*Before D. V. Sehgal, J.*

GENERAL MANAGER, PUNJAB ROADWAYS, JALANDHAR,—*Petitioner*

*versus*

BALBIR SINGH,—*Respondent.*

*Civil Revision No.* 318 *of* 1987.

August 26, 1987.

*Payment of Wages Act (IV of* 1936)—*Sections* 7(1) *Explanation II,* 7(2)(h), *and* 15—*Withholding of annual increment without good and sufficient cause—Penalty imposed by competent authority without notice by non-speaking order—Order forming basis of deduction from wages—Deduction—Whether unauthorised—Authority under the Act—Whether has jurisdiction to ignore order and direct payment of wages.*

*Held,* that Explanation II to sub-section (1) of section 7 of the Payment of Wages Act, 1936 provides in no uncertain terms that any loss of wages resulting from imposition, for good and sufficient cause, upon a person employed of any of the penalties enumerated therein including the withholding of increments shall not be deemed to be a deduction from wages. In other words, if the loss of wages has resulted in imposition of such a penalty without good and sufficient cause as in the present case the authority under the Act shall ignore the order imposing the penalty of direct payment of wages wrongfully deducted from the wages of the employed person. Hence it has to be held that if an order imposing penalty is not a speaking order which does not disclose the process of reasoning by which the decision has been arrived at, the authority under the Payment of Wages Act will have jurisdiction to treat such an order as non-existent and direct the payment of wages unauthorisedly deducted. (Paras 9 and 10).

*Civil Revision under Article* 227 *of the Constitution of India praying that the Revision Petition may kindly be accepted, judgment dated* 15*th January,* 1986 *recorded by the Authority under the Payment of Wages Act, Jalandhar and the judgment dated* 26*th May,* 1986 *recorded by the Additional District Judge, Jalandhar may be quashed, and the application of the respondent dismissed, with costs, throughout.*

K. P. Bhandari, A.G. (Pb.), with Himinder Lal, Advocate, *for the Petitioner.*

JUDGMENT

*D. V. Sehgal, J.*—

(1) This judgment shall dispose of C.Rs. Nos. 318, 319, 460 and 461 of 1987 as a common question of law is involved in all of them.

(2) It would suffice to refer to the facts giving rise to C.R. No. 318 of 1987. This revision petition under Article 227 of the Constitution of India is directed against the judgment dated 26th May, 1987 of the learned Additional District Judge, Jalandhar, as an Appellate Authority under the Payment of Wages Act, 1936 (for short 'the Act'), whereby an appeal filed by the General Manager, Punjab Roadways, Jalandhar, the petitioner, against the judgment, dated 15th January, 1986, passed by the Authority under the Act was dismissed.

(3) An application under section 15 of the Act was filed by Balbir Singh respondent-workman before the Authority under the Act alleging that certain annual increments due to him had been wrongfully withheld. He prayed for the issuance of a direction to the petitioner to pay the wages illegally deducted by withholding these increments. The claim was resisted by the petitioner who contended that the orders withholding the increments of the workman had been passed by the competent authority and the deduction thus made was valid in law. The Authority under the Act, however, reached at a finding that the orders through which the increments of the workman had been withheld were not speaking orders and thus were nebulous and cryptic. Therefore, the deduction made from the wages of the workman through the said orders was not for good and sufficient cause. As a result, the application of the workman was allowed and a direction was issued that he should be paid wages for the period of 12 months preceding the date of presentation of the application under section 15 of the Act by him as if the orders withholding his increments were not passed against him. As already mentioned above, an appeal filed by the petitioner against this order before the Appellate Authority failed and this is how he presented the present revision petition in this Court.

(4) I have heard Shri K. P. Bhandari, the learned Advocate-General, Punjab, on behalf of the petitioner. There is no representation on behalf of the workman-respondent. The matter is, however, not *res integra*. I have already dealt with a similar point

of law in my judgment in *General Manager, Punjab Roadways, Jalandhar* v. *Nanak Singh,* (1), *wherein* I, *inter alia,* held as under:—

> "It has been held by the Authority under the Act that the order dated 6th August, 1982 withholding increment of the respondent is not a speaking order. The learned Additional District Judge while affirming this finding has observed that after going through the relevant file produced on behalf of the petitioner it has been found that no reasons were recorded as to why the explanation submitted by the respondent was not found satisfactory. Explanation II to section 7 of the Act, *inter alia,* provides that any loss of wages resulting from imposition, for good and sufficient cause, upon a person employed of a penalty of withholding increment shall not be deemed to be a deduction from wages, in any case, where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirement as notified under the Act. When no reasons were assigned for withholding increment of the respondent,—*vide* order dated 6th August, 1982 it could not be said that his increment was withheld for good and sufficient cause. I, therefore, find that the Authority under the Act was within its jurisdiction to hold that the order dated 6th August, 1982 was invalid, had to be ignored and the deduction of wages in pursuance thereof were ordered to be paid to the respondent."

(5) The learned Advocate General, however, submitted that my above decision needs reconsideration. He brought to my notice the provision of clause (h) of sub-section (2) of section 7 of the Act. According to the said provision deduction from the wages of an employed person shall be made only in accordance with the provisions of the Act and may be of the following kinds only, namely:—

> "(a) . . .
>
> to
>
> (g) . . .

(1) C.R. No. 462 of 1987, decided on 24th July, 1987.

(h) deductions required to be made by order of a Court or other authority competent to make such order.

(i)
to

(q) . . ."

(6) He contended that the orders withholding the increments of the respondent had without dispute been passed by a competent authority and were, therefore, saved by clause (h) *ibid.* To convass support for his view, he relied on a Division Bench judgment in *Gopichand Khoobchand Sharma and others* v. *Works Manager Loco-shops, Western Railway, Dohad, and another,* (2). He submitted that once there is an order of a Court or any other competent authority statutorily empowered to make the order and in pursuance of that order deduction is made by the employer, the deduction would fall within the terms of the aforesaid provision and would be permissible under the Act. Such an order may be null and void, regular or irregular, that would not be a matter for the Authority under the Act to examine. The only point into which the Authority under the Act would be competent to enquire would be whether the authority which passed the order was competent under the statute to make it. It could not go behind the order to adjudicate on its validity. I have gone through the judgment in *Gopichand's case* (supra) and find that the provisions of Explanation II to sub-section (1) of section 7 did not come in for consideration.

(7) On the other hand, a Division Bench of this Court in *The Deputy Chief Mechanical Engineer Northern Railway Jagadhri Workshop, Jagadhri* v. *Joginder Singh* (3), has *inter alia* held as under :—

"The language employed in explanation II noticed above that the wages deducted as penalty resulting from the imposition for good and sufficient cause pursuant to a domestic enquiry could be validly deducted. In other words, if the employee puts forth a defence that deductions have been made in pursuance to a disciplinary action against the employee it has to *prima facie* show that the enquiry had been held in accordance with the rules on the subject. If

(2) AIR 1967 Gujarat 27.
(3) 1980 P.L.R. 610.

it fails to do so, or if the order imposing the penalty on the employee *prima facie* discloses that it had been passed in violation of the principles of natural justice, it is open to the authority to come to the conclusion that the penalty had not been imposed on the employee for good and sufficient cause, the authority would ignore such an order and order the payment of wages to the employee. The provisions of section 7(2) (h) of the Act also imply that the order of a Court or other authority should have been passed after notice to the employee if the employer intended to claim any immunity against its challenge. In the instant case, the appellate Authority has come to the conclusion that the impugned orders were passed against the employee without the service of any notice upon him to show cause why such an order should not be passed. The impugned orders were, therefore, violative of principles of natural justice and contrary to the rules governing the enquiries. In the circumstances no fault can be found with the view taken by the Appellate Court."

(8) I am bound by the ratio of the Division Bench judgment in Jogiñder Singh's case (supra), I find that the view taken by me in *Nanak Singh's case* (supra) is consistent with what has been held by the Division Bench in *Joginder Singh's case.*

(9) The learned Advocate-General, however, made an attempt to distinguish *Joginder Singh's* case by contending that in that case it had been found that the order imposing penalty of stoppage of increment had been passed without following the rules of natural justice and the said order was, thus, inconsistent with the statutory rules governing the service of the workman. It is now well settled that the rules of natural justice postulate some essentials, namely, that a person cannot be a judge in his own cause, a person should not be condemned unheard, i.e., the rule of *audi alteram partem* should be followed, and that the order which is *quasi* judicial in character and visits civil consequences should disclose the process of reasoning by which the decision contained therein has been arrived at, i.e., that it should be a "speaking order". This aspect has been elaborated by the Supreme Court in a catena of judgments, the earlier one of these being *Bhagwat Raja* v. *Union of India and others* (4). Following *Bhagat Raja's* case, it was held by this Court in *Ram Dass*

(4) AIR 1967 S.C. 1606.

*Chaudhry Veterinary Assistant Surgeon* v. *State of Punjab and another,* (5) that where an order withholding increment of a Government servant is a non-speaking one, the same is violative of the provisions of rule 4 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 which lay down that a penalty can be imposed upon members of the services only if good and sufficient reasons are shown.

(10) It is the above principle which is adumbrated in Explanation II to sub-section (I) of section 7 of the Act when it provides in no uncertain terms that any loss of wages resulting from imposition, for good and sufficient cause, upon a person employed of any of the penalties enumerated therein including the withholding of increments shall not be deemed to be a deduction from wages. In other words, if the loss of wages has resulted from imposition of such a penalty without good and sufficient cause the Authority under the Act shall ignore the order imposing the penalty and direct payment of wages wrongfully deducted to the employed person.

(11) In view of the above discussion, I find no merit in any of these revision petitions. These are, therefore, dismissed. Since there is no representation on behalf of the respondent in any of the petitions, there shall be no order as to costs.

*R.N.R.*

(5) 1968 S.L.R. 792.

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