(1968) 12 AHC CK 0005

Allahabad High Court

Case No: None

Ram Kishore Sharma		APPELLANT
	Vs	
Additional District Judge and Others		RESPONDENT

Date of Decision: Dec. 10, 1968

Acts Referred:

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

Citation: (1969) 2 LLJ 353

Hon'ble Judges: B.N. Lokur, J; B. Dayal, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

B.N. Lokur, J.

The petitioner, who was a train clerk in the Northern Railway, was placed under suspension on 22 October 1955, and was later removed from service by an order dated 29 December 1955. Ho filed an appeal against his order of removal, which was not disposed of for some time. Thereupon, he filed a writ petition in the Punjab High Court on 10 April 1957, seeking to quash the order of his removal. On 28 November 1959, the Punjab High Court declared the order of removal of the petitioner from service as void, illegal and inoperative. As the petitioner was not given the arrears of his salary for the period between 22 October 1955 and 1 April 1960, on which date he joined the service on formal reinstatement, he moved the Payment of Wages Authority u/s 15(2) of the Payment of Wages Act for a direction, commanding the Divisional Superintendent, Northern Railway, to pay to the petitioner an amount of Rs. 9.179 towards the wages withheld for the aforesaid period and an amount of Rs. 91,790 by way of compensation for the deducted wages. The application was resisted by the Divisional Superintendent, Northern Railway, on various grounds. It was contended, inter alia, that the period of the petitioner''s absence from duty was treated as leave by the competent authority and the

application was barred by time. The Payment of Wages Authority held that the petitioner''s application was not barred by time but rejected the application on the ground that he was not untitled to any wages as the period of his absence from duty was treated as leave by an order passed under Para. 2044(2) of the Indian Railways Establishment Code, Vol. II, the propriety of which could not be determined by him. In appeal, the Additional District Judge, Saharacpur, held that the aforesaid Para. 2044(2) had no application where the removal is declared to be void, illegal and inoperative; the learned Judge, however, held that the application was barred by time as it was presented beyond the period of six months prescribed by Section 15(2) of the Payment of Wages Act. According to him, the petitioner had not submitted to the order of removal and regarded himself as continuing in service and hence the wages became due to him on various dates from 22 October 1955 to 1 April 1960. He fortified himself in this view by the decision of a single Judge of this High Court in Sheo Prasad Vs. Additional District Judge and Others, .

2. Aggrieved by the rejection of his application, the petitioner filed this petition under Article 226 of the Constitution. The petition was originally heard by Beg, J., who referred the case to a larger Bench as he felt that the decision in Sheo Prasad Vs. Additional District Judge and Others, requires reconsideration in the light of certain observations made by the Supreme Court in Divisional Superintendent of Northern Railway v. Pushkar Datt Sharma (1967) 14 I.F. & L.R. 204.

3. It was argued before us by the learned Counsel for the petitioner that the petitioner could not approach the Payment of Wages Authority until the Punjab High Court declared the order of his removal from service as void, illegal and inoperative, that accordingly the starting point of limitation would be 26 November 1959, the date of the judgment of the High Court, that the application was made within six months of that date and was hence within time. It was also pointed out that the decision in Sheo Prasad Vs. Additional District Judge and Others, was taken up in special appeal which was still pending and could not be regarded as an authority.

4. Learned Counsel for the Divisional Superintendent, Northern Railway, fairly conceded before us that, as held by the learned Additional District Judge, Para. 2044 of the Indian Railways Establishment Code, Vol. II, is not applicable to a case of the present nature. That paragraph applies only where an order of removal or dismissal is set aside by a departmental authority and the employee concerned is reinstated; it does not apply to a case where the order of removal or dismissal is held by a civil Court or in writ petition to be void, illegal and inoperative. Such a view was taken also by a learned single Judge of this High Court in Divisional Superintendent, Northern Railway v. Nandlal Dubey 1962 A.L.J. 872. The Supreme Court too has expressed the same view in connexion with the corresponding provision in Fundamental Rule 54 in Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh,

5. The only question that, therefore, survives is whether the application presented by the petitioner before the Payment of Wages Authority was within time. The first proviso to Section 15(2) of the Payment of Wages Act requires the application to be made within six months from the date on which the deduction from the wages was made or from the date on which the payment of wages was due to be made. It has been contended before us by the learned Counsel for the Divisional Superintendent, Northern Railway, that the petitioner, having treated the order of his removal as void, should have made the application month after month after the date of the order of removal; it is pressed, on the other hand, by the learned Counsel for the petitioner that so long as the order of removal stood, It was futile to make the application month after month, since the railway authorities could not be compelled to pay the wages in the face of the order of removal.

6. In Sheo Prasad Vs. Additional District Judge and Others, a single Judge of this High Court has held that even where an order of removal is declared void by the civil Court, the starting point of limitation would be the date of suspension or perhaps the date of removal and not the date of decision by the civil Court. Reliance was placed upon another decision of a single Judge of this High Court in Noor Ali Vs. Kanpur Omnibus Service Ltd., , that, for purposes of institution of a suit for recovery of wages, where an employee is suspended from service but is later on reinstated, the cause of action for recovery of wages for the period of suspension accrues from the date of suspension and not from the date of his reinstatement. It Is significant that in Sheo Prasad Vs. Additional District Judge and Others, it was recognized that It was not practicable to put forward the claim for wages until a decision from the civil Court declaring the order of removal as void was obtained. The special appeal against the decision was disposed of on other grounds and the question about the commencement of the period of limitation was not decided.

7. Our attention has been drawn to certain observations made by the Supreme Court in Divisional Superintendent, Northern Railway v. Pushkar Datt Sharma (1967) 14 I.F. & L.R. 204 (vide supra). In that case, the employee was dismissed on 23 December 1947, and he challenged the validity of the order of dismissal by a civil suit. The suit was decreed on 31 March 1951, as a result of which his dismissal was declared void. On appeal the decree was set aside and the employee''s suit was dismissed on 14 August 1952. The employee went in second appeal to the High Court and he succeeded, with the result that the decree passed by the trial Court in his favour was restored on 9 January 1962. A special appeal against this order was also dismissed on 16 September 1964. The employee made an application on 7 July 1962, before the Payment of Wages Authority for past wages due to him between 24 December 1947 and 6 July 1962. The Supreme Court, holding that the employee was entitled to all wages due to him, observed:

It may be that a claim for payment of wages has to be made within six months from the date when the wages fell due and in that sense, an application u/s 15(2) must be made within six months of the accrual of the cause of action from month to month; but in the present case, when the appellate Court dismissed the respondent''s suit on 14 August 1952, it was not open to the respondent to apply u/s 15(2), because the appellate Court

had held that his dismissal was justified and valid. It was only when the second appeal was allowed on 9 January 1962, that the respondent had a cause of action.

Though the employee was dismissed on 23 December 1947, the Supreme Court did not consider that the Payment of Wages Authority should have been approached within six months of that data; nor did the Supreme Court consider that the employee should have approached the Payment of Wages Authority within six months of 31 March 1951, when the suit was decreed by the trial Court; the Supreme Court observed that it was only when the second appeal was decided in his favour that the employee had a cause of action. In view of the above observations of the Supreme Court and the implications thereof, we are of the opinion that in the present case the petitioner was justified in not moving the Payment of Wages Authority until his removal was declared void by the Punjab High Court in his writ petition. The declaration in favour of the petitioner was made by the Punjab High Court on 26 November 1959, and the application to the Payment of Wages Authority was made on 28 April 1960, i.e., within six months of the decision in his writ petition. That being so, the application was within time.

8. It was urged on behalf of the Divisional Superintendent, Northern Railway, that had the petitioner applied to the Payment of Wages Authority soon after his removal, that authority would have also considered the question whether the order of removal was legal or illegal and would have given relief to the petitioner if the order were found to be illegal. This argument raises the question of jurisdiction of the Payment of Wages Authority. It is well-settled now that the Payment of Wages Authority has limited jurisdiction--only to the extent conferred by the Act itself. Vide A.V. D"Costa v. B.C. Patil and Anr. 1955 I L.L.J. 363. In Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another, the Supreme Court defined the limited jurisdiction of the Payment of Wages Authority in the following words (at pp. 7--8):

In dealing with claims arising out of deductions or delay made in payment of wages the authority inevitably would have to consider questions incidental to the said matters. In determining the scope of these incidental questions care must be taken to see that under the guise of deciding incidental matters the limited jurisdiction is not unreasonably or unduly extended. Care must also be taken to see that the scope of these Incidental questions is not unduly limited BO as to affect or impair...the limited jurisdiction conferred on the authority...in our opinion, it would be inexpedient to lay down any hard and fast or general rule which would afford a determining test to demarcate the field of incidental facts which can be legitimately considered by the authority and those which cannot be so considered.

9. The question whether an order of removal or dismissal of a civil servant Is valid or otherwise is a complicated question involving interpretation and application of the provisions of the Constitution and, to our mind, such a question Is not incidental to a claim arising out of deductions or delay made in payment of wages and the Payment of Wages Authority cannot consider the question. We respectfully agree with the observations of the

Full Bench of the Bombay High Court in Viswanath Tukaram Vs. General Manager, Central Railway and Others, that the Payment of Wages Authority has no authority to decide whether the services of an employee have been rightly or wrongly terminated or whether the dismissal is lawful or unlawful. A Division Bench of this High Court has also held in Eastern Railway (by Danapur Divisional Accounts Officer) v. Additional District Judge and Ors. 1968 II L.L.J. 582 it was not open to the Payment of Wages Authority to ignore an order of reduction in rank made by a competent authority and to hold that the order was not good for sufficient reasons, Accordingly, the petitioner was not bound to apply to the Payment of Wages Authority for his wages as long as his removal was not declared void by a civil Court or in a writ petition.

10. In P.J. Lartieus v. Superintendent, Printing and Stationery, Uttar Pradesh 1965 A.L.J. 292 a single Judge of this High Court has held that an application to the Payment of Wages Authority for arrears of salary would not be maintainable in view of Order II, Rule 2, of the Code of Civil Procedure, if that claim is not made in a suit challenging the order of dismissal. But that decision has no application to the facts of this case as the order of removal of the petitioner was declared void in a writ petition and not in a civil suit. In Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, it has been held that the bar of Order II, Rule 2, of the Code of Civil Procedure, may not apply to a petition for a high prerogative writ under Article 226 of the Constitution. (P. 270.)

11. For all these reasons we are of the opinion that the petitioner''s application before the Payment of Weges Authority was maintainable. We hence quash the order of the Payment of Wages Authority and that of the Additional District Judge, Saharanpur, and remit the case back to the Payment of Wages Authority for disposal on the basis that the application is not barred by time and the order treating the absence of the petitioner as leave under Para. 2044 of the Indian Railway Establishment Code, Vol. II, is Illegal. In the circumstances of the case we direct the parties to bear their own costs.