

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

O.A. No.
T.A. No.

978/1990

199

DATE OF DECISION _____

Union of India and others Petitioner

G.P. Agrawal

Advocate for the Petitioner(s)

Versus

Ram Deo

Respondent

A.K. Sinha

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. K. Obayya, A.M.

The Hon'ble Mr. J.P. Sharma, J.M.

1. Whether Reporters of local papers may be allowed to see the judgment ?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether to be circulated to all other Benches ?

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Ghanshyam/

(3) (16)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

O.A.No. 978/1990

Union of India and others	...Petitioners
Versus	
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Hon 'ble Mr. K.Obayya, A.M.
Hon 'ble Mr. J.P.Sharma, J.M.

(By Hon 'ble Mr. J.P.Sharma, J.M.)

Union of India has filed this application through General Manager, Northern Railway Allahabad against the order dated 16.8.1990 passed by Presiding Officer D.L.C.Kanpur for payment of Rs. 14470/- The application has been admitted after hearing on 10.12.1990 and the operation of the order dated 16.8.1990 was stayed.

2. In this application the applicants pr-ayed for quashing the order dated 16.8.1990 by Dy. Labour Commissioner Kanpur.

3. The facts of the case are that Sri Ramdeo respondent filed an application under section 16 of the Payment of Wages Act, 1936 with the allegations that he is inemployment of the Railway Authorities at Kanpur under Divisional Personal Officer, Allahabad He prayed before the Labour Court under Section 15(2) for Payment of Wages unlawfully deducted by respondent no. 2, Divisional Personal Officer Allahabad from 15.1.1988 to 14.10.1988 amounting to Rs. 2370/-.

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The employee before the Labour Court urged that he has not been allotted Railway Quarter inspite of that the Railway had deducted in January Rs. 370/- and thereafter at the rate of Rs. 250/- per month from his pay treating the employee in the occupancy of Railway quarter. The deduction made by the Railway Au-thority is against the law, so he is entitled to be paid deducted wages with 10 times penalty. This claim of the Railway Employee for Rs. 2370/- was allowed with 5 ^{times} /penalty and Rs. 250/- as costs. It is against this the present application has been filed by Union of India.

4. The employee is respondent in this case who filed the reply taking objection that Prescribed Authority has not been made a party, but that has been done now . Since the Prescribed Au thority is a formal party no notice has been issued to him.

5. The next objection of the respondent employee is that the present application is not maintainable., the applicant Union of India have ^{not} gone in appeal before the District Court under section 17 of the PW Act 1976. It is stated that the Tribunal has no jurisdiction. It is further stated that since there was no quarter with the employee so there arises no question of deducting any amount of premium and the applicant cannot deduct the amount under section 7(2) clause (h) of PW Act 1936. In anycase the employee was not given any notice to show cause against recovery and there is therefore, violation of principles of natural justice. The deduction which is still being made of Rs. 250/- cannot be legally made. It is therefore, prayed that the application of Union of India be dismissed and the amount decreed by D.L.C. Kanpur in

the aforesaid proceedings be paid to the applicant.

6. We have heard the learned counsel of both the parties at length. The question of jurisdiction has already been decided in the case of Union of India Versus Sarup Chand Singla reported in Full Bench (1986-88) judgment/page 183. It has been held in the above case that the word court in section 17 of the PW Act 1936 means "an authority" and it does not include 'Persona', 'designata' under section 28 of the A.T. Act 1985, jurisdiction of the court has vested regarding service matter of Central Government employees in the Tribunal. The service matter has been defined to include every matter concerned with the service of an employee.

In the above reported case the full bench has come to the following decision:

"To sum up, therefore, an Authority constituted under section 15 of the PW Act as also the Commissioner for Workmen's Compensation are only special Tribunals, but not courts. So they can exercise the jurisdiction and powers vested in them respectively in respect of matter and disputes falling under the said Acts. However, this Tribunal will have the jurisdiction, powers and authority in respect of "service matters" of Central Government employees in respect of which it has jurisdiction, powers and authority by virtue of section 14(1) of the Act. Further, the Tribunal is competent to grant relief to the aggrieved employee/Workman as the case may be in accordance with the provisions of PW Act and WC Act. Moreover, this Tribunal shall also have all the appellate powers of the Court of Small Causes in a Presidency-town and the District Court elsewhere under section 17 of the PW Act as also of the High Court

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under section 30 of the WC Act, as the case may be. Lastly, this Tribunal is also vested with the extra-ordinary writ jurisdiction of the High Court under Article 226 and 227 of the Constitution in respect of matters falling under section 14(1) of the Act. We answer this reference accordingly and both these cases be now placed before regular Bench for further hearing on merits."

7. The learned counsel for the applicants has also referred to a ~~larger~~ bench decision of CAT Hyderabad bench a Padmawali and another Vs. CPWD reported in C.S.J. Vol. III (1990) CAT page 384. In para 40 it has been held as follows:

40. "To sum up, our conclusions are as follows:

- (1) The Administrative Tribunals constituted under the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act. Hence all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of Sisodia, which lays down a contrary interpretation is, in our opinion, not correct.
- (2) An applicant seeking a relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.
- (3) The powers of the Administrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries (Supra).
- (4) The interpretation given to the term "arrangements in force" by the Jabalpur Bench in Rammoo's case is not correct

We answer the questions raised before the Larger Bench accordingly. All these Applications which have been listed before this Bench will now be listed before Division ✓

Benches for disposal in accordance with law. "

8. In the present case after the decision of the Prescribed Authority under PW Act Union of India has filed the present application which is almost analogous to an appeal under section 17 of the PW Act. It is in view of the fact that the jurisdiction of the District Court stand vested under section 28 in the Central Administrative Tribunal. It is therefore, held that this Tribunal has jurisdiction in this matter.

9. On merits the learned counsel for the respondents' argued that the deduction from the wages of the Respondent Ram Deo was made under the order of the Competent Authority which is permissible under section 7 sub clause h . Sub cluase h runs as follows:

Competent *Competent* "Deductions required to make by order of ^a court or other authorities, competent authority to ~~work~~ ^{make} such order."

In the present case the contention of the employer Union of India is that --- Ram Deo (employee) has encroached on the Railway line near the place he was posted and constructed a thatch over it (Marhaiya). Since ^{the} employee has caused ^{loss} to the Railway by encroaching upon the land so the damages has been lavied for use and occupation at Rs. 250/- per month which are liable to be deducted from the monthly wages. The employee Ram Deo has denied having encroached upon - - a Railway land before the Prescribed Authority, that is, Dy. Commissioner Lx Labour Court. The applicant Union of India did not give

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before the Prescribed Au-thority any evidence/the Respondent Ram Deo, before the Labour Court, stated that he has no Railway Quarter in his possession. He has further stated that he has no Railway Quarter with him. Dy. Commissioner Labour Court has observed that the Railway has not filed any evidence of unlawful encroachment or construction over the Railway land by the employee Ram Deo. In view of these it was held that the deductions made from the wages of the employee Ram Deo were illegal deduction.

10. In fact ~~the~~ case of the applicant Union of India does not fall under clause 7(h) then there is no right to deduct the wages to the extent Rs. 250/- per month from the salary of the respondent Ram Deo. If the employee Ram Deo has made any encroachment on the Railway land and raised over it unauthorised construction, ^{then} / in that case he has to be proceeded with under the Public Premises Eviction of Unauthorised Occupants Act, 1972. There is a Estate Officer of the Railway who can take the proceedings at the instance of the Railway department who can pass an order according to law under that Act. Thus the findings of the Prescribed Authority of deducting a sum of Rs. 2370/- from the wages of the applicants are upheld and the applicant is bound to pay amount unlawfully deducted.

11. However, regarding the imposition of penalty by the Labour Court, Prescribed Authority gave 5 times of the amount deducted as damage appears to be excessive.

Sub clause 3 of section 15 lays down as follows:

- (3) " When any application under Sub-Section (2) is entertained, the authority shall hear the applicant and the employer or other person
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responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding twenty-five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding twenty-five rupees:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to:

- (a) a bonafide error or bona fide dispute as to the amount payable to the employed person, or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or
- (c) The failure of the employed person to apply for or accept payment."

12. In fact 10 times penalty of the deducted wages can be imposed but in the present case there is an order against the employee Ramdeo that the amount be deducted as reported by the Assistant Engineer. This order has been passed by Chief Yard Master though it can not be said to an order passed by Competent Authority to come under section 7(h), yet the deduction has been done under misapprehension and further there is a report about the encroachment of Railway land by the respondent employee Ram Deo . ✓

In view of the above we are of the opinion that the penalty imposed by the Prescribed Authority is exorbitant taking into account the allegations that the Railway employee had made encroachment on the Railway land and also raised the thatch over it. The department has also shown the departmental file where the applicant has also made admission of such a nature regarding this land. Though that is not to be considered in this case and no finding given either on encroachment or on the raising of thatch by the applicant. That shall exclusively be the domain of the State Officer of the Railways. But this can be very well taken as ground to minimise the penalty of Union of India.

In view of the above discussion the application is disposed of as follows:

- (a) The order of D.L.C. Kanpur Prescribed Authority is modified to the extent that the applicant shall pay a sum of Rs. 2370/- to the Respondent Ram Deo being the deducted wages from his pay:
- (b) The applicants are further directed to pay an equal amount of Rs. 2370/- as penalty for withholding wages of the said employee Ram Deo besides costs of Rs. 250/-
- (c) The applicant can be free to proceed departmentally under ^{Premises} Public/Eviction and Unauthorised possession Provisions of Act 1972.

The parties to bear their own costs.

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Member (J)
(SS)

Rubeyza
Member (B)
22/2/71