

(1980) 07 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1109 of 1979

The Deputy Chief Mechanical Engineer, Northern Railway
Jagadhri Workshop, Jagadhri

APPELLANT

Vs

Joginder Singh

RESPONDENT

Date of Decision : 21-07-1980

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 7

Citation : (1980) 07 P&H CK 0002

Hon'ble Judges : M.R. Sharma, J; Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : B.S. Shant, for the Appellant; Britain Singh, Spl. Attorney, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Sharma, J.—The Respondent made a claim for Rs. 1637.83 before the authority under the Payment of Wages Act, 1936 (hereinafter called the Act) against the Petitioner pertaining to his remuneration for the suspension period from 21.9.1968 to 3.12.1969 and the loss resulting from stoppage of annual increment with cumulative effect for a period of three years with effect from 26.8.1970. The authority held that the claim for wages for the suspension period was barred by time and the loss of increment benefit having been backed by a valid order of stoppage could not be entertained by the authority under the Act. The Respondent went up in appeal which was allowed by the learned District Judge, Ambala. The revision petition filed by the Petitioner was admitted for hearing by a Division Bench because the view taken by me in Divisional Superintendent, Northern Railway, Delhi, etc. v. Ran Ktshan Etc. 1973 Cur. L.J. 693, was doubted.

2. The learned Counsel for the Petitioner drew our attention to Sections 7 and 15 of the Act, and argued that the authority under the Act exercised summary jurisdiction for ordering the payment of wages to an employee and in this

jurisdiction it cannot question the legality of the order passed by the employer who is a statutory authority. The material portion of Section 7 of the Act reads as under:

7. Deductions which may be made from wages: (1) Notwithstanding the provisions of Sub-section (2) of Section 47 of the Indian Railways Act, 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 1: Every payment made by the employed person to the employer or his agent shall, for the purposes of this 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:

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

3. The language employed in Explanation II noticed above shows that the wages deducted as penalty resulting from the imposition for good and sufficient cause pursuant to a domestic enquiry could be validly deducted. In other words, if the employer puts forth a defence that deductions have been made pursuant to a disciplinary action against the employee it has to prima facie show that the enquiry had been held in accordance with the rules on the subject. If it fails to do so, or if the order imposing the penalty on the employee prima facie discloses that it had been passed in violation of the principles of natural justice, it is open to the authority to come to the conclusion that the penalty had not been imposed on the employee for good and sufficient cause. In that case, the authority would ignore such an order and order the payment of wages to the employee. The provisions of Section 7(2) (h) of the Act also imply that the order of a Court or other authority should have been passed after notice is given to the employee if the

employer intended to claim any immunity against its challenge. In the instant case, the Appellate Authority has come to the conclusion that the impugned orders were passed against the employee without the service of any notice upon him to show cause why an order should not be passed. The impugned orders were, therefore, violative of principles of natural justice and contrary to the rules governing the enquiries against Railway employees. In these circumstances, no fault can be found with the view taken by the Appellate Court. The view is in accord with the principle of law laid down by a Division Bench of this Court in Civil Revision No. 389 of 1969 (The Divisional Personal Delhi Officer Davison, Northern Railway, New Delhi and Anr. v. Jaswant Raj and another) Cr. R. 389 of 1969, decided on April 27, 1972. After making an exhaustive analysis of the case law, the Division Bench observed as under:

This clearly indicates that where a part of the claim related to increment withheld, the Authority dealing with the claim has to see whether the deductions from wages in such cases on that account are in conformity with the rules framed by the employer for imposition of any such penalty.

This view was followed by me in Ram Kishan's case (supra). Mr. Shant, the learned Counsel for the Petitioner, submitted that the aforementioned view ran counter to the view taken by a Full Bench of this Court in Divisional Superintendent Northern Railway, Delhi Division Vs. Mukand Lal, . We are unable to accept this contention. In the Full Bench case, the legality of the order of suspension was not under challenge. In the instant case, as already observed, the impugned orders, were prima facie violative of principles of natural justice and the rules. No elaborate enquiry was needed to determine their legality. In such a situation, the authorities under the Act could ignore these orders while considering the claim made by the employee.

For reasons aforementioned, we see no force in this petition and dismiss the same. We might also add that the claim made by the worker has been resisted by the Petitioner wholly on untenable grounds for a long period. In the circumstances we order that the amount found to be due to the employee be paid to him along with interest at the rate of 6 percent., per annum. No costs.

B.S. Dhillon, J.

I agree.