(1977) 03 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 203 of 1973

Divisional Personal Officer, Northern Railways, New Delhi — APPELLANT

Vs

Ramesh Kumar Modgil, Jind — RESPONDENT

Date of Decision : 01-03-1977

Acts Referred:
Payment of Wages Act, 1936 — Section 15

Citation : (1977) 03 P&H CK 0016

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Advocate : K.L. Khanna and Mr. R.L. Garg, for the Appellant; Roshan Lal Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Harbans Lal, J.—This revision petition is directed against the judgment of the learned District Judge, Rohtak, dated August 21, 1972, whereby the appeal by the petitioner was dismissed and the order dated March 21, 1972, by the Authority under the Payment of Wages Act, 1936 (hereinafter called the Act), was upheld.

2. The facts, in brief, are that the respondent filed an application under sections 15 and 16 of the Act, claiming wages for the period from September 19, 1968, to March 6, 1969, amounting to Rs. 2,030/- alleging that the said wages had been illegally deducted from his wages by his employer, that is, the petitioner. The respondent was employed at the relevant time at Jind Railway Station in Northern Railway. He was arrested on September 19, 1968 u/s 4 of the Essential Services Maintenance Act, on the plea that he had participated in a illegal strike against the Railways. He was acquitted by the trial Magistrate on September 29, 1969. His services were terminated on October 7, 1968. Under rule 149, Indian Railway Establishment Code, Volume I, but was reinstated subsequently before the order of acquittal was passed by the trial Magistrate. The petitioner treated the intervening period from the date of termination of his services till the date of

his reinstatement as dies non, and, thus, the wages as mentioned above, were deducted from his salary. The services of the respondent were terminated on October 7, 1968, and he was reinstated on March 13, 1969. He was, in the first instance, allowed his wages on February 18, 1973, but subsequently that order was withdrawn on March 16, 1970. The application out of which this revision has arisen was, however, filed on September 9, 1971. It was specifically averred in the application that there was no Authority appointed by the Central Government to act under sections 15 and 16 of the Act and the same was appointed only by a notification of the Central Government on June 23, 1971. The respondent, therefore, prayed for condonation of delay in filing the application. The application was hotly contested by the Railway Administration. Inter alia it was contended that the order deducting the wages from the salary of the respondent had been passed by a competent authority and, therefore, the respondent was not entitled to any such wages. It was also contended that the application was barred by limitation. On the pleadings of the parties, the following issues were framed:

1. Whether the application is not maintainable for want of jurisdiction ?

2. Whether the application is barred by limitation ?

3. Whether the application is liable to be dismissed having not been properly presented ?

4. Whether the application is defective having been made jointly for all the applicants ?

5. Whether the applicants are entitled to the amount claimed in this application ?

The Authority decided all the issues in favour of the respondent and the delay in filing the application was also condoned. It was ordered that the applicant was entitled to full wages for the period from September 19, 1968 to March 16, 1969. His wages were calculated at Rs. 1,765.20 and he was allowed compensation amounting to Rs. 140/-. The appeal filed by the Railway Administration was dismissed vide judgment under revision.

3. The Learned Counsel for the respondent at one stage raised a preliminary objection that there is no provision for filing a revision petition under the Act, and that the present revision was filed apparently under Article 227 of the Constitution. In view of the amendment of the said Article, the revision petition was not maintainable. However, this preliminary objection was not pressed and was later on withdrawn.

4. The Learned Counsel for the petitioner, challenged the judgment and the findings of the authorities below on two grounds:

1. that though the respondent was reinstated after the termination of his services, yet at the time of the time passing of the order of reinstatement the period from the (sic) services till the date of his reinstatement was ordered to be

treated as dies non by the competent authority as contemplated under clause (h) of section 7(2) of the Act, and therefore, the order, deducting the wages of the respondent could not be scrutinised and questioned by any authority under the Act ; and that the application u/s 15 of the Act was filed a long time after the expiry of the limitation as prescribed under the Act.

As regards the first contention, the undisputed facts are that after the termination of his services, the respondent was reinstated by order a copy of which is Exhibit R.W. 1/3 passed on February 18, 1970. According to that order, the relevant period for which the wages are claimed by the respondent was ordered to be treated on duty That order was, however, reviewed by another order, dated March 16, 1970, a copy of which is Exhibit R.W. 1/4, which was passed in suppression of the previous order. As per that order, the period for which the respondent has now claimed wages and ordered to be treated as dies non instead of duty. A perusal of the judgment of the Chief Judicial Magistrate, Jind, dated September 29, 1969, by which the respondent was acquitted of the offence u/s 4 of the Essential Services Maintenance Act, 1968, shows that no case was made out against the respondent and that it had not been proved that the railway employees at Jind had been prohibited from participating in the strike. It was also held that the respondent had been taken into Police custody by 2.30 P.M. on September 19, 1968, when he was arrested whereas he was to join duty at 4.00 P.M. According to the Learned Counsel for the petitioner, the order disallowing the wages for the relevant period to the respondent had been passed by the competent authority under rule 2044 of the Indian Railway Establishment Code, Volume 11, which is reproduced below :

(I) When a railway servant who has been dismissed, removed, compulsorily retired or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order,--

(a) regarding the pay and allowances to be paid to the railway servant for the period of his absence from duty ; and

(b) whether or not the said period shall be treated as a period spend on duty.

(2) Where the authority mentioned in sub-rule (1) is of the opinion that the railway servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the railway servant shall be given the full pay and allowances to which he would have been entitled had he not been dismissed, removed, compulsorily retired or suspended, as the case may be ;

(3) In other cases, the railway servant shall be given such proportion of such pay and allowances as such competent authority may prescribe.

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowances are admissible ;

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allawonces admissible under rule 2043 (F. R.

53).

(4) In a case falling under clause (2) the period of absence from duty shall be treated as period spent on duty for all purposes.

(5) In a case falling under clause (3), the period of absence from duty shall not be treated as period sport on duly, unless such competent authority specifically directs that it shall be so treated to any specified purpose,

Provided that if the railway servant so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the railway servant.

A perusal of the aforesaid rule shows that if a railway servant is fully exonerated, then he is entitled to full pay and allowances for the period of his absence from duty and such period is to be treated as on duty for all purposes. In other cases, the period of absence is not to be treated as on duty unless the compentent authority orders otherwise. The competent authority, argued the Learned Counsel for the petitioner, had treated the period of absence of the respondent as not on duty and that order was in the exercise of the jurisdiction vested in the authority concerned. It is then contended that as the order relating to the deduction of wages was passed by the competent authority as contemplated by clause (h) of section 7(2) of the Act, the respondent was not entitled to claim any wages for the said period and the Authority was not competent to order the payment u/s 15 of the Act. In support of this contention, reliance has been placed on Ganeshi Ram, Etc. Vs. The District Magistrate and Another, A.V. D''costa Vs. B.C. Patel and Another, and Gopichand Khoobchand Sharma and Others Vs. Works Manager, Loco-shops, Western Railway, Dohand and Another,

6. In Ganeshi Ram''s case (supra) the railway employees claimed wages for the period for which they did not work on the jobs as a result of the order of removal which was later on cancelled and the order of reinstatement was passed on the ground that the said order of removal was illegal. The contention that the employee had been fully exonerated illegal, had not been raised before the High Court. In these circumstances, it was held,--

But the difficulty in entertaining this interesting argument is that it has not been raised before the High Court and it is an argument which can be adequately and properly dealt with only after the relevant and material facts are brought before the High Court.

7. In B.C. Patel''s case (supra), the claim of the employee was not for the wages which had been deducted illegally by the employer, but was based on the contention that he was entitled to higher wages. In these circumstances, it was held,--

Where the parties enter into the contract of service, say by correspondence and the contract is to be determined with reference to the letters that passed between them it may be open to the authority set up u/s 15, Payment of Wages

Act, 1936, to decide the controversy and find out what the terms of the contract with reference to those letters were. But if an employee were to say that his wages were Rs. 100 per month which he actually received as and when they fell due, but that he would be entitled to higher wages if his claims to be placed on the higher wages scheme had been recognised and given effect to, that would not be a matter within the ambit of his jurisdiction.

Thus, neither of these decisions is of any avail to the case of the

petitioner.

8. The ratio of the decision in Gopichand Khoobchand Sharma''s case (supra), does lend some support to the contention of the Learned Counsel for the petitioner. It has been held therein that the question whether a railway servant has been fully exonerated or not is entrusted by the rule making authority to the determination of the authority competent to act under rule 2044 and it is not a collateral question on the decision of which depends the jurisdiction of the competent authority to act. At the most, it can be said that the competent authority committed an error in the exercise of its jurisdiction and the order of the competent authority was therefore wrong or erroneous, but the same cannot be held as null and void. On facts, it was held that even if the amount claimed by the petitioners represented deduction from their wages, the same were permissible deductions within section 7(2)(h) of the Act.

9. In my considered opinion, the proper and correct interpretation of section 7 (2) (h) is that before an employee is deprived of his wages, two essential conditions must be satisfied,--

(1) the order regarding deductions from wages must be passed by a competent authority, under some Act or the rules ; and

(2) the deductions made by such authority must be permissible or justified under some rule or other provisions of law.

Unless the deductions ordered from the wages of an employee are permissible deductions or those warranted by the rules, clause (h) of section 7(2) will not come into operation. In the present case, it is not disputed that the order deducting the wages of the respondent for the relevant period was passed by the competent authority, but such deduction could only be made under rule 2044 of the Indian Railway Establishment Code, Volume If. According to this rule, the salary cannot be deducted if the removal or dismissal of an employee was totally unjustified or if the employee was fully exonerated. The impugned order treating the relevant period as dies-non and not as on duty does not give any indication whatsoever as to how the competent authority arrived at this decision. The judgment it of the trial Magistrate clearly shows that the respondent was fully and absolutely exonerated of the charge levelled against him. Under the circumstances, the order deducting the wages I of the respondent cannot be held to be within jurisdiction or within J the scope of the powers conferred on the competent authority. If clause (h) or section 7 (2) of the Act, is interpreted in the manner suggested in Gopichand Khoobchand Sharma''s case (supra), then the competent authority or the employer would have absolutely unfettered power to order deduction from the wages irrespective of the fact whether a particular case fell within sub-rule (2) or sub-rule (3) of rule 2044 of the Indian Railway Establishment Code, Volume II. That cannot be the intention of the legislature in enacting clause (h) of Section 7(2) of the Act. Thus, the order deducting the wages of the respondent was clearly without jurisdiction and unwarranted.

10. The Learned Counsel for the respondeat, relied on a Division Bench decision of Allahabad High Court, in Ram Prakash Agnihotri Vs. The Union of India (UOI), , wherein it was held that wherever wages are due and they are withheld for some reason or the other, it is clearly a case of deduction of wages and if the reason for deducting the wages is not an authorised reason u/s 7, then the employee has a remedy u/s 15 of the Act. I fully agree with the ratio of this decision.

11. The second contention of the Learned Counsel for the petitioner, is that the application u/s 15 of the Act was submitted by the respondent a long time after the expiry of limitation. It is not disputed that the application was filed beyond time. The case of the respondent is that it was only by a notification dated June 23, 1971, that the Central Government created the Authority under sub-section (1) of section 15 of the Act, for the State of Haryana and for some other States. Before this notification, there was no forum in existence to entertain the application by the respondent. The respondent filed the application on September 9, 1971. According to sub-section (2) of section 15 of the Act, an application can be presented within 12 months from the date on which the deduction from the wages was made or from the date on which the payment of wages was due to be made, as the case may be. However, the second proviso to section 15, is to the following effect:

Provided further that any application may be admitted after the said period twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

It was in the exercise of the power conferred on the Authority under this second proviso that the delay in filing the application was condoned. The learned District Judge, Rohtak, also did not interfere with this exercise of discretion.

12. According to the Learned Counsel for the petitioner, after the issuance of the notification, each day''s delay was required to be explained by the respondent and as the same was not done, the delay in filing the application could not be condoned. Reliance in this behalf has been placed on Sitaram Ramcharan etc. Vs. M.N. Nagarshana and Others, . Manager, Bokaro Colliery Vs. Udai Singh and Others, . Om Sarup v. Gur Narain 1965 P.L.R. 634 and Prem Narayan Amritlal Varme Vs. Divisional Traffic Manager Bhusawal,

13. In Sitaram Ramcharan''s case (Supra) it was held by their Lordships of the

Supreme Court that the second proviso to sub-section (2) to section 15 of the Act, is in substance similar to the provisions contained in section 5 of the Limitation Act, and that the explanation for not filing the appeal within time has to cover the whole period of delay. The contention that if sufficient cause was shown for not making the application within the time prescribed by section 15(2) of the Act, then applications could be made at any time there after was repelled. On facts, the applications u/s 15 of the Act, were held to be time barred by the Authority, and the High Court in the writ petition under Articles 226 and 227 of the Constitution, against this finding also agreed with this view and held that the cause for the delay had not been explained.

14. In Udai Singh''s case (supra), the application u/s 15 of the Act, though filed beyond time, was admitted ex parte. However, when objection regarding limitation was taken by the respondent, it was held to be time barred by the Authority. In appeal however, this finding was reversed and it was held that once the Authority had admitted the application though time barred, it would be deemed that the delay had been condoned and subsequently the objection by the respondent regarding the limitation cannot be entertained. It was held by the Patna High Court that this view of the appellate Court was wrong and the mere fact that the application had been admitted ex parte did not debar the respondent from raising the objection regarding limitation and the Authority was bound to go into the question of limitation and to give its findings after hearing both the parties.

15. This is not the position in the present case. Here, after the objection had been filed by the appellant, issue was framed and the delay in filing the application was condoned by the Authority and the appellate Court has also agreed with the same finding.

16. In Om Sarup''s case (supra), the question involved was whether the application for setting aside the abatement was within time or not and as to from which date the period of limitation was to commence. It was held that the terminus a quo for the purpose of limitation was the date of the death of the deceased and the date of abatement of the appeal and not the date of death of knoweledge death. It was further held that u/s 5 of the Limitation Act, each days delay was required to be explained for securing the benefit for extension of period.

17. In Prem Narayan Amritlal Verma''s case (supra) it was held that the Authority cannot condone the delay without giving notice and hearing the other side.

18. There can be no dispute with the proposition of law that if the petition is filed after the expiry of period of limitation, the delay for the whole period has to be explained and that the delay cannot be condone without notice and without opportunity to the other side. In the present case, however, the delay in filing the application occurred not on account of any fault on the part of the respondent, but because the Authority u/s 15 of the Act, who could hear the application, had

not been created. The period of limitation as prescribed in proviso to sub-section (2) to section 15, could commence only if the Court or the Authority where the application could be presented, was in existence. Unless there was a proper forum to entertain the application the question of commencement of the period of limitation did not arise. Admittedly, the notification was issued on June 23, 1971, and the application was made within 12 months, that is, the prescribed period from that date. It was in these circumstances that the Authority held that there was sufficient cause on the part of the applicant for not filing the application earlier and the delay was condoned. This finding was maintained by the appellate Court also. Keeping in view the peculiar facts of this case, the important question is whether the discretion exercised by the Authority in condoning the delay was so arbitrary or whimsical that it should be reversed in revision. In my opinion, the discretion to condone the delay was properly exercised in the peculiar and special facts and circumstances of this case and there is no warrant for setting aside the finding in this regard.

19. For the aforesaid reasons, there is on merit in the revision petition and the same is dismissed with no order as to costs.

