

Bachittar Singh v. M/s. Punjab Woollen Textile Mills (Mahajan, J.)

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the tender. To say the least the contention raised is hypertechnical, and is, therefore, rejected.

For the reasons recorded above, this petition fails and is dismissed. There will be no order as to costs.

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B.S.G.

REVISIONAL CIVIL

Before D. K. Mahajan, J

BACHITTAR SINGH,—Petitioner

versus

M/S. PUNJAB WOOLLEN TEXTILE MILLS,—Respondent

Civil Revision No. 225 of 1969

May 15, 1970

*Payment of Wages Act (IV of 1936)—Section 15—Order of dismissal or termination of an employee—Whether can operate retrospectively.*

*Held*, that an order of dismissal or termination of service passed by the employer cannot be made operative with retrospective effect. There is no provision in Payment of Wages Act, 1936, or any other law according to which an employer can order forfeiture of service of his employees on their dismissal or termination of their services thus leading to deprivation of wages otherwise claimable by them under the Act. (Para 1)

*Petition under Article 227 of the Constitution of India for revision of the order of Shri J. S. Chatha, Additional District Judge, Amritsar, dated 14th August, 1968 affirming that of Shri Dev Raj Saini, Senior Sub-Judge (Authority under the Payment of Wages Act), Amritsar, dated 16th June, 1967 dismissing the petition and leaving the parties to bear their costs.*

BALBIR SINGH BINDRA, ADVOCATE, for the Petitioner.

O. P. ARORA, ADVOCATE, for the Respondent.

JUDGMENT

MAHAJAN, J.—(1) This order will dispose of Civil Revisions Nos. 225 and 796 of 1969. Both the petitions cover the same period. The controversy has been narrowed down because the petitioner has dropped the contention that he is entitled to question the order of dismissal before the Authority under the Payment of Wages Act. He has confined his contention to the payment of wages for the period from 1st October, 1966 to 15th of February, 1967. His contention is that the order of dismissal was passed on the 15th of February, 1967, and the order could not be made operative with effect from 1st October, 1966. This contention is sound and must prevail. In this connection reference

may be made to the decision of Mehar Singh C.J. in *Messrs Chaman Textile Mills v. Tara Chand* (1). The observations of the learned Chief Justice, which are patient, are quoted below :—

“The last argument that is urged by the learned counsel for the applicant is that the order dismissing the respondents or terminating their services said that their service has been forfeited, meaning that service for the earned leave period had been forfeited, and in face of such forfeiture, which the learned counsel says has never been challenged before the Authority under Act 4 of 1936, the respondents could not have been allowed wages for forty-five days' earned leave. This is a matter which was never raised before the Authority. The order terminating the services of the respondents was not placed before it. A copy has been placed with the present application, but that is of no avail to the applicant. Apart from this, the learned counsel for the applicant is unable to show under what provision of law the applicant had the power to order forfeiture of any part of the service of any of the respondents. In substance, if there was such a power in an employer, it would mean denial of earned wages to a workman, but anything which a workman cannot recover as wages is what is stated in the Act itself, and it is stated further clearly what he can recover as wages. The learned counsel for the applicant has not been able to refer to any provision either in Act 4 of 1936, or in Act 63 of 1948, or any other law according to which the applicant could order forfeiture of service of any of the respondents on his dismissal or termination of his service thus leading to deprivation of wages otherwise claimable by him under the provisions of Act 4 of 1936.”

(2) The learned counsel for the respondent contended that the petitioner did not work from 1st October, 1966 to 15th February, 1967 because he was suspended. ‘Suspension’ has no meaning as was held by the Supreme Court in *Between Hotel Imperial, New Delhi and others and Hotel Workers' Union* (2). The relevant observations bearing on the point are quoted below :—

“It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term

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(1) C.R. No. 841 of 1966 decided on 17th October, 1968.

(2) 11 L.L.J. 544.

Hari Kishen Dass Jain v. The Life Insurance Corporation of India, etc.  
(Mahajan, J.)

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in any ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay."

(3) In view of these two decisions, the case of the petitioner is unassailable for wages from 1st October, 1966 to 15th February, 1967.

(4) For the reasons recorded above, I allow these petitions to this extent only that the petitioner will be entitled to his wages for the period beginning from 1st October, 1966, and ending with 15th February, 1967. There will be no order as to costs.

(5) The cases will now go back to the Authority under the Payment of Wages Act to determine the quantum of wages due to the petitioner for this period. The parties are directed to appear before the Authority on 9th of June, 1970.

N.K.S.

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CIVIL MISCELLANEOUS

Before D. K. Mahajan and Bhopinder Singh Dhillon, JJ

HARI KISHEN DASS JAIN,—Petitioner

versus

THE LIFE INSURANCE CORPORATION OF INDIA AND  
OTHERS,—Respondents

Civil Writ No. 1023 of 1969

May 18, 1970

*Life Insurance Corporation of India (Staff) Regulation (1960)—Regulation 39(1)(g)—Constitution of India (1950)—Articles 14 and 226—Services of an employee of Life Insurance Corporation terminated—Such employee—Whether can invoke the jurisdiction of the High*