(2010) 12 P&H CK 0428

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2142 of 1992

Charan Singh		APPELLANT
	Vs	
General Manager, Punjab Roadways		RESPONDENT

Date of Decision: Dec. 21, 2010

Acts Referred:

- Payment of Wages Act, 1936 - Section 15(2), 7

Citation: (2011) 129 FLR 630 : (2011) 4 LLJ 127 : (2011) 161 PLR 643

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Judgement

Rakesh Kumar Jain, J.

The question involved in this revision is as to "whether deduction from the wages of an employee can be ordered by way of withholding increment even if the finding of fact is recorded by the Court that no loss has been caused by the said employee to the department?

2. In brief, the facts of the case are that the Petitioner was working as a Fitter in the Punjab Roadways, Hoshiarpur. Vide order dated 16.5.1988, his two increment with cumulative effect were stopped and a sum of Rs. 1000/- out of wages was directed to be deducted in monthly instalments of Rs. 200/-. He was further directed not to be paid the subsistence allowance during the period of his suspension on account of the charge. The Appellant challenged the said order by way of an application filed u/s 15(2) of the Payment of Wages Act, 1936 (for short, "the Act"). The said application was allowed by the learned Senior Sub Judge, Hoshiarpur, exercising the powers of Authority under the Payment of Wages Act, vide its order dated 13.8.1991, to the following ef-fect:

The opposite party is not entitled to effect recovery of Rs. 1,000/- from the wages of the Applicant as ordered by impugned order dated 16.5.1978. However, the

deductions can be made on account of orders imposing penalty of stoppage of two increments with cumulative effect. I order accordingly and direct that if any amount is deducted from the wages of the Applicant one year prior to the filing of the application i.e. 01.6.1988 on account of penalty of Rs. 1,000/- shall be refunded to the Applicant and no further deduction on account of penalty of Rs. 1,000/- shall be effected. Application is allowed to this extent.

The order passed by the authority was challenged by both the Appellant as well as the Respondent. The Appellant had filed MCA No. 89 of 4.9.1991 titled as Charon Singh v. General Manager, whereas the Respondent had filed MCA No. 108 of 1991 titled as General Manager v. Charan Singh. The appeal filed by the Respondent was dismissed by the learned Appellate Court, whereas the appeal filed by the Appellant was allowed partly, vide order dated 07.5.1992, observing thus:

Consequently, the appeal of Charan Singh is allowed partly by modifying the order of the ''Authority'' to the effect that the salary and allowances for the period Charan Singh Appellant remained under suspension shall not be withheld.

The order of the ''Authority'' holding that the deductions from the wages of Charan Singh could be made in compliance with the order of stoppage of two increments with cumulative effect is, however, confirmed.

While allowing the appeal partly, the learned Appellate Court has recorded finding in para No. 4 of the judgment which reads as under:

It was conceded by the learned Government Pleader that no evidence was produced against Charan Singh in the course of disciplinary proceedings with regard to the loss incurred by the department.

3. Another finding was recorded in para No. 7 of the judgment which reads as under:

It is apparent that the department did not suffer any loss by the lapse on the part of the Appellant but he could not escape from the charge of negligence in the performance of his duties according to the material brought before the Enquiry Officer.

4. Thus, by virtue of the aforesaid order, the only grievance left with the Appellant to be redressed was with regard to stoppage of two increments with cumulative effect. He filed the present appeal before this Court in which learned Counsel for the Appellant has submitted that the learned Court below has committed a serious error of law in not granting the relief to set aside the order with regard to stoppage of two increments with cumulative effect despite the fact that there is no findings regarding any loss having been suffered by the department except for the negligence attributed to him.

5. Learned Counsel for the Appellant has referred to Section 7 explanation (II) of the Act to buttress his argument to the effect that deduction can be ordered only in case of loss having been suffered by the department. For ready reference, Section 7 of the Act is extracted as under:

7. Deductions which may be made from wages.- (1) Notwithstanding the provisions of [the Railways Act, 1989 (24 of 1989)] the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

[Explanation I].- Every payment made by the employed person to the employer or his agent shall, for the purpose of this Act, be deemed to be a deduction from wages.

[Explanation II].- Any loss or wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, namely:

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

(ii) the reduction to a lower post or time scale or to a lower stage in a time scale; or

(iii) ''suspension'' shall 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 mis behalf by the State Government by notification in the Official Gazette.]

I have heard learned Counsel for the Appellant.

6. No one has put in appearance on behalf of the Respondent/department despite the fact that the case has been shown'' in the list of regular board of this Court. In any case, the finding of fact recorded by the Court below is that no loss has been caused by the Appellant to the Respondent/department and therefore, withholding of increments is a punishment which runs contrary to Section 7(1) Explanation II of the Act and is thus illegal. The question posed in the revision goes in favour of the Petitioner and it is held that in case where there is no loss caused by the Appellant/employee, no deduction from his wages much-less on account of with-holding of increments can be ordered. Hence this appeal is allowed and the impugned order is quashed. No costs.