Kundan Lal Vs Union of India (UOI) and Another

Court: Allahabad High Court

Date of Decision: Sept. 4, 1960

Acts Referred: Payment of Wages Act, 1936 â€" Section 1, 15, 7(2)

Citation: AIR 1961 All 567 : (1961) 2 FLR 126 : (1961) 1 LLJ 679

Hon'ble Judges: O.H. Mootham, C.J; A.P. Srivastava, J

Bench: Division Bench

Advocate: S.C. Khare, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

Srivastava, J.
This is an appeal against the decision of Mr. Justice Chaturvedi allowing a petition filed by the respondent No. 1 under

Article 226 of the Constitution.

2. The facts which led to the petition appear to be these. The appellant Sri Kundan Lal was an employee of the Central Railway and was working

in the year 1953 as goods clerk (inward) at Belanganj, Agra. On the 2nd of June 1953 he received two bags of money containing a sum of Rs.

4098/-12/- which he was expected to keep locked in an iron safe. He himself claimed that he had put the money in the safe at 7.30 P. M. and had

locked the safe. It was however found the next morning that the lock of the safe was open and the amount was missing.

The appellant was thereupon put under suspension pending an enquiry. On the 10th of July 1953 a charge-sheet was framed against him in which

he was charged with negligence of duty on his Part inasmuch as he had failed to lock the safe after putting the cash in it. The appellant submitted his

explanation. The Superintendent of the Agra Area who was holding the enquiry under the provisions of the Railway Establishment Code to which

the appellant was subject, found the appellant''s explanation to be unsatisfactory and served a notice upon him requiring him to show cause why the

penalty of removal from service should not be inflicted upon him.

The appellant showed cause and was even heard in person. During his statement the appellant in a way expressed his willingness to pay the amount

in question in order to be saved from the punishment of removal of service. The proposal of removing him from service was thereupon dropped

and he was permitted to resume his post. He was, however, required to show cause why the penalty of recovering the sum of Rs. 4098/12/- at the

rate of Rs. 25/- per month from his salary should not be imposed upon him. He again showed cause but his explanation was not found to be

acceptable and the proposed Penalty was imposed upon him by the Superintendent Agra Area.

An appeal was Preferred against that order by the appellant but was rejected. He approached the Chief Commercial Superintendent for redress

but without success. He then applied for relief under the Payment of Wages Act to the City Magistrate of Agra who had been appointed u/s 15 of

the Act as an Authority to hear and decide all claims and disputes arising out of deductions from the wages of Persons employed in his district.

The appellant contended before the authority that the Superintendent Agra Area was wrong in his finding that the amount in question had been lost

on account of any negligence of the appellant and that there was no justification for deducting anything from his wages on that account. The

application was opposed mainly on the ground that the authority under the Payment of Wages Act had no jurisdiction to go into the question

whether the appellant had caused any loss to the railway on account of his negligence.

It was urged that the orders of the Enquiring Officer under the Railway Establishment Code had become final on the point. The authority under the

Payment of Wages Act over-ruled the objection, considered the matter and reached the conclusion that the negligence of the appellant was not

established and that the deductions that were being made from his salary were unauthorised, illegal and unjust. He, therefore, allowed the

appellant''s application and directed that the deductions be restored.

Aggrieved by that order the Union of India, who is now respondent No. 1, filed the writ petition cut of which this appeal has arisen and prayed that

the order of the City Magistrate be quashed by a writ of certiorari. The main ground urged in support of the petition was that the deductions which

were being made from the appellant''s salary were justified under Clauses (c) and (h) of Sub-section (2) of Section 7 of the Payment of Wages Act

and the authority under the Act had wrongly held them to be unjustified. It was contended that in any case he had no jurisdiction to go into the

question whether the appellant''s negligence had been established or not.

3. The petition was contested on merits as well as on the ground that as the Petitioner had an alternative remedy of appealing against the impugned

order but had not pursued that remedy it was not entitled to seek the aid of the Court under Article 226 of the Constitution.

4. The learned Judge who heard the petition Overruled the pleas raised by the appellant and allowing the petition directed that the order passed by

the authority under the Payment of Wages Act on the 27th of August 1955 be quashed.

5. The plea about there being an alternative remedy has not been pressed before us in appeal. Learned counsel for the appellant, however, urged

that the learned Judge was not justified in quashing the order of the authority under the Payment of Wages Act because,

1. The provisions of the Payment of Wages Act overruled those of the Railway Establishment Code and irrespective of what had been held by the

Railway authorities under the Code it was open to the appellant to approach the authority under the Payment of Wages Act for redress and it was

for that authority to consider whether the deductions from the appellant''s salary which were being made were justified or not.

(2) That the only deductions which could be made from the appellant''s salary were those permitted by Sub-section (2) of Section 7 of the

Payment of Wages Act. The deductions in question were not covered by any of the clauses of that sub-section. The authority under the Payment

of Wages Act was, therefore, justified in ordering the restoration of those deductions.

6. Learned Counsel for the appellant submitted with reference to his first contention that the rules to be found in the Indian Railway Establishment

Code had been framed u/s 241 of the Government of India Act, 1935, and related to the conditions of service of the persons serving under the

Government. He Pointed out that Sub-section (4) of Section 241, clearly provides that the rules framed under that section would be subject to acts

of the appropriate legislature regulating the conditions of service of persons serving His Majesty in a civil capacity in India.

The Payment of Wages Act was according to him an Act of the kind and the rules of the Railway Establishment Code were consequently to be

read subject to that Act. The decisions of the rail-way authorities arrived at under those rules, were it was contended, not final for all purposes and

if purporting to act under the rules the railway authorities had directed certain deductions to be made from the wages of some person it was open

to that person to approach the authority under the Payment of Wages Act and to show that the deduction was unjustified. The decision of the

authority under the Payment of Wages Act would, it is urged, supersede the decisions under the Railway Establishment Code.

7. The weakest link in this chain of argument appears to be the assumption that the Payment of Wages Act is an Act meant to regulate the

conditions of service of persons serving the Union of India in a civil capacity. The rules in the Rail-way Establishment Code are undoubtedly rules

regulating the conditions of service of railway employees. It is, however, difficult to accept the contention that the Payment of Wages was meant to

regulate the conditions of service of this class of employees or of any of the other persons serving the State in a civil capacity.

The Payment of Wages Act appears to be of a much general application. It has certainly been made applicable to persons employed by the Indian

Railways but applies equally to a large number of other persons employed in industries which have no concern with the State at all. The Act does

not deal with the conditions of service of any class of employees. It contains no provisions about the terms on which the employees can be

engaged. It does not deal with the conditions on which they are expected to serve or with the manner in which their services can be terminated.

Its purpose appears to be a limited one viz. to regulate the payment of wages to the persons governed by the Act and to ensure that their wages

were paid to them in full and with regularity. It is, therefore, not possible to accept the suggestion that it was intended to override all the statutory

rules and regulations framed by the State for the trial and punishment oÃ¯Â¿Â½ that class of civil employees to whom the Act has been made

applicable.

A reference was made in this connection to certain observations made in the case of K.P. Mushran Vs. B.C. Patil and Another, . Though there is a

reference in the second Paragraph of that judgment to the view taken by the authority under the Payment of Wages Act that the Act was one

contemplated by Sub-section (4) of Section 241 of the Government of India Act there is nothing in the judgment to show that the learned Judges

were either confirming, or rejecting that view.

The case cannot, therefore, be treated as an authority for the proposition put forward by learned counsel. We are, therefore, unable to accept the

contention that it was open to the appellant by approaching the authority under the Payment of Wages Act to set at naught the decision of the

hierarchy of authorities which had dealt with his case under the provisions of the Railway Establishment Code and had come to the conclusion that

a particular penalty must be imposed upon him.

8. The Correctness of the other submission of the learned counsel depends on how Clauses (c) and (h) of Sub-section (2) of Section 7 of the

Payment of Wages Act are to be interpreted. Section 7(1) prohibits deductions from the wages other than those which are permitted by Sub-

section (2) of Section 7. That subsection contains Clauses (a) to (k) but we are concerned in the present case only with Clauses (c) and (h). It is

common ground that unless the deductions in question are recoverable by either or both these clauses they could not be made.

The respondents contended that the deductions in question were covered by both the Clauses (c) and (h). Mr. Justice Chaturvedi, felt somewhat

doubtful about the case falling under Clause (c) but felt on surer grounds so far as the application of Clause (h) was concerned. If Clause (h) is

applicable it becomes immaterial whether Clause (c) also covers the case or not.

Clause (h) permits:-

Deductions required to be made by order of a Court or other authority competent to make such order.

The respondent urges that the deductions in question were required to be made by an authority competent to make the order under the Railway

Establishment Code and are on that account covered by Clause (h). The contention of the appellant on the other hand is that the words ''other

authority'' used in Clause (h) must me interpreted ejusdem generis with ''Court'' which means a judicial or quasi judicial tribunal which decides

cases. The authorities under the Railway Establishment Code, it is urged do not fall within that clause and the order passed by such authorities was,

therefore, not an order contemplated by Clause (h).

9. It is not necessary for us to interpret the word ''Court'' in this case because it is not the contention of either party that the authorities which dealt

with the appellant''s contention under the Railway. Establishment Code constituted a ""Court"". What we have to see is whether they could be

considered to be ""authorities competent"" to make an order of deduction within the meaning of the expression as used in Clause (h). Neither the

word ''authority nor the word ''competent'' has been defined anywhere in the Payment of Wages Act or in the General Clauses Act.

It is ,however, not without significance that the expression ''authorities competent'' is to be found in some of the rules of the Railway Establishment

Code e.g. Rule 170. According to the Concise Oxford Dictionary the word ''authority'' means ""power, right to enforce obedience; person having

authority."" ''Competent'', according to the same Dictionary means ""properly or legally qualified to do"". According to the Dictionary, therefore, the

expression must be held to mean ""a person properly of legally qualified to enforce obedience"".

The authorities empowered under the Railway Establishment Code to deal with defaulting railway employees and to impose penalties on them for

charges established clearly appear to be authorities qualified by the said rules to enforce obedience to their orders and there is no reason why they

should not be considered to be ""authorities competent to order deductions"" as contemplated by Clause (h).

10. The arguments of Mr. S. C. Khare for the appellant, however, was that as the words other authorities'' follow the word ''Court'' the principles

of ejusdem generis should be applied and they must be interpreted as meaning not an authority of the kind mentioned in the Railway Establishment

Code but some tribunal acting in a judicial or quasi-judicial manner. He laid particular stress on the fact that the officers who dealt with the

appellants'' case under the Railway Establishment Code were employed by the same employer and could not on that account command the

respect which a Court or a tribunal could command.

11. The rule of ejusdem generis has to be applied with some caution. The correct method of approach appears to be that indicated by Lord Esher,

in Anderson v. Anderson. 1895 1 QB 749 at p. 753;

Nothing can well be plainer than that to shew that prima facie general words are to be taken in their larger sense, unless you can find that in the

particular case the true construction of the instruments requires you to conclude that they are intended to be used in a sense limited to things

ejusdem generis with those which have been specifically mentioned before.

The same view was expressed by Vaughan Williams, L. T., in Tillmanns and Co. v SS. Knutsford, Ltd. 1908 2 KB 385 at p. 399 where the

learned Judge criticised the rule of ejusdem generis as stated in Maxwell on the Interpretation of Statutes, 4th ed. at page 499, and observed,

It will be observed that the course of reasoning which is there adopted inverts what Lord Esher, M. R. Lopes, L. J., and Rigby, L. J., describe as

the proper way of approaching the matter; they approach it by saying that you must give these general words, even when following the particular

enumeration, their natural meaning, unless there is something in the instrument to be construed which prevents you doing so, while the passage in

Maxwell says that you ought to begin by assuming that the general words are limited by the immediately preceding particular words, unless there is

something on the face of the instrument which ought to lead one to refuse to apply the ejusdem generis"".

12. Before the principle of ejusdem generis can be attracted it is necessary that the particular words which precede the general words must

represent a category or genus which includes several species. It is only then that the meaning of the general words is cut down and is limited to the

species of the same genus. As was laid down by the Supreme Court in The State of Bombay Vs. Ali Gulshan,

Apart from the fact that the rule must be confined within narrow limits, and general or comprehensive words should receive their full and natural

meaning unless they are clearly restrictive in their intendment, it is requisite that there must be a distinct genus, which must comprise more than one

species before the rule can be applied"".

13. While interpreting Section 7(2)(h) of the Payment of Wages Act it will be noticed that there is nothing in the clause to show that the words

''Court'' or ''other authority'' were not intended to have their ordinary meaning or that the word ''Court'' was intended to be genus or category.

Deductions could be directed by competent courts. They could equally be directed by other competent authorities which could not be considered

to be Courts, but whose orders were equally binding. The clause put the deductions ordered by both on the same footing and made them

Permissible. There appears, therefore, to be no justification for cutting down the meaning of the word ""authority"" and for holding that it should have

all or some of the qualities of a Court. The ejusdem generis rule does not appear to be applicable in this case at all.

14. But even if it is assumed for the sake of argument that the authority contemplated by Clause (h) was a judicial or quasi-judicial authority a

reference to Rule 1702 of the Railway Establishment Code will show that the authority which directed the recovery of Rs. 4,098/12/- from the

salary of the appellant in monthly instalments of Rs. 25/- was an authority which was acting in a quasi-judicial manner because the rule required that

the employee concerned be informed of the definite offence against him, that he be afforded the opportunity of making an explanation and be given

reasonable facilities for the Preparation of his defence. It was only after a consideration of all the materials so furnished that the authority could pass

the order which the appellant sought to avoid by having recourse to the provisions of the Payment of Wages Act.

15. It is not disputed that the authorities under the Railway Establishment Code which dealt with the appellant"s case were empowered under that

Code to take the action which they have taken. The appellant has exhausted all the remedies that were open to him under those rules. He took the

matter to the highest authority to which it could be taken and the view consistently taken was that the penalty which had been imposed upon him

was justified. The order passed by the authorities was an enforceable order which had become binding on the appellant. The deduction in question

was thus clearly covered by Clause (h) and became a permissible deduction.

The fact that the authorities who had imposed the penalty under the Railway Establishment Code were also employees of the Railway

Administration cannot, in our opinion, take them out of the category of competent authorities contemplated by Clause (h). While framing rules u/s

241 of the Government of India Act or Article 309 of the the Constitution the State could constitute any persons including its own servants as

competent authorities for taking action against defaulting employees. The validity of the rules in the Railway Establishment Code has not been

challenged before us. There is, therefore, no reason why the decisions taken under the rules of the Code should not be binding. It was not open to

the appellant to avoid them simply on the ground that they were made by persons who were also employed in the Railways.

16. Before Mr. Justice Chaturvedi it was also urged on behalf of the appellant that the decision of the railway authorities was not binding because

the appellant had not been given sufficient opportunity to prepare his defence. That plea was not reiterated before us.

17. The deductions in question being permitted by Section 7(2)(h) of the Payment of Wages Act it was, in our opinion, not open to the City

Magistrate of Agra acting as an authority under the Act to decide that they were unjustified or to order that they be restored. His order was,

therefore, liable to be quashed.

18. On behalf of the respondents the jurisdiction of the City Magistrate, Agra to pass the impugned order was challenged on another ground also.

The City Magistrate had been appointed as authority under the Payment of Wages Act by the State Government. It was urged that the appellant

being an employee of the Central Government his case could be dealt with only by a Person appointed by that Government, Reliance was placed

in this connection on Section 24 of the Payment of Wages Act. As we have found the impugned order to be invalid on another ground it is not

necessary for us to express any opinion on this point.

19. The petition against the appellant was rightly allowed. The appeal has no force. It is dismissed with costs.