Hari Kishen Dass and another, v. The Union of India and others, — Falshaw, J.

by an estate officer, the affected person has every opportunity to present his case and the dispute can be properly adjudicated on before any final action is taken under section 5 of the Act. In these circumstances I am of the opinion that the provisions of the Act of 1958 do not offend the provisions of article 19(1)(f) of the Constitution, and I do not see how any question under article 14 arises. The result is that I would dismiss the petition with costs. Counsel's fee Rs. 50.

Gurdev Singh, J.

GURDEV SINGH, J.—I agree.

B.R.T.

REVISIONAL CIVIL.

Before Inder Dev Dua, J.

DHANJI RAM SHARMA,—*Petitioner.*

versus

UNION OF INDIA AND ANOTHER,—*Respondents.*

Civil Revision No. 263-D of 1959.

1960 — Sept.' 8th.

Payment of Wages Act (IV of 1936)—S. 15—House allowance and city allowance—Whether can be granted by the Authority under the Act—Employee suspended from service—Suspension held illegal and ultra vires *and employee re-instated—Whether entitled to the payment of house allowance and city allowance for the period of suspension.*

Held, that where an employee is in receipt of house allowance and city allowance before his suspension and after his re-instatement, he is entitled to receive these allowances for the period of his suspension and the Authority under the Payment of Wages Act, 1936. has the jurisdiction to grant them to the employee under section 15(2) of the said Act.

Divisional Engineer, G.I.P., Railway v. *Mahadeo Raghoo and another* (1) relied on.

(1) A.I.R. 1955, S.C; 295

Petition under Section 115, C.P.C., read with Section 44 of Punjab Courts Act, and under Article 227 of the constitution of India for revision of the order of Shri J. S. Bedi, District Jwdge, Delhi, dated 1st April, 1959, affirming that of Shri R. S. Bindra Authority Under Payment of Wages Act, Delhi, dated 16th October, 1958, directing the respondent No. 1 to pay the sum of Rs. 4,473-5-0 to the applicant together with 9/10ths of the costs.

Petitioner in person.

NANAK CHAND, ADCOCATE, *for the Respondent.*

JUDGMENT

Dua, J.

DUA. J.—This revision petition has been filed by Dhanji Ram Sharma, against the order of Shri J. S. Bedi, District Judge, Delhi, dismissing his appeal against the order of Shri R. S. Bindra, purporting to act as Authority appointed under the Payment of Wages Act, IV of 1936.

2. It is not disputed that the petitioner was employed as a Ticket Collector by the Northern Railway and was posted as such at Delhi (Main) Railway Station. He apparently joined service in November, 1950, in the grade of 55—3—85/4—125—5—130, in addition to dearness allowance permissible under the rules. Some proceedings were taken against him as a result of which he seems to have been removed from service in April, 1954, by the Divisional Commercial Superintendent, Delhi. A suit was thereupon filed by him assailing the validity of the order of removal which was decreed by the Court on 28th February, 1957. The petitioner thereupon approached his Department for reinstatement and it is stated in the order of the learned District Judge that he was reinstated on the forenoon of 20th July, 1957. I may here mention that Shri R. S. Bindra, Authority under the Payment of Wages Act, has also expressly mentioned in his order that the petitioner

was reinstated on the forenoon of 20th July, 1957. Wages for the period 20th July, 1957 to 2nd December, 1957, were admittedly paid to him, but for the period intervening the date of his removal and his subsequent reinstatement, he was not paid any wages. This omission led him to file an application under section 15(2) of the Payment of Wages Act in which he claimed a sum of Rs. 5,059-13-0, on account of unpaid wages for the period 16th April, 1954, to 19th July, 1957. The Authority allowed him full claim except the amount demanded on account of house allowance and city allowance with respect to which, in the opinion of the Authority, the ptitioner could only claim relief by means of a regular suit. In this view of the matter, a sum of Rs. 4,473-5-0, only was allowed to the petitioner.

3. Feeling aggrieved, the petitioner took the matter on appeal to the learned District Judge who affirmed the order of the Authority by observing that the house allowance and the city allowance do not form part of wages within the contemplation of the Payment of Wages Act. It is against this refusal on the part of the Authority and the District Judge to allow him house allowance and city allowance that the present petition is directed.

4. It is contended on behalf of the petitioner that the matter is covered by a decision of the Supreme Court in *Divisional Engineer, G.I.P. Railway,* v. *Mahadeo Raghoo and another,* (1). In fact I find from the order of the learned District Judge also that both sides there had agreed that it is the interpretation of this decision which must determine the fate of the controversy in this case. I may here reproduce the following observation from this judgment :—

> "The answer to the question whether house rent allowance is 'wages' may be in the

(1) A.I.R. 1955 S.C. 295.

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affirmative if the rules framed by the department relating to the grant of house rent allowance make it compulsory for the employer to grant house rent allowance without anything more: in other words, if the house rent allowance had been granted without any conditions or with conditions, if any, which were enforceable in law."

In the reported case, it was held that statutory rules framed by the Government governing the grant of house rent allowance do not make it unconditional and absolute in terms. The house rent allowance was not admissible to all the employees of a particular class but was admissible only to such railway employees as were posted at specified places in order 'to compensate railway servants in certain costlier cities for excessive rents paid by them over and above what they might normally be expected to pay', nor was such an allowance 'intended to be a source of profit' or to be 'an allowance in lieu of free quarters' as specifically stated in the preamble to the letter No. E47CPC/14, dated 1st December, 1947, issued by the Railway Board. A little lower down in the judgment it is again observed that "house rent allowance is admissible only so long as an employee is stationed at one of the specified places and has not been offered Government quarters."

Now, in the case in hand it is not denied that immediately before his removal from service, the petitioner was posted in Delhi and was not living in Government quarters nor had he refused to live in Government quarters offered to him, and that he was actually receiving house allowance and city allowance. The petitioner has also asserted that after his reinstatement he is being paid both

these allowances. My attention has not been drawn to any material on the present record which would show that this assertion made by the petitioner is by any means incorrect. If this be the correct position, then I cannot see how for the period beginning from 16th April, 1954, and ending with 19th July, 1957, he can legitimately be deprived of these two allowances, when, in pursuance of the declaratory decree, holding his removal to be *ultra vires*, *status quo ante* was actually restored.

6. On behalf of the respondent, the only contention raised is that the petitioner is still suspended and that not being in service, he cannot claim these two allowances. I find it wholly impossible to sustain this contention. This was not the position urged before the learned District Judge. The counsel on behalf of the respondent has asserted at the Bar that this position was, in fact, put forth and argued in the Court below, but, as is well-established, the presumption is that it was not urged, there being no mention of it in the judgments of the Courts below; (See *Harji Mal and others* v. *Devi Ditta Mal and others* (1), and *Sreemati Krishna Promada Devi* v. *Dhirendra Nath Ghosh and others* (2). Besides, had the petitioner in fact been suspended during the period beginning from 16th April, 1954, and ending with 19th July, 1957 (the period with which alone we are in the present dispute concerned), I fail to see how the petitioner could have been granted wages as claimed by him. The respondent did not care to challenge the order of the Authority granting wages to the extent of Rs. 4,473-5-0, either before the learned District Judge or in this Court. I, therefore, do not find it

(1) I.L.R. IV Lahore 364 at P. 366.
(2) I.L.R. LVI Cal. 813=A.I.R. 1929 P.C. 50:

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possible to uphold the contention raised on behalf of the respondent that the petitioner actually remained suspended from 16th April, 1954 to 19th July, 1957, and, therefore, disentitled to claim the two allowances in dispute before me. As a matter of fact, on behalf of the respondent, stress was only laid on the claimant being suspended at the present moment, and I was requested by the respondent's counsel, that, in the interests of justice, I should ask the claimant whether or not he was actually suspended these days. I declined to question the claimant as desired because, in my opinion, it was wholly irrelevant to the point in controversy before me and also because the question has to be decided on the material on the record, no case having been made out by the respondent for additional evidence.

7. The counsel for the respondent had nothing else to urge on the merits and he was clearly unable otherwise to support the reasoning and the order of the learned District Judge who seems to have completely failed to appreciate and understand the real and precise question which called for his determination. Indeed the matter seems to have been approached both by the Authority under the Payment of Wages Act and by the lower appellate Court from a wholly erroneous point of view, and they both seem to have misdirected themselves in correctly understanding and applying the ratio of the Supreme Court decision to the present case. Here I may also observe that the beneficient provisions, like those of the Payment of Wages Act, call for liberal and broad interpretation so that the real purpose, underlying such enactment, is achieved and full effect is given to the principles underlying such legislation.

8. For the reasons given above, this petition is allowed and in modification of the orders of

the Authority under the Payment of Wages Act and of the learned District Judge granting Rs. 4,473-5-0, only I direct that the petitioner should be paid full amount of Rs. 5,059-13-0, as claimed. That this is the amount due after including two allowances has not been questioned before me. The petitioner is entitled to his costs of these proceedings.

B.R.T.

APPELLATE CIVIL.

Before S. S. Daulat and Daya Krishan Mahajan, JJ.

HANS RAJ PANDIT, *Decree-Holder—Appellant.*

versus

DHANWANT SINGH,—*Judgment-debtor.*

Execution First Appeal No. 202 of 1956.

Punjab Debtors' Protection Act (II of 1936)—S. 9—Whether offends article 14 of the Constitution of India—Hindu Succession Act (XXX of 1956)—S. 4—Effect of on succession which opened before its commencement—Attachment of property in execution of decree—Effect of—Whether creates a charge in favour of attaching creditor—Constitution of India—Article 14—Applicability of—How to be determined.

1960

Sept.' 8th.

Held, that section 9 of the Punjab Debtors' Protection Act, 1936, does not offend the provisions of article 14 of the Constitution of India. It enacts no new provision of law but merely gives recognition to the rule of law applicable to a well-recognised class of persons, namely, persons governed by the Customary Law of the Punjab. This rule applies to persons irrespective of their religion, colour or race.

Held, that section 4 of the Hindu Succession Act, 1956, does away with the rule of custom so far as succession is concerned and therefore, after this Act came into force,