

Original Application No.525 of 1995.

HON. MR. JUSTICE B.C.SAKSENA, VICE-CHAIRMAN  
HON. MR. S. DAS GUPTA, ADMINISTRATIVE MEMBER.

- VERSUS

- O R D E R (Open Court).

JUSTICE B.C. SAKSENA, VICE-CHAIRMAN.

We have heard Shri G.P. Agarwal, learned counsel

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for the applicants. Through this D.A. the applicants challenge the order passed by the Prescribed Authority under the Payment of Wages Act, in P.W. case No.35/87 Surendra Singh Vs. Divisional Engineer and others, dated 5/10/1994. The respondent No.1 in this D.A. had filed a claim under the Payment of Wages Act for payment of his wages from 19-1-1987 to 31-3-1987 on the ground that they have illegally been deducted from his wages. The learned Payment of Wages Authority recorded a positive finding that the present applicants have failed to file any order terminating the services of the present respondent No.1. Thus he took the view that the respondent No.1 continued in service and non-payment of wages for the period in question amounts to deduction from his wages. Accordingly the payment of wages authority have decreed Rs.2,008/- along with damages to the tune of Rs.10,040/- and Rs.200/- as costs.

2. The learned counsel for the applicant has taken us through the written statement filed before the Prescribed Authority under the Payment of Wages Act. In the said statement, the stand of the applicant was that the Service Card, on the basis of which the respondent claimed to be an MRCL was a fake one, and show cause notice was issued to him and on the basis of enquiry it was found that the service card of the respondent No.1 was a forged document. The applicant states that the respondent did not respond to the show cause notice issued by the applicant. In our opinion, nothing prevented the authorities, in these



circumstances, to pass an order terminating the services of respondent No.1. However, the applicant admitted that no order, terminating the services of respondent No.1 was passed. In view of these facts the findings recorded by the Prescribed Authority, that the respondent No.1 continued to be in service, cannot be faulted.

3. The learned counsel for the applicant urged that under the provisions of section 7(2) the deductions for the period in question were for the alleged absence of respondent No.1 from duty. In paragraph 8 of the written statement filed before the Wages Authority, nowhere it is stated that the respondent No.1 had absented himself from duty and for that reasons deductions have been made from his salary. Learned counsel for the applicant urged that under section 9, deductions for absence from duty are warranted. In view of our conclusion that no evidence was laid, much less proved, before the Payment of Wages Authority that respondent No.1 has been absent from duty during the relevant period, the provisions of the said section will not be applicable.

4. The learned counsel for the applicant urged that since the Service Card of respondent No.1 was found to be a forged document, the appointment of respondent No.1 and the assignment of MRCL Status to him was null and ab-initio void. Therefore, his services were discontinued from 19-1-1987.

5. We are not impressed with this submission. On the basis of the preliminary enquiry if it was found that the Service Card of the respondent No.1 was a fake document, after issuance of show cause notice to him no further steps to terminate his services had been taken. Merely on the ground of the preliminary finding that the Service Card of the respondent No.1 was a fake document, the appointment of respondent No.1 would not become ab-initio void. As such an order for terminating his services ~~cannot be~~ <sup>could have</sup> ~~be~~ <sup>en</sup> passed. In the absence of an order terminating the services of the respondent No.1, the finding of the Payment of Wages Authority, that the respondent No.1 continued to be in <sup>railway</sup> service and non-payment of wages to him for the period in question amounts to deduction from his wages, is correct, on the facts and circumstances of the present case.

6. Learned counsel for the applicant drew our attention to clause (vi) of section 2 of Payment of Wages Act, which defines wages as under :-

" 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-"

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So long as there was no order terminating the services of respondent No.1, we are of the opinion that he was entitled to remuneration in terms of the continuance of his employment and non-payment of his wages for the relevant period clearly amounts to illegal deductions from his wages, under the payment of wages Act.

7. Learned counsel for the applicant next submitted that it was not open to the Wages Authority to adjudicate on the validity of the order of termination. This plea is clearly fallacious. As noted herein above, the Payment of Wages Authority has recorded a clear finding that no order terminating the services of respondent No.1 was produced before it. Before us Shri G.P. Agarwal, learned counsel for the applicant, has admitted that no termination order had been passed. In this context we may also note another submission made by the learned counsel for the applicant that in view of the issuance of show cause notice and there being no response from respondent No.1, the services of respondent No.1 should be deemed to have been terminated. In support of this submission the learned counsel for the applicant has not shown us any statutory provisions. There can be no deemed termination. Termination can be brought about only by a positive order of termination. This submission of the learned counsel is, therefore, repelled.

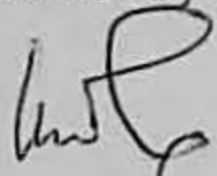
8. The learned counsel for the applicant next submitted that the damages awarded by the payment of wages authority is not warranted in view of the

provisions of sub-section (3) of Section 15 of the Payment of Wages Act. The said provision, inter-alia, provides that :-

"the authority may direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding twenty-five rupees in the latter...."

This provision provides for ten times compensation in case of wrongful deduction and Rs.25/- only in the event of delayed payment of wages. The Prescribed Authority has awarded compensation of five times the wages deducted. The learned counsel for the applicant submits that the Payment of Wages Authority should have decided whether there was wrongful deduction of wages or delayed payment of wages. On the facts and circumstances of the present case the Prescribed Authority has positively held that there is a wrongful deduction from the wages of respondent No.1 and accordingly he has awarded compensation. No other point is urged.

9. In view of the discussion herein above, the D.A. lacks merit and it is accordingly dismissed summarily.



MEMBER(A)



VICE-CHAIRMAN.