

**(1994) 05 AHC CK 0019****Allahabad High Court****Case No:** C.M.W.P. No. 12864 of 1984

Sujana Ram

APPELLANT

Vs

Authority Under Payment of  
Wages Act and Others

RESPONDENT

**Date of Decision:** May 20, 1994**Acts Referred:**

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

**Citation:** (1995) 70 FLR 276 : (1995) 2 LLJ 524 : (1994) 3 UPLBEC 1989**Hon'ble Judges:** S.K. Keshote, J**Bench:** Single Bench**Advocate:** P.C. Jhingan, for the Appellant; R.K. Jain and Rajiv Sharma, for the Respondent**Final Decision:** Allowed**Judgement**

S.K. Keshote, J.

The petitioner filed this writ petition before this Court against the order of the Authority under the Payment of Wages Act, 1936, Saharanpur (hereinafter referred to as the Authority under the Act, 1936) dated March 7, 1984, under which the application filed by him for the order of the payment of the salary to him for the period from September 2, 1980 to December 28, 1981 has been dismissed on the ground that the same is barred by time. The petitioner has come up with the case that the employer M/s. Krishna Enterprises, Industrial Area, Hardwar, District Saharanpur through its proprietor Smt. Krishna has illegally withheld the salary of the petitioner for the period September 2, 1980 to December 28, 1981. The petitioner had filed an application to the said effect before the Authority under the Act 1936 on April 23, 1982 along with an application for condonation of delay in filing the said application. The petitioner filed number of documents and also got himself examined in support of his claim. He has made a statement on May 25, 1982 that the respondent-employer had collected many persons in connection with her

plots and in the presence of those persons she has stated that the payment of the wages will be made by the employer to the petitioner within a week. The petitioner has stated that he made a complaint on February 24, 1982 to the Labour Inspector, Hardwar in connection with withholding of his wages by the employer. The Labour Inspector, Hardwar by his letter dated July 17, 1982 informed the petitioner that the said authority has written letter to his employer for the payment of his wages but no communication has been received by it and the petitioner has been advised by the said letter of the Labour Inspector, Hardwar to file a case under the Payment of Wages Act, 1936. The petitioner accordingly submitted an application before the Authority under the Payment of Wages Act, 1936 before the respondent No. 1 on April 23, 1982. The petitioner further stated that no oral or documentary evidence has been produced by the employer to contest his application for condonation of delay. The petitioner filed another document i.e. letter of the employer dated June 25, 1981 which has been sent to him in response to his letter dated June 15, 1981, in which the liability to make payment of his wages has been admitted and he was assured that as soon as erection of building and installation of Bituminised Water Machine is completed his all claims shall be paid in lump sum. The Authority under the Act 1936 has discarded all the documents filed by the petitioner only on the ground that those documents have not been proved. Some of the documents, which have been exhibited by the petitioner, have also been discarded on the ground that the same has not been proved.

2. Learned counsel for the petitioner has argued that the Authority under the Act 1936 has committed a serious illegality in exercise of its jurisdiction in rejecting the application of the petitioner as sufficient cause has been made out for filing of the application after limitation. Next, he has argued that the said authority has discarded the documentary evidence on the grounds which are not tenable in the eyes of law. Strict rule of evidence is not applicable. The documents have been produced and the same have also been exhibited. The order of the said Authority which has been given by it by excluding the documentary evidence filed by the petitioner is perverse and arbitrary on the face of it.

3. Lastly, learned counsel for the petitioner argued that the said Authority has not considered an important fact that whole of the claim of the petitioner was not barred by time. At the most the application could have been rejected on the ground of limitation in respect of the claim which has become barred by time in case the delay in filing thereof would have been considered to be there.

4. Learned counsel for the respondent No. 3 on the other hand argued that the order of the said Authority dated March 7, 1984 is appealable u/s 17 of the Payment of Wages Act and as such this writ petition is not maintainable. On the merits he argued that the findings which have been recorded by the said Authority is a finding of fact on the question whether a sufficient cause has been made out for condonation of delay or not and as such this Court will not sit as court of appeal

over the said findings. He next argued that no wages whatsoever of the petitioner has been withheld by the employer and it is a false case which has been made out by the petitioner. He further argued that even if the claim of the petitioner for payment of wages for certain period was within time, the said Authority has not committed any illegality in rejecting the application as the petitioner has filed a composite application and it could not have been spitted up.

5. Replying to the objection of the counsel for the respondents regarding the availability of alternate remedy, learned counsel for the petitioner has argued that the appeal was not maintainable as under the impugned order only the matter has been considered regarding the condonation of delay in filing of the application u/s 15 of the Act 1936. He placed reliance on the decisions in the cases of Khema Nand Vs. East Indian Rly., Administration, , Sitaram Ramcharan and Others Vs. M.N. Nagrashna and Another, and Manik Chand Bhaumik v. Regional Manager, N.E. Frontier Railway 1975 LIC 1696.

6. I have considered the arguments of the counsel for the parties. So far as the objection of the counsel for the respondents regarding the availability of the alternate remedy to the petitioner is concerned, it is sufficient to state that this writ petition has been filed in the year 1984 and it has been admitted on January 20, 1986. The opposite parties have filed counter- affidavit in this case in which no such objection has been taken. At the stage of final hearing after about 10 years of filing of the writ this objection was taken. It will, therefore, not be proper, to reject the writ petition on the ground of availability of alternate remedy at this stage, when the writ petition has been admitted and it remained pending for hearing in this Court for about 10 years and both the parties filed their counter and rejoinder affidavit, will not be proper to dismiss the same on the ground of availability of alternative remedy to the petitioner. In view of this fact I do not think it proper to discuss the authorities which have been cited by the learned counsel for the petitioner in support of the argument that against the impugned order the appeal does not lie. Therefore, the preliminary objection, which has been raised by the learned counsel for the respondents deserves no consideration and the same is disallowed.

7. So far as the merits of the case are concerned, the Authority under the Act 1936 has excluded from consideration the material documentary evidence produced by the petitioner in support of his case that there was no delay on his part in filing of the application. The petitioner has filed documentary evidence to show that his liability has been accepted by the employer. The petitioner when failed to get his wages from the respondent No. 3 he made a complaint dated February 24, 1982 to the Labour Inspector, Hardwar. The Labour Inspector, Hardwar has failed to get the wages paid to the petitioner from the employer and as such he advised the petitioner to file an application before the Authority under the Payment of Wages Act, 1936. The Authority under the Payment of Wages Act, 1936 has not considered the oral as well as documentary evidence filed by the petitioner. Even the

documents, which have been exhibited by the petitioner, have not been accepted on the ground that the same have not been proved. The Authority under the Payment of Wages Act, 1936 has not considered that the strict rule of Evidence Act is not applicable to the proceedings under the Payment of Wages Act.

8. It is true that the finding on the question that there was sufficient cause or not in filing the application is a finding of fact, but the present is a case where the said Authority has recorded the said finding by excluding the material and relevant documentary evidence filed by the petitioner and as such the said finding, in my opinion, is perverse on the face of it. Non-consideration of material evidence or excluding of the material evidence from consideration on an illegal ground renders the finding recorded by the said Authority to be illegal and perverse. Apart from this the said Authority did not consider that whole of the claim of the petitioner was not barred by time. I do not find any force in the argument of the learned counsel for the respondents that the application could not have been splitted up as it is a composite application for the whole of the claim, part of which is within time and part of which is not within time. The said Authority has also not considered that the Payment of Wages Act, 1936 is a beneficial provision/The said Authority has also not considered that the question of condonation of delay in filing the application should have been considered liberally and in a manner to advance the cause of low paid employee. The order, which has been passed by the said Authority is, therefore, patently illegal and cannot be allowed to sustain.

9. In the result, the writ petition succeeds and is allowed. The order of the respondent No. 1 dated March 7, 1984 is set aside and the case is remanded back to the said authority with the direction to decide the matter afresh in accordance with law and the observations made in this judgment above. Parties are left to bear their own costs.