

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

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Registration T.A.No. 876 of 1986
(Case No. 2 of 1984, u/s 15 of
Payment of Wages Act)

Jagdishvs. D.P.O. N.Rly, New Delhi.

Hon'ble Justice Shri S.Zaheer Hasan, Vice Chairman.
Hon'ble Shri Ajay Johri, Member (A).

(Delivered by Hon. S.Zaheer Hasan, V.C.)

This application (Case No. 2 of 1984) for direction under Section 15 of the Payment of Wages Act, 1936, pending before the Prescribed Authority, Ghaziabad, has been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act (XIII of 1985).

Applicant Jagdish was employed as a mason in the Northern Railway, Ghaziabad. He filed this application before the Prescribed Authority (under the Payment of Wages Act), Ghaziabad (to be referred as the Prescribed Authority) for direction under Section 15 of the Payment of Wages Act, 1936 (in short P.W. Act) for illegal deduction of his wages amounting to Rs. 12,013.60 due from 1.5.1983. This

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application was filed on 28.4.1984. The applicant also claimed interest as well as compensation at the rate of 10 times amounting to Rs. 1,20,136/-.

It has been contended by the learned counsel for the applicant that this case has wrongly been transferred to this Tribunal which has no jurisdiction. In General Manager, N.E. Railway, Gorakhpur and others vs. Phooldeo and others (Civil Misc. Writ Petition No. 13349 of 1986 decided on 2.2.1987) a Division Bench of the Hon'ble Allahabad High Court has held that the jurisdiction of the Prescribed Authority under the P.W.Act is not ousted by the provisions made in the Administrative Tribunals Act. In this case an application under Section 15 of the P.W.Act was pending and in that connection it was contended that it should have been transferred to the Central Administrative Tribunal. The learned Judges observed that the object of the P.W.Act is to ensure payment of wages in a particular form and at regulated intervals without unauthorised deductions. Special matters and disputes are entrusted to the Authority for adjudication. It is not within the competence of the Authority under the P.W.Act to decide the validity of termination of service etc. The Authority has only right to decide whether it was a case of unauthorised deduction or delayed payment and it has also power to award compensa-

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tion at the rate of 10 times and, therefore, the learned Judges held that a case under Section 15 of the P.W. Act was maintainable before the Prescribed Authority and was not liable to be transferred to the Central Administrative Tribunal.

In a case reported in AIR 1976 SCC page 70 (The Premier Automobiles Ltd. vs. Kamlekar Shantaram Wadke of Bombay and others) Hon'ble Supreme Court made the following observations:-

".....The handicap leads only to this conclusion that for adjudication of an industrial dispute in connection with a right or obligation under the general or common law and not created under the Act, the remedy is not exclusive. It is alternative. But surely for the enforcement of a right or an obligation under the Act the remedy provided *uno flatu* in it is the exclusive remedy....."
(para 14)

"....the civil court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act. In that event civil court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account

of the alleged breach of contract if the contract is one which is recognised by and enforceable under the Act alone. "
(para 9)

"... the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute may be stated thus:

- (1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.
- (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.
- (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.
- (4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or

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the raising of an industrial dispute, as the case may be." (Para23).

"... in relation to principle No.2 stated above...there will hardly be a dispute which will be an industrial dispute within the meaning of Section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle No. 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle No. 3 stated above." (para 24).

The term "wages" has been defined in Section 2(vi) of the P.W.Act as all remunerations expressed in terms of money or capable of being so expressed; but does not include any bonus, value of any house accommodation etc., any travelling allowance, gratuity and so on. The P.W.Act further fixes the responsibility for payment of

wages, fixation of wage-period and the mode of payment. Sections 7, 9, 10, 11, 12 and 13 of the P.W.Act permit certain deductions. Sec. 14 relates to appointment of Inspectors. Under Section 15 a person aggrieved, any legal practitioner or any official of the registered trade union or any Inspector can move the Prescribed Authority for direction in case of wrong deduction of wages or delay in payment of wages. Under this section the Authority is also empowered to award compensation not exceeding 10 times of the amount deducted in certain cases and not exceeding Rs. 25/- in other cases. An appeal can be filed in the District Court within the required period of limitation. Penalty for certain offences has been provided in the P.W.Act and the procedure for trial of the offence is also laid down.

Section 22 lays down as follows:-

"No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed -

- (a) forms the subject of an application under Section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or

has formed the subject of a direction under Section 15 in favour of the plaintiff; or

(c) has been adjudged, in any proceeding under Section 15, not to be owed to the plaintiff; or

(d) could have been recovered by an application under Section 15. "

So, from the above it would appear that payment of wages in a particular form and at regular intervals without any unauthorised deduction is the object of the P.W.Act. This Act regulates the payment of wages to certain classes of persons employed ^{in the nature} as defined. If ^{such} a person files a claim demanding wages wrongfully deducted plus compensation at the rate of 10 times as laid down in Sec. 15, we, in the Tribunal, will not be in a position to grant that relief which has been provided under the P.W.Act. Of course, if he simply wants to claim arrears of his wages he can move an application under Section 19 of Act XIII of 1985 if he is governed by that Act: but if he wants to enforce his rights under Section 15 of the P.W.Act he will have to go to the Prescribed Authority under the P.W.Act. The rights conferred on employed persons under the P.W.Act can only be enforced through the machinery *uno flatu* (at the same time) provided by that Act;

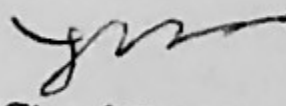
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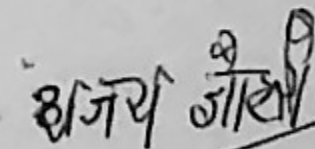
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They are not common law rights. A Central Government employee even though he may be an employed person as defined in Section 2 of the P.W.Act as well, complaining of breach of service rules and not of breach of labour laws or the provisions of the P.W.Act can, however, maintain an application under Section 19 of the Administrative Tribunals Act.

Since, in the case before us, the dispute relates to the enforcement of a right and obligation created under the P.W.Act, the only remedy available to the suitor is to get the remedy adjudicated under the P.W.Act. So, to our mind, this case under Section 15 of the P.W.Act has been wrongly transferred to this Tribunal.

Let the records of the case (Case No. 2 of 1984) be retransmitted to the Prescribed Authority, Ghaziabad.


Vice Chairman
April 24, 1987.
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Member (A)