
(1966) 08 MP CK 0012
In the Madhya Pradesh High Court

Divisional Superintendent, Central Railway and Another
Vs

APPELLANT

Onkarnath Gupta

RESPONDENT

Date of Decision : 12-08-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 311
Payment of Wages Act, 1936 — Section 15, 17, 7

Citation : (1968) ILR (MP) 963 : (1968) JLJ 1036 : (1969) 1 LLJ 705 : (1969) MPLJ 54

Hon'ble Judges : K.L. Pandey, J

Bench : Single Bench

Judgement

K.L. Pandey, J.

This revision u/s 115 of the CPC is directed against a reversing appellate order dated 6 August 1963 whereby the District Judge, Jabalpur, acting u/s 17 of the Payment of Wages Act, 1936 (hereinafter called the Act), set aside an order of the Payment of Wages Authority dated 30 June 1962 and instead directed the applicants to refund to the non-applicant Rs. 2,973.96 which had been, so it was found, wrongfully deducted and also to pay to him Rs. 700 as compensation.

The facts giving rise to this revision may be shortly stated. At the material time, the non-applicant was employed as a weighment clerk in the Central Railway and worked at Katni. He was suspended with effect from 27 April 1957, a departmental enquiry was held against him and he was removed from service from 12 July 1957. He successfully challenged the order of his removal from service in Miscellaneous Petition No. 4 of 1958, dated 3 July 1959, and this Court quashed that order with the consequence that he was taken back on duty on 27 August 1959. When he asked for his wages from 27 April 1957 to 26 August 1959 amounting to Rs. 3,914.75, only a sum of Rs. 940.79 was paid to him. Since the remaining amount of Rs. 2,973.96 was deducted, the non-applicant filed an application u/s 15(2) of the Act for a direction for its refund and also for

compensation. While the Payment of Wages Authority dismissed that application on the ground that the deduction was permissible under Rule 2044 of the Railway Establishment Code, the District Judge took a different view and passed the impugned order.

The main point urged in support of this revision is that Rule 2044, as amended and in force at the relevant time, justified the passing of the order by which Rs. 2,973.96 was deducted from the wages payable to the non-applicant. Rule 2044, which corresponds to Fundamental Rule 54, reads:

Rule 2044.-(1) When a railway servant, who has been dismissed, removed 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 spent 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 or suspended, as the caBe 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 (3) shall be subject to all other conditions under which such allowances are admissible.

(4) In a case falling under 01. (2), the period of absence from duty shall toe treated as a 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 a period spent on duty, unless such competent authority specifically directs that it shall be so treated for 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 and admissible to the railway servant.

It is contended that this deduction made by a competent authority under Sub-rule (3) of Rule 2044 was authorized by Clause (h) of Section 7(2) of the Act, that it could not be regarded as one contrary to the provisions of the Act and that the authorities appointed by or under the Act had, therefore, no jurisdiction to direct that the amount be refunded. Having heard the counsel, I have formed the opinion that this contention cannot be accepted.

Rule 2044, which governs cases of reinstatement of railway servants who have been dismissed, removed or suspended, applies only to consequential orders of

reinstatement which are passed by the competent administrative authority. It has no application to cases where the orders of dismissal or removal from service are declared by a decree of the civil Court to be illegal and inoperative or quashed in proceedings under Article 226 of the Constitution- *Risal Singh Vs. Union of India (UOI) and Another, and Divisional Superintendent, N. Rly., Allahabad and Others Vs. Nand Lal Dubey*, . Learned counsel for the applicants sought to distinguish these cases on the ground that they interpreted the old Rule 2044, which referred to reinstatement by the revising or appellate authority. It is true that they dealt with the old rule, but the Allahabad case proceeds on a wider ground. This is what the learned Judge, who decided that case, stated:

In a case of the present type, where the dismissal has been held to be wrongful, the question of reinstatement does not at all arise, because the employee shall be deemed to have never been dismissed and shall further be deemed to have continued in service.

The order of removal from service, which denied to the non-applicant a reasonable opportunity of defending himself in disregard of the protection afforded to him by Article 311(2) of the Constitution was a nullity and non-existent in the eye of law. It was an illegal order which was void and inoperative from the inception. The position was as if the non-applicant had never been removed from service and he was all along on duty. In these circumstances, there could be no question of reinstating him and Rule 2044, under which the competent authority purported to Act, did not apply to the non-applicant's case. That being so, the authority was not competent to pass under that rule any order requiring deduction to be made from the non-applicant's wages and, if he did so, it was contrary to the provisions of the Act.

The only other point argued before me is that the compensation awarded is excessive. The amount of compensation is in the discretion of the authorities constituted under the Act and there should be no interference in revision when, while the relevant enactment contemplates that compensation could be up to ten times the amount deducted, the compensation actually awarded in this case is only a fraction of that amount.

Since no other point was pressed, this revision fails and is dismissed. Costs here shall follow that event. Other costs as ordered by the appellate authority. Hearing fee Rs. 75.