

REVISIONAL CIVIL

Before C. G. Suri, J.

THE DIVISIONAL PERSONNEL OFFICER, NORTHERN RAILWAYS,
D.S. OFFICE, NEW DELHI,—Petitioner.

versus

PRITAM SINGH,—Respondent.

Civil Revision No. 1249 of 1970.

September 28, 1971.

Probation of Offenders Act (XX of 1958)—Sections 4 and 12—Indian Railway Establishment Code, Volume II—Rule 2044(2)—Payment of Wages Act (IV of 1936)—Sections 7 and 15—Indian Railways employee suspended during the pendency of a criminal case against him—Such employee convicted in the criminal case but dealt with under Section 4, Probation of Offenders Act—Whether deemed to have been “fully exonerated” under Rule 2044(2) of Indian Railway Establishment Code—Withholding of his full monthly emoluments during the period of suspension—Whether is a disqualification within the meaning of Section 12 of the Act and amounts to deduction under Sections 7 and 15, Payment of Wages Act.

Held, that if a Government employee, on his conviction for a criminal offence, is dealt with under the provisions of Section 4 of the Probation of Offenders Act, 1958, then in view of the provisions of Section 12 of the Act, he is not to suffer any disqualification which otherwise would have attached to his conviction for the offence. Where an Indian Railway employee is suspended during the pendency of a criminal case against him and on conviction he is dealt with under Section 4 of Probation of Offenders Act, he is deemed to have been “fully exonerated” within the meaning of Rule 2044(2) of the Indian Railway Establishment Code, Volume II. If it were not so, it will mean that a disqualification is being attached to his conviction for the offence and the full benefit of the provisions of Section 12 of the Act is being withheld from the employee. Such an employee is entitled to full salary and emoluments during the period of suspension. If a part of his monthly emoluments is withheld from him, he will be made to suffer a disqualification attaching to his conviction which will be in violation of the statutory provisions of Section 12 of the Act. Withholding of a part of the full salary of an employee on his exonerated is also a deduction within the meaning of Sections 7 and 15 of the Payment of Wages Act.

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Petition under Article 227 of the Constitution of India read with Section 115 C.P.C. praying that the petition be allowed and the impugned order be quashed.

Pitam Singh Jain and V. M. Jain, Advocates, for the petitioner.

Pritam Singh (in person).

ORDER

SURI, J.—(1) This revision petition under Article 227 of the Constitution of India, read with section 115 of the Code of Civil Procedure, is directed against the order of the Additional District Judge, Ambala affirming on appeal the order of the Authority, appointed under the Payment of Wages Act, 1936, (hereinafter briefly referred to as 'the Act') whereby a claim for recovery of deductions in wages, filed by Pritam Singh respondent under section 15(2), read with section 7 of the Act, had been allowed. By the impugned orders, the respondent who is an employee of the Northern Railways has been declared entitled to receive full salary for the period of suspension from 28th July, 1965 to 18th November, 1965.

(2) The respondent was serving the petitioner as Trains Clerk at Ambala. He had a fight with a colleague in the office and a criminal case under sections 324 and 506, Indian Penal Code, and section 120 of the Indian Railways Act had been instituted against him. The order of suspension from service had been passed during the pendency of that criminal case. The respondent was convicted by the trial Magistrate under section 324, Indian Penal Code, but on appeal had been released on probation of good conduct under section 4 of the Probation of Offenders Act, 1958. Security for good behaviour furnished by him for the prescribed period has been duly complied with and discharged.

(3) Even though the respondent had been reinstated before the final decision of the criminal case, he has been allowed to draw only the subsistence allowance during the period of suspension. The difference between this subsistence allowance and the full monthly emoluments which had been withheld from him was described by the respondent to be 'a deduction' within the meaning of section 7 and 15 of the Act and the respondent had, therefore, filed a claim with

the Authority under section 15(2) of the Act. This claim has been allowed by the Authority and the order has been affirmed on appeal by the Additional District Judge, Ambala. The Authority had allowed a sum of Rs. 200 as compensation for the withholding of a part of the salary but this amount awarded as compensation has been reduced to a sum of Rs. 10 only by the Additional District Judge, Ambala.

(4) Shri Jain, the learned counsel for the petitioner, argues that the difference in the monthly emoluments withheld from the respondent during the period of suspension does not amount to any deduction within the meaning of sections 7 and 15 of the Act as, during this period, the respondent was not entitled to anything over and above the subsistence allowance. He relies in this connection on a Full Bench decision of this Court in *Divisional Superintendent Northern Railway, Delhi Division v. Mukand Lal* (1). It is not clear from this ruling whether the employee had been exonerated of all liability before he was reinstated. The suspension had lasted only for a period of about a fortnight and it can be that the shortage of stores detected in that case had been visited with the imposition of a mild penalty or the employer had accepted an expression of regrets by the employee and that there was not such a complete exoneration from liability so as to entitle the employee to full salary and emoluments during the period of suspension. On the peculiar facts of that particular case the finding may have appeared justified that the withholding of the difference between the subsistence allowance and the full salary did not amount to a deduction and that for the period of suspension, the employee was not entitled to anything over and above the subsistence allowance. The Probation of Offenders Act, 1958 was brought on the Statute Book after the decision in *Mukand Lal's case* and the Full Bench was not in a position to give any opinion as to how far the provisions of the said Act would have affected the legal position. I, therefore, agree with the learned Additional District Judge that the Full Bench decision in *Mukand Lal's case* is not helpful to us in determining the effect of sections 4 and 12 of the Probation of Offenders Act on the present case. Shri Jain then relies on a Division Bench ruling of the Andhra Pradesh High Court in *Akella Satyanarayana Murthy v. Zonal Manager, Life Insurance Corporation of India, Madras* (2). A clear distinction was drawn in that case between dismissal of officials for their conduct and their dismissal

(1) A.I.R. 1957 Pb. 130.

(2) A.I.R. 1969 A.P. 371.

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on a conviction for criminal offence. If the dismissal proceeded on a conviction for a criminal offence and the employee had been given the benefit of section 4 of the Probation of Offenders Act, the order of dismissal was found to suffer from an infirmity, in view of the provisions of section 12 of the Probation of Offenders Act, 1958. This section runs as follows:—

“12. Removal of disqualification attaching to conviction. Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provision of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under section 4, is subsequently sentenced for the original offence.”

(5) In this connection, rule 2044 of the Indian Railway Establishment Code, Volume-II which deals with ‘Pay after re-instatement’ may also be reproduced here with advantage:—

“2044 (F.R. 54) (1).—When a railway servant who has been dismissed, removed, or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order—

- (a) regarding the pay and allowances to be paid to the railway servant for the period of his absence from duty; and
- (b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub-rule (1) is of the opinion that the Railway servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Railway servant shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, or suspended, as the case may be.”

(6) The respondent was dealt with under the provisions of section 4 of the Probation of Offenders Act, 1958 and in view of the provisions of section 12 of that Act, he has not to suffer any disqualification

which might otherwise have attached to the conviction for the offence. If he is not "fully exonerated" within the meaning of rule 2044(2) of the Railway Establishment Code, it would mean that we have attached a disqualification to his conviction for the offence of causing simple hurt and that we are trying to withhold from the respondent the full benefit of the provisions of section 12 of the Probation of Offenders Act. The withholding of a substantial part of the full salary of the respondent would be a disqualification attaching to his conviction and this would be a violation of the statutory provisions of section 12 of the Probation of offenders Act and the respondent's case must be made to fall under sub-rule (2) of rule 2044 of the Railway Establishment Code in order to entitle him to full salary and allowances, etc. Reference may in this connection be made to a Division Bench ruling of the Delhi High Court in *Iqbal Singh v. Inspector-General of Police and others* (3), wherein it was held that an employee's reinstatement after his conviction for a criminal offence, when he had been given the benefit of section 4 of the Probation of Offenders Act, would result in the restoration of the *status quo ante* the order of suspension and that no order of dismissal from service could follow the conviction for that criminal offence dealt with under section 4 of the Probation of Offenders Act. In that case, dismissal from service was taken to be a disqualification within the meaning of section 12 of the Probation of Offenders Act. The Hon'ble Judges of the Supreme Court were pleased to observe in *M. Gopal Krishna Naidu v. The State of Madhya Pradesh* (4), that an order under fundamental rule 54 (which corresponds to rule 2044 of the Railway Establishment Code) is in a sense a consequential order that has to be passed after the employee's reinstatement has been ordered and the question whether a certain case falls within one or the other clause of the fundamental rule must depend on the examination by the competent authority of all the facts and circumstances of that case. If the factual finding is that the employee was fully exonerated or in case of suspension that it was wholly unjustified, an order withholding a part of the monthly salary and allowances would adversely affect the employee and would result in a disqualification. On the facts of the case now before me, the respondent had been dealt with under section 4 of the Probation of Offenders Act and he cannot, therefore, be made to suffer any disqualification. If a part of his monthly emoluments were to be withheld from him, he would be

(3) A.I.R. 1970 Delhi 240.

(4) A.I.R. 1968 S.C. 240.

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made to suffer a disqualification and the consequential finding of the competent authority that has, therefore, to follow is that the respondent stands fully exonerated from any liability and that his suspension was wholly unjustified. There is no other way of reconciling the provisions of rule 2044 of the Railway Establishment Code with the mandatory provisions of section 12 of the Probation of Offenders Act, 1958.

(7) The revision petition is accordingly dismissed with costs.

B. S. G.

REVISIONAL CRIMINAL

Before D. S. Tewatia, J.

HARBANS SINGH,—Petitioner.

versus.

STATE OF PUNJAB ETC.,—Respondents.

Criminal Revision No. 62-M of 1970.

September 29, 1971.

Punjab Cooperative Societies Act (No. XXV of 1961)—Sections 55 and 82—Dispute arising in terms of Section 55 referred to arbitration—Such dispute also giving rise to criminal liability—Jurisdiction of criminal Courts—Whether barred to entertain proceedings with regard to the dispute.

Held, that clause (c) of sub-section (1) of Section 82 of the Punjab Cooperative Societies Act, 1961 clearly shows that it envisages the barring of the jurisdiction only of the civil and revenue Courts with regard to disputes which are required to be referred for the arbitration of the Registrar of the Cooperative Societies. If Section 55 of the Act had barred the jurisdiction of the criminal Courts also, there was no necessity to specifically provide in clear and unambiguous terms under Section 82 of the Act that only the jurisdiction of the revenue and civil Courts will be barred with regard to those very disputes. Various provisions of a statute have to be so interpreted by the Courts as to give effect to all the provisions thereof. The use of the word 'suit' by the legislature in the relevant portion of Section 55 is significant and the subsequent words 'or other proceeding' have to take their colour from the word 'suit'. This indicates that the legislature did not intend to extend the injunction to criminal Courts against