

**(2007) 08 AHC CK 0227**

**Allahabad High Court**

**Case No:** None

Anil Kumar Yadav

APPELLANT

Vs

State of U.P. and Imperial  
Cinema

RESPONDENT

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**Date of Decision:** Aug. 16, 2007

**Acts Referred:**

- Payment of Wages Act, 1936 - Section 17

**Citation:** (2008) 1 AWC 456 : (2007) 115 FLR 521 : (2008) 1 LLJ 335

**Hon'ble Judges:** Arun Tandon, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

Arun Tandon, J.

Heard learned Counsel for the parties.

2. Counsel for the parties agree that the writ petition may be finally disposed at this stage without calling for a counter affidavit specifically in view of the order proposed to be passed today

3. Petitioner Anil Kumar Yadav made three applications under the provisions of Payment of Wages Act alleging therein that the employers M/s. Imperial Cinema have not made payment of wages for the period mentioned in the applications. The applications were numbered as PWA-1 of 1995, PWA-2 of 1995 and PWA-3 of 1995. The Prescribed Authority under the Act vide order dated 15.7.2003 held that the applications made were liable to be allowed and, therefore, directed payment of withheld wages along with interest thereon and penalty

4. Against this order of the Prescribed Authority, the employers M/s. Imperial Cinema filed an Appeal u/s 17 of the Payment of the Wages Act. The Additional District Judge, Moradabad/Appellate Authority fonder the impugned order dated

12.7.2007 has allowed the Appeal filed by the employers only after recording that the provisions of Payment of Wages Act are not applicable in so far as the Cinema Halls are concerned and, therefore, the applications made by the petitioner could not have been entertained.

5. Counsel for the petitioner submits that there has been complete non-consideration of the provision of Section 2(4) read with Section 18 of the U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962. It is therefore contended that the impugned order is patently illegal and is liable to be set aside.

6. On behalf of respondents it is stated that petitioner in his applications admitted that he was the Manager. Such persons are excluded from the provisions of U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 u/s 3 and, therefore, the applications made by the petitioner under the Payment of Wages Act were misconceived. The Appellate Authority has not committed any error in passing the impugned order.

7. For the purposes of appreciating the contention raised on behalf of the parties, it is worthwhile to reproduce Section 2(4), Section 18 and 3(a) of the U.P. Dookan Aur Vanijya Adhishthan Adhinivam, 1962:

2(4) "Commercial establishment" means any premises not being the premises of a factory, or a shop, wherein any trade, business, manufacture, or any work in connection with, or incidental or ancillary thereto, is carried on for profit and includes a premises wherein journalistic or printing work, or business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, or which is used as theatre, cinema, or for any other public amusement or entertainment or where the clerical and other establishment of a factory, to whom the provisions of the Factories Act, 1948, do not apply work;

3. The provisions of the Act not to apply to certain persons, shops and commercial establishments.(1) The provisions of this Act shall have no application to-

(a) employees occupying positions of confidential, managerial or supervisory character in a shop or commercial establishment, wherein more than five employees are employed:

Provided that the number of employees so exempted in a shop or commercial establishment shall not exceed ten per cent of the total number of employees thereof;

18. Recovery of wages.- The wages of an employee, if not paid as provided by or under this Act, shall be recoverable in the manner provided in the Payment of Wages Act, 1936 as if the same wages were payable under that Act.

8. From the aforesaid provisions it is apparently clear that the commercial establishments, which include a Cinema Hall are covered by the provision of U.P.

Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 and employees of such commercial establishment, if not paid their wages as provided under the Act, can ask for recovery of the withheld wages in accordance with the provisions of the Payment of Wages Act, 1976 (Reference Section 2(4) read with Section 18 of the Act). The provisions of Payment of Wages Act have been made applicable by in corporation. The aforesaid aspect of the matter has completely been ignored by the Appellate Authority while passing the impugned order. Consequently the finding recorded in the impugned order to the effect that provisions of Payment of Wages Act do not apply to Cinema Halls is totally misconceived.

9. The issue, which remains for consideration before this Court is as to whether in view of Section 3 of the U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 the petitioner is excluded from the purview of the said Act on the plea that in his applications he has stated that he has employed as Manager of the Cinema Hall.

10. Counsel for the petitioner submits that the petitioner although designated as Manager infact did not discharge any duties, which can be termed as managerial in nature He clarifies that it is the nature of the duties discharged which is material and not the designation.

11. In the opinion of the Court the contention so raised is based on correct reading of Section 3(a) of the Act. Mere designation of a workman as a Manager will not exclude him from the operation of the provision of U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962.

12. The authorities are under legal obligation to examine as to whether employee occupies a Managerial or supervisory position or not. The aforesaid aspect of the matter has not been examined by the Appellate Authority in its impugned order No final opinion can be expressed by this Court at this stage of proceedings. The issue is left open for the Appellate Authority to adjudicate upon after examining the evidence on record and after affording opportunity of hearing to the parties concerned.

13. Accordingly the writ petition is allowed. The order dated 12<sup>th</sup> July, 2007 is quashed. Let the Appellate Authority decide the Appeal filed by the petitioner afresh preferably within three months from the date a certified copy of this order is filed before him specifically in light of the observations made herein above.