(1959) 07 AP CK 0003

In the Andhra Pradesh High Court

General Manager, Southern Railway — APPELLANT

Vs

Somasundaram (P.) and Another — RESPONDENT

Date of Decision : 22-07-1959

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 17, 2, 22, 23

Citation : (1959) 2 LLJ 706

Hon'ble Judges : Mohammed Ahmed Ansari, J

Bench : Single Bench

Judgement

Mohammed Ahmed Ansari, J.—The writ petitioner is the General Manager, Southern Railway, and seeks a writ to vacate an order by the Additional Commissioner for the Workmen''s Compensation which was made on 12 July 1956. The sequence of events, which has led to the writ petition, can be shortly stated. P. Somasundaram, the respondent 1, was from August 1953 to November 1954 working as a stores clerk in the grain shop at Gooty. He was asked to take charge of the grain shop, because the then manager of the shop had small-pox and the respondent continued in the position from 19 April 1954 to 7 May 1954. While he was in charge, the grain shops at Raichur and Gooty were merged with effect from 1 May 1954 and the manager of the grain shop at Raichur was asked to take over charge of the shop at Gooty also, which he did on 7 May 1954. When the respondent had taken over the charge on 19 April 1954, a verification of the stock had been made by the then acting grain shop inspector and no deficit was found. Again the inspector was deputed to assist and conduct the departmental stock verification at the time the respondent handed over the shop. in course of this verification, which like the earlier one was on the basis of what is known as the 10 per cent weighment basis, shortages were discovered in various stocks. A copy of the report showing the shortages was furnished to the respondent, who was asked to submit his explanation. The report together with the explanation was reviewed by proper railway authority and it found the respondent liable. The amount of the loss so caused was held to be Rs. 116-10-2, which the first respondent was called upon to make good. He appealed to the grain shop superintendent, and then to the General Manager, but both the appeals were dismissed. As the respondent had failed to make good the deficiency, the amount was ordered to be recovered from his security deposit of Rs. 250, which he had furnished according to the Financial Rules at the time of his being appointed a clerk. On 31 October 1955 the respondent filed an application u/s 15(2) of the Payment of Wages Act (IV of 1936) before the Additional Commissioner who on 12 July 1956 held the deduction not to be proper and allowed the application.

2. Two grounds have been taken in the writ petition for vacating the aforesaid order. The first is that as the deduction complained against was not from the respondent''s wages, the Additional Commissioner had no jurisdiction to make the order. The other is that the deduction was made under rules framed in exercise of statutory power and the Additional Commissioner was not authorized to sit as an appellate authority over the decisions of such authorities.

3. It is necessary in order to appreciate the first ground to refer to the definition of "wages" as it stood at the time when the amount was deducted from the deposit furnished by the respondent. Section 2(vi) of the Payment of Wages Act then defined wages to mean:

all remuneration capable of being expressed in money, which would be payable if the terms of the contract of employment were fulfilled to a person in respect of his employment and would include bonus, additional remuneration, and any sum payable because of the termination of the employment.

There are other qualifications and explanations to the definition which need not be mentioned in this case. Now such wages are reauired by Section 7(1) of the Act to be paid without deduction except those enumerated in the Sub-section (2). The latter provision enumerates nine deductions and of these a special reference to the following two is necessary;

7. (2) 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, namely:

* * * (c) deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

* * * (h) deductions required to be made by order of a court or other authority competent to make such order.

Section 15 of the Act provides for a special tribunal which is to decide claims arising out of deduction or delay in payment of wages and penalty for malicious or vexatious claims. Appeal against the order is provided by Section 17 and jurisdiction of civil Court is excluded u/s 22. Section 23 renders any contract or agreement whether made before or after the commencement of the Act concerning relinquishment of any rights conferred by the Act to be null and void.

4. The first ground in the writ petition is that as the deduction was not out of wages but from the deposit, the Additional Commissioner had no jurisdiction u/s 15 to entertain any claim concerning the deduction being unjustified. Obviously the tribunal under the Act can only decide the right and duties covered by the enactment and cannot assume jurisdiction over other disputes. It follows that if deposits by the employees be not covered by the definition of wages the order impeached by the writ petition would be without jurisdiction. In this connexion the counsel for the writ petitioner has referred to the observations of Sinha, J.. in The Divisional Engineer, G.I.P. Railway Vs. Mahadeo Raghoo and Another, that wages meant remuneration payable by an employer to his employee for services rendered according to the terms of the contract between them. He further relied on D''Costa v. Patel 1955 I L.L.J. 363, wherein it was observed that any question of potential wages was beyond the authority of the tribunal. Reliance was also placed on A.R. Sarin v. B.C. Patil 1951 II L.L.J. 188, Anthony Almeda v. R.M.T. Taylor 1957 I L.L.J. 452 and Arumughamv Jawahar Mills 1956 I L.L.J. 519 in support of the argument concerning the Additional Commissioner being an authority of limited jurisdiction. The Government Pleader has relied on the explanation to Section 7(1) in support of the deposit being treated as wages. The aforesaid explanation is as follows:

Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

I am inclined to the view that the explanation cannot be read as enlarging the meaning of the word " wages" to such an extent as to cover any other payment by the employee. Plurality of rights and duties may exist between the employer and the employee and the Act does not cover all legal relations between the two. It would not extend to contracts of indemnity by the employees; for the deposits made in pursuance of such agreement would not be remunerations for the services and would not, therefore, be wages. I do, however, express no definite opinion on this part of the argument, because the other objection to the jurisdiction is sustained by many decisions.

5. As already mentioned, the employer is entitled to recoup himself out of the wages for the losses sustained due to the negligence of the employee. This is (?) allowed by Section 7(2)(c). The employer is further entitled to deduct amounts ordered by authorities or Court from the wages u/s 7(2)(c). It is not disputed that there are rules having the force of law, under which railway authorities can make deductions out of the security deposits by the railway employees in order to recoup losses caused by their employees'' negligence. It is also clear that if such deductions be made by railway authorities, the Commissioner under the Payment of Wages Act can not interfere with them. This view has been taken in Union of India (UOI) Vs. Kundan Lal and Another, , Anant Ram and Others Vs. District Magistrate, Jodhpur and Another, and The General Manager, Northern Railway Vs. Swaroopraj and Others, The learned Judges in all the three cases

have held that the Commissioner is not authorized to interfere with deduction out of the deposit given by a railway employee where it is made by the authorities according to the rules. The Additional Commissioner in this case before me has not found the orders to be by officers not duly authorized to make them, nor has he held the deductions to be without notice. On the other hand, he has found the basis, on which the shortage of stock was found, when the storekeeper handed over his charge, not to be proper. In doing so he has acted as if he was sitting in appeal over decisions of properly constituted authorities and this he could not. Were I to hold otherwise, the Commissioner would be deciding correctness of judicial pronouncements when exercising the jurisdiction, which he admittedly cannot. I, therefore, hold the order disallowing deduction by the Additional Commissioner to be without jurisdiction and accordingly it is quashed.

6. The writ petition is allowed. As the railway employee is not before me, I direct that the parties should bear their costs. I fix, however, the advocate''s fee to be Rs. 100.