
(1975) 04 AP CK 0013
In the Andhra Pradesh High Court

D. Baliah and Others

APPELLANT

Vs

Secretary, Indian Detonators Limited

RESPONDENT

Date of Decision : 02-04-1975

Acts Referred:

Andhra Pradesh Payment of Wages Rules, 1937 — Rule 26(3)(g), 9(2)

Citation : (1975) 2 APLJ 54 : (1976) 2 LLJ 247

Hon'ble Judges : Ganghadhar Rao, J;Alladi Kuppaswami, J

Bench : Division Bench

Judgement

Alladi Kuppaswamy, J.—The petitioners are employees of the respondent-company. Their wages for 8 days were deducted from out of their wages for the month of April, 1970 by the respondent. Thereupon the petitioners filed a petition u/s 15(2) read with Section 16 of the Payment of Wages Act complaining that a sum of Rs. 640 was illegally deducted from their wages without assigning any reason and without affording any opportunity to the applicants to explain against such deduction. They prayed for a refund of the said amount. In the counter to the petition, the respondent stated that the petitioners acting in concert and without reasonable cause staged an illegal tool down strike in the factory of the respondent on 20th April, 1970. The workers including the petitioners were notified that their wages for eight days would be deducted from the wages for April, 1970 according to the proviso to Section 9(2) read with the explanation thereto of the Payment of Wages Act. It was submitted that the deductions were in accordance with law. It was further contended that the question whether the deduction was illegal or not is one that cannot be gone into in an application u/s 15 of the Payment of Wages Act.

2. The authority which was entitled to hear the application u/s 16(2) and which heard the application came to the conclusion that the cut of 8 days wages was in accordance with the provisions of the Act and the applicants are not entitled to recover the same. It also negated the contention that the authority under the Payment of Wages Act has no jurisdiction to go into the question whether the

deductions were legal or not. In the result, the application was dismissed.

3. The petitioners preferred an appeal to the Chief Judge, City Civil Court, Hyderabad u/s 17 of the Act. The learned Chief Judge held on a consideration of the evidence that the petitioners had participated in a concerted strike on 20th April, 1970. He took the view that there was no need to give a notice to the petitioners before making the deductions as the Act did not provide for such a notice. It was contended before him that the deductions to be made under the Act were subject to the Rules made under the said Act and as there was no rule authorising the deduction of 8 days wages, the deduction was illegal. The learned Chief Judge observed that the rules only provide for deductions in the case of breach of contract and there was no other rule regarding deductions to be made in the case of absence from duty. He, therefore, came to the conclusion that the respondent was entitled to make the deduction of 8 days wages which was the maximum permissible under the Act. In the result, dismissed the appeal.

4. The petitioners filed this revision petition against the order of the learned Chief Judge, City Civil Court. The revision being u/s 115 CPC, the petitioners are not entitled to canvass the finding of fact arrived at by the learned Chief Judge that the petitioners had participated in a concerted strike and had absented themselves from duty without any just cause. The learned advocate for the petitioners, therefore, very properly contended himself by arguing two main questions of law. Firstly, he contended that u/s 9(2) the employer may deduct an amount not exceeding his wages for 8 days as may be due to the employee subject to any rules made in this behalf by the State Government. It is submitted that inasmuch as no such rules were made by the State Government, the section authorising deductions to be made cannot come into operation at all and no deductions can be made. Secondly, it was contended that as the deduction of wages amounts to a penalty imposed upon the employees, principles of natural justice require that notice should be given to the employees to show cause why such deduction should not be made, and inasmuch as such a notice was not given, the deductions are illegal.

5. Before dealing with the first contention, it is necessary to set out the relevant provisions of the Act and the Rules. Section 7 of the Act provides that the wages of an employee, shall be paid to him without deductions of any kind except those authorised by or under the Act. Section 7(2) enumerates the deductions which can be made from the wages of an employed person. Section 7(2)(b) deals with deductions for absence from duty. The following sections deal with the different kinds of deductions which are mentioned in Section 7. Section 9 deals with deductions for absence from duty. Section 9(1) provides that deductions under this head may be made only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work. Section 9(2), which is relevant, may be set out in extenso.

The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work:

Provided that, subject to any rules made in this behalf by the State Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say, without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employee in lieu of due notice.

Explanation: For the purposes of this section, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in-strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

6. It is thus seen that under this section the deduction normally shall be not more than the wages due for the wage period for which the deduction is made. The proviso, however, states that if ten or more employed persons acting in concert absent themselves without due notice and without reasonable cause, then the deduction may include such amount not exceeding his wages for 8 days. In the explanation, it is provided that an employee shall be deemed to be absent it although present he refuses, in pursuance of stay-in-strike or for any other cause, which is not reasonable in the circumstances to carry out his work. In the present case, all the conditions laid down in the proviso are fulfilled. Ten or more persons in concert absented themselves without notice and without reasonable cause, the absence being construed in the light of the explanation; that is though they were present, they refused to work. It was, therefore, permissible for the employers to deduct the amount not exceeding wages for eight days.

7. It is, however, argued by the petitioners that the proviso says that this deduction is subject to rules made in this behalf, and there are no rules made with regard to due deductions in the case of absence from duty. The argument is that since there are no Rules, the proviso itself cannot come into operation as the proviso says that it is subject to any rules. We are unable to agree with this contention. According to us, the correct interpretation of the proviso is that the deductions can be made in accordance with the terms of the proviso, but if there are any rules framed, the deductions can be made only according to the said rules. In other words, the proviso is subject to rules, if any, made by the State Government. If there are no rules made, then the deductions can be made according to the proviso. In this case, the rules have not been made. Therefore, the employers were right in making deductions in accordance with the proviso. If the contention of the petitioners is to be accepted, then no deductions can be made at all in the absence of rules. This could not have been the intention of the

Legislature, nor does the language of Section 9(2) lend itself to any such construction. The learned Counsel for the petitioners relied upon the decision in *K.R.C.S. Balakrishna Chetty and Sons and Co. Vs. The State of Madras*, where it was observed that the expression "subject to" means "conditional upon." It was, therefore, argued that the operation of the proviso is conditional upon the enactment of the Rules. This argument in our view, proceeded upon an improper appreciation of the decision of the Supreme Court. In that case, Section 5 of the Madras General Sales Tax Act provided that subject to such restrictions and conditions as may be prescribed including the conditions as to licences and licence fees, the sale of bullion and specie, of cotton, of cotton yarn and of any cloth woven on handlooms and sold by persons dealing exclusively in such cloth shall be exempt from taxation u/s 3. The expression "prescribed" was defined in Section 2(f) as "prescribed by rules made under the Act". A licence had been granted to the petitioners u/s 8 of the Act. The petitioners were sought to be assessed under the provisions of the Act to sales tax. They contended that as long as they held the licence, they were not liable to any assessment of sales tax as u/s 5 the sale of cotton yarn with which the petitioners were concerned was exempt from taxation. They contended that it was immaterial if they were guilty of infraction of any law or of breach of the terms and conditions of the licence. In support of their contentions, they relied on the opening part of Section 5 which said that it was subject to such restrictions and conditions as may be prescribed. The Supreme Court held that the giving of licence itself was subject to conditions to be observed by the licensee, and the licence was issued subject to the Act and the Rules. On a proper interpretation of Section 5, it only meant that the exemption under the licence is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by and under the Act whether in the rules or in the licence itself. In other words, the licensee was exempt from assessment as long as he conformed to the conditions of the licence and not that he was entitled to exemption whether the conditions upon which the licence is given are fulfilled or not. It is in this context that they stated that the correct meaning of the use of the words "subject to" is "conditional upon." We do not think that the decision of the Supreme Court has any relevance to the facts and circumstances of this case. In this case, no rules at all have been framed with reference to deductions for absence from duty. No doubt under the general rulemaking power conferred u/s 26 of the Act, the Andhra Pradesh Payment of Wages Rules, 1937 were made, Rule 16 is stated to be made under the power conferred u/s 26(3)(g) of the Act which authorises rules to be made with reference to the proviso to Section 9(2). But on a reading of Rule 16, it is found that it relates to deduction for breach of contract. Therefore, it is obviously a mistake to call that rule as a rule made u/s 26(3)(g) as it does not deal with the matters referred to in the proviso at all. Hence it must be taken that there is no rule relating to the deductions in the case of absence from duty and with regard to matters referred to in the proviso to Section 9(2). We are, therefore, of the view that the decision of the Supreme Court stated above is of no assistance to the petitioners. We are unable to agree with the contention that unless and until

such rules are made, the proviso does not come into operation and the authorities are not entitled to deduct 8 days wages which is permissible under the proviso.

8. The second contention is that the deduction is bad as no opportunity to show cause against the deduction was given to the petitioners. The learned Chief Judge took the view that the Section 9(2) does not envisage the giving of such an opportunity. He referred to the various other provisions of the Act in which specific reference is made to a notice being given and in the absence of such a specific provision in Section 9(2) he concluded that no notice need be given in the case of deduction for absence from duty. The learned Counsel for the petitioners argued that while it is true that there is no specific provision for the giving of a notice u/s 9(2) principles of natural justice require that such notice should be given. We are inclined to agree with that contention. Notwithstanding the fact Section 9(2) does not provide for any notice to show cause being given before a deduction is made, we are of the view that as deduction of wages is penal in its nature, principles of natural justice require that such notice should be given.

9. In this case, however, we find from the records that as a matter of fact such a notice was given. On the 30th of April, 1970, a notice was published in which it is stated that the workmen, whose names are given in the Annexure as they went on an illegal tool down strike on 20th April, 1970, without notice, are notified under Rule 16(2)(c) of the Andhra Pradesh Payment of Wages Rules, 1937, that their wages for 8 days are being deducted from their wages for the month of April, 1970, as per Section 9 of the Payment of Wages Act, 1936. The actual deduction was made on the 7th of May, when the salary for April was disbursed. Hence the petitioners, who were among the workmen, whose names were given in the Annexure, had sufficient notice and opportunity to show cause against the deduction. While it is true that notice should be given, it is not necessary it should be given in any particular form, nor is it necessary that it should be sent individually. A general notice is sufficient so long as the workers concerned were made aware of the proposed deduction. Vide. *The Managing Director, M. & A.M. Corporation v. R.K. Bhattacharya* (1971) Lab. I.C. 1339 It was sought to be contended on behalf of the petitioners that this notice is not a notice of proposed deduction but only notice of a decision already arrived at by the employer. We are unable to agree with this contention. In the notice, it is stated that the wages for eight days "are being deducted". In other words, it means that the wages are proposed to be deducted. The notice was given on the 30th April, 1970 and the deduction was to be made only on a later date when the actual salary was being paid. It cannot, therefore, be contended that the employers had already made the deduction and were merely informing the employees of that deduction in that notice. For these reasons, we are of the view that the second contention also cannot be accepted.

10. In the result, the revision petition is dismissed, but in the circumstances,

without costs.