
(1957) 01 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 96 of 1955

Divisional Superintendent Northern Railway, Delhi Division	APPELLANT
Vs	
Mukand Lal	RESPONDENT

Date of Decision : 18-01-1957

Acts Referred:

Constitution of India, 1950 — Article 254, 311, 311(2)
Government of India Act, 1935 — Section 241(2)
Industrial Disputes Act, 1947 — Section 33
Payment of Wages Act, 1936 — Section 10, 7

Citation : AIR 1957 P&H 130 : (1957) 2 LLJ 452

Hon'ble Judges : Passey, J; Mehr Singh, J; Khosla, J

Bench : Full Bench

Advocate : K.L. Gosain and Krishan Lal Kapur, for N.L. Salooja, for the Appellant; H.L. Sibal and G.C. Mital, for the Respondent

Judgement

Khosla, J.—The following question has been referred for the consideration of the Full Bench by my Lord the Chief Justice:

"When an employee is placed under suspension in accordance with the rules by which his conditions of service are regulated, is He entitled to wages during the period of suspension at the same rate as if he were not suspended, and is the Authority constituted under the Payment of Wages Act competent to order the employer to pay the full amount of wages during such period?"

2. The circumstances which gave rise to this reference are stated in detail in the order of my Lord the Chief Justice, and it will be sufficient if I recapitulate some of the more salient incidents. The petitioner Mukand Lal who was employed as a Booking Clerk at the Railway Station Panipat was charged with negligence resulting in monetary loss to the Railway Department- The loss took place on 8-5-1951 and four days later the Enquiry Committee appointed to go into the matter submitted its report. On the same day Mukand Lal was suspended.

A charge-sheet was given to him. He remained under suspension from

12-5-1951 to 27-5-1951. For this period he was paid a subsistence allowance which was equivalent to half his normal salary. The question arose whether the Railway Department in paying him less than his salary had made a deduction in wages due to him. The petitioner moved the Authority under the Payment of Wages Act and the Authority modified the order of the Railway Administration. The question therefore now arises whether Mukand Lal was entitled to receive his full wages for the period during which he remained under suspension and whether the Authority under the Payment of Wages Act could direct the payment of full wages to him. The matter came before this Court on the motion of the Railway Department.

3. I may mention at the start that there are two decisions of this Court which support the view that both parts of the question referred to the Full Bench should be answered in the negative. The first of these is a reported case *Rura Ram Vs. Divisional Supdt., N.W. Rly., Lahore*, which was decided by a Division Bench consisting of Das C. J. and Achhru Rath J. The second is an unreported case *Gurcharah Lal v. Divisional Superintendent, Northern Rly. Civil Rev, No. 116 D of 1953, (Punj) (B)* decided by myself. There is, however, a Division Bench decision of the Bombay High Court given in *K.P. Mushran Vs. B.C. Patil and Another*, in which a contrary view appears to have been expressed. My Lord the Chief Justice was of the view that there was a conflict between the Division Bench decision of this Court and the Division Bench decision of the Bombay High Court and this was his only reason for referring the matter to a Full Bench. The Bombay High Court has considered the matter afresh in *E. Thillai Natarajan Vs. C.P. Fernandes*, and has expressed a view which if not contrary to its previous view in *Mushran v. Patil (C)* is certainly in complete accord with the two decisions of this Court. It is possible that had this decision been brought to the notice of my Lord the Chief Justice the occasion for this reference may not have arisen. However, the matter is of considerable importance, both to the Railway Administration and to its employees and we" have therefore heard lengthy arguments and considered it from all aspects independently of the previous decisions dealing with the matter.

4. It seems to me that the matter presents itself under three different aspects.

1. The suspension of a Railway employee suspends wholly or in part the contract between them and the Railway Department. Therefore the original terms regarding the quantum of wages are no longer enforceable, during the period of suspension.

2. The" rules contained in the Indian Rail. way Establishment Code were framed under the authority of S. 241, Government of India Act, 1935. These rules govern the conditions of service applicable to Railway employees. A Railway employee accepting employment agrees to be governed by these rules and these rules, therefore, become part of the contract which governs his employment. The rules contemplate suspension in certain circumstances and the payment of a subsistence or compensatory allowance less than the normal salary during the period of suspension. Therefore when the Department suspends a Railway

employee in the circumstances and according to the procedure laid down in the rules the employee cannot say that his wages are being withheld from him because for the period of suspension his wages are equivalent to the compensatory allowance.

3. The rules contained in the Indian Railway Establishment Code were framed under the authority of the Government of India Act, 1935, which came into force in 1937. The Payment of Wages Act was passed in 1936. The later rules framed under the authority given by Parliament must take precedence over an earlier Act passed by the Indian Legislature.

5. I now proceed to examine these three aspects in detail. Any contract between master and servant is a mutual obligation which requires each party to perform its part of the contract. In the case of Railway service an employee undertakes to do the work assigned to him and the Railway Department which is the employer in the case, undertakes to pay wages for the work done, and to provide certain other guarantees which constitute the conditions of service as laid down in the Indian Railway establishment Code. A contract can, however, be suspended temporarily and during its period of suspension the contracting parties are absolved of all or some of their obligations.

There is nothing novel in a contract being suspended. It merely amounts to a postponement of the actual performance of the contract, and in the case of a continuing contract like the contract of service between master and servant suspension means that the relationship of master and servant remains in abeyance for a certain period. Suspension, however, need not be complete and it cannot be argued that whenever a contract of service is suspended, the servant is free to go and seek employment elsewhere and the master is free to withhold the wages due to the servant and to employ some other servant to do his work. Such suspension would be equivalent to a total termination of the contract and suspending a contract is certainly not the same thing as terminating or rescinding it; and if suspension is something less than termination, then it must follow that a connection however tenuous, continues between the master and servant.

The servant perhaps cannot seek employment elsewhere though he does not perform his normal duties for his master. Similarly the master may be obliged to give a subsistence allowance to the servant though he may not be obliged to pay him his full wages which are to be paid for specific work done by the servant. There is some though perhaps not very apt analogy in a retainer which is paid to a lawyer engaged by a firm who wants its cases handled by that particular lawyer. A fee for actually handling the case is paid over and above the retaining fee and till the actual case is handed over it cannot be said that the lawyer is representing the firm in any particular case.

6. It seems to me, therefore, that suspension need not completely absolve the two contracting parties. In other words suspension may be partial, and if that be

so we shall have to examine in each individual case what the extent of the suspension is and what consequences flow from it. This will depend upon the terms agreed between the two contracting parties. In the present case the Indian Railway Establishment Code lays down the manner in which the contract of service is suspended. Suspension is to take place in certain given circumstances only, and when that happens, the Railway employee is not entitled to any wages but is entitled to a lesser amount which is called compensatory or subsistence allowance and since there can be no unilateral suspension of a contract an employee can only be suspended where he has accepted as part of his contract terms which authorise his employer to suspend him in certain given circumstances. Where suspension was not in contemplation of the contract of service no suspension can take place.

This seems to me to be the basis of all the rulings, both English as well as Indian, dealing with the matter. If I may put it more briefly at the risk of tautology, where two parties agree to a contract of service and the contract of service provides for suspension in certain cases the suspension which takes place has the result of holding the contract service temporarily in abeyance, and during the period of abeyance the relationship between the master and servant is determined by terms which have also been mutually agreed upon. In the present case the terms mutually agreed upon between the parties are contained in the rules embodied in the Indian Railway Establishment Code and this Code has been accepted by both the parties. Under the Code suspension can be ordered in certain circumstances. It is conceded that those circumstances did obtain in the present case and therefore suspension was perfectly valid. During the period of suspension the employee could not ask for the enforcement, of the original contract but was only entitled to the smaller claim specified in Rule 2043 of the Code.

7. There can be no doubt that by the terms of the contract or by the conditions of service agreed upon between the parties power to suspend may be given to the master, and when he exercises that power the mutual obligations of master and servant cease. It was held in *Bird v. British Celanese Ltd.* 1945 1 All ER 488 (E) that where suspension can under the rules take place the mutual obligations to work and to pay wages cease. This was a case of a spinner employed by the British Celanese Limited on certain terms. The employee knew that according to a well-recognised practice the employer could temporally suspend a workman from his employment, with a proportionate deduction from the week's wages, for breaches of the factory rules.

The employee committed one of these breaches and he was suspended for two days. A deduction was made from his wages for these two days and he brought an action for the recovery of damages against the Company. It was held that "the suspension having been in accordance with the terms of the contract of employment, the mutual obligations of the parties ceased for the two days of the suspension. Therefore, non-payment of two days' wages was neither in the

nature of a fine, nor a deduction from the sum contracted to be paid" by the employers.

8. A somewhat similar matter was considered in *Wallwork v. Fielding*, 1922-2 K.B. 66 (F). In that case an Act of 1882 empowered the Watch committee to suspend a police constable and to stop his pay during the period of suspension, A police constable so suspended relying upon the Police Act of 1919 claimed full wages for the period of suspension. It was held that there was nothing in the Act of 1919 which took away the power to suspend given under the older Act of 1882. The significance of this decision is that where power to suspend can be lawfully exercised the contract of service remains in suspension and the mutual obligations of the parties are not enforceable. In *Hanley v. Pease & Partners, Ltd.*, 1915-1 K. B. 698 (G) it was found that the employers had no right to suspend the employee and therefore the employee was entitled to damages or wages.

9. This Court considered this matter in *Rura Ram Vs. Divisional Supdt., N.W. Rly., Lahore*, It was a case almost on all fours with the present one and the provisions of Rules 1711 and 2043 of the Establishment Code were considered. The Division Bench gave its decision in clear and categorical terms.

"Where the employer has no power to suspend the employee he remains under an obligation to pay to such employee the full salary for the period for which he without actually dismissing him does not allow him to work professing to have suspended him for that period.

"Where, however, the employer in the exercise of a lawful power vested in him to suspend an employee does suspend him he cannot be said to be under any obligation to pay any salary to the employee for the period of suspension unless the terms of service themselves provide for payment of the whole or a part of such salary.....

..... In the present case the railway administration had an indisputable power to suspend the petitioner and the said administration having duly suspended him in the exercise of that power the petitioner is not entitled to any salary for the period of suspension excepting the subsistence grant not exceeding 1/4th of his salary provided for in the rules which he has already received."

10. I may mention again my own decision *Jo Civil Rev. No. 116-D of 1953 (Punj) (B)* which followed the Division Bench and in which I distinguished the *Bombay case (C)* in which a contrary view appeared to have been taken.

11. With regard to the *K.P. Mushran Vs. B.C. Patil and Another*, it seems pointless to discuss it as the same Court has now taken a view more in conformity with the one set out by me. It is significant that the judgments in both these cases were written by Chagla C. J., but the effect of the earlier *Bombay* decision which was mainly responsible for this reference to the Full Bench has now been wholly nullified by *E. Thillai Natarajan Vs. C.P. Fernandes*, the later decision of the

Bombay High Court. Chagla C. J. was at pains to discuss his earlier judgment in *Mushran v. Patil (C)* and to point out that there were certain distinguishing features between the two cases. His final conclusion was that suspension could be ordered under Rule 1711 in appropriate cases and during the period of suspension the employee was not entitled to anything more than the subsistence allowance laid down by Rule 2043.

12. Another way of looking at the matter is that there is no question of holding the contract in abeyance but the parties have agreed upon a certain contract. That contract says that in the normal course of events the employee will be paid a certain wages. The contract goes on to say that when a certain eventuality occurs then different terms of contract will apply, and these different terms are that the employee will not be called upon to work for a temporary period though he may be required to remain present at his house or at the office and for that period he would be paid a smaller amount which for the sake of convenience is called compensatory or subsistence allowance. Therefore the contract is one whole transaction providing for different sets of circumstances.

I may illustrate my point by a hypothetical example. An employee may be told that he will normally be required to work six hours a day and will be paid at the rate of say Rs.6/- a day. If, however, he is called upon to do extra work he will be paid at the rate of Rs. 1/8/- per hour for every extra hour, but if in certain circumstances there is not enough work to keep him busy for six hours or the employer chooses not to make him work his wages will be reduced by eight annas for every hour falling short of six hours. In such a case the wages of the employee which he can recover under the Payment of Wages Act will be the wages set down in the contract and not Rs. 6/- a day, because for any particular day that he works for seven hours he will be entitled to recover Rs. 7/8/- and if he works for five hours he cannot recover more than Rs. 5/8/-.

If for some reason the employer tells his employee not to work at all on a certain day the employee will be entitled to no more than Rs. 3/- for that day according to the terms of the contract. Here there will be no question of suspension because the employee has not been told to keep away for any misconduct committed by him, but the wages which he can recover are not the full or normal wages of Rs. 6/- per day. If the employer chooses to keep the employee idle for a whole week the employee cannot go to the Authority under the Payment of Wages Act and say: "The employer has deducted Rs. 3/- a day from my wages. Therefore pass an order directing the employer to pay me the amount so deducted." The employer's answer to this claim will be :

"The employee agreed with me that I could give him less than six hours" work a day and pay him a correspondingly smaller amount. It was also agreed that I could keep him idle for a whole day or a whole week and in that event I would not be obliged to pay him more than Rs.3/- per day. These were the terms of our contract and these terms only are enforceable. His wages for the days during which he remained idle were Rs. 3/- and there was no question of any

reduction." In a case of this type there was no suspension though the employee's could have raised the argument which MukandLal has raised before us, and on the analogy of the hypothetical case, given by me I am of the view that in the present case the contract of service between the parties was contained in the Establishment Code and according to this contract the employee could be suspended in certain circumstances and during the period of suspension the wages were equivalent to subsistence allowance.

Therefore when the employee goes to the Authority under the Payment of Wages Act he can only recover the subsistence allowance because that is what falls under the definition of "wages". In other words, the employee must enforce the whole contract and not a part of the contract. The whole contract covers suspension and the subsistence allowance payable to him during suspension.

13. Lastly, if there is any conflict between the provisions of the Payment of Wages Act and the rules contained in the Establishment Code it is the Code which must prevail. This matter was discussed very fully by Chagla C. . J. In E. Thillai Natarajan Vs. C.P. Fernandes, referred to above and I will make no apology for quoting extensive extracts from the judgment in that case, more particularly as this judgment has now nullified the effect of the earlier decision of 1952 (C) which was mainly responsible for this reference to the Full Bench.

"It is clear and it is not disputed that the rules framed by the Governor-General u/s 241(2) of the Government of India Act regulate the conditions of service between the petitioner and the railway authority with regard to his suspension and with regard to the subsistence allowance permissible to him while he is under suspension.....

The Government of India Act, 1935, came into force on 1-4-1937. The Payment of Wages Act was passed on 23-4-1936, and it came into force on 28-3-1937. A question has also been raised whether it could be said of the Payment of Wages Act that it regulates the conditions of service between the railway authority and its employees, but for the purpose of this argument we will assume that that Act does regulate the conditions of service. Therefore, the position in law was that prior to 1-4-1937, there was on the statute book an Act which, with regard to payment of wages, regulated the conditions as between employer and employee including the Railway authority and the petitioner.

Then was passed the Government of India Act on 1-4-1937, and Section 241(1) expressly deals with conditions of service in the case of services of the Federation, and the railway service is a service of the Federation

....the Governor-General has framed rules and the rules in question with regard to suspension and subsistence allowance fall within these rules framed by the Governor-General. Therefore, without more, it is clear that this Parliamentary legislation must override any provision made with regard to the conditions of service in the case of services of the Federation made by an Indian statute passed before the Parliamentary legislation was put on the statute book." The

learned Chief Justice concluded as follows: "We will, therefore, decide this matter on the narrow ground that the conditions of service of the petitioner with regard to his suspension and with regard to the wages to which he is entitled during the period of suspension are regulated by the rules framed by the Governor General u/s 241 of the Government of India Act and that the Payment of Wages Act has no application with regard to those conditions, and it is not open to the petitioner to claim an amount as being illegally deducted by the railway authority when that deduction is legal and permissible under the rules framed by the Governor-General under the Government of India Act."

With these remarks I wish, with great respect, to express my agreement. I have taken the liberty to quote extensively from the judgment of Chagla C.J. because this aspect of the matter could not have been stated more clearly or more emphatically than he has done.

14. Therefore it seems to me that from whatever angle the matter is viewed, a railway employee cannot, during his period of suspension, claim his full wages and he cannot go to the Authority under the Payment of Wages Act alleging that his wages have been deducted, because in fact there has been no deduction. We can say that the rules provide for suspension of the contract, and on suspension the contract between master and servant is held in abeyance, with the consequence that both parties are absolved from performing their full obligations. Or we can say that the provisions with regard to suspension and the subsistence allowance payable during suspension are part of a larger contract which must be enforced as a whole and not in part. And lastly if there is in fact any conflict between the Establishment Code and the Payment of Wages Act, it is the Code which must prevail.

15. Both parts of the question referred to the Full Bench, therefore, must be answered in the negative.

Kesho Ram Passey, J.

16. I concur.

Mehr Singh, J.

17. I agree.