

**(1948) 12 P&H CK 0004**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 54 of 1947**

Abdul Latif

APPELLANT

Vs

Divisional Superintendent, Lahore Division

RESPONDENT

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**Date of Decision :** 27-12-1948

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 96  
Payment of Wages Act, 1936 — Section 15, 15(3), 15(4), 17, 17(1)

**Citation :** AIR 1959 P&H 398

**Hon'ble Judges :** Harnam Singh, J;A.N. Bhandari, J

**Bench :** Division Bench

**Advocate :** Bhagirath Das, for the Appellant; Narinjan Singh Keer, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.N. Bhandari, J.—The short point for decision in the present case is whether an appeal lies from an order refusing to make a direction u/s 15 of the Payment of Wages Act, 1936. It appears that one Abdul Latif who was employed as a Booking Clerk on the North Western Railway was removed from service of the Crown on 9-8-1942.

He submitted a number of petitions u/s 15 of the Act of 1936 for payment of delayed wages, including the one dated 31-8-1945 which forms the subject of the present case and in which he claims payment of delayed wages for the period commencing with the 1st April 1945 and ending with the 30th September 1945. The Authority appointed by the Provisional Government to hear and decide the claims arising under the statute came to the conclusion that there was a bona fide dispute between the employer and the employee as to whether the removal was or was not valid in the eye of law and, consequently, that in view of the proviso to Sub-section (3) of Section 15 the Authority was not at liberty to make a direction for the payment of wages.

The application was accordingly dismissed without issuing a notice to the

opposite party. The petitioner appealed to the District Judge of Delhi, but the latter declined to entertain the appeal on the ground that no appeal could lie against an order refusing to make a direction. The petitioner has come to this Court in revision and the question for this Court is whether the learned District Judge has come to a correct determination in point of law.

2. Sub-section (3) of Section 15 provides that when any application under Sub-section (2) of the said section is entertained, the Authority may direct the refund to the employed person of the amount deducted from his wages, or the payment of the delayed wages, together with the payment of such compensation as the Authority may think fit. Sub-section (4) empowers the Authority to direct that a penalty not exceeding Rs. 50/- be paid to the employer if the application is malicious or vexatious. Sub-section (1) of Section 17 is in the following terms:

"(1) An appeal against a direction made under Sub-section (3) or Sub-section (4) of Section 15 may be preferred, within 30 days of the date on which the direction was made .....

(a) by the employer or other person responsible for the payment of wages u/s 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or

(b) by an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under Sub-section (4) of Section 15."

3. Section 17 provides clearly and in unambiguous language that in certain circumstances an appeal can be preferred against a direction made under Sub-section (3) or Sub-section (4) of Section 15, but it is completely silent as to whether an appeal can lie from an order refusing to make a direction. The question which arises and which is by no means freedom difficulty is whether the expression "direction" can be deemed to include the expression "failure to make a direction" or "refusal to make a direction."

4. A diversity of judicial opinion has manifested itself in regard to the meaning that should be attached to the expression "direction" appearing in Sub-section (1) of Section 17. According to one view the word "direction" must be deemed to be synonymous with the word "order" so that if an authority constituted under the Payment of Wages Act makes a direction (that is, an order u/s 15) an appeal would lie from the said direction or order, whatever the nature of such direction or order may be.

According to this view an appeal would lie from an order even if such order omits or refuses to make a direction. According to another view the word "direction" must be regarded as a positive order directing one person to make payment to the other and cannot be said to include a negative order, for example, an order that no payment should be made.

5. Two authorities have been cited in support of the first proposition. In *Mohamed Haji Umar v. Divisional Superintendent, North Western Railway*, AIR 1941 Sin 191, Weston J., held that although the USD of the word "direction" in Section 17 lends some support to the argument that no appeal will lie unless an order of the nature explicitly contemplated by Section 15(3) has been made, it would be a remarkable result if an employed person were held to have a right of appeal only if he has obtained an order allowing a part of claim, and to have no right of appeal if his claim has been rejected in toto however large it may have been.

The learned Judge, therefore, entertained no doubt whatever that the Legislature did not intend such a result, and that the word "direction" in Section 17 should be taken to include a refusal to make a direction. This view was endorsed in *Divisional Supdt., North Western Rly. Lahore v. Abdul Latif*, Civil Revn. No. 454 of 1946. decided by the High Court at Lahore in which Abdnr Rahman J., held that as it has been clearly provided in Section 17(1)(b) that an appeal was competent to an employed person, if the total amount of wages claimed to have been withheld from him exceed Rs. 50/-, it was extremely unreasonable to hold that the Legislature could have intended to allow a right of appeal to a person who had been allowed a part of his claim and that it could not have intended to allow a similar right of appeal to a person whose claim was totally dismissed. In the course of his order the learned Judge observed as follows:

"This means that the only qualification for any employed person to appeal as laid in Section 17 of the Act is that his claim must exceed a sum of Rs. 50/-and not that any part of his claim should have been decreed by the first Court. Had that been so, it would have been clearly stated. If the contention advanced by learned counsel for the petitioner were to be upheld, it would mean that the Legislature had omitted in Sub-clause (b) of Section 17 of the Act to provide for cases where the claim happens to be totally refused.

It seems to be wholly unreasonable to contend that while the Legislature had provided for an appeal where a claim was partially allowed by the Authority under the Payment of Wages Act it had failed to provide for a remedy when the whole of the claim was refused altogether. It would be anomalous to hold that while an appeal would be competent when a claim was allowed to some extent yet the decision of the Authority under the Payment of Wages Act would be final when it was negated in toto.

One must rebel against a construction which would lead to such absurdities. The obvious meaning to be attached to. Sub-section (1) of Section 17 in my view is that the word "direction" under sub-sections (3) and (4) of Section 15 of the Payment of Wages Act covers cases both when the direction is to pay and when there is a direction not to pay."

6. A contrary view has been taken in *Khema Nand Vs. East Indian Rly., Administration*, and *P. Kumar v. Running Shed Foreman E. L Rly. Administration*,

AIR 1946 Oudh 148. In the Allahabad case Hamilton J., held that the language of Section 15 indicates that a direction is an order to one side to make a payment to the other side. When the application of the employee u/s 15 is rejected as time-barred without even entering into the merits it must be taken that not merely was there no direction but that the application was not even entertained.

There is nothing in the Act which provides for an appeal in such cases. The learned Judge examined the case reported in AIR 1941 Sin 191 and held that although it is somewhat hard that there should not be an appeal in certain cases it was difficult to hold that a refusal to make a direction is a direction. In dealing with this argument he expressed himself as follows:

"It may be that the Legislature held that if an employee had made good his claim in part he should have a right of appeal as regards the part as to which he had failed but the Legislature thought that if he had entirely failed then he had not made out a prima facie case so he should have no right of appeal."

7. A similar view was, taken in AIR 1948 Oudh 148. In that case Thomas C. J., held that the language of Section 15 indicates that a direction under that section is an order to one side to make, payment to the person to whom the wages are due. But where an application of the employee u/s 15 has been rejected, it must be taken that there was no direction and hence no appeal lies against the order rejecting the application.

8. The construction which the Courts have placed on a similar provision in another enactment leads me to the same conclusion. Section 39 of the Guardians and Wards Act empowers a Court to remove a guardian appointed or declared by the Court, or a guardian appointed by will or other Instrument and Clause (g) of Section 47 allows an appeal against an order removing a guardian.

The Courts have held again and again, that an order refusing to remove a guardian does not fall under that clause and is final and not appealable, vide *Mohima Chunder Biswas v. Tarini Sundari Chose* ILR Cal 487; *Pakhwantj Daj v. Indra Narain Singh* ILR Gal 201; *In re, Bai Hazkha* ILR 20 Bom 667; *Intiaz-un-Nissa v. Anwar-ul-Jah* ILR All 433; *Kaniz Jenatul Kobra v. Hamidimnissa* 14 Ind Cas 56 (Gal); *Muhammad Anvvar Ali Khan v. Dara Shah Khan* ILR All 514; 56 Ind Cas 208: (AIR 1920 All 397 (I)) and AIR 1925 260 (Oudh)

9. Had the Legislature intended that an appeal should lie not only from an order making a direction but also from an order refusing to make a direction, it could have had no difficulty in manifesting its intention in clear and unambiguous language as it has done in the various clauses of Rule 1 of Order 43 of the Code of Civil Procedure. Clause (j), for example, provides that an appeal shall lie from an order under Rule 72 or Rule 92 of Order 21 setting aside or refusing to set aside a sale.

Similarly, Clause (1) declares that an appeal shall lie from an order under Rule 10 of Order 22 giving or refusing to give leave. Again Clause (m) confers a right

of appeal from an order under Rule 3 of Order 23, recording or refusing to record an agreement, com- promise or satisfaction.

10. The only inference that may reasonably be drawn from these provisions of law is that while the Legislature was anxious to confer a right of appeal against a direction made u/s 15 of the Act of 1936, it did not wish to confer a similar right in respect of an order refusing to make a direction. Nor can such right be presumed on the ground only that it is somewhat unreasonable that while the Legislature had provided for an appeal where the claim was partially allowed by the Authority it had failed to provide for a remedy when the whole of the claim was refused.

A right of appeal cannot be presumed on such vague surmising and the Legislature cannot be presumed to have done something which the Courts consider it should have done. It has been held repeatedly that an appeal is a creature of the statute and that a right of appeal cannot be presumed unless it has been expressly conferred.

11. For these reasons, I have no hesitation in endorsing the view taken by the learned District Judge that no appeal lies from an order refusing to make a direction and that the appeal preferred in the present case could not be entertained. The petition will be dismissed but there will be" no order as to costs.

Harnam Singh, J.

12. I concur in, the order proposed by my learned brother.