



Judgment
Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

TRANSFER APPLICATION NO.271 of 1986.

Union of India and another Appellant
Opp. parties.
Versus
Shital Respondent
applicant.

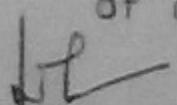
Hon'ble D.S.Misra-AM
Hon'ble G.S.Sharma-JM

(Delivered by Hon'ble D.S.Misra)

This is an appeal under section 17 of the Payment of Wages Act, 1936 against the order dated 31.5.1984 passed by Sri G.Saran Regional Conciliation Officer Bareilly in the capacity of Prescribed Authority appointed under payment of Wages Act in Case No. 24 PWA of 1980 allowing the application and directing the appellants to pay a sum of Rs.3668/- to the respondent.

2. The applicant-respondent had moved an application under Section 15 of the Payment of Wages Act on 19.6.1980 claiming wages from 14.4.1980 to 15.5.1980 and overtime from July 1975 to September 1977. So far as Payment of Wages for the period 14.4.1980 to 15.5.1980 is concerned, the same had been paid by the Union of India during the pendency of the application. As regards the claim for overtime, the learned authority under the Payment of Wages Act(hereinafter referred to as the Authority) has passed an order directing the appellants to pay Rs.1834/- as overtime wages and an equal amount as compensation.

3. The respondent-applicant, who was working as Chowkidaar, claims that he was utilized for 72 hours, six days a week, and was entitled to 12 hours overtime. The applicant stated that he had been paid overtime upto June, 1975, but he had not received payment of overtime wages from 11.7.1975 to September, 1977.





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The Opp. parties-appellants in their written statement had denied the claim of the applicant-respondent that he was entitled for overtime work on any date after July, 1975. The appellant-opp. parties had produced their head clerk in support of their contention that the applicant was not entitled for the overtime payment as the duty roster of the Chowkidars was revised on or before 19.9.1975. It was also contended by the appellant-opp. parties that the respondent-applicant was engaged only for five days a week at the rate of 12 hours per day and the respondent-applicant was given double rest in a week.

4. The respondent-applicant had requested for summoning papers which were alleged to be in the possession of the appellant-opp. parties to substantiate his claim for payment of his overtime claim. The appellants-opp. parties were ordered to produce the Muster-sheet of the respondent-applicant, which is also a paid voucher but the appellants-opp. parties informed the authority that it is not possible to produce the document in question as the same had been destroyed being more than 5 years. The opp. parties-appellants had also filed papers in support of their contentions.

5. The learned authority has held that this register did not disclose the particulars of overtime of any other staff except the applicant and did not place any reliance on this register due to the fact that it does not make any mention of the instructions contained in the circular dated 16.7.1975 and the circular dated 29.7.1978. Learned authority has held that the contention of double rest of Chowkidars was provided in the circular dated 29.7.1978 and therefore, the contention of the appellant-opp. parties that the respondent-applicant was given double rest w.e.f. from 19.7.1975 was not reliable or trustworthy. Learned authority has upheld the claim of the respondent-applicant and has also held that the failure of the appellant-opp. parties to make payment amounted to deduction of wages. Learned authority has held that the respondent-applicant was entitled to payment of overtime work done with effect from

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20.7.1975 to 30.9.1977 and directed the appellant-opp. parties to pay the sum of Rs.1834/- as wages deducted and an equal amount as compensation.

6. We have heard the argument of the learned counsel for the parties and have also perused the record. Learned counsel for the appellants contended that the claim of the respondent was barred by limitation and the finding of the learned Prescribed Authority was against law on the subject. The learned authority had framed specific issue no.1 on the subject and decided the issue in favour of the applicant-respondent on the ground that the opp. parties/appellants had accepted the liability vide letter dated 26.11.1979, a copy of which was filed by the applicant-respondent. A perusal of this letter would show that the permanent ~~Weych~~ Inspector, Northern Railway, Shahjahanpur had informed the applicant that his overtime bill had been sent to the Assistant Engineer, Shahjahanpur on 15.11.1979. This letter does not indicate the date on which the overtime claim was preferred nor does it indicate the amount for which the claim was made. Learned authority had computed this date, i.e., 26.11.1979, as the date on which the claim became due and the date on which this claim was filed on 19.6.1980 before the authority being within one year of this date, he held the application as being in time. We have considered this matter and we find that under the proviso to Section 15 of the Payment of Wages Act, 1936 an application should be presented within 12 months from the date on which the deduction from the Wages was made or from the date on which the payment of the wages was due to be made as the case may be. Further proviso to this section of the Act empowers the authority to admit an application if the applicant satisfies the authority that he had sufficient cause for not making the application within such period. Learned authority has not examined the plea of limitation taken by the appellants-opp. parties in their reply and has summarily over ruled this objection. The claim of the respondent-applicant related to the period commencing

SL from July, 1975 to September, 1977 and had become due much before the

date (19.6.1980) on which the application was filed before the authority.

7. It was contended on behalf of the respondent that his claim having been acknowledged by the P.W.I. Sahjahanpur on 26.11.1979, is within time from the date of the said acknowledgement. In his finding on issue no.1 regarding limitation, this contention of the respondent was accepted by the Prescribed Authority and the claim was found to be within time from the date of acknowledgement. In our opinion, the view taken by the Prescribed Authority in this connection, is not correct. Para 3 (d) in which it has been stated that the P.W.I. Sahjahanpur informed the respondent vide letter no. E-12 dated 26.11.1979 that the bills in question have been sent for check and payment to the Assistant Engineer, Sahjahanpur on 15.11.1979 is the application of the respondent himself moved under section 15 of the Payment of Wages Act and it is not the admission of the appellants. Letter dated 26.11.1979 in question does not appear to have been filed. In any case, even if we assume that the said letter contained the facts alleged as contended by the respondent in para 3(d) of his application, it nowhere stated the actual amount claimed by the respondent in this case. The acknowledgment, if any, is vague. For claiming benefit of acknowledgement under section 18 of the Limitation Act the respondent had to show that the amount claimed by him in his application was acknowledged by a duly authorised person on behalf of the appellants. In the absence of the same, the learned Prescribed Authority erred in treating the claim of the respondent in time. In our opinion, there was no valid and legal acknowledgement as required under section 18 of the Limitation Act in this case and on the basis of the alleged vague letter of the P.W.I., the claim of the respondent could not be treated in time. The finding given by the Prescribed Authority is, thus, not in accordance with law and is liable to be

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quashed. As the claim of the respondent was barred by limitation, it is unnecessary to go into other aspects of this case for deciding the appeal.

8. The appeal is accordingly allowed and the order passed by the Prescribed Authority is hereby set aside and the application of the respondent is dismissed. We, however, make no order as to costs.

[Signature]

4.12.1986
Member (A)

[Signature]
4.12.1986
Member (J)

Dated 4.12.1986
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