

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THE 22nd DAY OF FEB: 1996

Original Application No. 1438 of 1993

HON.MR.JUSTICE B.C. SAKSENA,V.C.

HON. MR. D.S. BAWEJA, MEMBER(A)

The Divisional Railway Manager  
Central Railway, Jhansi

Applicant

BY ADVOCATE SHRI A.V. SRIVASTAVA  
Versus

1. Pooran Singh, S/o Chhote Singh  
R/o Isai Tola, New Mohalla  
Prem Nagar, District Jhansi
2. The Prescribed Authority  
Under the Payment of Wages Act 1936  
The Deputy labour Commissioner  
District Jhansi.

Respondents

O R D E R(Reserved)

JUSTICE B.C. SAKSENA,V.C.

A notice of the OA was sent to the respondent no.1. The notice was returned back unserved. Fresh address of the respondent no.1 was directed to be furnished. Since the respondent no.1 was not in railway service for the last ten years and his whereabouts were not known service by publication of a notice in the daily news paper having all India circulation was permitted. copy of the news paper in which the notice was published was filed alongwith misc application no.1012/95. Despite the same no appearance was put in on behalf of the respondents.

2. We have heard Shri A.V. Srivastava learned counsel for the applicant. Through this OA the judgment dated 17.7.93 passed by the Prescribed Authority under the

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Payment of Wages Act has been challenged. The respondent no.1 had filed an application u/s 15 of the Payment of Wages Act which was registered as P.W. Case No. 31/83. the ground taken by the respondent no.1 was that he was employed as casual mason and has not been paid wages for the period w.e.f. 18.1.83 to 18.5.83 amounting to Rs.2420/-. By the impugned order apart from the sum of Rs.2420/- a further sum of Rs.2420/- was awarded as compensation and Rs.100/- as costs.

3. The learned counsel for the applicant has taken us through the impugned judgment passed by the prescribed Authority as also the material on record. He submitted that a written statement had been filed in which it was specifically averred that the applicant, (Respondent No.1) had not worked from 18.1.83 to 18.5.83 and hence the question of payment of wages for the period did not arise. He also submitted that since the respondent no.1 did not actually and physically worked during the period in question it would not amount to wrongful deduction.

4. The respondent no.1 it is admitted, <sup>was</sup> appointed as casual mason from 29.5.73 to 18.9.73 and from 20.8.73 to 10.7.82. He was granted status as MRCL mason on 9.8.82. Since the only point for consideration arising before the Prescribed Authority was whether the present respondent no.1 had worked during the period in question or not was to be decided on the basis of material on record. From the order passed by the Prescribed Authority it appears that the present applicant had filed copies of Muster roll for the period January 1983, Feb. 83 and March 83. From the order we find that these documents have not been analysed and solely on the basis that for the period in question the present respondent no.1 was not given a charge sheet alleging unauthorised absence. Neither any inquiry was held nor termination order was passed. It

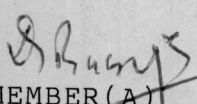
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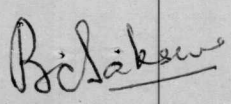


was held that the relationship between master and servant continued and thus the present respondent no.1 was entitled to wages for the period 18.1.83 to 18.5.83.

5. In our opinion the learned Prescribed Authority erred in taking the said view. In our opinion the respondent no.1 was only a monthly rated casual labour, he will be entitled to wages on proof of having physically worked in a given period. The present applicants had discharged the onus upon them to prove that the present respondent no.1 did not physically worked during the period in question and had filed extract of Muster roll for the three months in question. The learned Prescribed Authority failed to analyse the said evidence. Even if no charge sheet has been issued or order for termination had been issued, The master servant relationship no doubt continued. But it is altogether different matter whether without proving to have worked between 18.1.83 to 18.5.83 the present respondent no.1 has made out a claim for wages. There was no proof that he ~~he~~ was prevented from working.

6. In view of the discussion hereinabove, the OA succeeds. The order dated 17.7.93 passed by the Prescribed Authority is quashed. The amount which the applicant may have deposited pursuant to the interim order passed in the OA shall be refunded to the applicant on a certified copy of this order being filed through an application seeking refund before the Prescribed Authority.

  
MEMBER(A)

  
VICE CHAIRMAN

Dated: Feb. 22/ 1996

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