CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 434 of 1992

Union of India and Others .... Applicants

Versus

Anil Kumar Bhatnager .... Respondent

CORAM:

Hon. Mr. Justice U.C. Srivastava, V.C

Hon. Mr. K. Obayya, Member(A)

The pleadings are complete, the case is being heard and disposed of finally. The Union of India has challenged the order passed by the Prescribed Authority allowing the application u/s 15 of the Payment of Wages Act filed by the respondent pleading wages of particular period. The respondent come with the allegation that he was appointed as Dak messenger and his monthly emoluments were Rs.250/- and his wages pertaining to the period 2.5.83 to 18.8.83 amounting to Rs.489/- has not been paid to him. Later on by way of an amendment after written statement in which it was pleaded by the department i.e. the Union of India that the applicant was not their employee and his services were terminated by way of discharge w.e.f. 19.8.83.

2. The applicant amended his application. The earlier claim of the applicant was for a period

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when admittedly he was in service. But instead of filing a fresh application by way of amendment he amended the applicant and prayed that instead of 18.3.83 it will be substituted as 31.12.83 and the figure Rs.285/- which was initially claimed by him with the figure of Rs.8,450/- substituted as salary for the said period. The case of the respondent was that he continued to remain in service and he was never disengaged and after 18.3.83 although he was attending the duties, the applicant was not allowed to do the work and before the Prescribed Authority the applicant prior to approaching the Authority of Payment of Wages Act gave a notice to the counsel, thereafter the case was instituted.

3. The respondents have stated that he was only a casual labour and his engagement came to an end w.e.f. 13.3.83 and he being no longer as an employee of the department the applicant was not entitled to any wages, emoluments or compensation. Now the department relied on the admission made by the applicant that beyond a particular period work was not being taken. No documents whatsoever produced in regard which may indicate that infact before this engagement any notice was given to him or he was intimated of the fact that no work is available and he will not be allowed to continue. No record even was produced which may contain a note that as the work has come to an end, he may be disengaged. The burden

of proof lay on the department . By challenging the applicant's contention that he was continued to remain in service and there was no complete failure on the part of the department which proved the same. There was no option before the labour court but to accept the statement of the applicant during an oath that he ofcourse at a particular date any work was not assigned, he continued to remain in service and attending his duties even though the work has not been taken from him. It was not a case wherein a dispute has been decided or the Authority under Payment of Wages act exceeded its jurisdiction. It was rather a case in which there was an assertion and apart from their denial there was no proof, as such the person should be always deemed to be in continuing service unless he was not terminated in accordance with law. Even though casual labour, there should be some order or some notice till then he has been disengaged. It is in these circumstances the salary in the year awarded to the respondent and seven times compensation has been given.

4. Sri Amit Sthalekar, learned counsel for the applicant contended that the Authority of Payment of Wages Act have no jurisdiction what ever to deal with this question. It was not a question of adjudication. As the servant will be deemed to be continued in service unless terminated

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and otherwise and the Authority of Wages Act did it.

5. Learned counsel then contended that admission is the best evidence and respondent himself admitted that he was in service upto a particular date, it was sufficient to hold thereafter he ceased to be in service. The case of the respondent was not as such. His case was that although he was attending his duties and he was not given the job. The burden which lay on the respondent and the present applicant was not discharged at all. As such there being no admission in order to bind a party should be given clear cut admission in respect to the right and claim by the particular party. There being no admission, the present applicant was not discharged their liability to prove an assertion or a fact which asserted by them. There was complete failure to do so on their part. Learned counsel then contended that ofcourse it was only by way of an amendment that the wages could not have been allowed to the respondent no.1 as he has not worked during this period, no work no pay should have been applied. The contention would have been correct incase the finding would have been that not withstanding the fact that respondent no.1 was deprived of work that he was no longer in service, he was attending his duty and work was not taken. But here the situation is otherwise. Incase an

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employee wants to do work and employer without any rightful cause allows him not to do the work then the employer will be liable to pay him, the salary and as such in these circumstances this application deserves to the dismissed. It was lastly contended that ofcourse there was no justification for allowing seven times compensation to the respondent. The contention is not without reason. The respondent is also responsible for the same incase earlier he claimed salary for the period of one month which he obviously entitled to. But later on he amended the application intead of filing the fresh which could have been filed by him earlier. It was not a case in which the compensation of seven times could have been awarded to the respondent no.1.

6. Accordingly the same is reduced only to the amount which has been decreed in favour of the respondent no.1 i.e. a sum of Rs.3383/-. The applicant may now be entitled to a sum of Rs.16,777 only as the position is now clear that the respondent no.1 is no longer in service of the applicant. No order as to the costs.

MEMBER(A) VICE CHAIRMAN

Dated: 3rd December, 1992:

(Uv)