
(1997) 09 MAD CK 0057

In the Madras High Court

Case No : C.R.P. No"s. 541 of 1994 and C.M.P. No. 2824 of 1994

General Manager, India Cements Ltd.

APPELLANT

Vs

Subramanian N.S.

RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

Payment of Wages Act, 1936 — Section 13, 15, 16, 17, 26

Tamil Nadu Shops and Establishments Act, 1947 — Section 36

Citation : (1997) 09 MAD CK 0057

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Judgement

A.R. Lakshmanan, J.—The above revision has been preferred as against the order passed by the Appellate Authority under the Payment of

Wages Act (Additional District Judge of Tirunelveli) in C.M.A. Nos. 5/89 to 37/89 dated September 30, 1993.

2. It is necessary to state the following facts of this case : The petitioner herein is a public utility service, engaged in the manufacture of cement. The

Cement and Quarry Workers Union, of which the respondents are members had issued a strike notice on January 20, 1987, intimating that the

said Union proposed to strike work on February 5, 1987. A copy of this notice was sent to the Assistant Labour Commissioner (Central),

Trivandrum and the Deputy Commissioner of Labour, Tirunelveli along with other persons. The Labour Officer, Tirunelveli initiated conciliation

proceedings and called upon the petitioner and the respondents before him on January 27, 1987. It was contended before the Labour Officer that

the Cement and Quarry Workers" Union of which the respondent is a member has no representative capacity. Moreover, it is further pointed out

that the wages and other service conditions in the cement Industries are decided at all India level. It was further pointed out that so far as this dispute is concerned, the reference will be made only to the arbitrator and that there was no necessity to go on strike. The Assistant Commissioner of Labour, Ernakulam also initiated conciliation proceedings and informed the parties that he would hold talks on February 4, 1987. The management attended the meeting, but the Union did not. The petitioner herein raised the contention which was raised before the Labour Officer. It was further pointed out that the strike on February 5, 1987 was illegal and unjustified, since the conciliatory proceedings were pending. The management also put up a notice as per Section 9 of the Payment of Wages Act. Notice was sent on each and everyone of the employees and it was clearly pointed out in the notice that their absence in concert is a violation under the Payment of Wages Act and that the petitioner herein had proposed to deduct 8 days wage cut as provided for under the Payment of Wages Act. In their explanation to the above mentioned notice, the workmen confirmed that they went on strike as per the desire of the union and that the deduction of wages can be made only if the absence is not for a reasonable cause.

3. The petitioner herein, thereafter, by order, dated March 23, 1987 stated that the explanation given by the workmen, on February 27, 1987 to the notice given by the management on February 11, 1987 is not satisfactory. It was further stated that the strike made by the workmen was illegal and unjustified and it is a violation of provisions of the Payment of Wages Act and consequently the management is entitled to deduct 8 days wages cut u/s 9(2)(8) of the Payment of Wages Act. Accordingly, the management intimated that 8 days wage cut will be implemented. Aggrieved by the aforesaid order, the workmen preferred an application before the Authority under the Payment of Wages Act, claiming that the deduction made by the management is illegal and also claimed compensation for the illegal deduction. The authority under the Payment of Wages Act has held that the deduction made was illegal and also ordered compensation to an equivalent amount. The said Authority, in his order has observed that the strike was illegal, but, however, he has held that the management has not disclosed the details with regard to the amount of deduction and the manner

which the same has been remitted in a specified notice as per Section 16(2)(c) of the Payment of Wages Act. He has further held that even though

individual notice were sent to the workmen, the individual notice does not disclose the details as is required u/s 16(2)(c), and on that score, has

allowed the application filed by all the 33 workers. Thus he has directed payment of Rs. 24,663.30 to all the workmen put together.

4. Aggrieved by the aforesaid order, the petitioner herein preferred an appeal before the Appellate Authority under the Payment of Wages Act.

viz., the Additional District Judge, Tirunelveli. The learned Appellate Authority confirmed the order of the Authority and held that the strike was

illegal. But, however, he has proceeded to hold that the details as per Sec. 16(2)(c) has not been disclosed. He has further held that the

management is making an unjust enrichment by deducting additional 7 days wages in addition to the one day wage. i.e., the day on which they went

on strike. Therefore, the Appellate Authority has confirmed the order passed by the original authority.

5. Aggrieved by the aforesaid order of the Appellate Authority dated September 30, 1993, the petitioner has preferred the above revision.

6. I have heard the arguments of Mr. S. Jayaraman, learned counsel for the petitioner and of Mr. K. Chandru, learned counsel for the respondent.

7. Mr. S. Jayarman, learned counsel for petitioner contended that the impugned order confirming the order passed by the original authority is

clearly erroneous in law and that both the authorities have set aside the deduction on highly technical grounds viz., that the management has not

complied with the requirements mentioned in Rule 16(2)(c) of the Tamil Nadu Payment of Wages Rules. Having held that the strike was illegal and

unjustified, the authorities below should have automatically come to the conclusion that the petitioner is entitled to make deductions u/s 9 of the

Payment of Wages Act. It is further submitted that the authorities below also failed to realise that even under the Standing Order 19(1)(F)(b), the

petitioner is entitled to make deductions. The Authorities below have given a categoric finding that the management had put them on notice, as per

Section 9(2) and that the strike made by them was illegal. In spite of that, Appellate Authority had directed payment of a sum of Rs. 24,663.30 to

the workmen. According to Mr. Jayaraman, learned counsel for the petitioner,, the workmen are not entitled to that amount and that purely on a

technical ground the deduction was held to be unjustified.

8. Mr. Jayaraman, learned counsel for the revision petitioner further submitted that the authorities below having held that the concerned employees

along with others have gone on an illegal and unjustified strike and there are no justifiable reasons for the workmen to go on a strike and

consequently the strike itself is not justified, they have erred in holding that the imposition of 8 days wage cut by the management is contrary to law,

and that they have allowed the appeal as well as the application on a highly technical ground that the management has not complied with the

requirements as mentioned in Rule 16(2)(c) of the Tamil Nadu Payment of Wages Rules.

9. The next contention of Mr. Jayaraman is that the management had issued a circular on February 3, 1987 stating that the proposed strike of the

workmen on February 5, 1987 is illegal and unjustified and has also stated that the management would impose a wage cut as per Section 9(2) of

the Payment of Wages Act and also in accordance with Section 19(L)(F)(K) of the Standing Orders of the company, and therefore, the action of

the management in issuing circular to all the workmen will amount to substantial compliance of the provisions of the Act. Individual workmen were

also issued show-cause notices on February 11, 1987 directing them to furnish explanation. In fact, they were directed to show cause as to why 8

days wages should not be cut as per Section 9(2) of Payment of Wages Act, and also in accordance with the relevant provisions of the Standing

Orders of the company. The workmen have also acknowledged the receipt of the show cause notice issued to them by affixing their signature in

the copy of the said notice for having received the original notice. Therefore, there is effective compliance of the principles of natural justice and

also the statutory requirement as contemplated under the Payment of Wages Act as well as the Standing Orders of the Company. According to

Mr. Jayaraman, both the authorities below have failed to notice that the management had complied with the requirement under Rule 116(2)(c) of

the Tamil Nadu Payment of wages Rules by a fixing notice at or near the entrance of the factory giving the names of persons from whom

wages deduction is proposed to be made and the number of days wages to be deducted and the conditions if any, on which deduction will be

remitted. He would further contend that the said Rule itself has been prescribed for the breach of contract, between the employer and the employees. Mr. Jayaraman cannonaded that the authorities below have proceeded on a highly hyper-technical ground that the management had not complied with Rule 16(2)(c) of the Tamil Nadu Payment of Wages Rules. It is further submitted that the authorities below have failed to realise that to there has been a total compliance of the provisions of the Act as well as the Standing of the Company. Arguing further, Mr. Jayaraman submitted that a reading of Rule 16(2)(c) will show that it is not necessary to mention the names of the individuals even in the notice which has to be affixed on the notice board, in case wages are to be deducted from the entire workmen of the particular department, and that Rule itself contemplates that a mere name of the Department will do. This being the position of law, the authority below has clearly erred in coming to the conclusion that the management has not complied with Rule 16(2)(c) in spite of the fact that the management having given the employees an opportunity to show cause as to why 8 days wage cut should not be imposed. According to Mr. Jayaraman, the so called non compliance of the Rules will not vitiate the action of the management imposing a wage cut which is in accordance with the provisions of the Payment of Wages Act as well as the Standing Orders. It is further submitted that the Rule itself contemplates that a notice has to be put up at the entrance of the gate by the manager as mentioned in the said Rule and that the non-putting up of that notice will not in any way infringe the principles of natural justice and that all that the Act contemplates is that the workmen must be put on prior notice before effecting the wage cut, which has been done in this case. Mr. Jayakumar also contended that even assuming for a moment that the rule has not been complied with, it may, at worst, amount to an irregularity and not an illegality and, therefore the view of the authorities below that the action of the management in cutting the wages amounts to violation of principles of natural justice is wrong.

10. Mr. Jayaraman has also placed reliance on Section 3 of the T.N. Labour Welfare Fund Act, 1972. Section 3 provides that the Government shall constitute a fund called the Labour Welfare Fund, and notwithstanding anything contained in any other law for the time being in force or in any

contract or instrument, all unpaid accumulations shall be paid, at such intervals as may be prescribed, to the Board, and be credited to the Fund

and the Board shall keep a separate account therefore until claims thereto have been decided in the manner provided for in Section 13. Section

3(2)(C) provides that deductions made under the proviso to sub-section (2) of Section 9 of the Payment of Wages Act, 1936 and under the

proviso to sub-section (2) of Section 36 of the Tamil Nadu Shops and Establishments Act, 1947, shall also be credited to the Fund. Therefore,

Mr. Jayaraman submitted that the petitioner is going to credit the amount, so already deducted by way of wage cut to the T.N. Labour Welfare

Fund Act, 1972, under Sec. 3(2)(c) of the said Act, and that therefore, there is no unjust enrichment on the part of the management.

11. Mr. Jayaraman, in support of his contentions relied on the decisions reported in D. Baliah v. Secretary, Indian Detonators Ltd. 1996 II LLJ

247 and Orient Paper Mills Sramik Congress v. O. P. Mills 1988 L.L.N. 132. The first decision is the judgment of a Division Bench of Andhra

Pradesh High Court wherein a similar question was considered by the said Division Bench. In the said case, as a matter of fact such a notice was

given. On April 30, 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 April 20, 1970, without notice, are notified under Rule 16(2)(c) of the A.P. 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 Sec. 9 of the Payment of Wages Act, 1936. The

actual deduction was made on May 7, when the salary of April month 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. The Bench has further

observed that 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. Relying on the

above decision, Mr. Jayaraman submitted that as in the said A.P. Case, the principles of natural justice have also been complied with in the instant

case and individual notices were also given to all the workers and therefore, the notice given is sufficient so long as the workers concerned and that

they were made aware of the proposed deduction.

12. The second decision cited by Mr. Jayaraman, learned counsel for the revision petitioner is the one reported in 1988 2 L.L.J. 132. In the said

case, a Division Bench of Orissa High Court, while deciding a question that arose under the Orissa Payment of Wages Act, 1936 u/s 9(2) of the

said Act and Section 26(3)(g) of the Orissa Payment of Wages Rules, 1936 held that the principles of natural justice are not to be followed and

the workers need not be asked to show cause before deductions are made. In para-8 of its judgment, the said Division Bench has observed that in

so far as the question of deduction u/s 9(2) is concerned, the question of applying the principles of natural justice does not arise whereas in case of

penal or further deduction under the proviso to Sec. 9(2), the said principles must be followed and the authorities must adjudicate upon the

justification of the so-called strike and the alleged concerted action without which the proviso will not operate. The Bench has further observed as

follows :

A combined reading of Sec. 26(3)(g) of the Act and Rule 16 of the Rules makes it clear that the procedure provided for in Rule 16 has to be

applied when deduction is made under the proviso to Sec. 9(2), and the procedure prescribed under the Rules fully complies with the principles of

natural justice. The fact that while prescribing the procedure for deduction to be made under the proviso to Sec. 9(2), the rules specifically provide

for application of principles of natural justice and no procedure is provided for under the rules for making the normal deduction under Sec. 9(2) is

indicative of the position that for making a deduction under Sec. 9(2), principles of natural justice are not required to be followed. The statutory

provisions do not expressly or by implication apply the rule of audi alteram partem while making the normal deduction under Sec. 9(2) of the

Payment of Wages Act.

13. Per contra, Mr. K. Chandru, learned counsel for the respondent submitted that the matter complained of is penal deduction of wages.

According to Mr. K. Chandru, the Payment of Wages Act itself contemplates and empowers the employer to deduct 8 days wages, but the same

can be done only as per the procedure provided under the provisions of the Act and the Rules made thereunder. My attention was drawn to Sec.

7(2)(b) of the Payment of Wages Act, 1936 (hereinafter referred to as the Act). Section 7 deals with the deductions which may be made from

wages. The said Section provides (1) notwithstanding the provisions of sub-section (2) of Section 47 of the Indian Railways Act, 1890 (9 of

1890), the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation-I says that every payment made the employed person to the employer or his agent shall, for the purpose of this Act, be deemed to be

a deduction from wages. Explanation-II says that any loss of the wages resulting from the imposition, for good and sufficient cause upon a person

employed, of any of the following penalties, viz.,

(i) the withholding of increment of promotion (including the stoppage of increment at an efficiency bar);

(ii) the reduction to a lower post or time scale or a lower stage in a time scale, or

(iii) Suspension;

shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in

conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette. Sec.

7(2) says that the deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be

of the following kinds only, viz. :"

(a) fines;

(b) deductions for absence from duty;

(c)

(d)

to

(k)

14. Mr. K. Chandru, learned counsel for the respondent next drew my attention to Section 9 of the Act which deals with the deductions for

absence from duty. Section 9 runs as follows :

9. Deductions for absence from duty"" :

(1) Deductions may be made under Clause (b) of sub-section (2) of Section 7

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.

(2) 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 be by any such terms he due to the employer in lieu of due notice.

Explanation : For the purpose 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 pursuant of a stay-in-strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

Sub-sec (1) allows deduction by the management of wages for absence from duty. Sub-Sec. (2) places a limit upon the deduction. Both the first two sub-sections apply to individual workmen. The proviso covers actions in concert and consequent absence of more workers than one without due notice and without reasonable cause. In such a case, the proviso permits a further deduction which may include such amount not exceeding the workman's wages for eight days. Where the deduction from wages was the ordinary or normal deduction and not the further deduction provided by the proviso to Sec. 9(2), the question whether the strike was justified or not is clearly irrelevant. Of course, in cases where further deduction is made under the proviso to Sec. 9(2), the Authority is bound to adjudicate upon the justification for the strike because it is only where the strike is without reasonable cause that the further deduction can be made.

15. Thus, it is seen that there are two pre-requisites for invoking the provision of

Sec. 9(2) of the Act. 1) there must be a strike without notice and

2) there must be a strike without a reasonable cause. In the instant case, in so far as these two pre-requisites are concerned, both the authorities

below have found that the strike is an illegal strike and that therefore, the management is right in deducting the wages. However, the enabling

provision is subject to the Rules made by the Government. The relevant Rules are the T.N. Payment of Wages Rules, 1937. In this regard Rule 16

which is framed under Sec. 26(3)(g) of the Act has to be looked into. Rule. - 16 runs as follows :

16. Deductions for breach of contract :

(1) No deduction for breach of contract shall be made from the wages of an employed person who is under the age of fifteen years.

(2) No deduction for breach of contract shall be made from the wages of any employed person unless :-

(a) there is provision in writing forming part of the terms of the contract of employment requiring the employee to give notice of the termination of

such employment and the period of notice does not exceed either, (i) fifteen days of the wage period, whichever is less; or (ii) the period of notice

which the paymaster is required to give of the termination of that employment;

(b) this rule has so been displayed in English and in the language of

the majority of the employed persons at or near the main entrance of the factory, and has been so displayed for not less than one month before the

commencement of the absence in respect of which the deduction is made; and

(c) a notice has been displayed at or near the main entrance of the

factory giving the names of the persons from whose wages the deduction is proposed to be made, the number of days' wages to be deducted and

the conditions (if any), on which the deduction will be remitted;

Provided that where the deduction is proposed to be made from all the persons employed in any departments or sections of the factory, it shall be

sufficient, in lieu of giving the names of the person in such departments or sections, to specify the departments or sections affected.

(3) No deduction for breach of contract shall exceed the wages of the person employed for the period by which the notice of termination of

service given falls short of the period of such notice required by the contract of employment.

(4) If any conditions have been specified in the notice displayed under clause (c) of sub-rule (2), no deduction for breach of contract shall be made

from the wages of any person who has complied with those conditions.

Sec. 26(3)(g) of the Act prescribes the conditions subject to which deductions may be made under the proviso to sub-section (2) of Section 9;

Rule-26 prescribes that the State Government may make rules to regulate the procedure to be followed by the authorities and Court referred to in

Sections 15 and 17 of the Act.

16. Referring to the submissions of Mr. Jayaraman, learned counsel for the revision petitioner, with reference to substantial compliance of the

provisions of the Act, Mr. K. Chandru, learned counsel for the respondent submitted that no party can come to say that they have substantially

complied with the provisions of the Act. Rule 16(2)(c) specifically provides that no deduction for breach of contract shall be made from the wages

of any employed person unless a notice has been displayed at or near the main entrance of the factory giving the names of persons from whose

wages the deduction is proposed to be made, the number of days' wages to be deducted and the conditions (if any), on which the deduction will

be remitted; Mr. K. Chandru also invited my attention to the concurrent findings of both the authorities below. According to Mr. K. Chandru,

subject to the procedures contemplated under the provisions of the Act, deductions have to be made, and that the relevant Rules have not been

complied with in the instant case, before making the deductions in question. I see much force and merit in the contentions of Mr. K. Chandru.

17. In the facts and circumstances of this case, it is pertinent to note that it is a cardinal rule of interpretation that where a State provides that a

particular thing should be done, it should be done in the manner prescribed by the statute and not in any other way. It is settled rule of

interpretation that where statute is penal in character, it must be strictly construed and followed. When a Law says that a thing is to be done in a

particular manner, it should be done in accordance with the said principles and not otherwise. When the parties sent before the authorities created

under the statute, they must strictly follow the procedures particularly prescribed under the statute and not otherwise. Therefore, the management in

the instant case cannot invoke the theory of substantial compliance under any

circumstances of the case, and particularly in case of this nature. In

penal jurisprudence strict compliance only is contemplated and should be invoked and not the theory of substantial compliance. In my opinion, the

substantial compliance theory put forward by Mr. Jayaraman will not operate or can be invoked in an area which is covered by the Rules and

Regulations.

18. Mr. K. Chandru, learned counsel for the respondent in support of his contentions relied on the decision reported in *The Management of*

Travancore Titanium Products Ltd. v. Their Workmen 1970 II LLJ 1. That was a judgment rendered by a Bench of Five Judges of the Supreme

Court. In that case, the employee concerned was working as a storekeeper and he was dismissed from service for falsely manipulating the store

records knowing the alteration to be false and with deliberate intention of defrauding the company. The Industrial Tribunal on the reference in

regard to the dismissal of the said employee awarded reinstatement of the employee with full back wages on the ground that the domestic enquiry

contravened the provisions of the standing orders in that the management did not furnish the employee with a copy of the report of the preliminary

enquiry, it did not give 3 days clear notice of the intention of the management to conduct the enquiry, it did not serve the employee with a list of

witnesses proposed to be examined at the enquiry and it refused him the assistance of another member of the staff of his own choice at the

domestic enquiry. On merits, the Tribunal found on the evidence adduced before it that the misconduct alleged against the employee was not made

out. On appeal, the Supreme Court upholding the award of the Industrial Tribunal held that the enquiry was vitiated as it contravened the

mandatory provisions of the relevant standing order. The Supreme Court further held that the finding of the fact reached by the Industrial Tribunal

on evidence before it could not be challenged in an appeal by special leave. The contention of the management that the employee had notice of 2

1/2 days should be taken as substantial compliance with the requirement of the relevant standing order was also negated on the ground that the

standing order which required 3 days clear notice is mandatory. The Supreme Court upheld the award of the Tribunal and held the Tribunal was

justified in awarding reinstatement with backwages from the date of dismissal to

the date of his reinstatement.

19. The above judgment squarely applies to the facts of this case. As rightly pointed out by Mr. K. Chandru, learned counsel for the respondent,

the provisions of the Payment of Wages Act have not been complied with at all in their letter and spirit. The theory of substantial compliance

cannot at all be applied to the statutes, whose provisions are penal in character. Therefore, I am of the view that the statutes which are penal in

character must be strictly construed in its letter and spirit. No deviation from strict compliance is permissible. A thing should be done in a manner

prescribed by the statute and not in any other manner.

20. As pointed out by Mr. K. Chandru, the Payment of Wages Act has been enacted to regulate the payment of wages to certain classes of

employed persons, and that the said Act is designed to secure prompt payment of wages to the employees and an expeditious disposal of claims

like wages or any portion thereof which has been withheld. It furnishes a summary remedy for wages earned in an office and not paid. It provides

for payment of wages to employed persons at regular intervals and without any unauthorised deductions. It is a penal Act, not an Act of civil nature

and the underlying idea is to punish the employers for non-payment of wages of the employees. The intention of the Legislature was that the

decision of the authority should become final and conclusive when it awards small wages to poor humble workers. That is the principle which

underlines the whole of the Act and every section of it, and it is the duty of the Court to give effect to that intention of the Legislature.

21. I have already come to the conclusion that the revision petitioner herein has not complied with the provisions of the Act and therefore, the

consequential deduction is illegal, and the individual notices sent are not in accordance with the provisions of the Act and the Rules made

thereunder. I am unable to accept the argument of Mr. Jayaraman, learned counsel for the revision petitioner that even assuming for a moment that

the Rule has not been complied with, it may amount only to an irregularity. In my view, the non compliance of the provisions of the Act which are

mandatory is only an illegality and therefore, the action of the management in cutting the wages for 7 days amounts to violation of the provisions of

the Act and the Rules made thereunder. The 8 days wage cut is not in

accordance with Sec. 9(2) of the Payment of Wages Act.

Therefore, the workmen are entitled to be reimbursed with the 7 days wage-cut and therefore, the management is directed to refund the sum to the

workmen representing seven days wages. It is stated that the management has deposited the entire amount to the credit of the appeal during the

pendency of the same before the Addl. District Judge, Tirunelveli. The management is now at liberty to withdraw the same immediately and refund

the same to the workmen within two months from the date of receipt of a copy of this order. When the management comes, forward with the

petition requesting the withdrawal of the amount in deposit, the Appellate Authority (District Judge, Tirunelveli) shall pass appropriate orders on

the same. Therefore, for all the foregoing reasons the Civil Revision Petition is dismissed with the above direction to the management in regard to

the refund of 7 days' wage to the workmen concerned. However, in the circumstances of the case, there will be no order as to costs.