
(1985) 08 MP CK 0015
In the Madhya Pradesh High Court

Nathulal

APPELLANT

Vs

M.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 02-08-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Payment of Wages Act, 1936 — Section 7

Citation : (1986) 2 LLJ 255

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Judgement

V.D. Gyani, J.—By this petition, under Articles 226 and 227 of the Constitution, the petitioner challenges the order dated 24th October, 1981 passed by the Industrial Court (Annexure E) thereby setting aside the Labour Court's order dated 27th October, 1979 (Annexure D) and thereby quashing the order dated 26th January, 1978 (Annexure A) passed by the Depot Manager; Respondent 2.

2. The brief facts of the case are:

That, the petitioner was working as a driver in the employment of the Respondent 1 in Khandwa Depot, was found guilty of an accident which took place on 13th May, 1975 and was punished to pay Rs. 3,700/- as damages to the M.P. State Road Transport Corporation and the same was directed to be deducted in a monthly instalment of Rs. 25/- from the petitioner's salary. On 13th May, 1975, the petitioner was driving the passenger bus from Indore to Khandwa and some place between Dondwada and Chhegau on Indore Khandwa Road, while trying to overtake a truck, which had been brought to a standstill, on seeing another vehicle coming from the opposite direction the bus driven by the petitioner dashed against the truck, as a result of which, the radiator was completely damaged. The petitioner's contention was that brakes had failed and as much as he could not stop the vehicle inspite of his best effort by changing the gears. It is in these circumstances that the penalty has been imposed on the petitioner. The respondent corporation has not filed any return or counter-

affidavit although notice was given as back as November, 1982.

3. Shri Jhawar, learned Counsel appearing for the respondent, has raised the question of jurisdiction of the Labour Court and also contended that there is no error apparent on the face of the impugned order and as such it does not call for any interference. His contention is that the corporation has right to deduct the wages of the employee u/s 7 of the Payment of Wages Act, 1936, Section 7 read as follows:

7 Deductions which made from wages. (1) Notwithstanding the provisions, Sub-section (2) of the 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.

On the other hand, it is contended on behalf of the petitioner that Standing Order 12(2)(f) clearly lays down that any act or omission for the deduction from the wages of an employee which are authorised or under the provisions of the Payment of Wages Act "shall amount to minor misconduct", and as Schedule 2 Item I of the Industrial Relations Act, 1960, confers jurisdiction on the Labour Court to consider the propriety or legality of any order passed or action taken, by an employer while acting or purporting to act under the standing orders. It is submitted by the learned Counsel, that the Labour Court was competent to entertain an application u/s 31(3) of the Act. It is also contended by the learned Counsel that, even in order to base deduction from the wages of an employer under the Payment Wages of Act, it is essential that the employee is found guilty of some negligence in the discharge of his duties and no such deduction or recovery amounts to a punishment, and the Labour Court under the Act has jurisdiction to enter into the matter. In order to appreciate the rival contentions, advanced by the counsel, it is necessary to refer to the Standing Order 12(2)(f) which reads as follows:

Any act or omission for which deductions from the wages of an employed persons are authorised by or under the Payment of Wages Act.

Reading this standing order in juxta-position with Schedule 2, Item I of the Act, it stands abundantly clear that the Labour Court has jurisdiction to entertain and inquire into such matters u/s 31(3) of the Act.

4. The respondent based their action on Section 7 of the Payment of Wages Act. Section 7(2)(c) of the Payment of Wages Act reads as follows:

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:

(a) and (b)...

(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.

5. It is evident that the deduction for damages is permissible only when the damages or loss is directly attributable to the negligence or default of the employee; and in order to hold a person or an employee negligent it is essential that he should be afforded an opportunity of being heard against such a charge of being negligent or in default. Undisputably, no such opportunity has been given to the petitioner. Even while interpreting Section 7(2)(c) of the Payment of Wages Act, one cannot overlook the basic principles of Natural Justice and interpret the provision divorced from reason. The contention advanced by the respondent is that no penalty as such imposed for negligency, cannot be accepted. The permissibility of deduction from wages itself is based when the loss or damage is directly attributable to negligence of an employee. Thus an element of negligence is very much present even in the making of deductions from wages. Rules of Natural Justice dictate and demand that before attributing negligence or default to an employee, he must be given an opportunity of being heard against such charges of negligence or default. Such is not the case with the respondent. Straightway order "Annexure A" has been passed without affording any such opportunity. It is therefore liable to be quashed on this short ground alone. It is accordingly quashed. The petition succeeds, it is allowed with costs. Counsel fee Rs. 200/- if certified. For the foregoing reasons, order Annexure A is set aside and is quashed. The outstanding amount of security deposit, after verification shall be refunded to the petitioner.