

(1956) 11 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Application No. 27 of 1956

General Manager Northern Rly., New Delhi

APPELLANT

Vs

Sajjan Raj and Another

RESPONDENT

Date of Decision : 28-11-1956

Acts Referred:

Payment of Wages Act, 1936 — Section 2(6)

Citation : AIR 1957 Raj 78 : (1957) RLW 150

Hon'ble Judges : Wanchoo, C.J.; Dave, J

Bench : Division Bench

Advocate : Magraj, for the Appellant; Zorawarmal, for the Respondent

Final Decision : Dismissed

Judgement

Dave, J.—This is a writ application under Articles 226 and 227 of the Constitution of India by the General Manager, Northern Railway, New Delhi. It is directed against one Sajjanraj, who is an employee of the Northern Railway and against the District Magistrate, Jodhpur, who is non-petitioner No. 2.

2. The facts giving rise to it are that the non-petitioner No. 1 Sajjanraj, was an employee of the Northern Railway and so he drew ration for himself and his dependants from the Railway Grain Shop at concessional rates. It was alleged against him that from November 1947 to May 1948 he drew ration illegally for his brother Uttamchand although his brother was over 18 years of age and was not dependant upon him.

The matter was ultimately decided by the Divisional Personal Officer, Northern Railway and Rs. 63-4-0 were ordered to be recovered from the wages of non-petitioner No. 1 u/s 7 of the Payment of Wages Act, 1936. The said amount of Rs. 63-4-0 was accordingly deducted from his pay from September 1954 to January 1955 by instalments. The non-petitioner No. 1 thereafter presented an application u/s 15 of the Payment of Wages Act, 1936 (which will hereafter be called the Act) before the District Magistrate Jodhpur.

It was urged by him before that authority that the concessional ration drawn by him did not fall within the ambit of the term "wages" under the Act, that the deduction of Rs. 63-4-0 from his wages was, therefore, illegal and it should be ordered to be refunded to him. This application was allowed by non-petitioner No. 2 on 29th September 1955 and the petitioner was . directed to refund the said amount to non-petitioner No. 1. It is against this order that the present application has been filed.

3. One of the grounds raised by the Petitioner in his application was that the District Magistrate could not be validly appointed as an authority under the Payment of Wages Act and so he had no jurisdiction to pass the impugned order. This argument, however, was not pressed at the time of arguments and since it has been abandoned. We need not enter into that matter.

4. The next and the main objection raised by the petitioner is that the grant of ration at a concessional rate was a part of the dearness allowance, which was given to the employees and, therefore, it was covered by the definition of "wages" given in the Act. It has been urged that part of the dearness allowance was paid to the employees in cash and part in the form of grain shop concession and, therefore, the ration overdrawn by non-petitioner No. 1 was a part of his wages and the cost of the overdrawn ration could be deducted from his wages.

The main question for determination, therefore, is whether the supply of ration at concessional rate drawn by non-petitioner No. 1 from the Railway Grain Shop was a part of his wages and its cost could be deducted by the petitioner from the wages of non-petitioner No. 1.

5. The definition of "wages" given in Section 2(vi) of the Payment of Wages Act is as follows :

"(vi) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment express or implied, were fulfilled, be payable whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed or otherwise, to a Person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include -

(a) the value of any house-accommodation supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order or the State Government.

(b) any contribution paid by the employer to any pension fund or provident fund ;

(c) any travelling allowance or the value of any travelling concession ;

(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment ; or

(e) any gratuity payable on discharge".

6. It is urged by the petitioner's learned counsel that according to the above definition, "wages" mean all remuneration capable of being expressed in terms of money and since the ration drawn by non-petitioner No. 1 was capable of being expressed in terms of money, it was covered by the said definition.

On the other hand, it is contended by learned counsel for the non-petitioner No. 1 that the sale of grain by the Railway Grain Shop to the railway employee's at concessional rates was in the first instance not capable of being expressed in terms of money and, secondly, it was only an amenity, which was excluded from the definition of "wages" in clause (a) of the definition given above and, therefore, the said concession was not covered by the term "wages".

We have given due consideration to this argument and are of opinion that the ration drawn by the non-petitioner" was remuneration which was capable of being expressed in terms of money since it could be valued and that value could be expressed in terms of money. But the scheme of the Act, as we shall shortly discuss hereafter, shows that this sort of concession was excluded from the purview of the term "wages"" as a mere amenity and, therefore, it could not be called "wages" under the Act, though it may be capable of being so called in common parlance.

We may first point out that under clause (a) of the definition of "wages" amenity was excluded from the definition of wages. Then, Section 6 of the Act provides that "all wages shall be paid in current coin or currency notes or in both". The provisions of this section are mandatory and it enjoins upon the employer that after the enforcement of the Act, he is in duty-bound to pay the wages only in current coin or currency notes or in both. Section 20(2) then provides that

"whoever contravenes the provisions of Section 4 Section 6 or Section 2 shall be punishable with fine which may extend to two hundred rupees". Section 23 of the Act further provides that

"any contract or agreement whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right."

Thus Sections 6, 20 and 23 read together make it quite clear that after the enforcement of the Payment of Wages Act an employer to whom this Act is applicable is bound to pay to his employees all wages in current coin or currency notes or in both and he cannot circumvent this provision of law even by saying that the employee had made with him an agreement to the contrary because Section 23 makes it further dear that such a contract or agreement would be null and void in so far as it purports to deprive him of such right.

Thus an employee cannot be deprived of his right to receive his wages in cash even if he has agreed to relinquish that right. Moreover, the Act does not stop here, but u/s 20 referred above, it provides penalty for breach of the provisions

of certain sections of the Act and Section 6 is also one of them. If an employer makes a breach of the provision of Section 6 there is no escape for him from the punishment provided in Sub-section 2 of Section 20.

So when the Act requires that all wages must be paid in cash, when an agreement or contract to the contrary has been made null and void and when the breach of this Provision has been strictly forbidden and made a penal offence, then the conclusion is irresistible that if anything is paid in kind, it would be a mere amenity or concession and not "wages" within the meaning of the Act.

It may be conceded that if Sections 6, 20 and 23 were not there in the Act and if we were left alone with the definition of "wages" as given above, then there could be room for argument that) payments in kind were covered by the definition. It appears that the definition of wages was left wide by the framers of the Act to cover that remuneration which was paid in kind by the employers to the employees before the enforcement "of the Act, so that it may be possible to convert "the same into cash and include it in wages after the enforcement of the Act.

This may be one of the reasons for this, seeming contradiction between Section 2(vi) and Section 6 of the Act There may be other reasons also in the mind of the framers of the Act ; but whatever those reasons may be, there is no doubt that Sections 6, 20 and 23 read together clearly exclude payments in kind from "wages" which can be paid only in current coin or currency notes after the enforcement of the Act.

7. It has been vehemently urged by the petitioner's learned counsel that in the present case, a part of dearness allowance was paid by way of ration at concessional rates and since the dearness allowance, which was paid in cash was a part of wages, the other part, which was paid in kind, also came within the term ""wages". We have given due consideration to this argument as well.

It may be that dearness allowance in cash was not paid to railway employees to the same extent as it would have been if grain was not sold to them at concessional rates from the Railway Grain Shop. But for this reason alone, we cannot say that what was paid to the employees in kind was a part of their wages. It happens in many concerns that high wages or dearness allowance at a higher rate is not paid to the employees because several other amenities are provided.

In other words, the provision of an amenity may be one of the considerations for giving lower wages to an employee, but that would not convert an "amenity" into "wages" against the intention of the Act. It may be further pointed out that "wages" are generally given by an employer to his employees on a uniform basis if the employees are doing similar work in similar circumstances. Wages do not generally depend Upon the size of the family of an employee.

For instance, if an employee, who has got only two dependants, will not get less

wages than, another employee who has eight dependants, if they are doing similar work in similar circumstances. It is admitted by learned counsel for the petitioner that the railway employees were not getting a uniform quantity of grain from the Railway Grain Shop i. e., this was not a case where the employer had agreed to give a definite quantity of grain to its employees uniformly as a part of their wages.

The only concession, which was given to the employees, was to purchase grain at a concessional rate depending upon the number of dependants, though to a limited extent. The employee's choice to purchase was dependent upon the availability of a particular type of grain at a particular time. Moreover, an employee was free to purchase even from other places if he could get the grain cheaper elsewhere though such cases must be very few in fact. These circumstances, therefore, show that the facility of getting grain at a cheaper rate from the grainshop was in the nature of a concession or an amenity and not a part of the wages,

8. Learned counsel for the petitioner has referred to the case of *The Divisional Engineer, G.I.P. Railway Vs. Mahadeo Raghoo and Another*, In that case, their Lord-ships were only considering whether in any circumstances house-rent allowance could come within the purview of the term, "wages". It was observed that,

"The definition of "wages" in the Act also excludes from its operation the value of house accommodation referred to in Sections 7 and 11 as aforesaid. The legislature has used the expression "value of any house accommodation" in the definition of "wages" as denoting something which can be deducted from "wages". The one excludes the other. It is thus clear that the definition of "wages" under the Act cannot include the value of any house accommodation supplied by the employer to the employee; otherwise, it would not be a legally permissible deduction from wages.

It is equally clear that house rent allowance which may in certain circumstances as aforesaid be included in "wages" is not the same thing as the value of any house accommodation referred to in the Act".

9. It is enough to say that the above case is not helpful to the petitioner because no question of house-rent allowance is involved in the present case.

10. Learned counsel has next referred to the case of *Payment of Wages Inspector, M. B. Government v. Bramhodatta Bagrodia*, AIR 1956 Madh-B 152 (B) but it has no bearing on the facts and circumstances of the present case.

11. On the other hand, we might refer to the case of *Indian Tea Association v. Workmen of all Tea Estates in Assam*, 1956-2 Lab LJ 291 (SC) (C). In that case the Management of the tea estates in Assam used to supply rice to their workmen at concession rates. Before February 1950, the supply of rice to an adult male worker was 5 seers per week. Thereafter, the rice quota was reduced

by half a seer per week and cash compensation was allowed to the workers in lieu thereof.

Then on 18th of November 1950, the Government of India issued a notification whereby an all India cereal ration scale was laid down and no adult male worker was entitled to get more than 3 1/2 seers of rice per week. Thus there was a further cut of another seer of rice per week. The workmen claimed compensation in cash and this led to a dispute between the employers and the workmen. Meanwhile, the Government of Assam fixed minimum wages which were to come in force from 30th of March 1952.

The employers contended that this notification had the effect of absorbing cash compensation claimed by the workers and, therefore, they were not under any obligation to pay compensation for the rice cut, after the date of this notification. The workmen, on the other hand, claimed that they should continue to get the cash compensation. This was another dispute between the employers and the employees which ultimately went to the Supreme Court in appeal.

It is true that the dispute in that case was different from the point in dispute in the present case; but their Lordships of the Supreme Court have throughout referred to the supply of food stuffs to the employees as "amenity" or "concession". It appears from this case that even though each employee in that case was getting a uniform fixed quantity of food stuff from the employer, it was considered as a concession apart from the minimum "wages" which were fixed by the Government of Assam in their notification.

This decision lends support to the view which we have already held above that the facility of purchasing grain enjoyed by non-Petitioner No. 1 from the Railway Grain Shop at concession rates was in the nature of an amenity and not a part of his wages and, therefore, the deduction made by the petitioner from the non-petitioner's wages was incorrect and the non-Petitioner No. 2 was not wrong in passing order for refund of that amount.

12. Before leaving this case, we must make it clear that we do not mean to justify the conduct of non-petitioner No. 1. The Petitioner is free to take any departmental action or even to prosecute him for fraud if he has committed any; but the deduction of the amount of Rs. 63-4-0 from his wages was not according to law and for this reason, we cannot allow the writ application. The writ-petition is, therefore, dismissed and in the circumstances of the case, we leave the parties to bear their own costs.