Supreme Court of India
Dilbagh Rai Jarry vs Union Of India And Others on 5 November, 1973
Equivalent citations: 1974 AIR 130, 1974 SCR (2) 178
Author: R S Sarkaria
Bench: Sarkaria, Ranjit Singh

PETITIONER:
DILBAGH RAI JARRY

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT05/11/1973

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
KHANNA, HANS RAJ
KRISHNAIYER, V.R.

CITATION:
1974 AIR 130 1974 SCR (2) 178
1974 SCC (3) 554
CITATOR INFO :
E&R 1974 SC1084 (6)
RF 1986 SC2045 (67)
R 1990 SC1080 (13,14,15,17)

ACT:
Payment of Wages Act, 1936-S. 15(2)-Limitation when commences- The date on which deduction from wages was made or the date on which, the payment of wages was due to be made.
Running allowance whether part of wages.

HEADNOTE:
The appellant, a Railway Guard, was convicted and sentenced for an offence under s. 509, I.P.C. The High Court uphold his conviction. On appeal this Court set aside.the conviction and acquitted him. In the meanwhile the appel-lant, was dismissed from service with effect from 31st March, 1956. The appellant impugned the order of dismissal in the High Court which held that his dismissal was wholly void and ineffective. Thereupon the appellant was reinstated and was informed that the matter of his back wages for the period between the date of his dismissal and the date of reinstatement would be decided later. By

another letter he was informed that this period was treated as leave due. He was paid Rs. 81.51 as his wages for the entire period ending on March 7, 1959.

The appellant made an application under s. 15(2) of the Payment of Wages Act, 1936 claiming Rs. 9,016.60 plus ten times the said amount as compensation. In addition, he first claimed 'traveling allowance' but later sought to amend the application by replacing 'traveling allowance by 'running allowance This was rejected by the Prescribed Authority. The Authority allowed a part of the claim but the appellant preferred an appeal to the Appellate Authority under the Act. The Appellate Authority held that the claim was barred by time as limitation had commenced from the date of dismissal from service and not from the date of reinstatement Or the date on which it was decided to treat the period of dismissal as leave due.

On the question (i) whether the. claim application filed by the appellant tinder s- 15(2) was time-barred and (ii) whether he was entitled to running allowance.

Allowing the appeal,

HELD : (i) the first proviso to sub-ss. (2) of s. 15 indicates two alternative starting points for limitation, namely, (i) the date on which deduction from wages was made or (ii) the date on which the payment of the wages was due to be made. [183-A]

From a reading of s. 15 it is clear that the legislature has deliberately used, first. in sub-s. (2) and then in sub-s. (3). the expressions "deduction of wages" c and "delay in payment of wages' as two distinct concepts. Terminus a quo (i) in the proviso expressly relates to the deduction of wages, while (ii) is referable to the delayed wages. If both these terminii were always relatable to the same Point of time, then there would be nor point in mentioning terminus a quo (i) and the legislature could have simply said that limitation for a claim under s. 15(2) would always start from the date on which the wages "fall due" or "accrue" as has been done under Article 102 of the Limitation Act which applies only to suits for recovery of wages. The very fact that two distinct starting points of limitation referable to two distinct concepts have been stated in the proviso. shows that the legislature had visualised that the date of deduction of wages and the due date of delayed wages. may not always coincide. Conjunction "or" which in the context means "either" and the phrase "as the

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case may be" at the end of the proviso are clinching indicate of this interpretation. They are not mere surpluses and must be given their full effect. The legislature is not supposed to indulge in tautology; and when it uses analogous words or phrases in the alternative, each may be presumed to convey a separate and distinct meaning. the choice of either of which may involve the

rejection of the other. To hold that the two expressions "wages deducted" and "wages delayed" though used in the alternative. carry the same meaning, and in the proviso are always referable to one and the same point of time, would be contrary to this primary canon of interpretation. (183B-E)
Ordinarily where an employee was dismissed on one date and reinstated on another, the deduction of wages may synchronize with the act of reinstatement. In the instant case the deduction did not take place on the date of reinstatement because the order of reinstatement expressly stated that decision with regard to his wages for the period would be taken later. Therefore the deduction would coincide with the decision deducting the wages. Such a decision was taken on February, 18, 1959 and limitation under the first part of the proviso commenced from that date. [183G-H]
Jai Chand Sawhney v. Union of India [1963] 3 S.C.R. 642; Divisional Superintendent. Northern Railway v. Pushkar Dutt Sharma (1967] 14, F.L.R. 204; held inapplicable.
(ii) Running allowance was counted towards average pay in those cases only where the leave did not exceed one month. Travelling allowance or running allowance was eligible if the officer had travelled or run, not otherwise. it could not be said that running allowance was due to the appellant as part of his wages for the entire period of his inactive service. [185H; 186A]
Per Krishra Iyer J. (Concurring) In this country the State is the largest litigant today and the huge expenditure involved makes a big draft on the public exchequer, In the context of expanding dimensions of State activity and responsibility, it is not unfair to expect finer sense and sensibility in its litigation policy, the absence of which in the present case had led the Railways callously and cantankerously to resist an action by its own employee. a small man, by urging a mere technical plea which had been pursued right up to the highest court and had been negatived, It was not right for a welfare State like ours to be Janus-faced and while formulating the humanist project of legal aid to the poor contest the claims of poor employees under it pleading limitation and the like, [186-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1898 of 1967. Appeal by Special Leave from the Judgment and Order dated the 4th November, 1965 of the Allahabad High Court in Civil Miscellaneous Petition No. 2491 of 1965. Bishan Narain and D. N. Mishra, for the appellant. S. N. Prasad and S. P. Nayar, for respondents Nos. 1 & 2. The Judgment of the Court were delivered by-
SARKARIA J.-This appeal by special leave is directed against the order dated November 4, 1965, of the High Court of Judicature at Allahabad dismissing the appellant's writ petition under Article 226 and 227 of the Constitution in limine.

The appellant was a Guard 'C' Grade in Northern Railway. He was confirmed in that post in 1952. On April 3, 1955, an incident took place at Railway Station, Kalka, as a result of which, he was prosecuted for an offence under s. 509, Penal Code. The Additional District Magistrate, Ambala convicted and sentenced him on December 29, 1955 to three months simple imprisonment. His appeal was dismissed by the Court of Session. In Revision, the High Court of Punjab, on March 5, 1956, maintained his conviction but reduced the sentence.

On April 2, 1956, the appellant received a communication from the Divisional Personnel Officer, Northern Railway that he had been dismissed by the Divisional Superintendent from service w.e.f. March 31, 1956.

In Appeal by special leave, this Court, set aside the conviction ,of the appellant and acquitted him by its judgment dated March 7, 1957. Thereafter, the appellant filed a writ petition in the High Court of Punjab under Article 226 of the Constitution impugning the order The High Court by its judgment, dated of his dismissal. September 2, 1958, issued the, writ directing the respondents to treat the dismissal of the appellant wholly void and ineffective. Pursuant to that direction, on December 26, 1958 the appellant received a letter from the Divisional Personnel Officer that he had been reinstated to the post of Guard 'C' Grade and that the matter of his back wages for the period between the date of his. dismissal and the date of reinstatement would be decided later on. By another letter of February 13, 1959, the same officer informed the appellant that the period from the date, of his dismissal to the date of his reinstatement would be treated as leave- due. The appellant, on March 11, 1959, was paid Rs. 81.51 as his entire wages for the period ending March 7, 1959.

On August 13, 1959, the appellant made an application under S. 15(2) of the Payment of Wages Act (Act 4 of 1936) (here- inafter referred to a$ the Act) before the prescribed authority claim-in-, a sum of Rs. 9015.60 plus 10 times of, the said amount as compensation from the respondents. In addition, Traveling Allowance was claimed. Later, an attempt was made to amend the application and replace 'Traveling Allowance' by 'Running Allowance'. The Authority did not permit the appellant to do so as- he had failed to amend in time despite the order of the Court. The respondents resisted the appellant's claim on various grounds including that of limitation. By an order dated August 7, 1963, the Authority directed respondent No. 1 (Union of India), in its capacity as employer, to refund the sum of Rs. 4863.20, (plus Rs. 100/- as costs) to the appellant holding that the same had been illegally deducted from his wages. The Authority disallowed the remaining claim including that of the Running Allowance. Against the order of the Authority, two appeals were carried to the Appellate Authority (Additional District Judge)-One by the appellant and the other by the respondents. The Appellate Authority- held that the appellant's claim was barred by time as limitation had commenced from the date of dismissal from service and not from the date of reinstatement or the date on which it was decided to treat the period of dismissal as leave due. It upheld the dismissal of the appellant's claim to the Running Allowance, inter alia for the reason that he had, despite the order of the Authority, failed to amend the petition within the period indicated in 0.6, R.18 of the Code of Civil Procedure. The Appellate Authority further found that the Railway Administration was competent to treat the period of appellant's inactive service from April 1, 1956 to February 17, 1959, as leave due and to deduct his wages for that period in accordance with rule 2044 of the Railway Establishment Code; and in view of s. 7 (2) (h) of the Act, no refund of the deducted

wages could be allowed. It further held that in the case of Railway Administration, the Divisional Superintendent named as Pay Master was res- ponsible for the payment of wages of the Railway employees, and consequently, the direction of the Authority requiring the Union of India to make payment to the claimant was illegal. In the result, the Appellate Authority allowed the respondent's appeal and dismissed the appellant's claim. The appellant's writ petition impugning this order of the Appellate Authority was, as already stated, dismissed by the High Court. Hence this appeal.

The first question that falls to be considered is, whether the claim application filed by the appellant under s. 15(2) of the Act was time barred?

Mr. Bishan Narain, learned Counsel for the appellant contends that the case falls under the first part of the proviso (1) to s. 15(2) which relates to deduction of wages and limitation would start from March 11, 1959 when the wages for the period of the appellant's inactive service were actually deducted and he was paid Rs. 81.51 only for the entire period ending March 7, 1959., Even on a stricter view, according to the learned Counsel, limitation would not start earlier than the date, February 13, 1959, when constructive deduction took place and it was decided to treat the period of his inactive service as leave due (which meant leave without pay). Since the appellant's claim application had been presented within six months of either of these dates, it was well within time.

Learned Counsel for the respondents does not dispute that this is a case of deduction of wages. His argument, however, is that irrespective of whether the case was one of deduction or of non-payment of wages, the starting point of limitation would be the same viz., the date on which the wages fell due or accrued. The argument is that the concepts of 'deducted wages' and .'delayed wages' are so integrated with each other that the events relatable to them always synchronise furnishing the same cause of action and the same start of limitation. It is pointed out that the wages of a Railway employee fall due every month; wages of one month being payable by the 10th of the succeeding month. Since the dismissal of the Appellant was declared void and non-est by the Punjab High Court-it is urged-his right to claim wages continued to accrue every month even during the period of Ills dismissal. In the view propounded by the learned Counsel, limitation for making the application under s. 1 5 (2) started from January 3, 1956, the date of the dismissal and the application made by the appellant more than three years thereafter, was clearly time-barred. Reference has been made to this Court's decision in Jai Chand Sawhney v. Union of India(1).

We shall presently see that while the contentions of the learned Counsel for the respondents cannot, those canvassed by the learned Counsel for the appellant must prevail. .

The material part of s. 15 of the Act reads "15(1) 15(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1) may apply to such authority for a direction under sub-section (3) Provided that every such application shall be presented within (twelve 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:

Provided further that any application may be admitted after the said period of twelve months when die applicant satisfies the authority that he had sufficient cause for not making the application within such period. 15(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry' (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, 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, and even if the amount deducted or the delayed wages are paid before the disposal of the application direct the payment of such compensation, as the authority, may think fit, not exceeding twenty-five rupees :.....

The question of limitation turns on an interpretation of the first proviso to sub-s. (2) of S. 15. This proviso ex facie indicates two

1. [1969] 3 S.C.C. 642.

alternative termini a quo for limitation, namely : (i) the date on which deduction from wages was made, or, (ii) the date, on which the payment of the wages was due to be made. From a reading of s. 15, it is clear that the legislature has deliberately used, first, in sub-s. (2), and then in sub-s. (3) the expressions "deduction of wages" and "delay in payment of wages" as two distinct concepts. Terminus a quo (i) in the proviso expressly relates to the deduction of wages, while (ii) is referable to the delayed wages. if both these terminii were always relatable to the same point of time, then there would be no point in mentioning terminus a quo (i), and the, Legislature could have simply said that limitation for a claim under s. 15(2) would always start from the date on which the wages "fall due" or "accrue" as has been done under Art. 102 of the Limitation Act which applies only to suits for recovery of wages. The very fact that two distinct starting points of limitation referable to two distinct concepts, have been stated in the proviso, shows that the Legislature had visualised that the date of deduction of wages and the due date of delayed wages, may not always coincide. Conjunction "or", which in the context means "either", and the phrase "as the case may be" at the end of the Proviso are clinching-indicia of this interpretation. They are not mere suplusages and must be given their full effect. The Legislature is not supposed to indulge in tautology; and when it uses analogous words or phrases in the alternative, each maybe presumed to convey a separate and distinct meaning, the choice of either of which may involve the rejection of the other. To hold that the two expressions "wages deducted", and "wages delayed", though used in the alternative, carry the same meaning, and in the Proviso are always referable to one and the same' point of time, would be contrary to this primary canon of interpretation "Deduction from wages" has not been defined in the Act. Some illustrations of such deductions are, however, to be found in ss. 7 and 13. One of them in s. 7 (2) (b) is "deductions for absence from duty" which indicates that such deduction can be a total deduction, also. That is to say "deduction from wages" may be 'the same thing as "deduction of wages". The deduction in the instant case is akin to this category covering the entire deficiency for the period of absence, the only difference being that here, the appellant absence from duty was involuntary. Such absence in official parlance is euphemistically called "in active service', if the

employee is later on reinstated. The point to be considered further is when did such deduction ofwages take place ? Ordinarily in a case like the present where the employee was dismissed on one date and reinstated on a later date, the deduction of wages may synchronise with the act of reinstatement. But on the peculiar and admitted facts of this case, the deduction did not take place on the date of reinstatement (26-12-1958) because the order of reinstatement expressly stated that "decision with regard to his wages to be paid for that period will be taken later on". In the case in hand, therefore, the "deduction' will coincide with the decision impliedly or expressly deducting the wages. Such a decision was taken and put in the course of a communication to the appellant on February 18, 1959 whereby he was informed that the period from 3-1-1956 to 17-3-1959, would be treated as 'leave due' Which, it is conceded, meant leave without pay. Thus, deduction from his wages for the entire period of his 'inactive service' took place on February 18, 1959. and limitation under the first part of the Proviso commenced from that date. The application was made on August 13, 1959, within six months of that date and was thus within time.

in Jai Chand Sawhney's case (supra), the, interpretation of the first Proviso to s. 15(2) never came up for consideration. Therein, the Court was concerned only with the construction of the expression "accrue/due" in Art. 102 of the Limitation Act, 1908 which does not govern applications under S. 15(2) of the Act. That case, therefore, is of no assistance in determining the precise issue before us.

It may be observed in passing that the, rule in Sheo Prasad v. Additional District Judge,(1) relied on by the Additional District Judge, was not followed by the same High Court in Ram Kishore Sharma v. Additional District Judge Saharanpur(2), as is had ceased to be good law in view _of the decision of this Court in Divisional Superintendent, Northern Railway v. Pushkar Dutt Sharma(3). In Pushkar Dutt's case (supra), the application under s. 15 (2) of the Act was filed within six months of the date on which the dismissal of the employee was set aside by the court in second appeal. The employee's application would have been within time irrespective of whether his case was treated as one of "wages deducted" or "wages delayed". Therefore, the necessity of examining the comparative mean- ing and distinction between "deduction from wages" or "delay in payment of wages due" and the two alternative starting points of limitation relatable to these expressions, did not arise in that case.

In the light of the above discussion, we reverse the finding of the Additional District Judge and hold that the application filed by the appellant under S. 15(2) of the Act having been made within six months of the date of deduction from his wages, was within time.

The second ground on which the order of the, Additional District Judge proceeds, is that since the deduction of the wages for the period of his inactive service from April 1, 1956 to February 17, 1959, had been made under the order of a co mpetent authority passed in accordance with rule 2044 of the Railway Establishment Code, in view of S. 7 (2) (h) of the Act no order could be made for the refund of the deducted amount. Both the learned Counsel before us are agreed that in view of the pronouncement of this Court in Devendra Pratap Narain 'Rai; Sharma v. State of U.P.(4), this ground is not sustainable. In Sharma's case (supra), this Court was construing rule 54 of the U.P. Government Fundamental Rules, the language of which is substantially the same as that of rule 2044 of the Railway Establishment Code. It (1) A.I.R. 1962 All. 144.

(2) [1959] All Law Journal p. 225.

(3) [1967] 14, F.L.R. 204.

(4) [1962] Supp. S.C.R. 315.

was held therein, that r. 54 enables the State Government to fix the pay of a public servant when his dismissal is set aside in departmental appeal. But that rule has no application to cases in which dismissal is declared invalid by a decree of civil court and he is, in consequence, reinstated.

Mr. Bishan Narain next contends that the prescribed Authority had wrongly disallowed the claim of the appellant to "Running Allowance' which he had mis-described as "Traveling Allowance" in his claim application. The point pressed into argument is, that once the Authority had allowed the appellant to amend his application for converting the claim of "Traveling Allowance" into "Running Allowance", it had no discretion left thereafter to prevent him from carrying out the amendment, on the technical ground that the period indicated by Order 6, Rule 18, Code of Civil Procedure, for this purpose, has expired. The Code of Civil Procedure, it is urged, does not govern amendment of applications under s. 15(2) of the Act.

The contention is untenable. While it is true that Rule s 17 and 18 of Order 6 of the-Code do not, in terms, apply to amendment of an application under s. 15(2), the Authority is competent to devise, consistently with the provisions of the Act and the Rules made thereunder, its own procedure based on general principles of justice, equity and good conscience. One of such principles is that delay defeats equity. The Authority found that the applicant was guilty of gross negligence. He took no steps whatever to carry out the amendment for several months after the order permitting the amendment, and thereafter, when the case was at the final stage, he suddenly woke up, as it were, from slumber, and sought to amend his application. In the circumstances, the Authority rightly refused to put a premium on this delay and laxity on the part of the appellant. In the view we take on the claim to running allowance we need not pronounce finally on whether an amendment to the relief once granted requires to be formally carried out in the petition, as in a pleading in court, less rigidity being permissible in quasi- judicial proceedings.

Mr. Bishan Narain further contends that Running Allowance was a part of the pay or substantive wages. In support of this argument he has invited our attention to rule 2003 of the Railway Establishment Code, clause 2 of which defines 'average pay'. According to the second proviso to this clause in the case, of staff entitled to running allowance, average pay for the purpose of leave salary-shall include the average running allowance earned during the 12 months immediately preceding the month in which a Railway servant proceeds on leave subject to a maximum of 75 per cent of average pay for the said period, the average running allowance once determined remaining In operation during the- remaining part of the financial year 1 cases of leave not exceeding one month. The crucial words, which have been underlined. show that such Running Allowance is counted towards 'average pay' in those cases only where the leave, does not exceed one month. It cannot, therefore, be said that Running Allowance was due to the appellant as part of his wages for the entire period of his inactive ser-

vice. Traveling allowance or running allowance is eligible if the officer has traveled or run, not otherwise. We therefore negative this contention.

For the foregoing reasons, we allow this appeal, set aside the order of the Appellate Authority and restore that of the Prescribed Authority. The appellant shall have his costs throughout.

KRISHNA IYER, J.-The judgment just delivered has my full concurrence but I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the present case being symptomatic of a serious deficiency. In this country the State is the largest litigant to-day and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, he led the Railway callously and cantankerously to resist an action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit court here and has been negatived in the judgment just pronounced ? Instances of this type are legion as is evidenced by the fact that then Law Commission of India in a recent report(1) on amendments to the Civil Procedure Code has suggested the deletion of s. 80, finding that wholesome provision hardly ever utilised by Government, and has gone further to provide a special procedure for government litigation to highlight the need for an activist policy of just settlement of claims where the State is a party. It is not right for a welfare' State like ours to be Janus-faced, and while formulating the humanist project of legal aid to the poor, contest the claims of poor employees under it pleading limitation and the like. That the tendency is chronic flows from certain observations I had made in the Kerala High Court decision(2) which I may usefully excerpt here "The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for, the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is. a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move, private parties to fight (1) Law Commission of India, .54th Report- Civil Procedure Code.

(2) P.P. Abu backer v. The Union of India :

A.I.R. 1972 Ker. 103 : 107 para 5.

in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way

back in 1957. This second appeal strikes me as an instance of disregard of that policy."

All these words from the Bench, hopefully addressed to a responsive Government, may, if seasonable reactions follow, go a long way to avoidance of governmental litigiousness and affirmance of the image of the State as deeply concerned only in Justic-Social Justice. The phyrric victory of the poor appellant in this case is a sad justification, for the above observations.

P.B.R. Appeal allowed-