

(1961) 08 P&H CK 0015
In the Punjab And Haryana At Chandigarh

Mohan Singh Choudhri	Vs	APPELLANT
Divisional Superintendent, Northern Railway		RESPONDENT

Date of Decision : 16-08-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1962) 2 LLJ 296

Hon'ble Judges : G.D. Khosla, C.J

Bench : Single Bench

Judgement

G.D. Khosla, C.J.—This petition arises out of an application under the Payment of Wages Act. The petitioner is a railway employee who was suspended on 24 February 1956. Then he was removed from service on 2 June 1956. He brought an application to this Court for a writ under Article 226 of the Constitution, and the removal was set aside on 17 May 1957. The question then arose what wages were due to him for the period after the date of his suspension. He claimed a sum of Rs. 2,172-7-0. The authority under the Payment of Wages Act made an order for the payment of Rs. 2,092.24 nP. An appeal was taken to the District Judge by the Railway Department and the Additional District Judge reduced the amount by Rs. 308,43 nP. The Additional District Judge allowed subsistence allowance only for the period 24 February 1956 to 2 June 1956, that is, the period during which the petitioner remained under suspension. For the remaining period the Additional District Judge made certain calculations on the basis of the rules and made a reduction of Rs. 106.00. The petitioner has moved this Court on the revision side and it is alleged on his behalf that for the first period he was entitled to full wages and not only to the subsistence allowance already paid to him. For the second period the increments which fell due and the revised scale was not taken into consideration and, therefore, the reduction made by the Additional District Judge was erroneous.

2. As far as the first period is concerned, there is no doubt at all that the petitioner was entitled to his full wages. Sub-rule (2) of Rule 2044 of the Indian

Railway Establishment Code, Vol. II, provides:

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 case may be.

This is not a case in which it can be said that in the opinion of the authority the railway servant has been exonerated, but since the order of dismissal was set aside by this Court, the order of suspension must also be treated as having been set aside. This was the principle laid down by the Supreme Court in *Om Prakash Gupta Vs. The State of Uttar Pradesh*, In that case a suit for the recovery of wages was brought by a Government servant who had been suspended, dismissed and then reinstated. It was held by the Supreme Court that when an order of suspension is followed by an order of dismissal and the order of dismissal is set aside by a Court, the order of suspension is not revived and is treated as not having existed at all. In that case the plaintiff gave up his claim for the arrears of salary during the period of suspension, but it is dear that according to the pronouncement of the Supreme Court the order of suspension in the present case must be treated as a nullity, and, that being so, the petitioner is entitled to his full wages during the period 24 February 1956 to 2 June 1956. The amount awarded by the Additional District Judge, therefore, must be increased on this account.

3. With regard to the second point, namely, the exact wages to which the petitioner is entitled for the period 3 June 1956 to 18 July 1957, the calculation has to be made on the basis of the increments due and the crossing of the efficiency bar. Now, this is a matter which cannot be said to come strictly within the purview of the Payment of Wages Act, because the authority under the Payment of Wages Act is not competent to determine whether the employee would or would not have crossed the efficiency bar when an order of suspension had been made against him and that order of suspension had been followed by an order of dismissal, even though the dismissal is set aside by an order of the Court or an order of the High Court. In this view of the matter, it must be held that the petitioner's claim with regard to the balance of Rs. 106 is not justified. This decision, however, must not be taken to mean that the petitioner cannot move his department with regard to the fixation of his salary under whatever rules are applicable to him. My decision only goes so far as to say that the additional amount claimed by him cannot be made the subject-matter of a revision of this kind.

4. With these observations, the amount awarded by the Additional District Judge will be increased by a sum to be determined by the department. There will be no order as to costs.