

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration O.A. No. 684 of 1992

Union of India and others ... Applicants.

Versus

Radhey Shyam Singh and others ... Respondents.

...

Hon'ble Mr. S. Das Gupta, Member(A)
Hon'ble Mr. T.L. Verma, Member(J)

(By Hon. Mr. S. Das Gupta, Member(A))

This O.A. No. 664 of 1993 has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying that the judgment and order dated 22.1.1992 (Annexure- A 1) passed by the Prescribed Authority in P.A. Case No. 43 of 1990 be set aside.

2. The brief facts of the case are that the respondent no.1 who was a Senior Typist under the Chief Workshop Manager, North Eastern Railway, Workshop Gorakhpur retired from service on 30.8.1989. The respondent no.1 was paid leave encashment for 167 days instead of 240 days on the ground that 73 days of leave availed by him in different spells during the period from 19.5.1988 and 28.4.1989, was on the ground of sickness and he had produced medical certificate from private medical practitioner which was not acceptable under the extant rule of the Railways. The leave for 73 days was, therefore, ~~deducted~~ ^{deducted} from the total 240 days and the respondent no. 1 was paid encashment only for 167 days. The respondent no.1 filed a claim petition under Payment

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of Wages Act which was contested by the applicant on the ground of ^{non-}maintainability of the petition both on account of the wage limit prescribed under Section 1 (6) of the Payment of Wages Act, 1936 and being barred by limitation. The applicants also contested the petition on merits. The prescribed authority under the payment of wages Act, respondent no. 2, however, allowed the petition directing the applicants to pay a sum of Rs. 5270/- as leave encashment for 73 days vide his judgment and order dated 22.1.1992 which is under challenge in this O.A.

3. The respondent no. 1, has filed counter reply, resisted the claim made by the petitioners. The applicants have filed a rejoinder affidavit in which the contentions made in the petition have been reiterated. We have heard the learned counsel for both the parties and perused the records.

4. In the grounds for the relief sought in the O.A., the petitioners have not raised the point regarding limitation which was taken in their reply to the claim petition before the respondent no. 2. They have, however, taken the plea that the prescribed authority had no jurisdiction to adjudicate the matter under Section 15(2) of the Payment of Wages Act, 1936, in view of the fact that the respondent No. 1 was in receipt of wages exceeding Rs. 1600/- per month and was thus debarred from approaching the authority under the Payment of Wages Act, 1936 in view of the limitation under Sec.

1 (6) of the said Act.

5. In support of their contention that the respondent no.1 was in receipt of wages exceeding Rs. 1600/-, the petitioners have filed a copy of the last pay certificate at Annexure- A 4. This last pay certificate shows that on 31.8.1989, the respondent no. 1 was in receipt of salary of Rs. 2387/- which included pay, D.A. and H.R.A. Although, it has not been stated as to what were his wages ~~during the~~ during the period from 19.6.1988 to 28.4.1989 during which 73 days of sick leave was availed of, It can be safely assumed, keeping in view the quantum of yearly ^{increment} ~~encashment~~. In the pay scale applicable to senior typist that even during the relevant period, the wages of the respondent no.1 exceeded Rs. 1600/-.

6. We may at this stage take a look at the relevant provisions in the Payment of Wages Act, 1936. Section 1(6) reads as follows;

"Nothing in the Act shall apply to wages payable in respect of a wage- period which over such wage-period , average one thousand six hundred rupees a month or more."

The term wages has been defined in Section 2 (vi) as follows;

"Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express

or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes;

(a) any remuneration payable under any award or settlement between the parties or order of a court.

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) Any sum which by reason of termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

The wage^{Period} has been defined in Section 4 of the Act which reads as follows;

"Fixation of wage periods; (1) Every person responsible for the payment of wages under Section 3 shall fix periods (in this Act referred to as wage period) in respect of which such wages shall be payable.

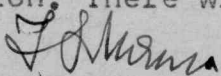
(2) No wage period shall exceed one month."


7. It would, therefore be clear that the respondent no. 1 was in receipt of wages exceeding Rs. 1600/-

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during the ^w~~wage~~, the relevant wage period(one month in this case) and, therefore, he was not entitled to approach the authority under the payment of wages Act, 1936 in view of the limitation imposed in Section (1) (vi). The competent authority under the payment of wages Act, the respondent no. 2 had, thus, exceeded ~~his~~ his jurisdiction ^{wi}for entertaining the claim petition of the respondent no. 1 and allowing the same.

8. In view of the above discussions, we hold that the impugned order dated 22.1.1992 was passed exceeding the jurisdiction of respondent no.2. The petition is, therefore, allowed and the impugned order dated 22.1.1992 is quashed and set aside. Since this decision is not on the merits of the case but on the ground of jurisdiction, the respondent no.1 shall ^{be} at liberty to seek redressal of his grievance by filing a fresh petition before the appropriate forum. The time taken by the competent authority under the payment of wages Act, 1936 and also the time spent in the disposal of this O.A. ^{was} not count towards the period of limitation for filing any such application. There will be no order as to costs.


Member(J)


Member(A)

Dated: 28 January, 1994.

(n.u.)