118.

16. We, therefore, hold that the application u/s 15 of the Act filed by Shri Dubey on the 20th of April, 1970, having been filed within 12 months of the decree of civil Court dated 31st of May, 1969, was well within time and was not barred by the first proviso to Sub-section (2) of Section 15 of the Act. In this view of the matter, therefore, both the Prescribed Authority as also the learned District Judge, Nainital committed a manifest error of law in holding, that, only a part of the claim made in the application filed by Shri Dubey was within time. As shown above, the entire claim made in the application was within time.

17. Accordingly, having held that the entire claim was within time, the application u/s 15 of the Act must necessarily be decided afresh in accordance with law.

18. Learned Counsel for the Railways then submitted that the appellate Court manifestly erred in law in not deciding the plea, raised on behalf of the Railway Administration, based on sub-s. (6) of Section 1 of the Act. Their plea is that the application u/s 15 of the Act itself was not maintainable inasmuch as the provisions of the Act would not apply to wages payable in respect of wage-period, over which period, the average is Rs. 400 a month or more. Learned Counsel has referred to the application u/s 15 of the Act filed by Shri Dubey giving details of the rates of pay and dearness allowance payable to Shri Dubey from 1-12-1966 to 19th April, 1970, According to him, the wages payable averaged over Rs. 400 a month, if not during the entire period but certainly at least for a part of the period. This contention has been seriously opposed by the learned Counsel for Shri Dubey, who has submitted that the total amount claimed by Shri Dubey was only Rs. 16,141.30 P. for period of 40 months and 19 days and, therefore, the average was less than Rs. 400 a month. He has also referred to two decisions of T.S.T. Co. V.R. Perumal AIR 1958 Mad. 25

and [Cachar Cha Sramik Union Vs. Manager, Martycherra Tea Estate and Another, .](#)

19. We do not, however, consider it expedient to decide this question, as, in our view, the matter is being sent back to be decided afresh treating the entire claim as being within time. Accordingly, we are leaving this question for being decided appropriately by the Prescribed Authority.

20. Learned Counsel for the Railway Administration has further raised a question on merits, namely, in regard to the age of superannuation of Shri Dubey. The case of the Railway Administration was that the age of superannuation of Shri Dubey was 55 years, being a Goods Clerk and not a ministerial railway servant, and, accordingly, Shri Dubey attained the age of superannuation on 27th February, 1969. Both, the Prescribed Authority, as also the learned District Judge, have held that Shri Dubey was to attain the age of superannuation on 26-2-1974 as the age of superannuation was 60 years. Treating this to be the age of superannuation, the claim for the period from 20th of April, 1969 to 19th April, 1970 was decreed. Thus this question of the age of superannuation is a material question for the decision of the claim made by Shri Dubey. Since the Prescribed Authority has now to decide the matter afresh treating the entire claim made as being within limitation, we consider it inexpedient to decide this question in these proceedings. This question will also be decided by the Prescribed Authority.

21. In Civil Revision No. 1009 of 1973, Shri Dubey has challenged the correctness of the orders of the Prescribed Authority as also of the learned District Judge, on the ground that the view taken by them, that only part of the claim in made the application u/s 15 of the Act was within time, is manifestly illegal. In Civil Revision No. 1010 of 1973, further challenge has been made in regard to the amount of compensation awarded.

22. In the circumstances, for reasons stated above, these revisions are liable to be allowed.

23. We, accordingly, allow the writ petition. The order dated 30th November, 1971 of the Prescribed Authority under the Payment of Wages Act, and the order dated 21st July, 1973 of the District Judge of Kumaun, Nainital, are hereby quashed. The Prescribed Authority will now decide the application u/s 15 of the Payment of Wages Act filed by Shri Surajnath Dubey afresh in accordance with law, and in the light of observations made above.

24. Both the Civil Revisions, hence, also stand allowed.

25. In the circumstances of the case, the parties will bear their own costs in the writ petition, as also in both the Civil Revisions.