

Court No. - 6

Case :- WRIT - C No. - 1003822 of 2010

Petitioner :- Union Of India Thru The General Manager
Northern Railway Bar

Respondent :- Ram Yadi S/O Chullahi Posted Under Chief
Inspector Of Works

Counsel for Petitioner :- Anil Srivastava, Chandra Shekhar
Sinha, Nishant Shukla, Vinay Tripathi

Counsel for Respondent :- C.S.C

Hon'ble Alok Mathur, J.

1. Heard Sri Vinay Tripathi, learned counsel for the petitioner as well as learned Standing counsel while none has appeared on behalf of respondent No.1 despite service of notice.

2. By means of the present writ petition the Union of India through General Manager, Northern Railway, new Delhi has approached this Court being aggrieved by judgment and award dated 26.6.2003 passed by the Prescribed Authority/Assistant Labour Commissioner under Payment of Wages Act. The petitioner has also challenged the orders dated 21.5.2004 and 30.5.2007 passed by Additional Civil Judge, Court No.1, Lucknow thereby dismissing the appeal preferred by the petitioner against the order of Prescribed Authority and also rejecting their application for recall of the previous order.

3. The facts in brief are that respondent No.1 was working as a casual labourer with the petitioners. The present dispute relates to non payment of wages from 15.10.1977 to 30.9.1980 and as the wages were not paid by the petitioners the respondent filed a claim petition before the Prescribed Authority under Payment of Wages Act, 1936.

4. Notices were issued to the petitioners who had put in appearance and also filed preliminary objections to the claim preferred by the workmen. It was stated that the claim for wages pertaining to the period of 1977 to 1980 was belatedly filed in 1988. The application preferred by the petitioners was rejected after due considerations vide orders dated 23.9.2002 and order dated 30.9.2002 which orders were never challenged further in appeal by the petitioners and they subsequently contested the matter on merits.

5. The employee had claimed that for the period from

15.10.1977 to 30.9.1980 he was entitled to the wages amounting to Rs.17307/-. The petitioner in the said proceedings was repeatedly granted liberty to file written statement and the evidence to oppose the claim of respondent No.1 but despite several opportunities they did not file any written submissions.

6. An application was also moved by the workmen for a direction to the petitioner to produce relevant service records. The Prescribed Authority allowed the said application and directed the petitioner to produce the service records as prayed by the workman. As the order was not complied and no document was produced before the Prescribed Authority the workman had given his oral evidence as well as documents to substantiate his claim and in the aforesaid circumstances the Prescribed Authority found his claim to be genuine and admissible and consequently directed the petitioner to pay an amount of Rs.18161/- as wages and one time penalty of Rs.18161/- totaling to Rs.36,322/- were directed to be paid to the workman.

7. The petitioners never filed appeal against the order of the Prescribed Authority which attained finality for the petitioner but the workman preferred an appeal before the Additional District Judge, Lucknow. In the said appeal it was stated that quantum of damages should be enhanced as the workman has suffered for seven years. Despite service to the petitioners they did not participate in the said appeal which proceeded ex parte and was allowed vide order dated 21.5.2004. While allowing the appeal of the workman learned Additional District Lucknow, Lucknow modified the order of the Prescribed Authority dated 21.5.2004 and the workman was entitled to get ten times of the unpaid amount of damages.

8. The petitioners had filed an application for setting aside the ex- parte order dated 21.5.2004 wherein they stated that they did not have any knowledge of the appeal. The said application was also supported by an application for condonation of delay where it was stated that the judgment passed in appeal came to the knowledge of the petitioner only when certified copy of the judgment and order was filed in another case in the court of Prescribed Authority and was received by them on 13.1.2005. The application for recall was rejected and thus it is noticed that the order of the appellate court was within the knowledge of the petitioner and there was delay of only one month which could not be explained by them and on this ground alone the application for recall has been rejected.

9. Learned counsel for the petitioner submits that there is no dispute with regard to the fact that the petitioners did not

contest the matter on merits either before the Prescribed Authority nor before the appellate authority but confines his argument to the imposition of penalty for ten times of the amount of wages granted by the appellate court. It is submitted that according to Section 15(3) the maximum amount of penalty which can be granted is ten times while the Prescribed Authority has only doubled the amount of unpaid wages to the workman.

10. He submits that in case the appellate authority was of the opinion that ten times amount deserves to be imposed as penalty then sufficient reasons should have been given for the same but no reasons whatsoever has been given by the appellate authority while enhancing the amount of penalty. Therefore, he submits that the impugned order deserves to be interfered with.

11. This Court has gone through the impugned orders.

12. In the present dispute the workman has claimed that he was a casual laborer with the petitioner and had claimed wages for the period 15.10.1977 to 30.8.1980 and in the entire matter the petitioners have been absolutely casual and negligent in prosecuting the case in as much as despite the opportunity having been granted by the Prescribed Authority they did not file any objection or written statement before the Prescribed Authority.

13. On the other hand, the workman was able to demonstrate that he fulfills all the conditions under Payment of Wages Act and that the petitioner had not paid wages for the period from 15.10.1977 to 30.9.1980 and in absence of any material filed by the petitioners while on the other hand, affidavit was filed by the workmen in which he was able to demonstrate and prove his case which claim was allowed saddling the petitioner with payment of wages for the said period quantifying an amount of Rs.18161 along with penalty of the same amount totaling to Rs.36,322/-. An appeal was preferred by the workman for enhancement of the amount of damages and in the appellate proceedings also the petitioners did not participate and by means of ex-parte order dated 21.5.2004 Additional District Judge, Lucknow enhanced the amount of penalty to the maximum amount prescribed under the Act which is ten times of the amount of wages.

14. It is noticed that the claim pertains to the year 1970 to 1980 and the respondent-workman filed his claim seeking to enhance the amount. Application for recall has been rejected on account of delay but still this Court would go into the legality of the appellate authority dated 21.5.2004 which has been canvassed

by the petitioner.

15. No doubt according to Payment of Wages Act, the Prescribed Authority has been given the discretion to levy damages to the tune of ten times of the amount of unpaid wages. Discretion has to be exercised in just, fair and reasonable manner and not in an arbitrary manner. In any view of the matter there has to be adequate reasons for awarding the amount of penalty. In the present case, the amount outstanding was for the period from 1.7.1977 to 1980 and the workman made the claim in 1988 which were allowed by the Prescribed Authority vide order dated 26.6.2003. Thus the workman has himself moved the claim after a delay of 8 years. The appellate authority in the present case has not applied his mind nor given any adequate reasons for enhancement and imposing the maximum amount of penalty.

16. It is in aforesaid circumstances that this Court is of the considered opinion that the order dated 21.5.2004 is arbitrary in as much as it is bereft of reasons. Accordingly, the writ petition is partly allowed and the impugned order of the Prescribed Authority and the appellate authority is modified to the extent that the penalty be five times of the charges is levied. Accordingly, the workman will now be entitled to Rs.18161 as arrears of unpaid wages and five times of the said amount of penalty and the penalty is reduced on account of the fact that the workman himself had not explained the delay of 8 years in filing the said claim.

17. In light of the above, the petition is **partly allowed**.

18. The petitioner has deposited an amount of Rs.15,000/- before this Court vide order dated 7.7.2010 and the said amount is directed to be released in favour of respondent No.1 subject to his moving appropriate application in this regard and the petitioners are directed to pay the remaining amount to the workman, expeditiously, but not later than six weeks.

(Alok Mathur, J.)

Order Date :- 29.2.2024

RKM.