

(1965) 07 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 22, 54, 55 and 56 of 1965

S. Ghosh and Others

APPELLANT

Vs

Dulia and Others

RESPONDENT

Date of Decision : 22-07-1965

Acts Referred:

Payment of Wages Act, 1936 — Section 7

Citation : AIR 1967 Raj 145 : (1969) 1 LLJ 194

Hon'ble Judges : D.S. Dave, C.J; Kan Singh, J

Bench : Division Bench

Advocate : Anand Prakash and Dayal Singh, for the Appellant; Chandmal Lodha, for the Respondent

Final Decision : Allowed

Judgement

Kan Singh, J.—These are four writ petitions under Article 226 of the Constitution filed by Shri S. Ghosh, Mines Manager, Bikaner Gypsums Limited. Jamsar (Bikaner), challenging the validity of the order of the Sub Divisional Magistrate, Bikaner (North), acting as Payment of Wages Authority under the Payment of Wages Act, hereinafter to be referred as the "Act, by which the Payment of Wages Authority directed the petitioner to pay the wages of Dulia and other workers which were found to have been deducted in contravention of the provisions of the Act. The writ petitions can conveniently be disposed of together.

2. The petitioner was the Mines Manager of the Bikaner Gypsums Limited at the mines of the Company at Jamsar. The Company is engaged in the mining of Gypsum. The opposite party, who were workers employed at the mines, filed separate applications before the Payment of Wages Authority to the effect that for the wage period 2-10-63 to 30-9-64, the petitioner had wrongly deducted the wages on the basis of the Manager's letter No. J/A-13a/2571/16 dated 26-9-63, by which the annual increments of the workers were stopped for a year This action was taken by the petitioner in accordance with the Standing Orders of the Company as a result of certain disciplinary proceedings taken against the

workers. The workers were found guilty of certain misconduct in that they were found sleeping during duty hours. The contention raised before the Payment of Wages Authority by the workers was that, as the Standing Orders under which the order for deduction of wages was passed did not provide for an appeal as required by a Government notification No. S. O. 391/PWA/Sec. 7/Ex. P. II/1960, published in the Government of India Gazette of 18-2-61, such a deduction was one in contravention of Section 7 of the Act.

The petitioner resisted the application on the ground that, as the basis of the deduction had been an imposition of penalty of the withholding of the increment according to the Standing Orders the deduction was valid. The Payment of Wages Authority did not accept the submission made by the petitioner and held that, as the rules made by the petitioner did not provide for, an appeal, the deduction made from the wages of the workers was illegal and unauthorised and consequently, according to the Payment of Wages Authority, the worker was entitled to the refund of the same. The only question that calls for consideration is whether the Payment of Wages Authority has considered the matter properly according to the tenor of Section 7 of the Act. Section 7 of the Act runs as under:

"Section 7(1) Notwithstanding the provisions of Sub-section (2) of section 47 of the Indian Railways Act, 1890 (IX 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.

Explanation I.--Every payment made by the employed person to the employer or his agent shall, for the purposes of the Act, be deemed to be a deduction from wages.

Explanation II.--Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, namely:-

- (i) the withholding of increment or, promotion (including the stoppage of increment at an efficiency bar);
- (ii) the reduction to a lower post or time-scale or to a lower stage in a time-scale; or
- (iii) suspension;

shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette.

2. 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) fines;

(b) deductions for absence from duty;

(c) deductions, for damage to or loss of goods expressly entrusted to the employee 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;

(d) deductions for house accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not or any other authority engaged in the business of subsidizing house accommodation which may be specified in this behalf by the State Government by notification in the official Gazette;

(e) deductions for such amenities and services supplied by the employer as the State Government may by general or special order, authorise;

Explanation.--The word "services" in this sub-clause does not include the supply of tools and raw materials, required for the purposes of employment.

(f) deductions for, recovery of advances or for adjustment of over-payments of wages

(g) deduction of Income Tax payable by the employed person;

(h) deductions required to be made by order of a Court or other authority competent to make such order;

(i) deduction for subscriptions to, and for repayment of advance from, any provident fund to which the Provident Funds Act, 1925 (XIX of 1925), applies or any recognised provident fund as defined in Section 58-A of the Indian Income Tax Act 1922 (XI of 1922) or any provident fund approved in this behalf by the State Government during the continuance of such approval:

(j) deductions for payments to co-operative societies approved by the State Government or to a scheme of Insurance, maintained by the Indian Post Office; and

(k) deductions, made with the written authorization of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956, or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government."

Section 7(1) of the Act contains a clear mandate that the wages of an employed person shall be paid to him without deduction of any kind except those authorised by or under the Act. Explanation (1) brings out the meaning of this provision clearly by enacting that every payment made by the employed person to the employer shall be deemed to be a deduction from wages. This explanation

is obviously designed to eliminate the use of subterfuges by employers, by making a show of a payment and then taking the amount back from the worker on another pretext. Explanation (2) was inserted by an amendment in 1957 to set at rest judicial controversy on the question whether reduction in wages on account of any punishment imposed was deduction within the meaning of this section. Explanation (2) now provides as to what deductions shall not be deemed to be deductions. If any case is covered by the explanation, then the Payment of Wages Authority will have no jurisdiction to deal with the matter, because in that event it will be a case of there being no deductions.

The notification issued under the explanation is reproduced hereunder:--

"The Gazette of India, February 18, 1961, Magha 29, 1882. 482. Part II S. O. 391/PWA/Sec. 7/Ex. P. 11/1960.

In pursuance of Explanation II to Sub-section (1) of Section 7 of the Payment of Wages Act, 1936 (4 of 1986), read with Section 24 of the said Act, and in supersession of the notification of the Government of India in the Ministry of Labour and Employment No. S. O. 517, dated the 5th April, 1968, the Central Government hereby specifies the requirements to which any rules framed by an employer in relation to his employees employed in Railways, mines and oilfields for the imposition of any of the following penalties shall conform, namely:--

All such rules shall provide that-

(1) the penalty of reduction to a lower post or time-scale or to a lower stage in a time-scale shall be imposed only after an inquiry, held as far as may be, in the manner hereinafter provided -

(i) definite charges shall be framed and served in writing, on the person concerned who will be required to submit within such time as may be specified, a written statement and also to state whether he desires to be heard in person;

(ii) for the purpose of preparation of his defence the person concerned shall be permitted to inspect and to take extracts from such records as he may specify provided that such permission may be refused if, for reasons to be recorded in writing, such records are not relevant for the purpose.

(iii) The charges as are not admitted shall be inquired into.

(iv) to (ix)

(x) appropriate orders shall be passed and communicated to the person concerned in writing.

(2) The penalty of withholding of increment or promotion but excluding the penalty of stoppage of increment at an efficiency bar shall be imposed only after the person concerned has been informed in writing of the proposed action together with the allegations and given an opportunity to make any representation that he may wish to make.

(3) The person concerned is given a right of appeal against order imposing any of the penalties mentioned in (1) and (2) above.

(No. Fac. 541/12/60)

P. D. Gaiha, Under-Secretary."

The Payment of Wages Authority held that, as the worker was not given a right of appeal regarding the penalty of withholding the increment, the action taken against the worker was rendered illegal. This conclusion, to our mind, is not warranted. If a particular deduction is not covered by the explanation (2) then it cannot be regarded as a case of no deduction, but this alone will not justify the inference that the deduction was one unauthorised in law. It is Sub-section (2) of Section 7 which lays down as to what are authorised deductions. The list of deductions given in Section 7(2) is exhaustive and no other deduction is permissible. The group of sections following this section namely, 8 to 13 of the Act, lay down the elaborate procedure for making the deductions. If the deductions had not conformed to the procedure laid down from Sections 8 to 18 of the Act, the same will not be deemed to be authorised and in that situation the employer shall be deemed to be under the obligation to pay the wages in full without the deduction.

It has been strongly canvassed before us by the learned counsel for the petitioner that the stoppage of increment for one year having been ordered by a competent authority under the Standing Orders which have the force of law this will be a case of a permissible deduction it is urged on behalf of the petitioner that Standing Orders are made under the provisions of the Industrial Employment (Standing Orders) Act, and thus they are statutory rules governing the conditions of service between the employer and the employee and thus have the force of law. There is no manner of doubt that the Standing Orders framed in accordance with the Industrial Employment (Standing Orders) Act have the force of law. We may quote the following passage from *The Bagalkot Cement Co. Ltd. Vs. R.K. Pathan and Others*, which was cited by the learned counsel for the petitioner

"Prior to the passing of the Act, conditions of employment obtaining in several industrial establishments were governed by contracts between the employer and their employees. Sometimes the said conditions were reduced to writing and in many cases they were not reduced to writing but were governed by oral agreements. Inevitably in many cases, the conditions of service were not well-defined and there was ambiguity or doubt in regard to their nature and scope. That is why the legislature took the view that in regard to industrial establishments to which the Act applied, the conditions of employment subject to which industrial labour was employed, should be well defined and should be precisely known to both the parties. With that object, the Act has made relevant provisions for making standing orders which, after they are certified constitute the statutory terms of employment between the industrial establishments in

question and their employees. That is the principal object of the Act."

3. In a very recent case reported as *Tata Chemicals Ltd. v. Kailash* 1965-1 Lab LJ 54: (AIR 1964 Guj. 205) the Gujarat High Court has also held that the service conditions prescribed by the certified standing orders amount to statutory service conditions binding on both the employers and the employees. Since the contention whether the order passed by the petitioner against the workers was an order passed by "other authority competent to make such order within the meaning of Sub-section 2 (h) of the Act, has not been dealt with by the Payment of Wages Authority, we are inclined to think that the case has not been properly dealt with by the Payment of Wages Authority it will be for that Authority to consider whether the Mines Manager was equivalent to the term "Management within the meaning of Rule 23 (b) of the Standing Orders. On the material placed before us, we are for the present unable to say whether the Manager was the same Authority as the Management within the meaning of this rule. Rule 37 of the Standing Orders gives an indication that the Company has Managing Agents and a Mines Superintendent. It will be for the Payment of Wages Authority to probe the matter and then see as to whether the Mines Manager was the same thing as the Management within the meaning of the Standing Orders so that any action taken by him could be taken to be that of a competent authority within the meaning of Section 7(2)(h) of the Act.

4. The result is that we accept all these four writ petitions, quash the orders of the Payment of Wages Authority dated 37-11-64, and direct that Authority to deal with the matter afresh in the light of the observations made by us above. In the circumstances of the case the parties are left to bear their own costs.