

(1984) 10 RAJ CK 0004
In the Rajasthan High Court

Prakash Chandra Johari

APPELLANT

Vs

Indian Overseas Bank and Another

RESPONDENT

Date of Decision : 22-10-1984

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 16, 7, 9

Citation : (1986) 2 LLJ 496

Hon'ble Judges : V.S. Dave, J;N.M. Kasliwal, J

Bench : Division Bench

Judgement

V.S. Dave, J.—This special appeal is directed against the order of the learned single Judge, dated September 27, 1982, summarily dismissing the S.B. Civil Writ Petition No. 809 of 1982.

2. A notice to show cause was issued in this appeal on January 6, 1983. Thereafter the respondent led a reply to the special appeal. Since the matter involves an important question of law, with the common consent of both the parties the arguments were heard in detail in the main appeal, at the admission stage.

3. The appellant was working in the respondent Bank and was posted at M.I. Road Branch in the month of January, 1979, and was assigned the duties of shroff and godown keeper. The appellant alleged that he attended his duties on 10th and 11th January, 1979 and his attendance was marked in the register on both the days and according to the Bank authorities the appellant absented from duties on both the days without permission. The case of the Bank further was that the appellant on January 10, 1979 entered the Bank premises with about ten persons in the morning and went to the office of the manager and thereafter left the office. Again on January 11, 1979, he worked upto 2.30 p.m. and absented himself from duty thereafter. The Bank deducted two days wages of the appellant treating him as absent from duty.

4. Aggrieved by this deduction of wages the appellant preferred a petition before

the Payment of Wages Authority, Jaipur under Sections 15(2) and (3) of the Payment of Wages Act, 1936 (hereinafter referred to as "the Act"). This petition was contested by respondent No. 1 and the respondent justified the deduction. Since there was a dispute about the fact of working in the Bank the Payment of wages authority thought it proper to hold a detailed enquiry into the matter. The appellant had submitted two affidavits in detail on which he was cross-examined also. The respondent also submitted the affidavits of its erstwhile manager and other members of the staff who were cross-examined in detail by the appellant. The payment of wages authority after detailed and protracted enquiry came to the conclusion that the petitioner worked for half an hour on January 10, 1979 and for four and half hours on January 11, 1979, and calculating his daily wages it held that five hours deduction of wages for these two days was illegal and the appellant was entitled to get Rs. 14.50 as his five hours salary for the aforesaid two days. The appellant feeling aggrieved by the order of the payment of wages authority filed S.B. Civil Writ Petition No. 809/82 in this court praying that the order of the payment of wages authority, dated December 28, 1981 in so far as it disallowed the wages to the petitioner be quashed and that he should be ordered to be paid the balance of deducted wages. This writ petition was summarily dismissed by the learned single Judge against which this special appeal has been filed.

5. It is contended before us by the learned Counsel for the appellant that the payment of wages authority had only to see whether the deduction ; made by respondent No. 1 was in accordance with the provisions of the Act or not and it had no jurisdiction to make a moving enquiry itself on the ground as to for how much period the employee remained on duty on 10th & 11th January, 1979. It was further contended that the employer did not give reasonable and proper opportunity to the appellant to explain the charge of absenting from duty levelled against him. It was further contended that the payment of wages authority has not appreciated the scope of Section 9 of the Act. It is submitted that the provision of Section 9(2) of the Act only provides that the amount of such deduction shall in no case, bear to the wages payable to the employed person in respect of wage period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period. The learned Counsel submitted that there must be some contract or condition of service which may enable the employer to make deductions from, the wages of the employee on the ground that he did not perform his work in office though he was physically present. Further submission of the learned Counsel is that employer can at best either charge-sheet the employee or claim damages from t him. But since the employee did not earn his salary from hour to hour and month to month the salary cannot be deducted for particular hours as has been done in the instant case. The learned Counsel in support of his submissions has relied upon *Monoj Kanti Bose and Others Vs. Bank of India and Others*, and *T.S. Kelwala and Ors. v. Bank of India and Ors.* 1981 (43) FLR 341.

6. Shri B.P. Gupta, appearing on behalf of the Bank submitted that the appellant

himself raised a dispute before the authority appointed under the Payment of Wages Act, Jaipur and preferred to lead evidence to substantiate that he (appellant) attended the office both on 10th & 11th January, 1979 which fact was categorically denied by the respondent and, therefore, it became obligatory on the court to decide the dispute raised. It is further submitted that the finding arrived at by the payment of wages authority to the effect that the appellant worked for half an hour on 10th January, 1979, and four and a half hours on 11th January, 1979, is a question of fact which cannot be interfered with in extra ordinary jurisdiction of this court. It was further submitted that in case of absence from duty, even for the part of the day, the Bank is entitled to deduct the wages for the whole day, while in the instant case the payment of wages authority has only permitted the deduction for the hours the appellant absented himself from duty. It was further submitted that it is a well known principle of Payment of Wages Act "No work no pay", and hence absence from duty would clearly mean that employee had not worked at all during the period of his absence. It was further submitted that Section 9 of the Act permits the deduction for whole or any part of the period during which the employee has absented. Reliance was placed on *Dharam Singh Rajput and Ors. v. Bank of India, Bombay and Ors.* 1979 IC 1979. *Vikram Tamaskitr and Ors. v. Steel Authority of India Ltd. and Ors.* 19824 I LLJ 84 . *V. Ramachandran Vs. Indian Bank, Adamji M. Badri and Others Vs. Labour Officer and Another, and Union of India (UOI) Vs. Pratap Rai,*

7. We have considered the rival contentions and have carefully gone through the cases cited above. The Act has been enacted to regulate the payment of wages and to ensure that the wages payable to the employees covered by the Act are disbursed by the employer within the prescribed period and no deductions other than those permissible by law are made by the employers. There is no controversy in the instant case that the Act is applicable to the respondent-bank and both the employee and the employer are governed by its provisions. Section 7 of the Act permits the deductions which may be made from the wages. u/s 7(2) (b) of the Act deductions from the wages, of an employed person, can be made in accordance with the provisions of the Act for deduction for absence from duty. Section 9 of the Act also deals with deductions for absence from duty. Section 9(1) & (2) of the Act read as under:

Deductions for absence from duty (1) Deductions may be made under Clause (b) of Sub-section (2) of Section 7 only on account of the absence of an employed persons from place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of which he is so required to work.

(2) The amount of such deductions shall in no case bear to the wages payable to the employed person in respect of the wage period for which the deduction is made, a larger proportion than the period for which he was absent bears to the total period within such wage period, during which by the terms of his

employment he was required to work.

Provided that, subject to any rules made in this behalf by the State Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice

A bare reading of Sub-section (1) makes it clear that deductions may be made for an absence if such absence is for the whole or any part of the period during which he is required to work. The argument of the learned Counsel that Section 9(2) of the Act applies in this case in our opinion is not well founded. A perusal of the aforesaid Sub-section (2) and Sub-section (1) of the Act makes it clear that the present case is governed by Sub-section (1) only and not by Sub-section (2) of Section 9 of the Act. The argument of the learned Counsel that in the absence of a contract, Sub-section (1) would not apply, in our opinion is not correct. A paraphrasing of Sub-section (1) would make it absolutely clear that the word "by the terms of his employment" qualifies the words "absence of an employed person from the place or places where" and not the words "such absence being for the whole or any part of the period during which he is so required to work". Hence the terms of his employment for the purposes of the Act and particularly this sub-section would only refer to the place or places of the working of the employee and not the working period. Wherever an employee is posted he has to perform his work in normal working hours and there is no necessity for specific contract about the working hours. So even otherwise subject to any contract to the contrary he is required to work for the period which are the normal working hours and the employer is entitled to deduct wages for the whole or any part of the period during which he is so required to work in case he absents from duty. An employee is supposed to carry out his duties during the working hours and in case, he for any reason refuses to work or absents himself during these working periods without the permission of the authorities, competent to permit, his leave of absence is liable for deduction of wages for the period he is absent, This is further clear by the explanation added to Section 9 of the Act which reads as under:

Section 9 Explanation -- for the purpose of this section, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in-strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

A bare perusal of the aforesaid explanation makes the intention of the legislature clear that even if the employee stays on his desk and refuses to work in pursuance of his stay-in-strike or for any other cause which is not reasonable he shall be deemed to be absent from the place. It is, therefore, abundantly clear

that the person who has not only left his desk but also office premises is certainly one who is absent from duty and makes himself liable for deduction of wages.

8. The submission of the learned Counsel that Sub-section (2) of Section 9 of the Act is attracted in such circumstances, in our opinion, is not tenable. Sub-section (2) of Section 9 of the Act contemplates a different situation than the one in this case. In Sub-section (2) of Section 9 of the Act the mode of deduction in respect of the wages period is mentioned and this Sub-section in fact, in our opinion, refers to the cases of long term absence or strikes by number of persons.

9. The learned Counsel for the appellant relied on *Monoj Kanti Bose and Others Vs. Bank of India and Others*,

Unless the employer is empowered or authorised by Act or under the terms and conditions of the employment to deduct any part of the salary from the salary payable to the employee, any such deduction will be unauthorised and in excess of the power of the employer and will, therefore, be illegal. Under the conditions of service contained in the two awards and the settlement, there is no provision authorising the Bank to deduct any part of the salary on a prorata basis for failure or refusal on the part of the employee to carry on their work during any part of the working hours after the employees have attended office and joined their duties.

In the instant case, as neither the contract of employment nor any other law authorises the Bank to deduct any part of the salary on the ground of the employee's refusal or failure to do the work during the said period, the notice or order directing deduction on a prorata basis from the salary payable to the employees must be held to be without any lawful authority and in excess of the powers enjoyed by the Bank.

In the instant case, the contract of employment is not a divisible one. The consideration for payment of salary to the employee may be the service to be rendered by him. The consideration is not related to any fixed period or work for any month. The consideration is one and indivisible and is not entirely dependent on the particular hours of work put in. The consideration is one, the failure or refusal on the part of the employee to do a fixed period of work on any particular day results in partial failure of the consideration in consequence whereof an employer may claim compensation against the employee, but the employer cannot claim the right to deduct any part of the salary on any prorata basis or, otherwise.

In the aforesaid case despite the fact that his Lordships came to the conclusions as mentioned aforesaid, it was held after quoting Sections 7 & 9 of the Payment of Wages Act that the Payment of Wages Act has no application in the instant case. The Shops & Establishments Act which applies in the instant case contains no provisions similar to the provisions contained in Sections 7 & 9 of the Payment of Wages Act authorising and empowering the employer to make any

deduction from the wages of the employee for absence from duty. As such this authority is of no avail to the appellants and does not apply in the facts and circumstances of the present case where the appellant himself has chosen to invoke the jurisdiction under the Payment of Wages Act. Then another case relied upon by the learned Counsel for the appellant is T.S. Kelwala and Ors. v. Bank of India and Ors. (supra) wherein it was held that "it was not permissible for the Bank authorities, in the absence of contract to deduct the wages of the employees for the work not done in a particular month". In the aforesaid case the employees of the Bank of India decided to resort to strike for a duration of two hours each on August 18, 29 and September 18, 1977. The Bank issued a circular to the effect that wages of the staff participating in the strike should be deducted on the principle of "no work no pay" and the Union gave a call for strike on December 29, 1977 for four hours. They also remained on strike on December 30, 1977. The authorities deducted the salary of the employees for four hours for December 29, 1977 and the whole day of December 30, 1977. It was against this that a writ was filed. His Lordship dealing with Section 7 & 9 of the Payment of Wages Act came to the conclusion that the employer can deduct the wages of an employee provided it is so permitted under the contract or settlement or award. It was further held that the provisions of the Act merely provide the mode of such deduction but do not confer any right on the employer to deduct. The right to deduct must be found out from the contract or any other statutory provisions and reliance on the provisions of Payment of Wages Act is ill-founded. With all respects we are unable to agree with the view taken in the aforesaid case. As we have already stated above the words "by the terms of his employment" in Sub-section (1) of Section 9 of the Act refer to the place and places where he is required to work, we cannot read the words "under the contract or settlement or award" in aforesaid sub-section. Neither Section 7 nor Section 9 of the Act admits all the aforesaid words which have been read by the learned Judge in his judgment. We are, therefore, unable to subscribe our views with the findings arrived at in the aforesaid case.

.10. In V. Ramachandran and Indian Bank (supra) the Division Bench of the Madras High Court considered the Calcutta case referred to above and also the other cases cited before them. Their Lordships were also dealing with the provisions of Tamil Nadu Shops and Establishment Act and were further considering the notice issued by the Indian Bank under the provisions of Section 9 of the Payment of Wages Act. After dealing with the various provisions their Lordships held that "the principle to be followed is "no work no pay" and in order to earn his wages an employee will have to work, absence from duty would undoubtedly mean that the employee had not worked during the period of absence and he is not entitled to wages for such a period of absence". In Dharam Singh Rajput and Ors. v. Bank of India, Bombay and Ors. (supra) the Division Bench of Punjab and Haryana High Court elaborately discussed the provisions of the Payments of Wages Act. Their Lordships were dealing with a case in the similar circumstances in which the T.S. Kelwala's case, referred to above, was

discussed and wherein part wages for December 29, 1977 and full wages for December 30, 1977 was deducted. It was held as under:

The expression "Wage period", cannot be read so as to make the same synonymous with "Wage day" Where the wage period is monthly, a part of this period can be reasonably split up into a number of days during the month, but it will be unreasonable to further split up each day into hours, minutes and seconds. In the matter of interpretation of this provision, the interests of both the employees and the employers have to be reasonably and justly balanced. I have no doubt in my mind that if on any particular day an employee is not able to report for duty for some time during the day on account of the factors beyond his control like sudden illness, accident etc. the employer will not take it into his head to deprive such an employee of the wages for the whole day, but as a matter of interpretation of law it is not reasonable and permissible to hold that it is left to the free and unrestricted discretion of the employee to report for work at any time of the day and be at liberty to do work for any part of the day only at his whim and caprice and still enjoy the right to claim wages for the remaining part of the day.

If absence from duty for a part of the day could be legitimately and rightly held as absence for the whole day, as held above, the respondent Banks were entitled to deduct the wages for the whole day u/s 16 of the Act read with Sections 7(2) (b) and 9 of the Payment of Wages Act, and there was no question of giving of any opportunity.

11. Similar view was taken by Justice Sabyasachi Mukharji (as he then was) in the Calcutta High Court in *Algemens Bank Nederland N.V. v. Central Government Labour Court at Calcutta and Ors.* 1978 LabIC 47. This judgment has also been followed by the Division Bench of the Madhya Pradesh High Court in *Vikram Tamaskar and Ors. v. Steel Authority of India Ltd.* (supra). We are in respectful agreement with the view taken by Punjab and Haryana, Madhya Pradesh, Madras and Calcutta High Courts and held that it was permissible for the Bank to have deducted the wages for the part of the day and the case has rightly been decided by the Payment of Wages Authority.

Next point raised by learned Counsel for the appellant is that Payment of Wages Authority has not rightly decided the question as to how many hours the appellant had worked on the two days. This is a question of fact and the findings arrived at by the Payment of Wages Authority cannot be interfered by this Court. Similarly this court will also not go into the question of mala fide or not affording proper opportunity by employer before deducting the wages as the Payment of Wages Authority has itself held detailed inquiry wherein the appellant has participated and it was after this protracted inquiry that the findings have been arrived at by the Payment of Wages Authority. We are not inclined to go into this question also in this appeal.

In the result, we find no force in this appeal and the same is hereby dismissed.

We leave the parties to bear their own costs.