

**ALLAHABAD HIGH COURT**

Sheo Prasad, Aligarh

Vs.

Additional District Judge

Civil Misc. Writ No. 406 of 1960

(V.G. Oak, J.)

01.08.1961

**ORDER**

**V.G. Oak, J.**

1. This writ petition is directed against an appellate order passed by the learned Additional District Judge, Moradabad, under the Payment of Wages Act (hereinafter referred to as the Act).

2. Sheo Prasad petitioner was at one time a Railway employee. He was suspended on 14-3-48. An order for his removal was passed on 21-6-48. He instituted a civil suit for a declaration that his removal was wrongful. The civil court decreed the suit of the plaintiff for declaration on 21-9-55. The petitioner filed a claim before the City Magistrate, Moradabad on 1-3-56, claiming a sum of Rs. 12,576/11/- as arrears: of his wages. This claim was resisted by the Railway administration. The City Magistrate returned the application on the ground that he had no jurisdiction. The same application was later presented before the Sub-Divisional Magistrate, Bilari. He passed an order on 14-6-58 allowing the petitioner's claim in part.

3. The Union of India filed an appeal against the Claims Commissioner's decision, dated 14-6-58. The appeal came up for disposal before the learned Additional District Judge, Moradabad. He held that the claim presented by Sheo Prasad was barred by time. The appeal was, therefore, allowed; and the Claims Commissioner's order was set aside. The present writ petition by Sheo Prasad is directed against the appellate order, dated 26-10-1959

4. The petitioner was suspended and removed in the year 1948. In 1955, he succeeded in obtaining a declaration that the removal was wrongful. The first question for consideration in this writ petition is whether the petitioner made his claim within time. Claims are made under Section 15 of the Act. The first proviso to sub-section (2) of Section 15 deals with limitation. That proviso runs thus:

"Provided that every such application shall be presented within six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:"

The second proviso to sub-section (2) of Section 15 lays down that delay in presenting a claim may be condoned if sufficient cause is shown. Parties are agreed that the period of limitation for making such a claim is six months. But they are not agreed about the starting point of limitation. According to the petitioner, the decision by the civil court was the starting point for limitation. According to the opposite party, the date of suspension was the starting point for limitation.

5. The learned Additional District Judge relied upon '*Noor Ali v. Kanpur Omnibus Service Ltd*',

In that case it was held, by Mehrotra, J. that, in a suit for recovery of wages for period of suspension, limitation starts from the date of suspension, and not from the date of reinstatement. In that case the question of limitation arose in a Small Cause suit. In the present case the question of limitation has arisen in a claim under the Payment of Wages Act. However, the decision of this Court in Noor Ali's Case. AIR 1955 Allahabad 707 is of some help in deciding the question of limitation in the

present case also.

6. It will be seen that, under the first proviso to sub-section (2) of Section 15 of the Act, the starting point of limitation is the date on which deduction from wages was made or the date on which payment of wages was due. Now if the petitioner was suspended and subsequently removed in the year 1948, it is obvious that wages were in fact due in the year 1948. It may be that in view of the order of removal, a claim for compensation or wages was not likely to succeed at that stage. But it is not correct to say that, wages were not due in 1948 on the footing that the removal was wrongful. The petitioner was due to retire in the ordinary course on 1-4-1951. There, was, therefore, no question of any wages falling due after 1951. It is impossible to accept the petitioner's contention that, wages were due from 1955. I agree with the learned Additional District Judge that, the starting point of limitation was the date of suspension (or perhaps the date of removal), and not the date of decision by the Civil Court. It may be that it was not practicable to put forward a claim for wages until a decision from the civil court was obtained. But it is not correct to say that, the date of decision by the civil court was the starting point for limitation.

7. The next contention of Mr. Radha Krishna appearing for the petitioner was that, the appellate court had no jurisdiction to interfere on the question of limitation, when the Claims Commissioner had condoned the delay. In support of his contention Mr. Radha Krishna relied upon a decision by Chagla, C.J. in *Prem Narayan Amritlal v. Divisional Traffic Manager*<sup>2</sup>, In that case, it was held that, in hearing an appeal against a direction under sub-section (3) of Section 15, the District Court has no Jurisdiction to consider the order made by the authority condoning the

delay. This decision directly supports the contention of Mr. Radha Krishna. But with great respect, I am unable to agree with that view.

<sup>1</sup> AIR 1955 All 707

<sup>2</sup> AIR 1954 Bom78

8. Section 17 of the Act provides for appeals. Sub-section (1) of Section 17 states:

"An appeal against a direction made under sub-section (3) or sub-section (4) of Section 15 may be preferred.....before the District Court....."

Sub-section (2) of Section 17 states:

"Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section (4) of Section 15 shall be final".

9. In order to decide whether in an appeal under Section 17, the District Court has liberty to enter into the question of limitation, it is necessary to go back to Section 15 of the Act. The Claims Commissioner is appointed under sub-section (1) of Section 15. Sub-section (2) of Section 15 provides for claims. The first proviso to sub-section (2) lays down the rule of limitation. The second proviso to subsection (2) of Section 15 provides for condoning delay by the Claims Commissioner. Sub-section (3) of Section 15 lays down that after hearing the parties, the Claims Commissioner may order payment of compensation or wages. Sub-section (4) of Section 15 provides for an order for penalty.

10. It is true that Section 17 expressly refers to sub-sections (3) and (4) of Section 15 only. Section 17 makes no reference to sub-section (2) at all. But I do not see why in dealing with an appeal against an order under sub-section (3), it should not be open to the appellant to satisfy the appellate court that in the first instance, the Claims Commissioner should not have entertained the claim at all, as it was time barred. There is nothing in Section 17 to indicate that, in dealing with an appeal under Section 17, the appellate authority has to accept a decision under sub-section (2) of Section 15 made by a Claims Commissioner as final. The provision in Section 17 is similar to the provision in the Civil Procedure Code for appeals against decrees. According to S.107 Civil Procedure Code, the appellate court has all the powers of the trial court. I do not see why that principle should not be applied with equal force to appeals under Section 17 of the Act. In my opinion, although Section 17 makes no reference to sub-section (2) of Section 15 of the Act, it is open to the District Court to enter into the question whether the Claims Commissioner was justified in condoning the delay under the second proviso to sub-section (2) of Section 15.

11. That is exactly what the learned Additional District Judge did. He pointed out that, it was not correct to say that the starting point of limitation was the year 1955. The true starting point for

limitation was the year 1948. On that footing, the claim was clearly barred by time. After considering the various circumstances in the case, the learned Additional District Judge appears to have reached the conclusion that the petitioner was not entitled to the benefit of the second proviso to sub-section (2) of Section 15 of the Act. It is not possible for this Court to interfere with the discretion exercised by the Additional District Judge in Appeal. On the view that the claim was barred by time, and the petitioner was not entitled to have the delay condoned, the decision must stand.

12. The petition is dismissed with costs to the opposite parties.  
Petition dismissed.