

The People's Insurance Company, Limited (in liquidation) now be transferred to the Court of the District Judge, Delhi.

v.  
Sardul Singh Caveeshar and others  
Tek Chand, J. I, therefore, allow the petition and direct that all proceedings connected with the winding up of the People's Insurance Company (in liquidation) shall remain and be continued in this Court in the exercise of its extraordinary original civil jurisdiction. I will leave the parties to bear their own costs.

B.R.T.

REVISIONAL CIVIL

Before I. D. Dua, J.

THE UNION OF INDIA AND OTHERS,—*Petitioners*

*versus*

TRILOKI NATH BHASIN,—*Respondent*

Civil Revision No. 409 of 1958

1959  
March, 31st

*Payment of Wages Act (IV of 1936)—Object and construction of—Sections 1(6), 2(vi) and 4—Employee with basic salary of more than Rs. 200 per mensem drawing less than Rs. 200 at the time deduction is made from his wages due to being on leave—Whether can apply under the Act—Section 7—deduction on account of costs awarded in some other proceedings—Whether permissible—Section 15—Authority appointed under—Whether a court—Revision against his order—Whether competent under section 115 of the Code of Civil Procedure (V of 1908) or Section 44 of the Punjab Courts Act (VI of 1918)—Constitution of India (1950)—Article 227—Powers of the High Court under.*

*Held.* that the Payment of wages Act has been enacted by the legislature for the purpose of ensuring regular payment of wages to small salary-holders so that they may be able to make their both ends meet. It ensures that such employees are paid the wages in a specified or particular form at regular, determined intervals without unauthorised deductions; it prohibits the employers to delay or withhold payment of the amount earned by workmen beyond

the period specified in the Act. This statute, therefore, calls for benevolent or beneficial construction; a construction which should advance the remedy and suppress the mischief and in case of doubt the construction should be placed in favour of the employee.

*Held*, that under section 4 (i) of the Payment of Wages Act the person responsible for the payment of wages has been enjoined to fix wage-periods in respect of which wages are to be payable and under Section 4 (2) that period cannot exceed one month. Under Section 2 (vi) of the Act the wages payable in respect of one month are to be seen and the employee in the present case being on leave his salary did not exceed Rs. 200 for the month in which the deduction was made. His case is therefore, clearly covered by section I(6) of the Act and he can make an application under the Act.

*Held*, that deductions which can legitimately be made from the wages have been clearly and exhaustively laid down in Section 7 of the Payment of Wages Act. The costs awarded by a court in some proceedings to the employer against the employee are payable by the judgment-debtor and can be realised in accordance with the normal procedure but cannot be deducted out of the wages payable to the employee. If such costs are deducted from his wages, he has the right to make an application under the Act.

*Held*, that the Authority appointed under Section 15 of the Payment of Wages Act is not a court subordinate to the High Court and, therefore, Section 115 of the Code of Civil Procedure or section 44 of the Punjab Courts Act cannot apply. A petition under Article 227 of the Constitution will, however, be competent if proper grounds for the interference of the High Court are made out. Under that Article the powers of the High Court are confined to canalising the proceedings of the subordinate Tribunals for the purpose of keeping them within the bounds of law. The power of interference under this Article is limited only to seeing that the Tribunal functions within the limits of its authority. It is not permissible to interfere with findings of fact or even with findings of law if no grave or manifest injustice has resulted from such error.

*Petition under Section 44 of Act 6 of 1918 Punjab Courts Act and Article 227 of Constitution of India, for*

revision of the order of Shri Om Parkash Sharma, Senior Subordinate Judge, Ferozepore, dated 12th of March, 1958 ordering that the amount in question shall be paid to the applicant by the Divisional Superintendent, Northern Railway, Ferozepore, within a period of one month from the date of decision, and further ordering that no charges

TRILOKI NATH, in person.

are allowed to the applicant on account of mental worries etc.

N. L. SALOOJA, for Appellant.

#### JUDGMENT

I. D. Dua, J.

DUA, J.—This a revision under section 44 of the Punjab Courts Act and under Article 227 of the Constitution of India preferred by the Union of India from the decision dated 12th of March, 1958 of Shri Om Parkash Sharma, Senior Subordinate Judge, acting as the Authority under the Payment of Wages Act. Triloki Nath Bhasin respondent preferred a claim, under section 5(2) of the Payment of Wages Act for the payment of Rs. 6/10/- on account of an alleged unauthorised deduction by the Railway Department. He was an old employee of the Northern Railway and retired from service on 28th of May, 1957. A sum of Rs. 6/10/- appears to have been deducted from his salary for the month of January, 1957 on account of law charges, i.e., costs of a suit awarded against him. His contention has been that the deduction is unauthorised and could not have been legally effected from his wages. He has, however, claimed damages for mental worries as well.

This claim was opposed and it was contended *inter alia* that the claim did not fall within the scope of the Payment of Wages Act. It was also contended that the applicant having retired, there was no relationship of employer and employee between the parties and that a joint application

against the several defendants was not competent; the deduction in question was justified being on account of costs of a law suit awarded against the petitioner which, according to the defendants, could be legally deducted from the salary due to the applicant. Only one issue was framed, viz., 'Whether the deduction in question is valid?' and the Authority came to the conclusion that the law charges in question could not be legally deducted under section 7 of the Payment of Wages Act. The Learned Senior Subordinate Judge came to the conclusion that the petitioner's net emoluments at the time of deduction being less than Rs. 200, his claim was within the scope of the Payment of Wages Act. It has also been observed that though one application against all the defendants might not be maintainable, a direction could without doubt be given to the Divisional Superintendent, Northern Railway, Ferozepore, who is the Paymaster under the Act.

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On revision, I was inclined not to interfere in this case in view of the petty amount involved and the decision being substantially just. Mr. Salooja has, however, contended that the Union of India is interested in having the question of law decided because a number of other similar cases are pending before the Authority under the Payment of Wages Act. I agreed to go into merits on the express condition that the decision even if goes in favour of the petitioner would not adversely affect the order passed in favour of Triloki Nath Bhasin in the instant case.

It is contended on behalf of the Union of India that the pay of Triloki Nath Bhasin at the relevant time was Rs. 225 per month but on account of leave he was drawing less than Rs. 200 per month. On this basis it is submitted that the definition of the word

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of 'wages', as given in the Payment of Wages Act, IV of 1936, means "all remuneration which would, if the terms of the contract of employment were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise \* \* \* \*". The mere fact that for a particular period on account of leave the employee draws lesser amount, his case would not be taken out of the definition of the term 'wages'. It is conceded that if the wages of the employee in the instant case amounted to less than Rs. 200 per month, he would be entitled to avail of the provisions of the Act but if the wages were above Rs. 200 then this Act would not be attracted. The learned counsel has also contended that in any case under section 7(2) (h) the Department was entitled to make the deduction in question because this deduction was required to be made by order of the Court or other authority competent to make such order. This last contention, however, is wholly unsustainable. It is admitted that no Court has passed an order requiring the deduction in question to be made. The Court only awarded costs in some proceedings and those costs are payable by the judgment-debtor and can be realised in accordance with the normal procedure. The counsel, however, contends that the deduction has been required to be made by an order of the Railway Department and for this submission reliance has been placed on *Union of India v. Kundan Lal, etc.* (1), but this authority, as I read it, instead of helping the learned counsel goes against his contention as is clear from the following observations :—

"The question in the case is whether the deductions had been ordered by any

(1) A.I.R. 1957 All. 363

authority competent to pass the order. The learned counsel for the respondent urged that every employer may be competent to pass an order for deductions of wages and he would certainly be so competent if he obtains an agreement from the employee agreeing to deductions being made by the employer.

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It was further argued that, if this interpretation is put on the clause, the entire object of section 7 would be defeated. I do not agree with the contention, because the clause requires that the order should be passed by an authority and, secondly, that the authority should be competent to make the order. Every employer would not come within the meaning of the word 'authority'.

It is only a person having some special powers conferred upon him, who could be called an authority. Even if an ordinary employer has obtained an agreement from the employee, which makes it legal for him to make deductions, the employer would not be an authority within the meaning of the word and would not be able to get the benefit of clause (h) of sub-section (2) of section 7 of the Act."

It is conceded that there are no rules framed which would govern the relationship of the parties before me as employer and employee and which confer this power of deduction on the employer. In this view of the matter the contention based on section 7(2)(h) must be rebuffed. Coming to the first submission, viz., that the Payment of Wages Act is not applicable to the present case, section 1(6) of the

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Act lays down that nothing in this Act shall apply to wages payable in respect of a wage-period which, over such wage-period, average two hundred rupees a month or more. In the present case the written statements filed on behalf of the respondents show that as the employee is on leave on half average pay, he is getting Rs. 177/8/- per month. Kewal Krishan, Clerk, Divisional Accounts Office, Ferozepore, has appeared as a witness with all the original documents relating to the pay drawn by the employee. He also prepared the statement which he produced in Court showing the salaries drawn by the employee, Triloki Nath, from 1st of May, 1955 to 28th of May, 1957. According to this statement Triloki Nath's basic pay was 220 up to 30th of June, 1955. In July, 1955, his basic pay was Rs. 223/4/- and from 1st of August, 1956, he basic pay was increased to Rs. 225 at which figure it continued up to 28th of May, 1956, when according to this witness's sworn testimony the applicant retired. After this date the employee "drew half pay as leave salary on half average pay, up to the date of his retirement, viz., 28th of May, 1957, afternoon". The employee in the witness-box had sworn that the statement made by Kewal Krishan was incorrect and that he had only been drawing Rs. 110 and later on Rs. 112 maximum, as leave salary on half average pay from 1st of May, 1955 to 28th of May, 1957. On this evidence the Authority under the Payment of Wages Act, on 22nd of August, 1957, by an interlocutory order came to the conclusion that the net emoluments of the employee at the time of the deduction in question being less than Rs. 200 the claim was perfectly within the scope of the Act. Therefore, the preliminary issue, whether the employee was governed by the Payment of Wages Act, was decided in his favour. The present revision petition has been preferred both under section

115 of the Code of Civil Procedure (which is in the same terms as section 44 of the Punjab Courts Act) and Article 227 of the Constitution. The Authority under the Payment of Wages Act not being a Court subordinate to the High Court obviously section 115 of the Code of Civil Procedure or Section 44 of the Punjab Courts Act cannot apply. Under Article 227 of the Constitution, however, the powers of this Court are confined to canalising the proceedings of the subordinate Tribunals for the purpose of keeping them within the bounds of law. The power of interference under this Article is limited only to seeing that the Tribunal functions within the limits of its authority. It is not permissible to interfere with findings of fact or even with findings of law if no grave or manifest injustice has resulted from such error. It is, in the circumstances, for the Union of India to show that the decision arrived at by the Authority under the Act is so clearly wrong that it has assumed jurisdiction not vested in it by law. This the learned counsel has not succeeded in establishing. However, on the merits also there is not much substance. Under section 4(2) of the Act no wage-period shall exceed one month and subject to this limit a person responsible for the payment of wages under section 3 has been enjoined by section 4(1) to fix wage-periods in respect of which wages are to be payable. In the instant case admittedly the employee has been on leave preparatory to retirement during the period, including the wage period in question, upto 28th of May, 1957, when he formally retired. The petition out of which the present revision has arisen, it may be noted, was instituted in February, 1957 while yet the employee was on leave preparatory to retirement and the amount in question has been deducted from the wages payable for the month of January, 1957. It is obvious

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of that by virtue of the definition of the term 'wages' as contained in section 2(vi), the wages, payable in respect of the period of one month, would average to less than two hundred rupees a month. That the wages payable to the employee in the present case, when he had taken leave preparatory to retirement, are capable of being expressed in terms of money and if all the terms of the employment, express or implied, were fulfilled, they would be payable only at the rate of less than two hundred rupees per month has not only been pleaded by the Union of India but has also been seen stated by the Accountant in the witness-box. The wages, in fact and actually, payable to an employee in the position of Triloki Nath Bhasin, during the period of leave preparatory to retirement, would thus be clearly covered by the statute in question. It must not be forgotten that the Payment of Wages Act has been enacted by the legislature for the purpose of ensuring regular payment of wages to small salary holders so that they may be able to make their both ends meet. It ensures that such employees are paid their wages in a specified or particular form at regular, determined intervals without unauthorised deductions, it prohibits the employers to delay or withhold payment of the amount earned by workmen beyond the period specified in the Act. This statute, therefore, in my opinion, calls for a benevolent or beneficial construction; a construction which should advance the remedy and suppress the mischief. In case of doubt the construction should be placed in favour of the employee. To apply the rule of strict construction in this case would, in my view, amount to defeating the real object and purpose of this enactment. It is in pursuance of general public policy, as stated above, that the legislature has mandatory provision for payment of wages to the employees, covered by

this enactment, before a prescribed date and deductions, which can legitimately be made from the wages, have also been clearly and exhaustively laid down and it has been expressly provided that wages must be paid to an employee without deductions of any kind except those authorised by or under this Act,—*vide* section 7. Considered in this light the word 'wages' as used in the statute must be construed to mean 'earned wages' as distinguished from potential wages (remuneration actually payable on fulfilment of contract) should be the criterion. It has not been suggested at the Bar that taking leave preparatory to retirement can legitimately be described as non-fulfilment of contract. The learned counsel for the petitioner has not drawn my attention to any direct precedent and he has submitted that the point being bare of authority, it is a matter of first impression only. The respondent has not engaged any lawyer with the result that I have not been able to get any real assistance for his point of view. In view of the above discussion, however, as at present advised, I think that the instant case must be considered to be clearly covered by the provisions of the Payment of Wages Act and the order of the Authority is not open to any serious objection.

For the reasons given above, I would dismiss this revision with costs.

*B.R.T.*

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*Before Chopra, J.*

M/s. BRITISH INDIA GENERAL INSURANCE CO.

LTD.,—*Petitioner*

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*Motor Vehicles Act (IV of 1939)—Section 96—Liability of the Insurer under—Right of the Insurer to defend the*

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