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The State of Pepsu

Grover, J.

It cannot be regarded that an application to make a reference under section 18 of the Land Acquisition Act is equivalent to an application to set aside an award. The Collector is only to make the reference in which the award may be confirmed or a different award may be given by enhancing the amount of compensation. No case has been brought to our notice which has authoritatively considered this question and has held that section 12(4) would cover the case of an application made under section 18 of the Land Acquisition Act. It must, therefore, be held that the decision of the District Judge on the second point was correct.

In view of the decision given on the first point, the order of the District Judge must be set aside and the case remanded to him with a direction to proceed in accordance with law. The parties have been directed to appear before the District Judge on 23rd December, 1957. There will be no order as to costs in this Court.

Bishan Narain, J.

BISHAN NARAIN, J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Bishan Narain and Grover JJ.

RULDU RAM AND OTHERS,—*Petitioners*

versus

THE DIVISIONAL SUPERINTENDENT NORTHERN RAILWAY FEROZEPORE CANTT,—*Respondent.*

Civil Revision No. 339 of 1955.

1957

Nov. 22nd

Payment of Wages Act (IV of 1936)—Sections 7 and 15—Employed person being paid wages at a certain rate—Employer starting paying wages at a lower scale without any fresh contract—Whether reduction or deduction in wages—Authority under the Act Whether competent to decide the matter.

Held, that where certain wages are being admittedly paid by the employer to the employed person and then the employer starts paying wages at a lower scale without any fresh contract of service between the parties, the question a once arises as to whether the employer is entitled to make that reduction or deduction, and it is for the Authority under the Payment of Wages Act, 1936, to decide whether the reduction in wages in such circumstances falls within the words "deduction in wages".

A. V. D' Costa, Divisional Engineer, G.I.P. Railway v. *B. C. Patel and another* (1), relied on; *Anant Bhagoji* v. *Captain Superintendent Indian Naval Dockyard* (2); distinguished.

Case referred by Hon'ble Mr. Justice J. L. Kapur, on the 24th January, 1956, to a larger Bench for opinion on the legal point involved in the case and later on decided by a Division Bench consisting of Hon'ble Mr. Justice Bishan Narain, and Hon'ble Mr. Justice A.N. Grover.

Petition under Section 115 of Civil Procedure Code for revision of the order of Sh. William Augustine, Authority Under the Payment of Wages Act, dated the 20th June, 1955, dismissing the application of the petitioner.

H. L. SARIN and J. K. KHOSLA, for Petitioners.

N. L. SALOOJA, for Respondent.

ORDER

The matter for decision in this case is whether a Commissioner appointed under the Payment of Wages Act, can adjudicate upon the dispute which has arisen in the present case.

The petitioners are Guards who have been in service for some time and allege that they chose the new scales of pay which are from Rs. 60 to Rs. 170 with certain annual increments. After

(1) A.I.R. 1955 S.C. 412
(2) A.I.R. 1956 Bom. 391

they had remained in this cadre for about three years their designation was changed and their wage was reduced. One of them Ruldu Ram thereupon brought a suit for declaration to the effect that he continued to be a Guard and that his wage could not be reduced. The matter was compromised on the Railway agreeing that he was a Guard and he was allowed to withdraw his suit in regard to wages with permission to bring a fresh suit. The petitioners had previous to this made an application under the Payment of Wages Act which was withdrawn.

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Kapur, J.

The question to be decided is whether the reduction in wages in the circumstances that I have indicated above fall within the words "deduction in wages". The case is not covered by any authority, at least none has been quoted before me, and the matter is of general importance and should be decided more authoritatively. I therefore refer this matter to a Division Bench and direct that the papers be placed before the Hon'ble the Chief Justice for the constitution of a Bench.

JUDGMENT.

GROVER, J.—This matter has been referred by Kapur, J., for decision by a Division Bench on the point whether the reduction in wages in the circumstances of the present case falls within the word "deduction in wages" within the meaning of section 7 of the Payment of Wages Act (Act No. IV of 1936).

Grover, J.

Briefly the facts are that the petitioners Buldu Ram, Hari Kishan and Baij Nath Kapur were appointed Railway Guards on 15th August, 1917, 16th May, 1930, and 5th February, 1930, respectively. After the Central Pay Commission's award a notice was published in the East

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Grover, J.

Punjab Railway Gazette (Extraordinary), dated December 10, 1947, regarding introduction of the scales of pay etc., prescribed on the recommendations of the Central Pay Commission. Thereafter the petitioners had to decide whether to serve on the old scales of pay or to accept the new scales fixed by the Commission. The petitioners exercised the option for the new scales of pay which was Rs. 60—4—120—5—170. The railway authorities got certain documents executed by the petitioners and it would be useful to refer to AW3/3 which was executed by Baij Nath Kapur. There is a column on the top entitled "Annexure 'A' (Pre-1931 Entrants)" below which is written "Guard 1". Then follows a heading "Refixation in prescribed scales of Pay (Pay Commission 1946-47) in respect of pre-1931 entrants." Under that heading also the name of Baij Nath Kapur is entered with his designation as "Guard Grade 1". Then follows another heading which is—"Details of fixation in prescribed scales (Pay Commission)" and the grade is given in columns (1) and, as mentioned above. Baij Nath Kapur was also made to sign another document called "Annexure 'N'" which is AW3/2 in which he stated that he elected to come on to the prescribed scales of pay with effect from 1st January, 1947, and that the option recorded was final. The other two petitioners executed similar documents. It is common ground that the petitioners received the salary in accordance with the prescribed scale mentioned in the aforesaid documents, namely, Rs. 60—4—120—5—175, and in fact, three increments were given to them. The first was on 1st of January, 1948, the second on 1st of January, 1949, and the third on 1st of January, 1950. For some time in the year 1950, the petitioners continued getting wages according to the scale mentioned above; but when the pay bills were made

for the period 8th July, 1950 to 7th August, 1950, reduced pay was shown in those bills, the grade being Rs. 40-60 and this was to be effective from 1st January, 1950. It is not known nor has our attention been invited to any document which can throw light on the matter as to the rule or the authority under which this was done. On the 1st of September, 1953, the aforesaid petitioners applied under sections 3, 15 and 16 of the Payment Wages Act, 1936, to the Senior Sub-Judge, Amritsar, who was the authority appointed under the Act. In paragraph 14 it was stated that the applicants' wages had not been paid in full and the amount as detailed below had been unlawfully deducated from their wages for the following wage periods :—

Wage period for which the amount is deducted	Amount deducted
	Rs.
Ruldu Ram, 8th July 1950 to 23rd April 1953	1,092 0 0
Hari Krishan, 8th July 1950 to 7th August 1953	1,214 0 0
Baij Nath, 8th July 1950 to 7th August 1953	1,411 0 0

The Divisional Superintendent Northern Railway filed two written-statements—one on 13th November, 1953, and the other on 14th January, 1954. Various objections were taken which are set out in these written-statements. The main pleas contained in the written-statement dated 13th November, 1953, were to be found in paragraphs 8 and 9. The position taken up was that no reduction had been made and the matter was outside the scope of the Payment of Wages Act, 1936, and that the action of the railway authorities did not amount to "deduction of pay". In the written-statement filed subsequently on 14th January, 1954, in paragraph 5 it was stated that no agreement, as alleged, had been executed between the

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applicants and the railway administration, but merely a declaration on the option form was called for to the effect as to whether they accepted the new scales of pay or old scales of pay and that the petitioners had opted for the new scales. It was further stated that the petitioners were II Grade Guards not fully qualified in the Guards' duties and were consequently fixed in the scale Rs. 40—2—60. The Senior Sub-Judge (the authority under the Act) found under issues Nos. 3 and 4 that from the evidence led by both the parties it was proved that the rank of the petitioners was recognised as Guards. The Senior Sub-Judge, however, took the view that he had no power to enquire into the ground for demotion or reversion of an officer from a higher post to a lower post, nor had he the power to declare the grades of the petitioners. He was further of the view that reduction of scale of wages was outside the ambit of his powers. The petitioners were dissatisfied with his order and filed the present petition for revision.

Mr. Harbans Lal Sarin, who appears on behalf of the petitioners, has invited attention, to sections 3, 7 and 15 of the Payment of Wages Act, 1936. The provisions of section 7 are material and it is provided by subsection (1) of the aforesaid section that notwithstanding the provisions of subsection (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 the Act. Subsection (2) provides that deductions from the wages shall be made only in accordance with the provisions of the Act and may be of the kinds mentioned from (a) to (k). Subsection (2) of section 15 is to the effect that where contrary to the provisions of the Act any deduction has been

made from the wages of an employed person such person can apply to the authority constituted under subsection (1) of section 15 for a direction under subsection (3). It would be useful to keep the definition of "wages" contained in section 2(vi) in mind which is in the following terms:—

> "'wages' means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include—
>
> (a) the value of any house-accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the State Government;
>
> (b) any contribution paid by the employer to any pension fund or provident fund;
>
> (c) any travelling allowance or the value of any travelling concession;
>
> (d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

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(e) any gratuity payable on discharge."

It is contended that the terms of the contract of employment were clearly embodied in the documents already mentioned and the petitioners were entitled to all remuneration in accordance with the same and therefore, any deductions which had been made were wholly unlawful. This question was open to the authority under the Act to decide and by refusing to do so it had failed to exercise jurisdiction. The question involved in this case would have to be decided in the light of the decision of their Lordships of the Supreme Court in *A. V. D'Costa, Divisional Engineer, G.I.P.,* Railway v. *B. C. Patel and another* (1). It was held by the majority that where the parties entered into the contract of service and the contract was to be determined with reference to any correspondence that passed between them it would be open to the authority set up under section 15 of the Act, to decide the controversy and find out what the terms of the contract with reference to those letters were. But any claim by an employee that he would be entitled to higher wages, if his claims were to be placed on the higher wages scheme, would not be a matter within the ambit of the jurisdiction of the said authority. After examining in detail the provisions of the Act their Lordships observed that in their opinion if an employee were to say that his wages were say Rs. 100 per month and that Rs. 10 had been wrongly deducted by the authority responsible for the payment of wages, that was to say, that the deductions could not come under any one of the categories laid down in section 7(2), that would be a straight case within the purview of the Act and the authority under

(1) A.I.R. 1955 S.C. 412

section 15 could entertain the dispute. I was observed as follows:—

> "But it is said on behalf of the respondent that the authority has the jurisdiction not only to make directions contemplated by subsection (3) of Section 15 to refund to the employed person any amount unlawfully deducted but also to find out what the terms of the contract were so as to determine what the wages of the employed person were.
>
> There is no difficulty in accepting that proposition. If the parties entered into the contract of service, say by correspondence and the contract is to be determind with reference to the letters that passed between them, it may be open to the authority to decide the controversy and find out what the terms of the contract with reference to those letters were. But if an employee were to say that his wages were Rs. 100 per month which he actually received as and when they fell due, but that he would be entitled to higher wages if his claims to be placed on the higher wages scheme had been recognised and given effect to, that would not, in our opinion, be a matter within the ambit of his jurisdiction."

Their Lordships summarised the law by stating that the authority had the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages but the authority had no jurisdiction to determine the question of potential wages.

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Jagannadhadas, J., who gave a dissenting judgment went further and held that where the higher wage did not depend upon a determination which involved the exercise of administrative judgment or discussion but depended on the application of and giving effect to, certain rules and orders which, for this purpose, must be deemed to be incorporated in the contract of employment, such a wage was not a prospective wage and the authority would be competent to decide even that matter.

In the present case the question essentially is to find out what the terms of the contract between the parties were and to determine what the wages of the employed persons were, and if this be so then the present case would be fully covered by the decision of the Supreme Court referred to above.

Mr. Nand Lal Salooja, who appears on behalf of the respondent, Railway, submits that there are certain documents which show that the petitioners were not entitled to be graded as Guard Grade I, and he further submits that the grade of Rs. 60-170 was wrongly fixed in the case of the petitioners as even under the award of the Pay Commission they were not entitled to be fixed in that grade. No such mistake was alleged or pleaded in both the written-statement filed on behalf of the railway and, therefore, it is not possible to entertain the aforesaid plea. Mr. Salooja also relies on a decision of the Bombay High Court in *Anant Bhagoji* v. *Captain Superintendent Indian Naval Dockyard* (1). In that case it was held that the payment of Wages Authority had no jurisdiction to entertain an application which was based on an allegation that the applicant should have been given another post with higher wages. The

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facts of the Bombay case are quite different. As observed by Shah, J., the primary question which fell for determination in that application was whether the Payment of Wages Authority had jurisdiction to entertain the application made by the petitioner contending that he should not have been reclassified as a Brush painter under the Notification dated 23rd December, 1948, and that he should have been paid wages fixed under the earlier Notification dated 31st December, 1947. There is no question of any reclassification by any Government Notification in the present case. It will be noticed that even in the Bombay case the decision of their Lordships of the Supreme Court was considered and followed and the decision was given in the light of the judgment of the Supreme Court. In the present case the petitioners rely on particular documents which form the basis of the contract between the parties and the case of the Railway is that the petitioners are not entitled to the wages as embodied in the documents in question. This certainly is a matter which would be within the jurisdiction of the authority under the Act to decide. Moreover, the deduction of pay is admitted and the plea is that the petitioners are entitled to less wages. It seems to us that where certain wages are being admittedly paid and then the employer starts paying wages at a lower scale the question at once arises as to whether the employer is entitled to make that reduction or deduction and this has to be decided by the authority. No fresh contract o fservice at a reduced rate of wages has been brought to our notice and it seems to be a unilateral act on the part of the railway by which the wages were reduced and the railway authorities insisted on making payment at a much lower rate. All these are matters which must be left to the authority under the Payment of Wages Act to decide.

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In the result it must be held that the questions which arise in this matter fall within the jurisdiction of the authority constituted under the Payment of Wages Act and the reduction in wages in the circumstances mentioned before falls within the words "deduction in wages".

This petition will now be placed before a learned Single Judge for disposal in accordance with law.

B.R.T.

REVISIONAL CIVIL

Before Tek Chand, J.

JOWALA SINGH AND OTHERS,—*Defendants-Petitioners.*

versus

MALKAN NASIRPUR AND OTHERS,—*Respondents.*

Civil Revision No. 426 of 1957.

1957

Nov. 25th

Code of Civil Procedure (V of 1908)—Order 22 Rule 11 read with section 141—Whether applies to revisions—Maxim inclusio unius est exclusio alterius—*Whether applies—Indian Limitation Act (IX of 1908)—Article 176—Applicability of.*

Held, that ordinarily the provisions of Order 22, Civil Procedure Code, govern the case of abatement during the pendency of the suit. This principle has been extended expressly by rule 11 of Order 22 to the case of appeals but there is no mention of its applicability to revisions. This is a case in which the maxim *inclusio unius est exlusio alterius* should apply and by restricting the application of the rule of abatement expressly to suits and appeals, the intention of the legislature was to exclude from its purview cases arising from proceedings in revision. Article 176, Limitation Act, which provides a period of limitation for making the legal representatives a party, refers to legal representatives "of a deceased plaintiff or of a deceased appellant". The provisions of section 141 of the Code of Civil Procedure also cannot be read in cases of abatements under Order 22, so as to extend its scope to revisions.