

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: July 16, 2013

+ **W.P.(C) 8392/2008**

U.O.I & ORS. Petitioners

Represented by: Dr.Ashwani Bhardwaj and
Mr.Sumeet Pushkarna,
Advocates

versus

U.C.SHARMA Respondent

Represented by: Mr.R.K.Vats, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. The present Writ Petition is one amongst many litigations filed by the parties, herein, against each other. Instant petition has been filed by the Union of India and its functionaries challenging the order dated August 20, 2008 whereby the Tribunal has allowed the Original Application No.285/2008 filed by the respondent herein with a direction to release the increments of the respondent from 1978 till 1984 with arrears thereof within a period of 2 months from the receipt of copy of the order.
2. The brief facts are that, while serving under G.E(West) Lucknow the

respondent was posted to G.E (Danapur) in terms of order dated June 30, 1978. The respondent did not report to his new unit and filed civil suit No.317/1978 and 97/1981 in Civil Court, Lucknow. The Civil Suit was decided by the Civil Court on September 06, 1982 with the result the respondent was taken back on the strength of G.E (West) Lucknow on May 10, 1984.

3. The respondent made an application before the appropriate authority under the Payment of Wages Act. The G.E (West) Lucknow filed a writ petition No.2879/1984 before the High Court of Allahabad Lucknow Bench questioning the jurisdiction of the authority under the Payment of Wages Act. Ultimately on a remand the authority under the Payment of Wages Act directed the petitioner herein to pay a total amount of ₹48,270.90 for the period November 1978 to September 1983 and a further amount of ₹20,004.94 for the period October 1983 to January 1986 vide award dated July 16, 1992. The authority further directed the petitioners to pay to the respondent the double of the aforesaid amount i.e. ₹1,36,551.68 within 15 days.

4. The petitioners challenged the aforesaid order of the authority by filing appeal, MCA No.205/1992 in the Court of District Judge, Lucknow. The Additional District Judge, Lucknow allowed the appeal of the petitioners vide order dated August 30, 1993. An application under Order 9 Rule 13 of Code of Civil Procedure was filed by the respondent before the Learned Additional District Judge, Lucknow for setting aside the judgment decree dated August 30, 1993 in MCA No.205/1992. It appears the application under 9 Rule 13 Code of Civil Procedure was allowed vide order dated January 11, 1995 setting aside the judgment dated August 30,

1993 passed in MCA No.205/1992.

5. Against the order dated January 11, 1995 the petitioners filed Civil Revision No.47/1995 before the High Court of Allahabad, Lucknow Bench. The Revision Petition was dismissed by the Court vide order dated September 20, 1999. Even the MCA No.205/1992 was dismissed for default by learned Additional District Judge, Lucknow. In the mean time the respondent filed Original Application No.168/1998. The said O.A was decided by the Tribunal directing the petitioners herein to grant increments to respondent as per Rules. A view was taken by the petitioners that since the respondent was absent for more than five years the same could be regularized with the sanction of President of India.

6. The application for restoration of MCA No.205/1992 was dismissed for non prosecution on October 11, 2002. The petitioners filed writ petition No.6741/2002 against order dated October 11, 2002.

7. On September 19, 2002 a show cause notice was issued to the respondent which was challenged by the respondent in Original Application No.1269/2003 before the Tribunal, Principal Bench, New Delhi. The said O.A was disposed of by the Tribunal by directing the petitioners to pass a speaking order. In the meantime the writ petition No.6741/2002 was decided by the High Court of Allahabad, Lucknow Bench whereby it allowed the writ petition and remitted the matter back to Appellate Authority to hear the appeal MCA No.205/1992 on merit.

8. On June 22, 2005 the petitioners passed a speaking order in terms of directions of the Tribunal in O.A No.1269/2003.

9. On remand, the Court of learned Additional District Judge vide order dated August 23, 2006 dismissed the appeal filed by the petitioner against

the order of the authority under the Payment of Wages Act on the ground that the amount deposited under Section 17(1)(A) of Payment of Wages Act was withdrawn on October 05, 1995. Against this order of Additional District Judge dated August 23, 2006 a petition titled as Misc. Single No.4691/2006 was filed before the High Court of Allahabad at Lucknow.

10. The respondent again filed a fresh Original Application before the Principal Bench of the Tribunal the Original Application being 285/2008 wherein the respondent prayed for quashing of notice dated September 19, 2002 and speaking order dated June 22, 2005 and grant of increments since 1978.

11. It is this Original Application i.e. 285/2008 which has been allowed by the Tribunal on August 20, 2008 and which is a subject matter of this writ petition.

12. Learned counsel for the petitioner would submit that the Tribunal could not have allowed the Original Application inasmuch as for the purpose of determining the issue of admissibility of increments to the respondent in accordance with Rules his period of unauthorized absence has to be determined. According to them since issue is pending before the High Court of Allahabad in the Misc. Single No.4691/2006 (since disposed of) the petitioners cannot take their own decision regarding increments for the same period. According to the petitioners, the grant of increments which was initially decided to be given by the Engineering Chief was not agreed by the Ministry of Defence. The Tribunal should have awaited the disposal of writ petition No.4691/2006. During the course of the submissions the learned counsel appearing for the respondents has placed before us an order dated February 05, 2013 passed by the learned Since

Judge of High Court of Allahabad, Lucknow Bench in Misc. Single 4691/2006. The same is reproduced hereunder:

“The petitioner has challenged the order dated 28.08.2006 passed by the learned Additional Judge, Court No.1, Lucknow. The application moved by the Union of India seeking permission to deposit the decretal amount in compliance of Section-17(1)(A) of Payment of Wages Act as well as on the application for condonation of delay in filing the counter affidavit in the matter has been rejected. The matter is pending since the year 1992 being Appeal No.209 of 1992. On furnishing the certificate of deposition of the decretal amount the appeal was admitted. However, it appears that the petitioner without seeking permission of the court withdrew the amount on 05.10.1995 which was treated as violation of Section-17(1)(A) of the Payment of Wages Act. Therefore, the petitioner’s application seeking permission to redeposit the said amount has been rejected.

At this stage, without disputing the aforesaid facts, learned counsel for the petitioner submits that the petitioner is ready to pay the decretal amount which comes out Rs.2,04,831.62 for restoration of appeal and to get decided it on merit. Since the matter requires adjudication on merit, I hereby permit the petitioner to pay the decretal amount before the court below within one month. The appeal is restored subject to deposition of decretal amount within the period stipulated as above. In default the petitioner shall have no opportunity to get restored the appeal. It is hereby provided that the contesting respondent is at liberty to move an application for release of the decretal amount. However, at this stage, keeping in view the long pendency of the matter I feel it appropriate to provide that if any such application is moved, the court of appeal shall release the amount as due for payment against the wages as well as the amount deducted from the wages. So far as the payment of compensation is

concerned since it is still disputed, at this stage I feel it appropriate to release only 50% of the said amount which shall be subject to decision of the appeal.”

13. A perusal of the order passed by the learned Single Judge would show that while disposing of the petition the appeal was restored subject to the petitioner's depositing the decretal amount before the Court below. Learned Single Judge has also directed the release of 50% of the said amount to be deposited by the petitioner, to be released in favour of the respondent herein in the eventuality he files an application. The release of the said amount of 50% shall be subject to decision of the appeal.

14. Appropriate would have been, the Tribunal instead of deciding the Original Application No.285/2008 awaited the disposal of the writ petition pending before the High Court of Allahabad, Lucknow Bench. Since the writ petition has been disposed of vide order dated February 05, 2013, the appeal would have a bearing in so far as the directions of the Tribunal in the impugned order. The Tribunal having decided the Original Application and granted the relief as sought for by the respondent, which is connected with the issue pending in the appeal filed before the Additional District Judge, Court No.1, Lucknow. We feel appropriate orders would be to direct the petitioners herein to compute the benefits as granted in favour of the respondent, by the Tribunal in the impugned order and deposit the same in the Court of Additional District Judge, Court No.1, Lucknow within 3 months. Needless to say that the order passed by the learned Tribunal dated August 20, 2008 in Original Application No.285/2008 would be subject to the outcome of the Appeal No.205/1992 pending before the Additional District Judge, Court No.1, Lucknow.

- 15 The writ petition is, accordingly, disposed of in terms of the above.
16. No costs.
17. Amount deposited by the petitioners be refunded with accrued interest to the petitioners. Cheque be drawn in the account of such name of the department as is informed by the counsel for the petitioners.

C.M Nos.6539/2012& 16151/2008

Dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 16, 2013
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