

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 510 of 1992

This 17th The Day of November 1992

Union of India through Senior D.P.O.
Northern Railway, Allahabad

.... Applicant.

By Advocate Shri G.P. Agarwal

Versus

1. Shri Ram Kripal, S/D Shri Ram Prasad
C/D Northern Rly. Works Union, 2
Navin Market, Kanpur
2. Prescribed Authority, A.L.C Sri R.B.Lal
3. Prescribed Authority, A.L.C. Shri Manmohan
Chaudhari
4. Prescribed Authority, A.L.C. Sri A.K.Rai,
Sarvodaya Nagar, Kanpur

.... Respondents.

By Advocate Shri B.N.Singh

Coram:

Hon'ble Mr. T.L.Verma, Member-J
Hon'ble Mr. S.Dayal Member-A

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By Hon'ble Mr. T.L.Verma, Member-J

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Union of India has filed this application for
issuing a direction to the respondents No. 2 to 4 to
quash proceedings in P.W. case Nos. 398/1989, 405/90
and 378/1991 pending before respondent No. 2 to 4
respectively.

2. The facts giving rise to this application
briefly stated are that respondent No. 1 along with 99
others was shifted from Kanpur to Etawah by order

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dated 8.10.1982 vide Annexure A-1. The respondents, it is stated reported for duty to Mr. P.N.Singh P.W.I. on 16.10.1982 and asked him to show him inattendance w.e.f. 9.10.1982. This was not acceded to by the P.W.I. whereupon the respondent No. 1 is alleged to have committed assault on Shri P.N.Singh P.W.I. and also threatened him with dire consequences. This fact was reported to the Chowki Incharge G.R.P.S. Phaphoond vide Annexure A-3. It is alleged that the respondent No. 1 has not reported to duty thereafter till date. He however has filed number of cases before the Payment of Wages Authority on the allegation that his accrued wages have been withheld/delayed. It is stated that some of the cases have been decided by the Payment of Wages Authority without jurisdiction and P.W. case Nos. 398/89, 405/90 and 307/91 are still pending for disposal.

3. It is stated that the dispute resulting from non-attendance of work by 48 of the ^{one} hundred workers transferred from Kanpur to Etawah was taken up by the Union representing the respondent No. 1 before the Assistant Labour Commissioner (C) Kanpur and tripartite agreement (Annexure A-7) was arrived at on 31.1.1983. The agreement arrived at is extracted below for ready reference;

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ANNEXURE A-7

Dated; 31.1.1983

No.K/8(45)/82-CopII

Minutes of discussions held on 31.1.1983 between D.E.N. N.Rly Kanpur and Uttar Rly. Karmchari Union, Lucknow before the Asstt. Labour Commissioner (C), Kanpur over illegal removal from service of 48 workers.

Shri S.K.Srivastava, E.E.N. N.Rly Kanpur is present for the Rly. Adm.

Shri B.D.Tewari working President of Uttar Rly. Karamchari Union, Lucknow is present for the workmen.

The matter was discussed thread-bore in the conciliation meeting. After long discussions the following conclusion emerged to solve the present statements.

1. The 48 workers involved in the dispute will be reinstated in their scaled rates with immediate effect. They will report for work within a week from today under P.W.I. (Spl.) Itawah (Etawah).

2. The intervening period will be treated as dies-non but the period will not be treated as break in service.

This fully and finally resolves the dispute.

Sd. B.D.Tewari
Sonal Working President

sd. 31.1.83
S.K.Srivastava
D.E.N. CNB

Sd. S.N.Srivastava
Asstt. Labour Commissioner (C)
Kanpur

48 workers including the applicant were reinstated in their scale rates. They were directed to report for work within one week from 31.1.1983. The intervening period was to be treated as dies non. The period during which the employees absented from work, however, was not to be treated as break in service. It is stated that respondent did not report to duty even after the decision of the Conciliation Court. He is alleged to have obtained orders for payment of wages from Payment of Wages Authority even for the period which was to be treated as dies non. It is stated that the respondent No. 1 having not worked at all was not entitled to wages. His applications filed before the Payment of Wages Authority for payment of wages for the period he did not work are not maintainable and as such the proceedings initiated on the application should be quashed.

4. The respondent No. 1 has resisted the application filed by Union of India. In the Counter Affidavit filed on behalf of the respondent No. 1, it has been stated that he has been regularly reporting for duty but he is not being allowed to work. It has further been stated that the contention of the applicant has been accepted by the Authority under the Payment of Wages Act in P.W. case No. 609/83 and 38/84 which have become final as no appeal was filed against those decisions by the petitioner. The order and direction given by the Authority in P.W. case No. 1031/85 has been confirmed by the District Judge Incharge Kanpur in P.W. Appeal No. 191/86. The applicants, therefore, it is stated are now stopped from questioning the decision of the Payment of Wages Authority that the applicant had not worked during the relevant period.

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5. We have heard the rival contentions and perused the record. It is well settled that the Authority under the Payment of Wages Act has jurisdiction to order payment of accrued wages which have either been withheld or illegally deducted. The Authority, admittedly has no jurisdiction to decide the entitlement.

6. In the instant case, the contention of the applicants is that the respondent No. 1 has not worked even for a day after he was reinstated consequent upon the tripartite agreement referred to above and as such no wage has accrued to him. The petitions filed by him, therefore, are not maintainable. As against this, the respondent No. 1 claims to have worked all along and that his claim regarding his having worked has been accepted by the Payment of Wages Authority in respect of some periods covered by the 3 cases referred to above. It would thus appear that there is dispute regarding the applicants having worked during the period in question in this case. For determining whether wages for the said period have accrued to the respondent No. 1 a finding of fact as to whether the respondent No. 1 ~~had~~ worked during the said period as claimed by him has to be recorded. For recording such a finding, evidence shall have to be adduced for & against to enable the payment of Wages Authority to record ~~such~~ a finding. We cannot arrogate to ourselves the function of payment of wages authority by undertaking the responsibility ^{of deciding a factual} whether the respondent had worked during the relevant period and earned wages.

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7. We find no merit in the contention of the learned counsel for the respondent No. 1 that the decisions of the Payment of Wages Authority allowing the claim of the applicant for wages in P.W. case No. 609/83, 38/84 and 1031/85 will operate as estoppel against the applicants and as such they cannot be a~~lleged~~ to ~~exaggerate~~ that matter against this application. The claims for wages depend upon the fulfilment of the contract to work. That being so, in each claim, it has to be established that the claimant had worked and earn the wages. Hence, the decisions passed in earlier Payment of Wages cases filed by the applicant will have no bearing on the facts of this case inasmuch as the respondent has to establish his claim of having completed the contract before earning the wages.

8. In view of the discussions made above, we find that this application has no merit and deserves to be dismissed and the same is accordingly dismissed leaving the parties to bear their own costs. The Payment of Wages Authority, however, is directed to expeditiously dispose of the cases pending before him in the light of the observations made in this order.

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Member-A

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J. K. Ali

Member-B

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