bifurcated area has been notified as a Sabha area and I am told by the learned Advocate-General that elections would have been held but for the fact that the petitioners obtained an order of stay of the election. The petitioners can contest the election to the new Sabha area. In this view of the matter, there is no force in this petition. The same fails and is dismissed but there will be no order as to costs.

*B.R.T.*

## CIVIL MISCELLANEOUS

*Before S. B. Capoor, and Prem Chand Pandit, JJ.*

THE DIVISIONAL SUPERINTENDENT, DELHI DIVISION NORTHERN RAILWAY,—
*Petitioner.*

*versus*

SATYENDER NATH AND ANOTHER, —*Respondents.*

**Civil Miscellaneous No. 1071 of 1963.**

1963

April, 23rd

*Payment of Wages Act (IV of 1936)—S. 7—Explanation II—Whether* intra vires *the Constitution and scope of—S. 7(2)(h)—Order made by authority not competent to make the order—Deductions made thereunder—Whether authorised.*

*Held,* that parliament or the State Legislatures can make a law regulating the conditions of service of members of the public services which include proceedings by way of disciplinary action without affecting the powers of the President or the Governor under Article 310 of the Constitution read with Article 311, thereof. Explanation II to section 7. Payment of Wages Act, is, therefore, *intra vires* the Constitution.

*Held* that Explanation II to sub-section (1) of section 7 of the Act does not really import anything new into the provisions. Clause (h) of sub-section (2) already provided that one of the categories of authorised deductions was—"deductions required to be made by order of a Court or other authority competent to make such order". It is, no

doubt, correct that deductions consequent upon punishment under the service rules are authorised deductions under the Act, but Explanations II lays down the qualifications that the rules under which the penalty has been imposed shall be in conformity with the requirement, if any, which may be specified in this behalf by a notification in the Official Gazette. The Government of India has promulgated the rules in pursuance of Explanation II which, *inter alia*, apply to employees in railway so far as the penalty of withholding of increment or promotion (but excluding the penalty of stoppage of increment at any efficiency bar) was concerned. It was to be imposed only after the person concerned had 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. This is substantially the same as rule 1712 of the Indian Railway Establishment Code.

*Held*, that a deduction from wages made under the orders of an authority not competent to make that order is unauthorised and is hit by clause (h) of sub-section (2) of section 7 of the Act.

*Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on 18th January, 1963 to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Capoor and Hon'ble Mr. Justice P. C. Pandit, decided the case finally on 23rd April, 1963.*

*Petition under section 115 of the Code of Civil Procedure and Article 227 of the Constitution of India praying that the order of Shri Mohan Lal Jain, Senior Sub-Judge and Authority under Payment of Wages Act, Ambala, dated the 25th October, 1960, be quashed.*

N. L. SALOOJA, ADVOCATE, for the Petitioner.

J. N. KAUSHAL, M. R. AGNIHOTRI and MOTI RAM AGGARWAL, ADVOCATES, for the Respondent.

JUDGMENT

Capoor, J.

CAPOOR, J.—This petition purporting to be under section 115 of the Code of Civil Procedure and Article 227 of the Constitution of India by the Divisional

Superintendent, Delhi, Division of the Northern Railway, has been placed before this Bench in view of the orders of Mahajan, J., dated the 18th January, 1963, in which it was observed that the principal contention raised was regarding the *vires* of section 7, Explanation II, of the Payment of Wages Act, and it was proper that the matter be heard by a Division Bench after a notice was issued to the Attorney-General of India. A notice was so issued but there is no representation on behalf of the Attorney-General of India.

The petition does not appear to be maintainable under section 115 of the Code of Civil Procedure since the Authority under the Payment of Wages Act (Act IV of 1936) (hereinafter referred to as the Act) is not a Court subordinate to the High Court, and so section 115 of the Code of Civil Procedure or section 44 of the Punjab Courts Act will not apply. In this connection *Union of India* v. *Triloki Nath* (1), may be referred to. We have, therefore, treated this as a petition under Article 227 of the Constitution of India.

Satyendar Nath respondent to this petition made an application under sub-section (3) of section 15 of the Act praying for a direction to the Divisional Superintendent of the Delhi Division of the Northern Railway for refund of a sum of Rs. 759.50 nP., to the applicant which amount had not been paid to him on account of the Divisional Superintendent having by an order made in the year 1951 withheld his annual increment which was at the rate of Rs. 4 per month for one year with permanent effect. This was during the period 7th December, 1952 to 7th March, 1960. This order was challenged by the applicant as being illegal. The circumstances in which it was made and

(1) A.I.R. 1961 Punj. 154.

The Divisional Superintendent, Delhi Division, Northern Railway
*v.*
Satyender Nath and another

Capoor, J.

which are admitted in the written statement are as follows:—

> The applicant while working as Assistant Station Master at Sabzimandi Railway Station was along with Bhagwan Das Pointsman placed under suspension in May, 1951, on allegations of negligence and dereliction of duty. A charge-sheet was issued and the punishment imposed on the applicant by the Divisional Transportation Officer was stoppage of privileges for one year. Bhagwan Das was reduced in rank to that of a Gateman. He filed an appeal to the Divisional Superintendent, who was also the Appellate Authority in respect of the applicant. In spite of the fact that there was no appeal by the applicant, the Divisional Superintendent holding in the impugned order that he (the applicant) had been dealt with very leniently enhanced the punishment to withholding of increment permanently for one year.

It was contended in the application that the Divisional Superintendent was not, under the Service Rules applicable, invested with any revisional powers and since no appeal had been preferred by the applicant it was illegal on his part to enhance the punishment of the applicant on an appeal filed by another person, i.e., Bhagwan Das. It was also urged that the impugned order was passed without issuing a fresh charge-sheet to the applicant and without giving him either a show-cause notice or affording an opportunity to him to defend himself.

In the written statement besides the contention that the Divisional Superintendent was fully em-

powered to make the impugned order, a preliminary objection was taken that the Authority under the Payment of Wages Act was not competent to deal with the question of legality or otherwise of the impugned order. It was also asserted that there was no wrong or recurring cause of action to the applicant and the order having been made as far back as the year 1951 could not be impugned in an application which was instituted in the year 1960. It was also pleaded that the competent authority had made the order for good and sufficient cause. The following were the issues:—

(1) Whether the legality or propriety of the order withholding increments of the applicant can be challenged under the provisions of Payment of Wages Act?

(2) Whether the application of the applicant on allegations contained in para No. 4 (16-B) of the application is not maintainable?

(3) Whether the order for withholding increments is unlawful and illegal for the reasons as stated in para No. 5 of the application?

(4) Whether the application is within time?

(5) If not, whether there are sufficient grounds for condoning the delay made by the applicant in filing his application?

(6) Whether the order for withholding increments was made by competent authority for good and sufficient cause?

(7) Relief.

The Authority under the Act treated issues Nos. 1 and 2 separately and by its order dated the 25th October, 1960, found these issues in favour of the applicant. The remaining issues were dealt with by an

The Divisional Superintendent, Delhi Division, Northern Railway
*v.*
Satyender Nath and another

Capoor, J.

order dated the 29th March, 1961, and issues Nos. 3 and 6 were also found in favour of the applicant. However, on issues Nos. 4, 5 and 7 it was held that the applicant was entitled to refund of Rs. 96 only which had been unlawfully deducted from his wages. The parties were left to bear their own costs.

Mr. N. L. Saluja on behalf of the petitioner, i.e., the Divisional Superintendent, has not challenged the findings of fact that the applicant was not shown to have been given any show-cause notice nor any charge-sheet before the impugned order was made by the Divisional Superintendent. There was thus clearly a contravention of the relevant provisions of the Indian Railway Establishment Code, Volume I (1951 Edition) which contains the statutory rules made by the Governor-General in Council under sub-section (2) of section 241 of the Government of India Act, 1935, relating to the conditions of service of railway servants who were subject to the rule-making control of the Governor-General in Council. Paragraph 1702 of the Code mentioned the various penalties which may for good and sufficient reasons be imposed on railway servants and item No. (4) was "withholding of increments or promotion, including stoppage at an efficiency bar". Paragraph 1712 provided that before an order imposing a penalty specified in items (2) to (6) of Rule 1702 and certain other items was passed against a railway servant, he shall be informed of the definite offences or failures on account of which it was proposed to impose the penalty and called upon to show-cause why that or any lesser penalty should not be imposed. It was also necessary to give him three days' time in which to submit his explanation and to allow reasonable facilities for the preparation of his defence. All these provisions were ignored by the Divisional Superintendent when he made the impugned order.

Under sub-section (4) of section 1 of the Act, it is to apply *inter alia* to the payment of wages to the

persons employed upon any railway by a railway administration. Section 7 specifies the deductions which may be made from wages of persons to whom the Act is applicable and sub-section (1) thereof is as follows:—

"7. (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 I to this sub-section is not relevant to our purpose. Explanation II was inserted by the amending Act 68 of 1957 and was to take effect from the 1st April, 1958. It is as follows:—

"*Explanation II.*—Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person 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."

The necessary implication is that deductions consequent upon punishment under service rules shall be

The Divisional Superintendent, Delhi Division, Northern Railway
*v.*
Satyender Nath and another

Capoor, J.

deemed to be deductions from wages if the qualifications as mentioned in the Explanation are not satisfied that is, "if imposed without good and sufficient cause, or if the rules framed by the employer for the imposition of the penalty are not in conformity with the requirements specified by Government in this behalf". Sub-section (2) enumerates the various categories of deductions from the wages which can be made under this Act and also provides that such deductions are to be made only in accordance with the provisions of the Act. Clause (a) of sub-section (2) mentions fines. Sub-section (1) of section 15 provides for the setting up of the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area. Applications to the authority are to be made under sub-section (2) of section 15. Section 22 provides that no Court shall entertain any suit for the recovery of wages or of any deductions from wages in so far as the sum claimed forms the subject of an application under section 15, or could have been recovered by means of an application under that section.

The contention advanced by Mr. Saluja on behalf of the petitioner in the present petition are as follows:—

1. Under clause (1) of Article 310 of the Constitution of India, except as expressly provided by the Constitution every person who is a member of a civil service of the Union holds office during the pleasure of the President. The two qualifications as given in Article 311 are that such a person—

   (a) shall not be dismissed or removed by an authority subordinate to that by which he was appointed, and

(b) shall not be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

The withholding of increment or promotion consequent upon disciplinary action is not one of the qualifications to the holding of office by the civil servant concerned during the pleasure of the President and is not, therefore, justiciable by the Authority under the Act; consequently Explanation II to sub-section (1) of section 7 of the Act is *ultra-vires* the Constitution;

(2) Explanation II to sub-section (1) of section 7 of the Act which came into force on the 1st April, 1958, could not be retrospective in operation so as to affect the impugned order which was passed in the year 1951;

(3) The impugned order which was passed as for back as the year 1951 cannot be re-opened in an application instituted in the year 1960; and

(4) The authority under the Act cannot sit in judgment on the question whether there was good and sufficient cause for the imposition of the penalty under the impugned order.

*Contention No.* 1.—While advancing this argument Mr. Saluja has lost sight of Article 309 of the Constitution under which Acts of the appropriate Legislature may regulate the recruitment, and conditions of

The Divisional Superintendent, Delhi Division, Northern Railway
*v.*
Satyender Nath and another

Capoor, J.

service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. The proviso to this Article lays down that until such a provision is made by or under an Act of the appropriate Legislature, it shall be competent for the President or the Governor of a State, as the case may be, to make the service rules. Under Article 313, until other provision is made in this behalf under the Constitution, all the laws in force immediately before the commencement of the Constitution and applicable to any public service or any post which continues to exist after the commencement of the Constitution under the Union or a State shall continue in force * * * * *". The combined effect of all these provisions is that so far as the Railway servants are concerned, the service rules as embodied in the Indian Railway Establishment Code continue in force. It has been held in *State of U. P.* v. *Babu Ram* (2), that Parliament or the Legislatures of States can make a law regulating the conditions of service of members of the public services which include proceedings by way of disciplinary action without affecting the powers of the President or the Governor under Article 310 of the Constitution read with Article 311 thereof. There is, therefore, no force in the contention advanced on the basis of Article 310 of the Constitution and indeed if that argument is carried to its logical conclusion, not only Explanation II to sub-section (1) of section 7 of the Act, but the whole of that section in its application to persons holding any civil post under the Union or under a State would become unconstitutional. No authority could be cited by Mr. Saluja for such a startling proposition, Point No. 1 as advanced by Mr. Saluja is, therefore, of no substance.

Explanation II to sub-section (1) of section 7 of the Act does not really import anything new into the

(2) A.I.R. 1961 S.C. 751 at pages 761 to 763.

provisions. Clause (h) of sub-section (2) already provided that one of the categories of authorised deductions was—"deductions required to be made by order of a Court or other authority competent to make such order". The statement of objects and reasons with regard to Explanation II to sub-section (1) of section 7 gives a clear indication on this matter and is as follows:—

> "The question whether reduction in wages, consequent upon any punishments imposed like suspension, stoppage of increments, reduction to lower post or scale, etc., would be deductions authorised under the Payment of Wages Act has been a subject of conflicting rulings, by courts of law. The intention of Government has been that the deductions consequent upon punishments under service rules should be authorised deductions under the Act. It is, therefore, intended to make it clear that any deduction, in wages consequent upon imposition of punishments under the service rules, will be authorised deductions under the Act."

While it is correct to say that deductions consequent upon punishment under the service rules are authorised deductions under the Act, but Explanation II lays down the qualification that the rules under which the penalty has been imposed shall be in conformity with the requirement, if any, which may be specified in this behalf by a notification in the Official Gazette. The Government of India in the Ministry of Labour and Employment promulgated the rules in pursuance of Explanation II to sub-section (1) of section 7,—*vide* notification No. S.O. 517, dated the 5th April, 1958. These were superseded by the Central Government by

The Divisional Superintendent, Delhi Division, Northern Railway
*v.*
Satyender Nath and another

Capoor, J.

notification No. S.O. 391/PWA/Sec. 7/Exp. II/1960, dated the 10th February, 1961, which is *inter alia* applicable to employees in railway so far as the penalty of withholding of increment or promotion (but excluding the penalty of stoppage of increment at an efficiency bar) was concerned. It was to be imposed only after the person concerned had 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. This is substantially the same as rule 1712 of the Indian Railway Establishment Code quoted above. In the instant case there is such a flagrant breach of the rules that the loss of wages resulting from the impugned order to the applicant must be held to be an unauthorised deduction from wages which would be hit by section 7 of the Act.

The third contention advanced by Mr. Saluja is devoid of all force. The loss of wages to the applicant is a recurring loss which he is competent to challenge whenever it is caused to him provided the period for which the relief is claimed is within limitation. Under the proviso to sub-section (2) to section 15, the application is to be presented within six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be, though under the further proviso the application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period. The Authority held that the claim of the applicant for a period beyond six months was barred by time and it was not prepared to extend further period of limitation under the proviso. The present petitioner, i.e., the Divisional Superintendent can, therefore, have no grievance on

this score, and the correctness of the calculations made by the Authority have not been challenged.

Capoor, J.

Regarding point No. 4, the only authority cited by Mr. Saluja was *Union of India through General Manager, Northern Railway, etc.* v. *Joginder Singh* (Civil Miscellaneous No. 566 of 1962) decided by this Court on the 10th October, 1962. The question referred to the Division Bench in that case was whether the Tribunal constituted under the Payment of Wages Act had jurisdiction to determine the legality and validity of the dismissal from service of a railway servant. This question was answered in the negative by the Bench. No such question is, however, involved in the instant case. Actually it is not really necessary in this case to direct one's attention to the question whether there was good and sufficient cause or not for the imposition of the penatly under the impugned order, because it is abundantly clear that the Divisional Superintendent did not have the jurisdiction to make that order. The applicant had not filed any appeal before him and his contention that the Divisional Superintendent had no revisional power has not been challenged by the learned counsel for the present petitioner. Accordingly it must be held that the Divisional Superintendent was not an authority competent to make the impugned order and as such that order is hit by clause (h) of sub-section (2) of section 7 of the Act.

In the result, none of the contentions advanced on behalf of the present petitioner is of any substance and I would dismiss the petition with costs to the contesting respondent, i.e., Satyendar Nath.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

*K.S.K.*