

(1956) 04 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Writ Application No"s. 54, 60, 61, 145 and 146 of 1955

Anant Ram and Others

APPELLANT

Vs

District Magistrate, Jodhpur and Another

RESPONDENT

Date of Decision : 04-04-1956

Acts Referred:

Constitution of India, 1950 — Article 309, 372

Payment of Wages (Procedure) Rules, 1937 — Rule 7

Payment of Wages Act, 1936 — Section 15, 15(2), 15(3), 17, 17(1)

Citation : AIR 1956 Raj 145 : (1956) RLW 288

Hon'ble Judges : Wanchoo, C.J;Modi, J

Bench : Division Bench

Advocate : M.M. Vyas and Zorawarmal, for Ganeshiram, Abdul Sakoor, Parasraj and Shivlal, for the Appellant; Magraj and Chandmal for Non-petitioner No. 2 and L.N. Chhangani, Government Advocate, for the Appearing Parties

Judgement

Wanchoo, C.J.—These are five connected writ applications by five railway servants against the order of the District Magistrate, Jodhpur, under the Payment of Wages Act (No. 4) of 1936 (hereinafter called the Act), and have been heard together as common points have been raised in them. We shall dispose them off by one judgment.

2. It is best to set out the facts of each case briefly, and we shall then indicate common points of law that arise in these cases.

3. Case No. 54 is by Anantram. He was in the service of the then Jodhpur Railway. In March, 1951, he was served with a charge-sheet by the then Chief Engineer and was removed from service on 26-3-1951. The order of his removal was set aside on or about 1-4-1953. However, another charge-sheet based on the same charges was framed against him on 29-4-1953.

It appears that the earlier order of dismissal was set aside on the ground of defect in procedure, and that was why Anantram was again served with a fresh charge-sheet, on the same charges. On this second charge-sheet, Anantram was

punished by stoppage of one increment. This second order was passed on 29-3-1954, and his appeal against that order was rejected on 31-8-1954. The applicant was not given his pay for the period from 27-3-1951, to 7-4-1953 and that period was treated as leave without pay.

The applicant made a representation in connection with the withholding of his pay, and thereupon he was informed on 31-9-1954, that the period from 27-3-1951, to 7-4-1953, was treated leave without pay according to the Railway Board's orders, and that as after the institution of fresh proceedings he had been found guilty, there was no case for moving the Railway Board for revising the earlier orders.

Thereafter, the applicant applied to the District Magistrate of Jodhpur u/s 15(2) of the Act on 12-10-1954. That application, has been dismissed by the District Magistrate as barred by time, and that is why Anantram has filed this writ application. His case is that the District Magistrate should have considered the documents produced by him, and thereafter decided whether he had sufficient cause for not making the application within the period of limitation prescribed by the proviso to Section 15(2) of the Act.

4. Application No. 60 is by Ganeshiram, and No. 61 is by Abdul Sakoor. These two were also in the service of the Jodhpur Railway. They were both suspended on 3-2-1950, and removed from service on 24-2-1950. They preferred appeals against the order, and though they say that the appeals were never disposed of, it appears that the order of removal was set aside in April 1954, and they were reinstated from 1-5-1954. They were again suspended on the same day namely 1-5-1954, and a fresh enquiry was made against them on the same charges.

Ganeshiram was eventually re-instated on 7-12-1954. He was also informed that his period of absence from 24-2-1950 to 30-4-1954, which had already been treated as leave without pay, would continue to be so treated. It seems that in the meantime Ganeshiram had made an application u/s 15(2) of the Act for wages for this period, which had not been paid to him.

Abdul Sakoor, on the other hand, was dismissed with effect from 14-9-1955, though the order was apparently not known to Abdul Sakoor when he filed his writ application in December, 1955, and was perhaps passed afterwards. Abdul Sakoor also applied for payment of wages due to him for the period he was under suspension from 24-2-1950 to 30-4-1954.

5. Applications Nos. 145 and 146 are by Parasraj and Shivilal Joshi. They were also in the service of Jodhpur Railway. Parasraj was suspended in December, 1952, and Shivilal in April, 1953. Parasraj was re-instated in October, 1953, as there was defect in procedure and Shivilal was re-instated in March, 1954.

A fresh charge-sheet was given to Parasraj on the basis of the same charges, and Parasraj was eventually removed from service on 19-2-1954. He filed an appeal which was dismissed. Then he made a revision petition belong the

General Manager, and he was finally re-instated on 2-2-1955. He was also informed that the period of his absence from duty would be treated as leave due, and he would be paid leave salary as due and admissible under the Rules. Both of them applied to the District Magistrate u/s 15(2) of the Act.

6. The District Magistrate has dismissed all these applications. The application of Anant Ram has been dismissed on the sole ground that it is barred by limitation. The applications of Parasraj and Shivilal Joshi have been dismissed on the ground of limitation, and also on the ground that the orders passed in their cases are covered by Rule 2044, Indian Railway Establishment Code, and by Section 7(2)(h) of the Act.

7. The Railway has opposed all these applications, and their contention before us is that the District Magistrate was light in dismissing three of the applications on the ground of limitation, and that the District Magistrate's view of Rule 2044 is correct.

In addition, it has also been urged that as an appeal lies under the Act, these applications should be dismissed on that ground. It has further been urged that as these are not cases of reduction from wages, or delayed payment of wages, the applications before the District Magistrate were not competent at all, and should have been dismissed on that ground.

8. Four points, therefore, which arise for determination in these cases are -

1. Whether an appeal lay against the order of the District Magistrate, and therefore this Court should not interfere in its extraordinary jurisdiction as no appeals were admittedly filed in these cases?

2. Could the applicants maintain their applications before the District Magistrate at all under the Act as cases of delayed wages or deductions from wages?

3. In case these are cases of deductions from wages, are such deductions justified u/s 7(2)(b), or Section 7(2)(h) of the Act? .

4. Was the District Magistrate justified in rejecting the applications on the ground of limitation in the manner in which he did so?

9. We shall take these questions one by one. The contention on behalf of the railway is that an appeal from the orders of the District Magistrate lies, u/s 17 of the Act, to the District Judge, and this Court should not, therefore, exercise its extraordinary powers under Article 226.

On the other hand, the applicants contend that no appeal lay to the District Judge at all, and they had no other remedy open except to come to this Court for redress.

10. The relevant portion of Section 17 with which we are concerned in this connection is this -

"(i) An appeal against, a direction made under Sub-section (3) or Sub-section (4)

of Section 15 may be preferred, within thirty days of the date on which the direction was made, in a Presidency-town before the Court of Small Causes and elsewhere before the District Court -

(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,

11. It is argued on behalf of the railway that the total amount of wages in each of these cases exceeded Rs. 50/-, and as the District Magistrate had dismissed the applications and in effect refused a direction for payment of the wages claimed, the applicants had right of appeal under this provision.

The applicants' contention, on the other hand, is that Section 17 only contemplates an appeal when there is a positive direction. They contend that if the District Magistrate had directed some part of the wages claimed by them to be paid to them, and rejected their claim for the rest, they would have a right of appeal under this section.

But as the District Magistrate did not direct any part of the wages to be paid to them, & dismissed their application in toto, they had no right of appeal as there was no direction as required under this provision.

12. Both sides have relied on decisions of High Courts in support of their respective contentions. There is divergence of opinion between various High Courts as to the right of appeal under this section.

Some High Courts have given a very narrow interpretation to the words of Section 17(1), and have held that where there is no positive direction, there can be no appeal. Others have held that even if there is no positive direction, an appeal will lie where a case has been heard on the merits, and the authority concerned has rejected the claim in toto. We may refer to these cases before considering the language of the section itself.

13. In "Khema Nand v. East Indian Rly., Administration" AIR 1943 All 343 it was 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 was rejected as time-barred without even entering into the merits it must be taken that not only 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 a case.

The facts of this case show that it was a case u/s 15(2), and not u/s 15(3). u/s 15(2), an application could be dismissed as barred by limitation. An appeal u/s 17 is only provided from a direction u/s 15(3) or Section 15(4). In the course of the judgment, the learned Judge certainly said that where there was no direction even on the merits, there could be no appeal.

We agree, however, with all respect, that where an application has been

dismissed on the ground of limitation, there can be no appeal u/s 17, for that section only allows an appeal from a direction u/s 15(3) or Section 15(4), while dismissal on the ground of limitation takes place u/s 15(2).

14. The next case, to which reference may be made, is "P. Kumar v. Running Shed Foreman, E. I. Railway Administration" AIR 1946 Oud 148 That was a case which was decided on the merits, and the Oudh Chief Court held that the language of Section 15 indicated that the direction was an order to one side to make payment to the person to whom the wages were due. It was also held that where an application of the employee was rejected, it must be taken that there was no direction. This view, if we may say so with respect, is based on a very narrow interpretation of Section 17.

15. We may then refer to Rajendranath Karmakar and Others Vs. Manager, French Motor Car Co., Ltd.,

There also an application was rejected in toto on the merits. The learned Judges held that no appeal lay as the order of rejection in toto did not come precisely within the scope of Section 17. The learned Judges also said that it might be that the legislature considered it desirable that no appeal by an employee would be permitted if the application for refund of certain amounts was thrown out in toto being wholly untenable, and that this might have been with the object of limiting the number of appeals or with the object of discouraging frivolous appeals.

We must say with respect that these last observations can have very little force when it is now open to the person whose claim has been rejected in toto to come to the High Court under Article 226 or Article 227. It also seems strange that a person claiming, say Rs. 800/- as wages, and getting a direction in his favour for payment of Rs. 100/- can appeal with respect to the remaining Rs. 700/- not allowed to him; but he cannot appeal if his claim for the entire amount of Rs. 800/- is rejected.

16. In Mohd. Matin Kidwai Vs. District Executive Engineer, N.E. Rly., Izatnagar and Another, the claim was dismissed for part of the period on the ground that it was time-barred, and for the rest on the ground that there was a bona fide dispute with respect to the remaining claim. It was held by the learned Judges that no appeal lay in the circumstances u/s 17. So far as that part of the order, by which part of the claim was held to be time-barred, is concerned, we agree that no appeal would lie.

The other part of the order which related to a disputed claim, might also not be open to appeal, for it is doubtful whether the Act contemplates cases of disputed wages being decided u/s 15. But the learned Judges certainly approved of the decision in the "Oudh case (B)", mentioned above holding that even if the interpretation of the precise language used in the statute leads to an illogical position, that is no reason to interpret the precise language in different manner.

17. We may now refer to the opposite view taken by some of the Courts.

18. In "Mahomed Haji Umar v. Divisional Superintendent, N. W. Railway", AIR 1941 Sin 191 Weston J. observed as follows "at page 192":

"Although the use 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 I have 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."

If we may say so with respect, this appears to us to toe the right view subject only to the condition that the rejection of the claim must have been after a consideration of the merits of the case.

19. In "Sitaram Ramcharan v. M.N. Nagrashna", AIR (1954) Bom 537, Chagla C. J. held that Section 17 only made a direction u/s 15(3) given by the Authority appealable, and that such direction would be a direction on merits after the application was entertained. He further held that where there was a decision under Sub-section (2) holding that the applicants had failed to show sufficient cause for not filing the application within time, such an order was riot appealable. He also held that the High Court had no powers of revision u/s 115, Civil P. C., as the Authority under the Payment of Wages Act was not a Court subordinate to the High Court.

20. It is true that that case was a case of dismissal on the ground that the application was barred by limitation, but the view taken in this case, if we may say so with respect, appears to us to be the sounder view.

21. In "C. S. Lal v. Shaikh Badshah", AIR (1955) Bom 75 Chagla C. J. reiterated the view that he had taken in the case cited above AIR(1954) Bom 537 and further made it clear

"that the right of appeal, which is conferred, is not limited to a case where the authority gives a direction to the employer to pay an amount to the employed person. The right of appeal would also arise if the authority refuses to give a direction in the sense that he holds on the merits of the application that the employee is not entitled to any amount; in other words, he dismisses the application of the employee after considering the merits of his case."

In that case, the application was dismissed on the ground of want of jurisdiction, and not on the merits. We agree with all respect that where the application is dismissed on the ground that the authority had no jurisdiction, it would not be a refusal to issue a direction as contemplated by Section 15(3) which can only arise after a consideration of the merits.

22. Let us now look to the words of Section 15(3) and Section 17. Section 15(3) lays down that the Authority shall hear the applicant and the employer, and

direct the refund to the employed person of the amount deducted, or the payment of the delayed wages.

Though Section 15(3) does not say in so many words that the Authority may refuse to give a direction, it is obvious that the Authority has the power to refuse to give a direction u/s 15(3) on the merits. This refusal is obviously an order u/s 15(3), and amounts to a direction that nothing is due to the employee. Now turning to Section 17, we find that the employee has the right of appeal if his claim is for a sum of more than Rs. 50/-, and that right arises even if the authority has allowed the entire claim except say for Rs. 5/-. The employee has got a right to appeal for these Rs. 5/- provided his claim was for more than Rs. 50/-.

The appeal, therefore, does not depend upon the amount disallowed, but upon the total amount of the claim. Further, even in those cases in which part of the amount has been allowed, and part has been refused, the appeal is really against the part which has been refused. It seems to us, therefore, wholly logical to hold that in one case there can be an appeal against a part which is disallowed but in the other case there can be no appeal against the whole if it is disallowed.

We feel therefore that the view taken by Weston J. and Chagla C.J. is the sounder view as to the interpretation of Section 17(1), and that when the Authority has considered the question on the merits, rejection of the whole claim should be taken to be a direction that nothing is due. Therefore, the employee would be entitled to appeal against such a direction.

23. We are, therefore, of opinion that where the Authority under the Act considers the question u/s 15(3) on the merits, and either directs that part of the wages ought to be paid and rejects the claim with respect to the rest, or rejects the claim with respect to the whole or the wages, an appeal by the employee to the District Judge would be competent u/s 17(1)(b) of the Act.

24. We now come to the second point, namely whether applications like these were maintainable at all as cases of delayed payment of wages or deductions from wages. The argument in this connection is that these are not cases of delayed payment of wages or of deduction from wages because the employees had been dismissed for the period for which they were making the claim, and therefore they could not maintain an application u/s 15(3). Reliance in this connection is placed on a number of cases which we shall examine just now.

25. In "Simpalax Manufacturing Co. Ltd. v. Alla-ud-Din" AIR 1945 Lah 195 it has been held that delayed wages can only mean wages which are admittedly due, but the payment of which has been postponed on some excuse or another. Hence any bona fide dispute as to the amount payable is to be tried by the civil courts. That was a case where a claim was made in the civil Court for wages due in lieu of notice after dismissal from employment. Wages as defined in Section 2(vi) include any sum payable to a person by reason of the termination of his employment.

The learned Judge took the view which he did on the basis of the proviso to Sub-section (3) of Section 16. But if we may say so with respect he seems to have misread it. He observes that the proviso provides that a direction should not be made when the delay in the payment of wages is due to a bona fide dispute as to the amount payable to the employed person. He omitted to consider that the direction which could not be made was with respect to compensation, and not with respect to the wages themselves. We must with respect refuse to follow this view.

26. The next case to which reference is made is "A. R. Sarin v. B. C. Patil", AIR (1951) Bom 423. That was a case where a claim was made for wages by a railway servant after the date of his dismissal, and it was held that such a claim could not be adjudicated by the Authority competent u/s 15(3).

If we may say so with respect, there is no reason to differ from the view taken in that case; but the case is distinguishable on facts. In the case before us there has been reinstatement, while there was no reinstatement in that case, and this makes the position different.

27. The next case is "Sarangdhar Singh v. Lakshmi Narayan", AIR (1955) Pat 320. In that case, the facts were that the payment of wages was withheld by the employer on the ground that he had a counter-claim against the employee on the ground of negligence, misappropriation and mismanagement, a suit was brought by the Manager's heir after his death for the wages due to the Manager against the employer, and the employer raised the bar of Section 22.

It was held that, in the circumstances of that case, when the employer had withheld the wages on the ground of negligence, misappropriation and mismanagement, the Payment of wages Act would have no application, and no claim could be maintained u/s 15(3). The facts of that case also, in our opinion, are very different. There is no question of any counter-claim by the railway; nor is it being said that the wages have been withheld because of any negligence, misappropriation or mismanagement of the applicants.

28. The next case is "N. Venkatavaradan v. Sembram Saw Mills, Sembiam, Madras", AIR (1955) Mad 697(K). There also the claim was for a period after dismissal, and it was held that such a claim could not be covered by the provisions of the Payment of Wages Act.

29. The last case is "A. C. Arumugham v. Manager, Jawahar Mills Ltd., Salem", AIR (1956) Mad 79. In that case, the facts were that on account of a cut in electricity, the employer "laid off" certain employees. These employees made a claim under the Payment of Wages Act, and it was held that the Payment of Wages Act did not cover cases of "lay off".

30. All the cases, therefore, relied upon by learned counsel are distinguishable on facts. In the cases before us the applicants were dismissed on one date, and were re-instated on a later date. They were not paid their wages for the period

between the dismissal and the re-instatement. Their claim is for wages for this period. Their re-instatement clearly implies that the Authority deducted their wages wholly or in part for the period between dismissal and re-instatement, and the case, in our opinion, would be covered by the provisions of the payment of Wages Act. There is no force therefore in this contention, and we reject it.

31. The next point is whether deductions were justified either u/s 7(2)(b) or Section 7(2)(h) of the Act. So far as Section 7(2)(b) is concerned, the point may be shortly disposed of. Under that provision, deductions can be made for absence from duty. We are of opinion that this absence is voluntary absence by the employee. It cannot cover absence of the employee when he is forced by circumstances created by the employer from carrying out his duties.

In the present case, the applicants were certainly absent from duty between the period of their dismissal and their reinstatement. But the absence was not a voluntary act on their part and it is not the case of the Railway that the applicants would not have come to do their duty if the Railway had permitted them to do so. In these circumstances, we are clearly of opinion that deductions cannot be made from their salary on the ground of absence from duty for such absence must be voluntary, and without the permission of the employer.

32. Then we turn to Section 7(2)(h) which permits the employer to make deductions required to be made by order of a Court or other authority competent to make such order. The contention of the Railway in this connection is that the Wages have been withheld by virtue of order passed under Rule 2044 of the Indian Railway Establishment Code, and that such orders must be held to be orders of other authority competent to make them within the meaning of Section 7(2)(h) of the Act.

On the other hand, it is contended on behalf of the applicants that the orders in question have been made by railway officers who are the servants at the Railway, and that Section 7(2)(h) does not contemplate orders by the servants of the employer for the benefit of the employer. Presented in this, bald way, the argument on behalf of the applicants appears attractive.

But we must make a difference between orders passed by Government servants in exercise of powers conferred upon them by statutory rules, and orders passed by servants of employers according to the directions or the wishes of their employers. The Railways are being run by the State and railway servants from the lowest to the highest are all Government servants.

Article 309 of the Constitution provides for making of rules regulating their recruitment, and the conditions of service of persons appointed in the service of the Union or the States. Article 372 of the Constitution provides for continuance of all the law in force in the territory of India immediately before the commencement of the Constitution.

The Indian Railway Establishment Code, therefore, is a body of statutory rules

deriving its force, from Article 309 read with Article 372 of the Constitution, and has made provision for conduct and discipline including the imposition of penalties on Government servants, and has indicated the persons who are authorised to inflict them.

These rules of conduct and discipline with respect to non-gazetted staff are to be found from Rules 1702 to 1727, Indian Railway Establishment Code. These rules lay down penalties of suspension, removal from service and dismissal, and also provide the procedure for these purposes. If a person is dismissed or removed, he has a right of appeal under Rule 1717.

There is also a provision for revision under Rule 1725, and finally there is a provision in Rule 1727 which lays down that nothing in these rules shall be deemed to preclude the President from revising, whether on his own motion or otherwise, any order passed under the said rules by any subordinate authority. Removals and dismissals are thus made by Railway Officers under these rules, and there is provision for appeal and revision.

33. Then we come to Rule 2044. It appears in the Chapter -- Railway Fundamental Rules -- Service Conditions, Pay and Deputation. This rule lays down what is to happen in the matter of payment of wages or salaries where a person is re-instated. It provides that when a railway servant, who has been dismissed, removed or suspended, is re-instated, the authority competent to order the reinstatement shall consider and make a specific order regarding the pay and allowances to be paid to the railway servant for the period of his absence from duty, and whether or not the said period shall be treated as a period spent on duty.

There is further provision as to when the full pay or wages should be ordered to be paid, and when only a part of the pay or wages should be paid, and when the whole of them may be withheld.

34. The contention on behalf of the Railway is that orders passed under Rule 2044, on re-instatement with respect to pay for the period of absence from duty due to suspension, removal or dismissal are orders which come within Section 7(2)(h) as orders of a competent authority requiring deductions to be made from wages.

We are of opinion that this contention is correct. The fact that the railway officers, who have the power to make such orders under Rule 2044, are servants of the Railway makes no difference. They are exercising their powers under statutory rules, and are competent authorities within the meaning of Section 7(2)(h). The analogy that they are the servants of the employer does not, in our opinion, apply in the case of statutory authorities passing orders under statutory rules.

If, therefore, there is an order under Rule 2044, which directs either that the wages for this period would not be paid, or that only a certain portion of the

wages would be paid, that order, in our opinion, is an order of the competent authority directing deductions to be made from the wages, and would be in accordance with Section 7(2)(h) of the Act.

Reference in this connection was made to "K. P. Mushran v. B.C. Patil" AIR 1952 Bom 235 on which the applicants strongly rely. In that case, a railway employee, who was on suspension and was later compelled to go on leave first on full pay, then on half pay, and thereafter without pay, made a claim for wages. There was, however, no charge against him, and no result of any departmental enquiry was communicated to him.

In those circumstances, it was held that he was entitled to full wages. It is not necessary for our purposes to examine that case in detail for the facts of that case are very different. It is enough to say that in the cases before us there was a charge against the applicants on which a departmental inquiry was held and an order is said to have been passed under Rule 2044.

In that case Rule 2044 was not considered perhaps, because there was no charge against the employee in that case, and no departmental enquiry resulted in any punishment. That case is, therefore, in our view, no authority for a case where there has been a charge, and a departmental enquiry followed by a reinstatement, further charge, and further enquiry followed by a punishment, and an order under Rule 2044.

35. The Railway, on the other hand, relies on "Rupa Ram v. Divisional Supdt., N. W. Rly., Lahore", AIR (1954) Pun 298. In that case, a station master was suspended, and was allowed only a proportion of his salary as wages. He applied under the Act for the remainder. It was held that the Railway Administration had an indisputable power to suspend the station master under Rule 1711 of the Rules made u/s 241(2), Government of India Act, 1935, and the said Administration having duly suspended him in the exercise of that power, the station master was not entitled to any salary for the period of suspension excepting the subsistence grant not exceeding one-fourth of his salary provided for in Rule 2043 of the Rules.

The judgment in this case was delivered by S. R. Das C. J. (now Chief Justice of India) and Achhru Ram J. We are, if we may say so with great respect, in agreement with the view taken in this case of the effect of the statutory rules contained in the Indian Railway Establishment Code.

We are of opinion that orders passed under these statutory rules would be orders of other competent authority mentioned in Section 7(2)(h), and would justify deductions from wages in the same way as an order by a Court.

36. We now come to the last point relating to the manner in which the point of limitation was considered by the Court below. Anant Ram's case in particular is that he had produced certain documents, but the District Magistrate dismissed his application without looking at those documents. Similar is the contention on

behalf of Parasraj and Shivilal Joshi.

in Anant Ram's case, the District Magistrate says that there was no specific prayer in the original application for condoning the delay; nor was sufficient cause shown for not making the application within the specified period of six months. He has also said that without production of certified copies or documents it is not possible to consider whether there was sufficient cause or not.

In the cases of Parasraj and Shivilal Joshi, the District Magistrate has said that the applicants should have made a specific prayer in their applications for condoning the delay. He has also said that they should have produced certified copies of the alleged correspondence between them and the railway, and that in the absence of such copies sufficient cause has not been shown.

37. We are of opinion that the approach of the District Magistrate in the matter of limitation is wrong. Section 15(2) lays down that a claim has to be made within six months from the date on which the deduction was made or from the date on which the payment of wages was due to be made in case of delay in payment of wages.

Further it is provided that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period. Further Rule 7, Payment of Wages Procedural Rules 1937 lays down that the Authority may refuse to entertain an application if after giving the applicant an opportunity of being heard, the Authority is satisfied for reasons to be recorded in writing that the application is barred by reason of the provision in the provisos to Sub-section (2) of Section 15.

This rule, therefore, casts a duty on the Authority, if any application is prima facie time-barred, to give an opportunity of being heard to the applicant, and thereafter, if it is of opinion that sufficient cause has not been shown, and the application is barred by time, to dismiss it. In these cases, what happened was that the question of limitation was not scrutinised at the earliest stage, and was raised by the railway in reply.

Thereupon, the Authority should have given an opportunity, as required by Rule 7 of the Procedural Rules, to the applicants concerned of being heard. This would, of course, include an opportunity to produce such documents as they desired to produce. The complaint of the applicants concerned, however, is not so much that they were not given an opportunity. Their complaint is that though they were given an opportunity, the Authority did not consider the documents produced by them, and dismissed the applications on the ground that they had not produced certified copies.

There is no doubt that Anant Ram in particular, and Parasraj and Shivilal Joshi also had produced certain documents, and were relying on them for their case that there was sufficient reason for them not to have preferred their claims

within six months. The District Magistrate did not consider these documents at all, though it is not the Railway's case that the documents produced were forged, or in any way incorrect.

In any case, if it was the view of the District Magistrate that these original documents in the shape of letters from the railway to the applicants were not sufficient, and that the applicants should have produced certified copies taken from the record of the Railway, he should have given time to the applicants for the purpose, though we must say that that would be a very extraordinary course to take when the genuineness of the documents produced is not disputed.

In any case, the District Magistrate could not have dismissed the application as barred by time without considering the effect of the documents that had been produced. Further, if he thought that those documents were spurious, and could not be relied upon, and there should have been production of certified copies, he ought to have given time to the applicants concerned to produce the copies.

In so far therefore as any application has been dismissed on the ground that it was barred by limitation without going into the documents produced by the applicants concerned, the order of the District Magistrate is clearly wrong, and he must be held to have refused to exercise the jurisdiction that vested in him.

38. We now take up the individual cases in the light of the decisions given above.

39. We begin with Anant Ram's case whose application has been dismissed as barred by limitation. In view of what we have said above, we are of opinion that the District Magistrate did not act in accordance with Rule 7 mentioned above, and he should, therefore, be ordered to rehear the matter in the light of the observations made by us in this connection.

It was urged, however, on behalf of the railway that if we take the view that an order under Rule 2044 came within Section 7(2)(h), it was not necessary to send the case back to the District Magistrate as the order of the re-instating authority under Rule 2044 was passed in this case.

The facts, however, are that Anant Ram was first re-instated on 1-4-1953, as there was some defect in the earlier proceeding. He was suspended soon after, and a further departmental enquiry was held on the same charges after remedying the defect in procedure, and he was finally re-instated on 30-9-1954. It does not appear that any order under Rule 2044 was passed in September, 1954, when Anant Ram was finally re-instated.

The contention on his behalf is that in cases where re-instatement takes place on account of some defect in procedure, and the same charges are again enquired into after remedying that defect, an order under Rule 2044 has to be passed when the second proceeding is also over. The reason for this is that till this second proceeding is over, the authority entitled to pass an order under Rule 2044 cannot know whether the case is one which is covered by Sub-rule (2) of Rule 2044, or Sub-rule (3).

We are of opinion that this is correct. Where a person is re-instated on account of procedural defect, and is again proceeded against departmentally on the same charges after removing the defect, the order under Rule 2044 has to be passed after the second proceeding is over. No such order has admittedly been passed in Anant Ram's case so far. In these circumstances, the application of Anant Ram has to be allowed.

40. Then we come to the case of Ganeshiram. He was first re-instated in May, 1954, and was thereafter suspended, and fresh proceedings were taken against him. He was finally re-instated on 7-12-1954. This time he was re-instated by the Divisional Personnel Officer and that Officer passed an order under Rule 2044 covering the period of suspension from 3-2-50 to 23-2-50 and 1-5-54 to 7-12-54.

The Divisional Officer also passed an order that the period of absence from 24-2-1950 to 30-4-54, which has already been treated as leave without pay would be so treated, thus confirming the earlier order passed on 1-5-1954. In view of this order of the Divisional Personnel Officer under Rule 2044, Ganeshiram is, in our opinion, not entitled to any more wages for the entire period covered by the order Ex. E, namely from 3-2-50 to 7-12-54. His application, therefore, fails.

41. Then we come to the case of Abdul Sakoor. He was first reinstated on 1-5-1954, and was then immediately suspended, and further proceedings after removing procedural defects were taken against him. After taking these proceedings, he was dismissed on 14-9-1955. He made his application to the District Magistrate in 1954 claiming wages for the period from 24-2-1950 to 30-4-1954. At the time he applied to the District Magistrate, the second proceeding against him was pending.

In the circumstances, we are of opinion that he should have applied only after the second proceeding was over. He would only be entitled to wages for this period if he was reinstated on the completion of the second proceeding, and an order in his favour was passed under Rule 2044. What has happened, however, is that he has subsequently, after the filing of the writ application in this Court, been dismissed.

In these circumstances, his remedy is to go in appeal against the order of dismissal, and if he is reinstated he may be given such wages as the competent authority may determine under Rule 2044. So long, however, as the order of dismissal stands, he is not entitled to anything, for the order of dismissal in effect confirms the earlier order of 1-5-1954 (vide Ex. C) by which the period of his absence from duty was treated as leave without pay. The application, therefore, must fail at this stage till the order of dismissal stands against Abdul Sakoor.

42. Then we come to the case of Parasraj. He was first reinstated on 14-10-1953. He was suspended again, and further proceedings after remedying the defect in procedure were taken. He was finally reinstated on 2-2-1966, by

the order of the General Manager. His application to the District Magistrate was made in 1954, and we are of opinion that he should have waited till the second proceeding was over.

Where a person is dismissed once, and is reinstated on account of defect in procedure, and further proceedings are taken against him on the same charges, he has to await the order on the second enquiry, and can apply for deducted wages after the second enquiry is over, and an order under Rule 2044 is passed. In such a case, we are of opinion that the second proviso to Section 15(2) will apply, and there would be sufficient cause for not applying within six months of the period for which the wages were deducted.

But as in his case also the General Manager has passed an order in February 1955 under Rule 2044, covering the entire period, we are of opinion that the application must fail. It is therefore no use sending it back to the District Magistrate for determining the question of limitation afresh, and then going into the merits of the case:

43. Then we come to the case of Shivlal. He was reinstated on 20-3-1954, and the case of the Railway is that, according to the order of the officer, who reinstated him, his absence was treated as leave without pay under Rule 2044. Whatever, therefore, may be the view on the question of limitation in his case, there is, in our opinion, no necessity after this order under Rule 2044 to send the case back, as he would, in the view that we have taken, not be entitled to any more wages.

44. We, therefore, allow the application of Anant Ram, and send the case back to the District Magistrate for deciding it according to law. Anant Ram will get his costs from the Northern Railway, The applications of Ganeshi Ram, Abdul Sakoor, Parasraj and Shivlal are dismissed. In view of the circumstances, we pass no order as to costs.