

State of U.P. Vs. Presiding Officer, Payment of Wages Officer and ors.

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SooperKanoon Citation : sooperkanoon.com/474378

Court : Allahabad

Decided On : Apr-30-2003

Reported in : (2003)IIILLJ519All

Judge : Rakesh Tiwari, J.

Acts : [Payment of Wages Act, 1936](#) - Sections 15, 15(2) and 16(2); Payment of Wages (Procedure) Rules, 1937 - Rule 8(2) and 8(3)

Appeal No. : C.M.W.P. No. 7424/1995

Appellant : State of U.P.

Respondent : Presiding Officer, Payment of Wages Officer and ors.

Advocate for Def. : R.P. Tiwari, C.S.C.

Advocate for Pet/Ap. : Ganga Prasad and ;R.K. Awasthi, Advs. and ;Rajendra Prasad, Standing Counsel

Disposition : Writ petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard the learned counsel for the parties and perused the records.

2. This writ petition has been filed by the State of U.P. challenging the validity and correctness of the orders dated December 31, 1993 and July 31, 1994 passed by the respondent No. 1 allowing the claim of respondents-workmen Nos. 2 to 7 regarding payment of deducted wages and order dated July 21, 1994 rejecting the restoration application/recall application of the petitioner.

3. The facts giving rise to the present writ petition are that the respondents 2 to 7 were engaged on daily wage basis in the department/farm of the petitioner. They were not paid their wages with effect from December 1992 to August 1993. The respondents filed claim application under Section 15(2) read with Section 16(2) of the [Payment of Wages Act, 1936](#) before the respondent No. 1 praying that the authority may recover the deducted wages of the workers with ten times penalty and the same be paid to them. Notices were issued on September 13, 1993 to both the parties for appearance on September 28, 1993 before the Prescribed Authority, but none appeared on behalf of the petitioner, hence ex parte proceedings were initiated.

4. Sri Kesh Nath AW 1 and Sri Shyam Bihari AW 2 were examined on behalf of the workers and they stated that the respondents had not been paid their wages for which they were entitled to be paid at the rate of Rs. 23/-per day. On the basis of oral and documentary evidences, the Prescribed Authority recorded findings of fact that the wages were not paid for the period January, 1993 to August, 1993. However, a direction was issued to the petitioner to make the payment to the workman of the deducted wages for the aforesaid period with two times penalty in addition of Rs. 100/- as costs.

5. The petitioner thereafter filed an application for restoration, which was rejected by an order dated July 21, 1994 after hearing the parties by the Prescribed Authority and it was held that the application for restoration had been filed beyond the period of one month prescribed under the Act and also the reasons given by the petitioner for condonation of delay in filing the restoration application are not good and sufficient. Earlier notice dated September 13/14, 1993 was received by the predecessor of the applicant. On September 16, 1993, Dr. Gautam Singh was granted time for filing his objection upto September 30, 1993. It was stated that Dr.

Gautam Singh was to retire on September 30, 1993 and he was busy in preparation of his retirement papers hence he could not appear and file his objection, which was not believed by the Prescribed Authority.

6. It is contended by the learned counsel for the petitioner that Rule 8 (3) of the Payment of Wages (Procedure) Rules, 1937 provides that any order passed under Sub-rule (2) or Sub-rule (3), may be set aside and the application may be re-heard on good cause and sufficient cause shown within one month from the date of the said order. It is further contended that the petitioner had shown sufficient and good cause but the Prescribed Authority had illegally passed the impugned order refusing to exercise its jurisdiction.

7. The proceedings under Section 15 of the [Payment of Wages Act, 1936](#) are summary in nature. It is not denied by the petitioner that he had received the notice. Earlier the notice was sent on September 13, 1993 by registered post by the Prescribed Authority. It is admitted that notices dated September 13/14, 1993 were received by Dr. Gautam Singh on behalf of the petitioner. Hence it cannot be said that the proceedings were held without giving any reasonable opportunity of hearing to the petitioner. In fact Dr. Gautam Singh did not appear before the Prescribed Authority inspite of receipt of notice, is not disputed. The Prescribed Authority has disbelieved the facts stated in the recall application of the petitioner, hence it cannot be said to be arbitrary and illegal in the facts of the case.

8. The petitioners had an alternative remedy of filing an appeal, but for the reasons best known to them, they have not chosen to do so and filed the writ petition. The appeal is now time barred and the workmen have not been paid the deducted wages due to them for about ten years and as such it would not be proper to keep the matter pending. The findings of fact given by the Prescribed Authority cannot be interfered in this writ petition.

9. In the circumstances, it is not a fit case for interference under Article 226 of the Constitution of India.

10. In the result, the writ petition is dismissed. There shall be no order as to costs.

