CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 30.7.1990

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

O. A No. 225/90
O.A No. 226/90
O.A No. 227/90 &
O.A No. 315/90

In O.A No.225/90

The Divisional Personnel Officer, Southern Railway, Trivandrum .. Applicant

v.

1.S.Gopalakrishnan
2.The Central Government Labour Court, Quilon. .. Respondents

In O.A No.226/90

Divisional Personnel Officer, Southern Railway, Trivandrum .. Applicant

v.

1. A. John Rose
2. Central Govt.Labour Court, Quilon. .. Respondents

In O.A 227/90

Divisional Personnel Officer, Southern Railway, Trivandrum. .. Applicant

v.

1. C.Kanakaraj
2. The Central Government Labour Court, Quilon. .. Respondents

In O.A 315/90

The Divisional Personnel Officer, Southern Railway, Trivandrum .. Applicant

v.

1. P.Sukumaran
2. The Central Government Labour Court, Kollam. .. Respondents

Smt. Sumathi Dandapani .. Counsel for the applicant

Mr. P.Sivan Pillai .. Counsel for the respondents

J U D G M E N T

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The question of law, facts and reliefs in these

cases are identical. Hence, on agreement of parties, they were heard together and disposed of by this common judgment.

2. This is a matter arising under the Payment of Wages Act. Normally the impugned orders in these cases ought to have been challenged before the District Court, Quilon. But in view of the 42nd Amendment and the enactment of the Administrative Tribunals Act, the appellate jurisdiction under the Payment of Wages Act in respect of this matter is vested in this Tribunal and accordingly these cases come up before us for consideration under Section 19 of the Administrative Tribunals Act, 1985.

3. For the sake of convenience we may deal with the facts in O.A 225/90. The Divisional Personnel Officer, Southern Railway, Trivandrum is the petitioner. The first respondent while functioning as Basic Electrical Fitter at Trivandrum was found guilty of dereliction of duty for which disciplinary action under Railway Servants Conduct Rules, 1966 was initiated against him. It ended in the imposition of a minor penalty of withholding of his annual increment from Rs.214/- to Rs.218/- in the grade of Rs.210-290 from 1.4.1984. The increment was withheld for a period of two years without the effect of postponing his future increments. The appeal filed by the first respondent was rejected by the appellate authority. He was again charge-sheeted for a serious misconduct on 13.9.1984. After completion of the disciplinary enquiry another order of punishment was imposed withholding the increment for three years from 1.4.1985. When he filed appeal against the same the appellate authority confirmed the penalty. In pursuance of the penalty

orders which are upheld by the appellate authority, when the Railway deducted the amount from his salary the first respondent approached the second respondent, the Central Government Labour Court, Quilon by filing P.W.A 32/85 under Section 15(2) of the Payment of Wages Act, 1936. Annexure-A is the petition and Annexure-B is the objection filed by the Railway raising the contention that the deduction has been effected in accordance with valid order passed on the Railway employee and since this is an authorised deduction, the Labour Court has no jurisdiction to deal with the matter. But the Labour Court passed the impugned order at Annexure-C awarding the amount claimed by him as having been illegally deducted from his salary. This order of the Labour Court is under challenge in this case.

4. The first respondent filed a detailed counter affidavit raising among other things preliminary objections about the maintainability of this petition. He has produced the orders passed by the disciplinary authority and the appellate authority and contended that the penalty imposed against him is illegal and hence the deductions from his salary is not permissible. The Labour Court as an authority under the Payment of Wages Act has jurisdiction to decide the disputes in this case for the reasons stated in Annexure R1(7) notes.

4. Having heard the matter we are of the view that there is no merit in the preliminary objections and they are misconceived. The procedural formalities contemplated under the Administrative Tribunals Act, 1985 have been duly complied with. But his objection is that the procedure

prescribed under Section 17 of the Payment of Wages Act read with the Rules thereunder including deposit of the amount have not been followed for filing an application before this Tribunal. It may be true that we are exercising the appellate jurisdiction under Section 17 of the Payment of Wages Act read with the provisions of Section 19 of the Administrative Tribunals Act. But there is no bar in viewing this application as one under Section 19 of the Administrative Tribunals Act filed by an aggrieved person for redressing the grievances covered by Section 14 read with Section 3(q) of the Act. For entertaining such an application under the latter Act, as indicated above, the procedural formalities prescribed under the Central Administrative Tribunal(Procedure) Rules,1987 have been duly complied with in this case. In this view of the matter it is not necessary to insist upon the applicant to comply with any further formalities for filing an appeal under the Payment of Wages Act and the rules thereon for dealing with the matter. Hence we reject the preliminary objection regarding the maintainability of the application.

5. The applicant in this case submitted that the orders passed by the disciplinary authority and the appellate authority are not challenged in this case. This is not disputed and we are satisfied that so long as those orders remain unchallenged, the deductions made by the Railway from the salary of the first respondent are valid deductions coming within Explanation II of Section 7 of the Payment of Wages Act, which reads as follows:-

> "Expl.II - Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person of any of the following penalties namely.

(1) withholding of increment or promotion(including the stoppage of increment at an efficiency bar) or

xx xx xx

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 requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette."

6. The learned counsel for first respondent further contended that there is no "good and sufficient" reason for imposing the penalty and effecting recovery by making deductions from his salary. This cannot be gone into at this stage especially when there is no challenge against the orders imposing the penalty and confirming the same and in the light of the clear provisions in Section 7 of the Act.

7. The learned counsel again submitted that these are "incidental" matters which can be gone into by the Labour Court notwithstanding Section 7 Explanation and this Tribunal can consider the same in this application. He has also cited the following decisions in support of his arguments:-

AIR 1961 SC 970
1964(1) LLJ 671
1973 (1) LLJ 6
1974 LAB. I.C. 307
1986 (1) SLJ 403
1986 LAB. I.C. 1509

7. We have no doubt in our mind regarding the scope of the jurisdiction of the authority under the Payment of Wages Act in dealing with the matters under Section 15 of the Payment of Wages Act. This provision only confers summary jurisdiction and the same is conferred on the Labour Court to decide the questions of

validity of deductions made by the employer from the wages or salary legitimately due to the employee which is his legal right unhampered by any impediments, which he has earned on account of the service rendered to the employer. When there is serious dispute regarding facts and questions like disciplinary action and imposition of penalty and such other matters necessitating taking of evidence and deciding various issues, the jurisdiction under the Payment of Wages Act is invariably ousted. Such matters will have to be worked out in other appropriate forums. Justice P.B.Gajendragadkar, as he then was, held in GANESHI RAM V. DISTRICT MAGISTRATE AND ANOTHER,AIR 1967 SC 356, as follows:-

> "The position under the Act is clear. Under S.7 certain specifided deductions are permitted to be made and in respect of the deductions thus permitted or authorised to be made there can be no claim under S.15. In other words, claims for recovery of wages can be validly made under S.15(2) and awarded under S.13(3) only where it is hown that the impugned deduction is not authorised or justified by S.7. Thus, it is only in respect of unauthorised or illegal deductions that claims can be made before the authorities by an aggrieved workman."

Further the Supreme Court in TOWN MUNICIPAL COUNCIL, ATHANI V. PRESIDING OFFICER,LABOUR COURT, AIR 1969 SC 1335, considered th questions and held as follows:-

> "In cases where there is no dispute as to rates of wages, and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off-days is due to a workman or not, the appropriate remedy is provided in the Payment of Wages Act. If the payment is withheld beyond the time permitted by the Payment of Wages Act even on the ground that the amount claimed by the workman is not due, or if the amount claimed by the workman is not paid on the ground that deductions are to be made by the employer, the employee can seek his remedy

> by an application under Section 15(1) of the Payment of Wages Act. In cases where S.15 of the Payment of Wages Act may not provide adequate remedy, the remedy can be sought either under Section 33C of the Act or by raising an industrial dispute under the Act and having it decided under the various provisions of that Act."

8. In the instant case the deduction from the first respondent's salary have been duly made by the Railway in pursuance of valid orders imposed on the applicant pursuant to disciplinary proceedings. The orders were upheld by the appellate authority. Whether the punishment has been imposed for"good and sufficient"cause would not come within the scope of the enquiry by the authority under Section 15 of the Payment of Wages Act. The only limited issue that can be gone into is as to whether the deductions have been made from the wages legally or otherwise. After going through the matter we are satisfied that the impugned order challenged in this case is unsustainable.

9. The contention of the learned counsel for the first respondent that the question as to whether the imposition of the penalty for"good and sufficient cause"is an incidental matter which can be gone into by the authority under the Payment of Wages Act is also unsustainable. It is not necessary to go through all the decisions cited at the bar to examine and decide that issue. An 'incidental power' as explained in 'The Law Lexicon' by P.Ramanatha Aiyar (1987 Edition at page 572) is as follows:-

> "An 'incidental power' is one that is directly or immediately appropriate to the execution of the specific power granted, and not one that has a slight or remote relation to it".

The Supreme Court in STATE OF TAMIL NADU V. BINNY LTD., MADRAS, AIR 1980 SC 2038 held:

> "Krishna Iyer,J., speaking on behalf of the Court, pointed out that "a thing is incidental to another if it merely appertains to something else as primary"

The Patna High Court in UNION OF INDIA V. SURENDRA MOHAN SINHA, 1976 LAB. I.C. 26, following the Supreme Court decisions explained the"incidental"matters coming within the purview of the Payment of Wages Act which can be gone into by the authority under the Act as follows:-

"In dealing with the claims arising out of deductions or delay made in payment of wages the Authority inevitably would have to consider questions incidental to these matters. But in determining the scope of these incidental matters the limited jurisdiction was not unreasonably or unduly expanded. While holding that there could not be any hard or fast rule which would afford a determining test to demarcate the field of incidental facts which could be legitimately considered by the Authority and facts which could not be so considered, the Supreme Court did emphasise that the jurisdiction under Section 15 of the Act is a special, summary jurisdiction. In view of the law laid down by the Supreme Court, it is, to my mind, clear that questions relating to matters not of deduction or delay in payment of wages simpliciter and innovating a complex consideration of facts and of the jurisdiction of the authority under whose orders the so-called deductions have been made cannot be within the competence of the authority appointed under Section 15 of the Act. I may reinforce my view by a Bench decision of the Bombay High Court in D.P.Kelkar v. Ambadas Keshav Bajaj,(AIR 1971 Bom 124) and a Bench decision of the Calcutta High Court in the case of Shri Kamal Prasanna Roy v. Shri Maurice Hyam, (1973) 77 Cal WN 64. In those cases it has been held that the Authority under the Payment of Wages Act has a limited jurisdiction in deciding claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. The limited jurisdiction of the Authority should not be unreasonably extended under the garb of deciding incidental matters. I fully and respectfully endorse the following observation of the Calcutta High Court in the case K.P.Roy:

"But the limited jurisdiction of the authority should not be unreasonably extended under the garb of deciding incidental matters. In other words, if a question involves a prolonged enquiry or enquiry into complicated questions of law and fact the authority under the Payment of Wages Act would refuse to exercise his jurisdiction."

Again in M/S.SINGH ENGINEERING WORKS PVT. LTD V. KANDHAI AND ANOTHER, 1975 LAB. I.C. 853, the Allahabad High Court held as follows:-

"The jurisdiction conferred upon the Payment of Wages Authority is a limited and special jurisdiction which should neither be unduly extended nor unduly curtailed. Primarily, the jurisdiction is to decide the question whether there has been any wrongful deduction

from the wages of an employee and the question whether there has been any delay in the payment of wages. Sub-section (1) confers on the authority, power to decide matters which are incidental to these two questions. The incidental matters which generally arise before the authority and which it has jurisdiction to decide, are:

(i) the determination of the question as to what the wages of the employee are;

(ii) finding out the terms of the contract between the employer and the employee;

(iii) deciding the question whether initially there was any relationship of employer and employee between the parties; and

(iv) deciding the question whether the application under sub-section(2) is time-barred and whether there is sufficient cause for the delay in filing it. In respect of these incidental matters, the Payment of Wages Authority is entitled to take evidence and to record its findings. But the jurisdiction of the Payment of Wages Authority does not extend to deciding the question whether the employer has bona fide or lawfully terminated the relationship of employer and employee. In Vishwanath Tukaram v. General Manager, Central Railway, AIR 1958 Bom 111(FB) a Full Bench of the Bombay High Court has held that the Payment of Wages Authority has no jurisdiction to decide whether the services of an employee have been rightly or wrongly terminated or whether the dismissal is lawful or unlawful."

10. In the light of these settled legal principles we see no force in the contentions raised by the first respondents. The applications are to be allowed. In the result we quash the impugned orders in O.A Nos.225/90, 227/90 and 315/90.

11. Regarding O.A No.226/90 the respondent has raised a technical objection that this application is not maintainable in view of the fact that the amount involved in the matter is less than three hundred rupees and no appeal is maintainable under Section 17 of the Payment of Wages Act and hence it is to be dismissed

on the sole ground. As indicated above under Section 19 of the Administrative Tribunals Act we are exercising not only the appellate jurisdiction, but also the original jurisdiction. In that view of the matter the applicant's grievance even if not maintainable as an appeal under the relevant statute, there is no bar for us for examining the grievances under Section 19 of the Administrative Tribunals Act. In this view of the matter we are of the opinion that the principles discussed above are applicable to this case as well. Accordingly we quash the impugned order in O.A 226/90 and allow this case.

12. There will be no order as to costs.

30.7.90

(N.DHARMADAN)
JUDICIAL MEMBER

30.7.90

(S.P MUKERJI)
VICE CHAIRMAN

n.j.j