

## APPELLATE CRIMINAL

Before R. P. Khosla and P. D. Sharma, JJ.

THE STATE,—Appellant.

versus

Y. K. NANDA,—Respondent.

Criminal Appeal No. 348 of 1963.

*Punjab Shops and Commercial Establishments Act (XV of 1958)—Ss. 16(4), 18(1) and 26—Employer not paying wages in lieu of unavailed leave to employee—Compensation ordered under S. 18(1), of the Act—Whether a penalty—Conviction of the employer for non-payment of compensation—Whether valid.*

1964

November, 18th.

*Held*, that a plain reading of section 18(1) of the Punjab Shops and Commercial Establishments Act, 1958, shows that the amount ordered to be paid by an employer to his employee under this section for the failure of the former to pay wages to the latter in lieu of unavailed leave is by way of compensation for loss and inconvenience caused to the employee by his employer. Sub-section (2) of section 18 simply provides that this amount of compensation for the purposes of its recovery shall be deemed to be a fine imposed under this Act in addition to the penalty imposed under section 26 and shall be realised as such.

*Held*, that sub-section (4) of section 16 of the Act mentions that where the employment of any person is terminated by or on behalf of the employer, the wages earned by him and the remuneration in lieu of unavailed period of due leave shall be paid before the expiry of the second working day after such termination and where an employee quits his employment on or before the next pay day. The above provisions made in the Act succinctly point out that the employer is bound to pay his employee wages for unavailed leave on the next pay day and by not doing so he contravenes the provisions of sub-section (4) of section 16 of the Act and hence his conviction under section 26 is valid.

*State appeal from the order of Shri Sant Ram Garg, Sessions Judge, Ambala, dated 5th November, 1962, modifying that of Shri Gurnam Singh, Magistrate 1st Class, Chandigarh, dated 30th July, 1962, and setting aside the conviction and sentence of fine of Rs. 25 imposed under section 26 of the Punjab Shops and Commercial Establishments Act, 1958, and reducing the amount of compensation from Rs. 300 to Rs. 100 only and upholding order with respect to payment*

*to Krishan Lal the sum of Rs. 164.60 nP. as wages in lieu of the unavailed leave of 41 days under section 18(1) of the Punjab Shops and Commercial Establishments Act.*

K. S. KWATRA, ASSISTANT ADVOCATE-GENERAL, for the Appellant.

M/s S. L. PURI, ADVOCATE AND MUNESHWAR PURI, ADVOCATE, for the Respondent.

#### JUDGMENT

Sharma, J.

SHARMA, J.—This is a State appeal from the order of learned Sessions Judge of Ambala, who on appeal set aside the conviction of Y. K. Nanda, Manager, Punjab National Bank Limited, Rupar, respondent, under section 26 of the Punjab Shops and Commercial Establishments Act (hereinafter referred to as the Act) and sentence of Rs. 25 passed by the learned Magistrate First Class of Rupar.

The State through the Inspector of Shops and Commercial Establishments, Rupar Circle, lodged a complaint under section 16(4) read with sections 18 and 26 of the Act against Y. K. Nanda, Manager, Punjab National Bank Limited, Rupar, in the Court of the Additional District Magistrate, Chandigarh, which, came up for hearing before Shri Gurnam Singh, Magistrate First Class, Chandigarh. The complainant alleged that Krishan Lal, an employee of the Punjab National Bank Limited, Rupar, resigned from his job with effect from 26th December, 1960, when 41 days unavailed leave was due to him. The emoluments for this period at the rate of Rs. 123.45 nP. per month were due to him which were payable on or before the next pay day. The respondent in spite of repeated demands is said to have refused to pay the amount on the ground that according to Shastri award the unavailed leave due to the employees lapsed on the day he left the Bank's service. The trial Magistrate came to the conclusion that Krishan Lal was entitled to Rs. 164.60 nP. as his wages in lieu of the unavailed leave of 41 days and consequently, directed the respondent to pay this amount as well as Rs. 300 in addition by way of compensation under section 18(1) of the Act. He also held him guilty for violating the provisions made in section 16(4) of the Act and thus sentenced him to pay a fine of Rs. 25 under section 26 of

the Act. The accused-respondent felt aggrieved from the above order and preferred an appeal in the Court of the learned Sessions Judge of Ambala, who reduced the amount of compensation awarded by the trial Magistrate from Rs. 300 to Rs. 100 and set aside his aforesaid conviction and sentence. According to him the amount of compensation awarded to Krishan Lal, under section 18(1) of the Act was by way of penalty and as such the respondent could not be punished under section 26 of the Act.

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The learned Counsel for the State-appellant argued that the sum of Rs. 300 awarded by the trial Magistrate, which was reduced to Rs. 100 by the learned Sessions Judge in appeal, was by way of compensation as provided in section 18(1) of the Act and could in no sense be considered as penalty imposed on the respondent for contravening any one of the provisions of the Act. In this connection he referred to sections 18 and 26 of the Act which run as :—

18. (1) In case of contravention of the provisions of section 16, if a Magistrate is satisfied that the employee has not been paid his due wages, he shall direct the employer to pay the wages along with compensation not exceeding eight times the amount of wages withheld. (2) The amount of wages withheld and compensation payable under this section shall, for the purposes of its recovery, be deemed to be a fine imposed under this Act in addition to penalty imposed under section 26 and shall be realised as such.

“26. Subject to the other provisions of this Act whoever contravenes any of the provisions of this Act, or the rules made thereunder and no penalty has been provided for such contravention in this Act, shall be liable, on conviction, to a fine not exceeding one hundred rupees for the first offence, and three hundred rupees for every subsequent offence.

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A plain reading of section 18(1) will show that the sum of Rs. 100 awarded by the learned Sessions Judge to Krishan Lal was by way of compensation and obviously for the

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loss and inconvenience caused by his erstwhile employer for not making payment of Rs. 164.80 nP. to him on the due date. Sub-section (2) of section 18 simply provides that this amount of compensation for the purposes of its recovery be deemed to be a fine imposed under this Act in addition to the penalty imposed under section 26 and shall be realised as such. It is very clear that the respondent was not made to pay this amount of compensation by way of penalty. The trial Magistrate thus was correct in convicting the respondent under section 26 of the Act because no penalty had been provided for contravention of the provisions of sub-section (4) of section 16 of the Act elsewhere. The learned counsel for the respondent made a feeble attempt to show that the period of unavailed leave due to Krishan Lal lapsed on the day he left the Bank's service. This point was also raised before the two Courts below and repelled for adequate reasons. The Shastri Award in paragraph 478 (7) lays down that the leave earned by an employee shall lapse on the day on which he ceases to be in service, but the same Award in sub-paragraph (9) of paragraph 304 provides that in case of conflict between the Award and the local Shops and Commercial Establishments Acts the provisions made in the latter would prevail. Clause (d) of sub-section (1) of section 14 of the Act says that if an employee does not in any one year take the whole of the leave allowed to him under clause (a), any leave not taken by him shall be added to the leave to be allowed to him in the succeeding year. Proviso (iii) thereof further lays down that where such award, agreement or contract of service provides for a longer leave with wages or weekly holidays than those provided under this section, the employee shall be entitled to only such longer leave or weekly holidays as the case may be. The word 'only' means that the employee will be entitled to leave as provided in the Award and not in addition the period of leave as enumerated in clause (a) of sub-section (1) of section 14 of the Act. Sub-section (4) of section 16 of the Act mentions that where the employment of any person is terminated by or on behalf of the employer, the wages earned by him and the remuneration in lieu of unavailed period of due leave shall be paid before the expiry of the second working day after such termination and where an employee quits his employment on or before the next pay day. The above provisions made in the Act

succinctly point out that the respondent was bound to pay the sum of Rs. 164.60 nP. to Krishan Lal on the next pay day and he in not doing so contravened the provisions of sub-section (4) of section 16 of the Act which is punishable under section 26 of the Act.

For the above reasons the appeal is allowed and the order of the learned Sessions Judge setting aside the conviction and sentence of the respondent under section 26 of the Act is vacated and instead the order of the trial Magistrate convicting the respondent under section 26 of the Act and sentencing him to pay a fine of Rs. 25 is restored. The remaining part of the order of the learned Sessions Judge directing the respondent to pay Rs. 164.60 nP. to Krishan Lal as his wages in lieu of the unavailed leave of 41 days and Rs. 100 by way of compensation of course stands.

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R. P. KHOSLA, J.— I agree.

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