
(1956) 08 MP CK 0013
In the Madhya Pradesh High Court

Ramji Rupchand

APPELLANT

Vs

Western Railway (District Superintendent)

RESPONDENT

Date of Decision : 06-08-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Payment of Wages Act, 1936 — Section 15, 17

Citation : AIR 1957 MP 155 : (1958) 2 LLJ 84

Hon'ble Judges : B.K. Chaturvedi, J

Bench : Single Bench

Judgement

Chaturvedi, J.—This is a revision filed by the petitioner Ramji who is a goods guard at Ratlam against an order of the Court of the District Judge, Indore, dated 26 July 1955, in appeal No. 117 of 1954 setting aside the order passed by the Authority under the Payment of Wages Act.

2. There is no dispute so far as the scale of the pay of the petitioner is concerned. It will be clear from the following narration that the dispute in this case is confined to arrears of salary which the petitioner is entitled to under orders of the President. The petitioner was in the service of B.B.C.L. Railway before 1931. In the next scale of 1931, all "C" guards were given a fixed salary of Rs. 100 per mensem. But when the petitioner was promoted to guard grade "C" he was given the pre-1931 scale of pay which was Rs. 50-5-85-10-105. Subsequently, all the railways in the country were integrated and the Pay Commissioner's recommendations were accepted by the Government of India which fixed a new scale of pay, hereinafter referred to as the "prescribed scale."

3. The pre-1931 railway servants were given an option to remain in the old scale or to opt for the prescribed scale. It was mentioned that the last date of option was 1 May 1948. The employees were asked to opt before that date and to mention whether they would like to come to the prescribed scale with retrospective effect from 1 January 1947 or from 16 August 1947. The post-1931 railway servants had no option as the prescribed scale fully applied to them.

4. Petitioner Ramji did not opt on 1 May 1948, but he, along with other railway servants, held doubts about the application of the prescribed scale. This scale, so far as the petitioner was concerned, was Rs. 60-4-120-EB-5-170; while the petitioner was already getting Rs. 70, possibly, he thought he might have to begin from Rs. 60 if he opted for the prescribed scale. It was represented to the Railway Board that the pre-1931 railway servants should first be brought on the post-1931 scale and then should be asked to opt for the prescribed scale. The Railway Board accepted this representation and notified in the Railway Gazette (Ex. P. 1) dated 11 November 1950 on pp. 25-26 the following:

Extract of Paras. 1 and 3 of Railway Board's letter No. E. 47 C.P.C./10, dated 31 March 1949.

1. The Railway Board have had under consideration the question of fixation of initial pay in the prescribed scales of railway servants on the pre-1931 scales of pay in cases where the pre-1931 scales of pay are inferior to the corresponding post-1931 scales of pay. It has now been decided that in such cases, the pay that the employee would have been entitled to, on the post-1931 scale of pay on the date of his coming on to the prescribed scale, should first be determined on the basis that the pay of such staff might be assumed to have been fixed on post-1931 scales under 2017-R-II (F.R. 22) with effect from the date of promulgation of said scales:

2. Those orders have the approval of the Governor-General.

5. A copy of Railway Board's above letter was sent to the District Traffic Superintendent, Ratlam, and others. It was mentioned in that letter dated 19 August 1950 that the General Manager under his No. EPC120/50/616 of 8 August 1950, accepted the following-categories as categories in which the pre-1931 scales are inferior to the corresponding post-1931 scales. In the six categories mentioned in this letter, No. 5 is that of goods and local section guards in which the petitioner was at that time. It was mentioned in Para. 4 of this letter that

there may be a few cases where staff may wish to exercise a revised option in view of these orders. Their particulars should be forwarded to this office so that the General Manager may be approached for allowing them a chance for revised options.

6. Then the copy of letter No. EA 377/IV goods dated 18 September 1950 from D.T.S., Ratlam, to the station master, Ratlam, says that

the pay of the staff mentioned under revised orders can be fixed provisionally subject to audit checking as shown below against each.

The petitioner's name Mr. Ramji, goods guard, Ratlam, is shown in this list and also it is mentioned that his pay can be fixed on 1 January 1947 or on 16 August 1947 at Rs. 108. Then the letter concluded in the following words:

Please let me know if they wish to exercise revised option in view of the revised

orders to enable me to forward their particulars to the Traffic Superintendent, General Local Office, so that the General Manager may be approached for allowing them a chance for revised option.

To this letter the petitioner replied on a Government form on 7 November 1950:

I want to elect prescribed scales under revised rules on and from 1 January 1947.

This will clearly show that the petitioner exercised his option on 7 November 1950.

7. In this connexion it is useful to refer to Gazette No. 22 of 11 November 1950, which notified the Railway Board's letter No. E47 CPC/10 dated 22 September 1950, about the question whether superiority or inferiority of pre-1931 scale over a post-1931 scale should be determined with reference to the post occupied by the employee on the relevant date or on the date of introduction of the post-1931 scales. It was laid down that the relative inferiority or superiority of the scales of pay should be determined with reference to the posts which the employees occupied in substantive or officiating capacity on 31 December 1946 or 15 August 1947 as the case may be, since the application of presumptive pay of pre-1931 employees in the post-1931 scale of pay had significance only on the date of option of the prescribed scales of pay.

8. Then, for the purpose of comparing a pre-1931 scale and post-1931 grades certain factors were laid down so that they could be taken into account to determine the superiority of one over the other. Then the order said that once it has been established that it would be more profitable for an employee to come on the post-1931 scales of pay before his pay is fixed in the prescribed scales, his presumptive pay in the post-1931 scales of pay should be worked out from the date of their introduction on the railway to the date of his option to the prescribed scales. The Board then said that the staff should then be called upon to send their applications for receiving the benefit of those orders within a period of three months. The Board also desired for early action for the implementation of this decision.

9. It will be obvious that the Railway Board wanted to give another chance to the employees for revised option and applications were invited from the employees within a period of three months, that is, by 11 February 1951. It was in compliance with this order that the petitioner's presumptive pay in the post-1931 scales of pay was worked out and he was asked to send his application to receive the benefit of those orders.

10. It appears that after this, some controversy arose, the exact nature of which is not known as the relevant papers are not on record, but a copy of letter No. E830/11 p. 4, dated 27 September 1952, from R.T.S. (E) B.C.T. to the District Traffic Superintendents marked as Ex. 27/3 states as follows:

The question of allowing pre-1931 guards, who had elected to remain in the existing scales of pay and who stand to benefit by application of Board's orders

(published in the gazette of 11 November 1950) is still under correspondence with the Railway Board. To obviate any apprehension on the part of the guards concerned, applications of those guards who have applied for getting the benefit within the target date of 10 February 1951 should be acknowledged individually stating that their applications are on record and will be dealt with on receipt of the Board's orders, in this connexion.

Then, Ex. P. 4 is a copy of Railway Board's letter No. E47 C.P.S. 10, dated 15 October 1952, to the General Manager, C.C.C. The subject is the same, that is, "post for which pre-1931 scales are inferior to the corresponding post-1931 scales." It says:

Reference correspondence resting with your letter No. E830/11, dated 11 July 1952. The President is pleased to decide that the guards on pre-1931 scale of Rs. 50-105 on the broad gauge section of your railway may be permitted to exercise an option for coming on to prescribed scales within two months from the date of issue of this letter. The fixation of pay should be done pro forma under R.S. (R.O.P.) Rules, 1947 ; the actual payment under the revised rate should be made from the date of exercising the option.

This notification is important as much of the controversy in this case rests upon its interpretation. It is, however, significant to note that this notification does not say as to what would happen to those pre-1931 guards who had already elected under notification No. 22 published in the gazette of 11 November 1950 and who had informed the authority about their option. It appears, however, that the petitioner Mr. Ramji was asked again to opt and he filed a form of election of the prescribed scales of pay on 10 November 1952.

11. As regards the employees who had opted in terms of Board's letter No. E47 C.P.S./10, dated 19 February 1952, it was made clear in Railway Board's letter No. E 47 C.P.C./10, dated 22 December 1952, that arrears were payable from 22 September 1950.

12. Last of all, there is in this connexion an important letter from the Railway Board No. E47 C.P.C./10 of 11 April 1953. It bears the same subject, i.e., "post for which pre-1931 scales are inferior to corresponding post-1931 scales of pay." It is published in the Central Railway Weekly Gazette, dated 1 May 1953, and it runs as follows:

In modification of decision contained in Para. 2 of Railway Board's letter No. E47 C.P.C./10, dated 22 December 1952, the President has been pleased to decide that the staff who have been benefited by the orders contained in the letters of even number, dated 22 September 1950 and 19 February 1952, should be paid arrears from 1 January 1947 or 16 August 1947.

There is no dispute about the salary of the petitioner under the prescribed scale; that is, on 1 January 1947, it ought to be Rs. 108 ; on 25 January 1947, Rs. 112; on 25 January 1948, Rs. 116; on 25 January 1949, Rs. 120; on 25 January

1950, Rs. 125; on 25 January 1951, Rs. 130; and on 25 January 1952, Rs. 135. The question is only whether he should get arrears of salary from 1 January 1947 or from 7 October 1950, when he made an application for option or from 10 November 1952, when he filled in the "election form." The Authority under the Payment of Wages Act held that the applicant must be paid his arrears from 1 January 1947, in accordance with the order of the President published in Central Railway . Weekly Gazette on 1 May 1953, mentioned above.

13. The Court of the District Judge did not agree, allowed the appeal against the judgment of the Authority under the Payment of Wages Act; and, on the basis of the Railway Board's letter No. E47 C.P.C./10, dated 15 October 1952, held that the actual payment of arrears is to be made from the date when the applicant exercised his option, that is, from 10 November 1952, when he filled in the "election form." The learned Court in appeal also held that the authority is incompetent to decide such questions as has been raised in this case u/s 15 of the Payment of Wages Act. He, therefore, rejected the claim of the petitioner. The petitioner has come in revision against this order.

14. The question whether such a revision is competent or not within the meaning of Section 115, Civil Procedure Code, has not been agitated before me. This Court has been hearing revisions against orders of the District Court passed in appeal u/s 17 of the Payment Wages Act as will be evident from cases reported in *Raj Kumar Mills, Ltd, v. Inspector, Payment of Wages* M.B.L.R. 1955, Civ. 35 : AIR 1955 MP. 60 and in *Payment of Wages, Inspector v. Bramhodutta* AIR 1956 MP. 152. The view held by this Court is that the "District Court" mentioned in Section 17 of the Payment of Wages Act is not a *persona designata* but a Court and is also one subordinate to the High Court within the meaning of Section 115, Civil Procedure Code.

15. Mr. Muzumdar, learned Counsel for the opponent, contended that such a question as has been raised in this petition cannot be investigated by the Authority under the Payment of Wages Act. In my opinion, there is no substance in this contention. In *A.V.D. Costa v. B.C. Patel* 1955 I L.L.J. 363 at p. 367 the Supreme Court observed:

If the parties entered into the contract of service, say by correspondence, and the contract is to be determined with reference to the letters that passed between them, it may be open to the authority to decide the controversy and find out what the terms of of the contract with reference to those letters were. But if an employee were to say that his wages were Rs. 100 per month which he actually received as and when they fell due but that he would be entitled to higher wages if his claims to be placed on the higher wages scheme had been recognized and given effect to, that would not, in our opinion, be a matter within the ambit of his jurisdiction.

The authority has the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages;

but the authority has no jurisdiction to determine the question of potential wages.

In this particular case there is no question of potential wages. I have not to enter into an elaborate enquiry with the object of determining as to what the wages ought to be, but the question is to ascertain what the wages of the petitioner actually are; and for determining the actual wages the authority has jurisdiction to construe the terms of the contract and to determine whether under the contract an amount X or an amount Y is payable to the employee as wages.

16. After the decisions of the Supreme Court, I do not think there can be any serious contention raised about this point. I would, therefore, repel the first contention of Mr. Muzumdar.

17. As regards merits of the case, Mr. Muzumdar relies upon Ex. P. 4 which is a copy of Railway Board's letter No. E47 C.P.C./40, dated 15 October 1952, to the General Manager, and he thinks that the order related to pre-1931 guards who had opted after 1 May 1948, for the prescribed scales and it was clearly laid down that in such cases fixation of pay should be done with effect from 1947, but that the actual payment under the revised scale should be made from the date of exercising the option.

18. The learned Counsel urges that the Railway Board's letter No. E47 C.P.C./10 of 11 April 1953, which is published in Central Railway Weekly Gazette, dated 1 May 1953, refers to "the staff who have been benefited by the orders contained in the letters of even number, dated 22 September 1950 and 19 February 1952." It does not refer to the guards for whom a Special order had been made in the Railway Board's letter, dated 15 October 1952. In my opinion, this contention is devoid of force. Railway Board's letters of 22 September 1950 and 19 February 1952, referred to all the staff including the pre-1931 guards.

19. In those letters there is absolutely no reference to the fact that the "staff" meant all the other railway staff (excluding pre-1931 guards). It is significant to note that the subject in every letter was "post for which pre-1931 scales are inferior to the corresponding post-1931 scales." The orders of the Government modifying previous ones have been varied from time to time according to the contingencies which arose, or, according to the difficulty which was experienced.

20. In my opinion, all these various orders should be read as a whole and the latest declaration must be accepted as the final intention and purpose. If taken in this way, I have to come to the conclusion that the later order of the President has annulled all the inconsistent orders of former dates. In fact the order of the President mentioned in the Railway Board's letter of 11 April 1953, must be construed as a repeal of the older and prior order by implication. Moreover, the Court has to suppose that the Government have a consistent design and policy and intend nothing that is inconsistent or incongruous.

21. A Government order cannot be expected to be discriminatory. Courts cannot suppose that the Government wanted that the pre-1931 guards should be

deprived of the advantages which they allowed to the other pre-1931 railway staff.

22. Mr. Muzumdar vigorously argued that the general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, does not apply if the prior enactment is special and the subsequent one is general. This, no doubt, is true, but it has been observed at p. 352 in *Craies on Statute Law* (5th Edn.) that this rule must not be pressed too far.

23. If a special enactment and a subsequent general Act are absolutely repugnant and inconsistent with one another, the Courts have no alternative but to declare the prior special enactment as repealed by the subsequent general Act. In all such cases, the legislative intention, rather than grammar or letter of the enactment is the determining factor. If the intention is found to be to sweep away all previous orders and to establish one rule for all railway employees, that will be sufficient to get rid of any previous special order relating to pre-1931 guards. The Railway Board's letter No. E47 C.P.C./ 10 of 22 December 1952, clearly begins with the following words:

Reference your letter No. CPC/52/OPN/19 /42 dated 11 October 1952. The Board is considering the question of granting a general option to the railway servants and the decision in the matter will be communicated to you as soon as arrived at.

It is, in this reference that the whole correspondence has to be looked at. This letter was issued clearly seven days after the Railway Board's letter of 15 October 1952, and the intention was that all the previous orders including those of pre-1931 guards would be reconsidered.

24. This leads me to the conclusion that the President's subsequent order of 11 April 1953, was intended to establish one rule for pre-1931 railway employees (including guards) whether they opted before 1 May 1948 or afterwards.

25. I have already observed in Para. 4 above that the petitioner had already exercised validly his option on 7 November 1950. He had informed the relevant authority of this election and that was sufficient. To fill in an "election form" was not necessary as it had not been prescribed anywhere. It was in compliance with Railway Board's letter No. E 47 CPC/10, dated 22 September 1950, that the petitioner's presumptive pay in the post-1931 scales of pay was worked out and he was asked to send his application to receive the benefit of these orders. In fact he is one of "the railway staff who has been benefited by the orders contained in Railway Board's letter dated 22 September 1960" within the meaning of the President's orders contained in the Railway Board's letter No. E 47 CPC/10 of 11 April 1953.

26. In this view of the matter, I would set aside the order of the District Court and restore that of the Authority under the Payment of Wages Act, No order as to costs.