**(1978) 10 MAD CK 0031**

**In the Madras High Court**

V. Ramachandran APPELLANT

Vs

Indian Bank RESPONDENT

**Date of Decision :** 06-10-1978

**Acts Referred:**

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 9A
Payment of Wages Act, 1936 — Section 7, 9
Tamil Nadu Shops and Establishments Act, 1947 — Section 2, 33C, 34, 36

**Citation :** (1979) 1 LLJ 122

**Hon'ble Judges :** Nainar Sundaram, J;Mohan, J

**Bench :** Division Bench

## Judgement

1. An interesting question arises in this writ petition as to the power of the management to deduct wages for the absence of the employee during working hours from his seat. As to how this question arise would be evident from the following facts:

2. The petitioner was working as a shroff/clerk in the respondent-Bank''s (Indian Bank) main branch at Madurai and he was drawing a total salary of Rs. 1,380 per mensem. He is also the organising secretary of the Indian Bank Employees'' Union which is claimed to be the major union. The Bank admittedly is a nationalised Bank. To celebrate the 7th anniversary of the Bank Nationalisation, which fell on the 19th of July, 1976, a function was organised to be held on the 19th July, 1976 at 6.30 p.m. A communication was addressed to all the members of the staff on that day stating that the meeting convened at 6.30 p.m. stood postponed to a later date on 28-7-1976 the following notice was put up:

1. The Bank regrets to note that in the month of July, 1976 some members of the staff have ceased to work by resorting to agitation such as mass deputation, absenting themselves from their seats during their normal working hours.

2. Such members of the staff are hereby informed that their wages will be proportionately deducted for the period of their absention from duty on those

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days.

3. The deduction of wages is without prejudice to the right of the Bank to take disciplinary action where warranted.

This was acknowledged by the union and to that a reply emanated from the Central Office of the Indian Bank to the following effect:

We have for acknowledgment your letter No. IBEU/MS./8/76-78 dated 29th July, 1976.

2. We have received information from the Manager, Madurai Main Branch that most of the staff members including those in Cash Department left their seats during office hours at about 1.15 p.m. on 20-7-76 and returned after 15 minutes disrupting the normal functioning of the Branch which resulted in inconvenience to the public.

3. You are aware that we have as early as April, 1972 circularised to all our branches to adopt the principle of ''No Work No Pay'' A copy of the circular was put on notice board. It is really surprising to note that you are not aware of the principle of ''No work No Pay''. This is an accepted principle in the Banking Industry. On the advice of the Indian Bank''s Association, all member Banks have agreed to adopt the principle of ''No work No pay''. In the above context we would like to draw your attention to Section 9 of the Payment of Wages Act, 1936. The proviso to the section gives the Management the right to deduct the wages in case of absence or abstention from work. Section 9 is the authority for deduction of wages on a pro-rata basis. This is the enunciation of the principle ''No Work No Pay''.

4. Under these circumstances your bringing in reference to Sastry/Desai Award has no bearing. The provisions of Section 9A of the Industrial Disputes Act, 1947, does not apply at all.

5. We once again take this opportunity to emphasises that it is very necessary to maintain discipline and efficiency which is a fundamental pre-requisite of good customer service.

This was protested against by the union stating that the deduction was not authorised either by the Desai Award or Sastry Award, nor by any other provision of law and in effect such deduction will violate the provisions of Section 9A of the Industrial Disputes Act or to reply the letter immediately. The salary for the month of July, 1976, was received under protest, as seen from the communication addressed by the union, dated 30th July, 1976. It is under these circumstances that the present writ petition has been preferred praying for a writ of mandamus to direct the respondent, represented by the Deputy General Manager, to pay the salary of the petitioner for the month of July, 1976, without any deduction as stated in the notice dated 28-7-1976.

3. The main grounds urged in the writ petition are as under: Employees in the

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Madurai Main Branch have gone on a mass deputation inside the premises on several occasions previously to put forward their grievances and no deductions from the salary have been made on those occasions. For instance, on 26-12-1973 and 7-6-1976 similar mass deputations were taken to the Regional Manager''s Office regarding the grievances concerning certain organisational matters, but no deductions were made from the salaries then, as on this occasion.

4. Neither the petitioner nor the other employees of the petitioner''s main office were given any individual notices before deductions were made for the alleged 15 minutes of mass deputation and they were not even called upon, after deduction was made, to show cause against deduction. Therefore, there is a violation of the principles of natural justice.

5. The notice dated 28-7-1976 is vague in that it does not mention the duration of the alleged absence from the seats and the place where the alleged agitation took place. It is stated that the mass deputation was confined exclusively to the bank premises and especially to the Regional Manager''s room.

6. Salary is property and, therefore, natural justice requires that the petitioner should be heard before he is deprived of the same, unless under the contract or under law the respondent is empowered to deduct the salary.

7. The respondent''s contention that Section 9 of the Payment of Wages Act applies is untenable since that Act is not applied to a bank. To this affidavit a counter-affidavit has been filed by the respondent.

8. Mr. A. Ramachandran, learned Counsel for the petitioner, reiterating what is stated in the affidavit, states that the petitioner is to be paid salary on a monthly basis. It is an indivisible contract. Under those circumstances there is no question of wages. If that be so, no deduction is permissible. Secondly, inasmuch as salary is property, before the petitioner is sought to be deprived of the same, he should have been heard and failure to hear would constitute violation of the principles of natural justice.

9. On a reading of Section 34 of the Tamil Nadu Shops and Establishments Act, 1947, which alone applies to the Bank it is clear there being "no absence from the premises", deduction is not authorised. It may also be noted in this connection that there is no corresponding provision like Sections 7 and 9 of the payment of Wages Act enabling the management to deduct any part: of the salary. In support of this submission the learned Counsel relies on a judgment of the learned single Judge of the Calcutta High Court reported in Monoj Kanti Bose and Others Vs. Bank of India and Others, .

10. Lastly, it is submitted that when on previous occasions when mass deputations were taken to redress the grievances, there was no deduction, the present deduction is only an emergency excess.

11. Mr. B.R. Dolia, the learned Counsel appearing for the Bank, in refuting the

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contentions, submits that the general principles that should be applicable in all these cases is "No work No pay". As an employee, the petitioner, in order to earn his wages, should have worked. Admittedly in this case he was absent from the place of work. It is not for this Court to decide, having regard to the narrow scope of the writ petition, whether the petitioner''s joining the mass deputation and being absent from his place of work was justified. Section 2(18) of the Tamil Nadu Shops and Establishments Act, 1947. defines wages" as:

''Wages'' means all remunerations capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable. Whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment.

And Section 36 of the said Act says that the wages could be deducted if the employee is absent from the place of work. The fact that the petitioner was inside the premises is of no consequence, because admittedly he was absent from his place of work. This is no question of any indivisible contract. Wages have to be earned on work and by reason of an absence, there being no work, there cannot be any wages. It is true the payment of Wages Act does not apply to this case. But nevertheless on the strength of Section 36 of the Tamil Nadu Shops and Establishments Act, 1947, it will be open to the management to deduct wages for the period of absence from the place of work.

12. There is no need for hearing in this particular case because the petitioner was not in his place of work, meaning the seat, because he had joined the mass demonstration to represent his grievances before the manager. The decision reported in Monoj Kanti Bose and Others Vs. Bank of India and Others, , cannot be made applicable to the facts of this case, because the finding therein is that the Payment of Wages Act has no application. Then again, the Shops and Establishments Act of the State of West Bengal contained no provision 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 employees for absence from duty while Section 36 of the Tamil Nadu Shops and Establishments Act makes a vital distinction. The learned Judge himself notes that if an employee is absent for a whole day, deduction is permissible but not for a period less than the full day, in which event the remedy of the employer is to seek damages or compensation for breach of contract. According to the learned Counsel, if this theory is applied, it is well open to an employee to attend office and do his duty just for a period of ten minutes and claim, on the strength of this decision, that the wages for the hours of absence from duty cannot be deducted. In such a case is it incumbent upon the employer to file a suit for damages for compensation. Besides, there is another decision of

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the High Court of Calcutta itself which taken an opposite view, as seen from Algemene Bank Nederland Vs. Central Government Labour Court and Others, , which proceeds upon the wholesome principle of "No work No pay" and the learned Counsel would commend that for this Court''s acceptance.

13. We have carefully considered the above arguments. To our minds it appears the principle that has to be applied in cases of this character should be "No work No pay". On the application of this principle, it will naturally follow that an employee, in order to earn his wages, will have to do his duty. Absence from duty, undoubtedly, would mean that the employee had not worked during that period of absence. In the instant case the petitioner joined the mass deputation and being a member of that deputation went to the Regional Manager''s office to redress his grievances. His affidavit itself makes a reference to this. As seen from the narration of the facts above, the function scheduled at 6.30 p.m. on 19th July, 1976, was postponed. In this connection the petitioner states:

I state that this unexpected cancellation of the function at the last moment to please the members of the minor mushroom union was not only a personal insult to our union President and a Director of the respondent''s Board but also an insult to my union. Naturally every member of my union felt that they should express their feelings and their disapproval of such an action of insult by the management, by way of oral representation, to the Regional Manager.

The affidavit further proceeds to state in paragraphs 7 & 8:

Accordingly the members of my major union decided to meet the Regional Manager personally and express their feelings about such a cancellation of the function. A deputation for the purpose of the members of the staff belonging to my major union led by N. Sivalingam, the Vice-President of our union and the members including me went silently and peacefully to meet the Regional Manager at his office situate in the first floor of the same building. On reaching the Regional Manager''s office about a dozen of us (including me) led by the said N. Sivalingam went inside the office after taking the Regional Manager''s permission while others stood outside peacefully. On entering the office of the Regional Manager, N. Sivalingam conveyed to the Regional Manager the feelings of our major union members, and expressed their disapproval.

I state that there was no demonstration or agitation or shouting of slogan of any kind except a peaceful representation. Immediately after expressing our feelings we returned to our respective seats and the entire time would not have taken more than 7 to 10 minutes.

Alluding to this incident, the notice issued by the Central Office of the respondent dated 29th July, 1976, which had been extracted in full earlier, states:

We have received information from the Manager, Madurai Main Branch, that most of the staff members including those in Cash Department left their seats during office hours at about 1.15 P.M. on 20-7-1976 and returned after 15 minutes

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disrupting the normal functioning of the Branch which resulted in inconvenience to the public.

It is on this basis that the deduction is sought to be made. In passing we may also note this is on the principle "No work, No pay": Having regard to these admitted facts, it is clear that the petitioner was absent from his place of work, namely, his seat. We are not able to agree with the contention of Mr. Ramachandran that the place of work u/s 36 must be understood as "the premises". That will be only widening the language of Section 36. Nor again, are we able to accept his argument that the contract is to pay salary and it is indivisible in character and, therefore, no question of deduction of wages could arise. This is because of the principle which we have enunciated earlier, namely, "No work, No Pay".

14. We understanding by a reading of the definition of "wages" found in Section 2(18) of the Tamil Nadu Shops and Establishments Act, extracted supra, that it is the remuneration which the employee is entitled to, under the terms of the employment either expressly or impliedly, earned reason of his work. Section 34 may now be usefully referred to. Sub-section (1) of Section 34 says:

The wages of a person employed shall be paid to him without deductions of any kind except those authorised by or under this Act.

Clause (b) of Sub-section (2) of Section 34 deals with deductions for absence from duty, which could be deducted only in accordance with the provisions of the Act. It is this connection Section 36 becomes relevant. Sub-section (1) of Section 36 reads as under:

Deductions may be made under Clause (b) of Sub-section (2) of Section 34 only on account of the absence of an employed person from the 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 the period during which he is so required to work.

Therefore, the absence that is spoken to under this Section is absence from the place where the employee is required to work and not the entire premises. We may also note that in view of the concession made by Mr. B.R. Dolia that the Payment of Wages Act does not apply, we are not dealing with the relevant provisions of Sections 7 and 9 of that Act. In our view, Section 36 of the Tamil Nadu Shops and Establishments Act is an enabling provisions under which the management can deduct wages for absence from duty.

15. Merely because in the past when mass deputations went there was no deduction, is not an effective answer to the power of the management to deduct wages for absence from duty.

16. In Monoj Kanti Bose and Others Vs. Bank of India and Others, , a similar question arose. The petitioners therein were employees of a nationalised Bank. The Bank had passed two others deducting the wages on a pro-rata basis for the

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time during which they were absent from their desk and participated in the demonstrations. The learned Judge held:

Unless the employer is empowered or authorised by any 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 settlements, there is no provision authorising the Bank to deduct any part of the salary on a pro-rata basis for failure or refusal on the part of the employees 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 employees'' refusal or failure to do the work during the said period, the notice or order directing deduction on a pro-rata 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 pro-rata basis or otherwise.

However, it is necessary for us to note that at page 300 of the report it is found by the learned Judge that the Payment of Wages Act has no application in that case and that the Shops and Establishments Act, which applies in the instant case, contains no provision similar to the provisions contained in Sections 7 and 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. In the end in paragraph 36 at page 305 of the report the learned Judge concludes as under:

The petition, therefore, succeeds in part. The notice or order dated 25-6-1975 directing pro-rata deduction cannot be given any effect and the respondents are hereby directed to forbear from giving any effect to the said order. Similarly, the order or direction contained in the notice or order dated 3rd July, 1975. directing pro-rata deduction of salary for absence from work due to mass demonstration on 1st and 2nd July, 1975, is illegal and unauthorised and cannot be operative. The Bank is hereby directed not to give any effect to that part of the order

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contained in the notice or order dated 3td July. Accordingly, appropriate writ are directed to issue and the rule to this extent is made absolute. The other part directing deduction from salary for absence on the 30th of June, 1975, contained in the said notice or order dated 3rd July, 1975, is valid and the Bank may proceed to implement the same and the rule to that extent is discharged.

Thus, according to the learned Judge, for absence from duty for a period less than a full day the remedy of the employer would be to claim damages or compensation by way of breach of contract. But if it is for a full day, deduction from salary is permissible. The vital point of distinction which makes this decision inapplicable to the facts of the present case is the absence of a similar provision like Section 36 in the Shops and Establishments Act of West Bengal, while there is the sepcific provision by way of Section 36 under the Tamil Nadu Shops and Establishments Act of 1947. Then again as Mr. Dolia points out, if art employee were to turn up for duty only just ten minutes before the office closes, could it be said notwithstanding he being absent from duty for the major part of the working day, the remedy of the employer would be to sue for breach of contract and claim compensation? In our considered view, it should not be so.

17. For the sake of completion, we will also refer to the later decision of the Calcutta High Court reported in Algemene Bank Nederland Vs. Central Government Labour Court and Others, . That was a case in which again the employees of a Bank, which is governed by the Shops Act, abstained from work between 3.00 p.m. and 5.45 p.m. to hold demonstration and meeting at the Bank premises. The Bank deducted the wages of the employees for the relevant period. One of the employees filed. an application u/s 33C(2) of the Industrial Disputes Act before the Labour Court. That petition was decided in favour of the employee. Thereupon the Bank moved the High Court under Article 226 of the Constitution. The learned Judge, Mukherjee, J., held:

A contract of employment involved reciprocal promises, the employee''s right to remuneration depending generally upon the performance of work done by him during the period of employment.

Wages were payment for the services rendered and deduction from wages pro-rata for failure of consideration from the employee''s side was permissible in law. Deductions in such cases were not penalty.

According to the West Bengal Shops and Establishments Act ''wages'' meant remuneration payable if the terms of employment were fulfilled. Performance of work for a specified period was one of the principal terms of employment. No wages, therefore, became payable under the Act for the said period of unauthorised absence from work on the part of the respondent-employee.

The Labour Court was wrong in holding that the petitioner-Bank had no right to make the deduction without holding disciplinary proceedings.

The Labour Court had also exceeded its jurisdiction u/s 33C(2). In the name of

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construing an agreement it could not adjudicate claims which did not arise from such agreement.

We are of the view that this decision lays down the correct principle.

18. Our above decision is not to be understood that in every case, though with full justification, if an employee leaves his desk the employer will be entitled to deduct wages during the period of absence. We are not called upon to determine that question on the facts of this case. We may also add that whether the employee has got a right to go on deputation during working hours and what exactly, in the instant case, was the period of absence, and whether the wages have been properly deducted for that period, are all matters which are to be agitated by way of an industrial dispute. For the purpose of this case were proceeding on the basis that during working hours, as stated in the notice of the respondent dated 29th July, 1976, at about 1.15 p.m. on 20-7-1976 the petitioner went on deputation for 15 minutes disrupting the normal functioning of the Bank.

19. For the foregoing reasons the writ petition will stand dismissed. However, we make no order as to costs.

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