
(1989) 06 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15557 of 1986

Mohd. Sultan

APPELLANT

Vs

A.P. Dairy Development Co-operative Federation Ltd.

RESPONDENT

Date of Decision : 22-06-1989

Acts Referred:

Payment of Wages Act, 1936 — Section 7, 7(3)

Citation : (1992) 2 ALT 13 : (1999) 3 LLJ 329

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : V. Venkataramana, for the Appellant; C. Ramakrishna, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramaswamy, J.—The petitioner impugned in this writ petition the proceedings dated September 3, 1986, ordering recovery of Rs. 21,361.45 ps. in 142 instalments at the rate of Rs. 150/- per month and Rs. 61.45 ps. for the last 143rd instalment from the salary every month commencing from September, 1986.

2. The contention raised on behalf of the petitioner and argued by the learned counsel for the petitioner Sri Vekataramana, is that the recovery is by way of penalty and therefore the authorities cannot recover the amount from the salary without giving any opportunity of hearing which is violative of the principles of natural justice. It is also further contended that though enquiry relating to misconduct was conducted, with regard to the recovery of the amount, there is no express charge.

After the report was submitted by the Enquiry Officer, the Disciplinary authority issued a preliminary show cause notice dated March 3, 1984 indicating the provisional conclusion to recover ten per cent of misappropriated amount viz., Rs. 2,13,614.45 ps. by the five officers including the petitioner, which comes to

Rs. 21,361.45 ps. But before reaching that conclusion, no opportunity was given to the petitioner and that therefore after submitting explanation, the final order also does not carry any further weight and therefore the recovery ordered is illegal and a manifest error apparent the face of the record had crept in warranting interference. The question therefore is whether the respondent-Management has got power and jurisdiction to recover the amount from the petitioner and others. Regulation 11(d) of the Andhra Pradesh Dairy Development Co-op. Federation Limited Certified Standing Orders issued in proceedings No. 24501 dated October 31, 1982, provides that:

"In accordance with the provisions of Payment of Wages Act, deductions may be made for loss of goods expressly entrusted to a workman for custody or for loss of money, for which he is required to account where such damage or loss is attributable to his gross neglect or wilful default."

Under Regulation 11 (d) of the Standing Orders, the Management has armed itself with the power to deduct wages from the workman, when the employee has caused loss of money, which is required to be accounted for where such loss is attributable to his gross neglect or wilful default. It is found that in the disciplinary proceedings, which has become final, the petitioner along with others was responsible for the loss of a sum of Rs. 2,13,614.45 ps., which was not accounted for out of the sale proceeds etc. Thereby the authorities are well within their jurisdiction to take action against the petitioner.

3. Section 7 of the Payment of Wages Act IV of 1936, for short "the Act" provides that:

"(1) Notwithstanding the provisions of Subsection (2) of Section 47 of the Indian Railways Act, 1890 (IX of 1890), wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act."

Sub-section (2) of Section 7 provides that:

"Deductions from the wages of an employed person shall be made only in accordance with the provision of this Act, and may be of the following kinds only, namely--

(a)

(b)

(c) deductions for damage to or loss of goods expressly entrusted to the employed persons 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."

Sub-section (3) of Section 7 provides thus:

"Notwithstanding anything contained in this Act, the total amount of deductions which may be made under Sub-section (2) in any wage period from the wages of

any employed persons shall not exceed--

(i)

(ii) In any other case, fifty percent of such wages;

Provided that where the total deduction authorised under Sub-section (2) exceeds seventy per cent, or, as the case may be, fifty per cent of the wages, the excess may be recovered in such manner as may be prescribed."

To a question put by me to the learned Standing Counsel Sri A. Ramakrishna, it is stated that the petitioner is drawing a salary of Rs. 1,500/- and odd per month. The recovery is only Rs. 150/-per month. In those circumstances, the requirements of Sub-section (3) of Section 7 has been complied with. Under Sub-section 2(c) for the loss of money for which the employee is required to account which is attributable to his neglect or default, the Management has got power to deduct from the wages of employed person. Thereby the Payment of Wages Act does authorise and empower the authorities to deduct from the wages of the petitioner the amount indicated in the order.

4. The question then is whether it is violative of the principles of natural justice. In this regard Sri Venkataramana placed reliance on a judgment of this Court reported in D. Baliah and Others Vs. Secretary, Indian Detonators Limited, wherein the Division Bench has considered the effect of Section 9(2) of the Act and held that:

"The learned counsel for the petitioner argued that while it is true that there is no specific provision for giving of notice u/s 9(2) principles of natural justice require that such notice should be given. We are inclined to agree with this contention. Notwithstanding the fact that Section 9(2) does not provide for any notice to show cause being given before deduction is made, we are of the view that as deduction of wages is penal in nature, principles of natural justice require that such notice shall be given."

I am bound by the ratio laid down by the Division Bench and accordingly I hold that before recovering any wages by way of penalty from the employed person, the Management employer is bound to give prior notice. The records placed before me do indicate that in the show cause notice dated March 3, 1984 it is stated thus :

"The Management also arrived at the provisional conclusion to recover 10 percent i.e., Rs. 21,361.45 ps. of the entire misappropriated amount. Accordingly you are required to show cause within two weeks as to why the above proposed punishment should be finalised besides recovering Rs.21,361.45 ps."

Admittedly the petitioner had submitted his explanation. This explanation was considered by the Management and ultimately they concluded that the recovery should be made from five of the employees including the petitioner. Therefore

the petitioner has been given an opportunity before the proposed recovery of the amount, his objections were considered and then only the impugned decision has been taken to recover the amount at the rate of Rs. 150 per month upto 142 instalments and the balance of Rs. 61.45 ps. in the 143rd instalment, every month commencing from September, 1986. As stated earlier this recovery being within the limit of Sub-section (3) of Section 7 of the Act, it is clearly legal and does not warrant interference. The petitioner has been given reasonable opportunity before ordering recovery of the amount and thereby the principles of natural justice have been complied with. Therefore I do not find any manifest error apparent on the face of the record warranting interference.

5. It is needless to mention that the petitioner has got a statutory remedy provided u/s 15 of the Act. It is open to him to pursue the remedy according to law. It is also needless to mention that the authority u/s 15 of the Act may consider the matter on merits.

6. The writ petition is accordingly dismissed. No costs.