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## C.S. Lal Vs Shaikh Badshah and Others

### O.C.J. Appeal No. 2 of 1954

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**Court:** Bombay High Court

**Date of Decision:** March 9, 1954

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) â€” Section 100, 9#Constitution of India, 1950 â€” Article 226#Payment of Wages Act, 1936 â€” Section 15, 15(4), 17

**Citation:** AIR 1955 Bom 75 : (1954) 56 BOMLR 859 : (1954) ILR (Bom) 1227 : (1956) 2 LLJ 457

**Hon'ble Judges:** Chagla, C.J; Tendolkar, J

**Bench:** Division Bench

**Advocate:** S. Baptista, for the Appellant; Danial Latifi, N.M. Shanbhag and D.S. Nargolkar, for the Respondent

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### Judgement

Chagla, C.J.

This is an appeal from a Judgment of Mr. Justice Desai who on a petition filed by the respondents held that the Authority

under the payment of Wages Act had jurisdiction to entertain the application made by them and his order dismissing the application on the ground

of want of jurisdiction was an erroneous order.

2. The facts briefly are that the petitioners were servants in the G. T. P. Railway prior to June 1947 and under a notification issued by the railway

authorities, - to which attention will be drawn presently, they provisionally opted for Pakistan and they went to Pakistan in June 1947. They

returned to India on 10-2-1948, and reported themselves for service to the Railway Authority. They were ultimately absorbed in the Railway

service on 1-5-1948. They then claimed their wages from 10-2-1948 to 1-5-1948, and the Railway Authority's contention was that they were

entitled to wages only from 1-5-1948, and not for any earlier period.

They thereupon presented various applications (or payment of wages which according to them had been wrongfully withheld. The applications

were beyond time; the delay was condoned by the Authority; he heard the applications on the preliminary issue whether he had jurisdiction to

entertain them, and he came to the conclusion that the claim of the respondents was for compensation and not for wages and therefore he had no

jurisdiction.

3. Now, the first contention urged by Mr. Baptista is that the petition is not maintainable inasmuch as the respondents had the right of appeal u/s 17

of the Act. Section 17 confers a right of appeal against a direction made under Sub-section (3) or Sub-section (4) of Section 15, and the right is

given to the employer, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, and it is given to an

employee if the total amount of wages claimed to have been withheld from him exceeds fifty rupees. Therefore, the right of appeal is against a

direction, whether it is made under Sub-section (3) or Sub-section (4) of Section 15.

In this case we are not concerned with Subsection (4) of Section 15, and the only question on this aspect of the case that arises for our

determination is whether the order made by the Authority was a direction under Sub-section (3) of Section 15. Turning to Section 15, Sub-section

(1) deals with the jurisdiction of the authority to be appointed and his authority is to deal with all claims arising out of deductions from the wages, or

delay in payment of the wages, of persons employed or paid in the area mentioned in that sub-section. Then Sub-section (2) gives the right to an

employed person to make an application where a deduction has been made from his wages, or the payment of wages has been delayed.

Then the first proviso to Sub-section (2) provides for the period of limitation within which the application is to be made, and the second proviso

gives the power to the authority to admit an application after the period of limitation. Then comes Sub-section (3) and the opening words of that

subsection are ""When any application under Sub-section (2) is entertained"", and then the subsection goes on to provide how the application is to

be heard by the authority, and the concluding words are

the authority may 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 ten times the amount deducted in the former case and exceeding ten

rupees in the latter.

The contention of Mr. Baptista is that after the delay had been condoned by the authority, the application was entertained, and the order made by

the Authority is a direction under Sub-section (3) of Section 15 that the employee is not entitled to wages, and that direction is subject to appeal

u/s 17. We think Mr. Baptista is right on the authorities that the right of appeal which is conferred is not limited to a case where the authority

gives a direction to the employer to pay an amount to the employed person. The right of appeal would also arise if the authority refuses to give a

direction in the sense that he holds on the merits of the application that the employee is not entitled to any amount; in other words, he dismisses the

application of the employee after considering the merits of his case.

But what is really urged by Mr. Baptista is that even when the Authority holds that the employee is not entitled to any relief, not on the ground that

he has no case on merits, but on the ground that he has no jurisdiction to entertain the application, it amounts to a refusal to give a direction which

is subject to appeal u/s 17. We are unable to accept that contention. It has been urged by Mr. Baptista that the expression ""entertain"" used in Sub-

section (3) is used in its technical sense, and that once the authority has come to the conclusion that delay should be condoned and puts the

application formally on file, it is entertained by him.

On the other hand, the view taken by the learned Judge below is that an application is only entertained when the Court has jurisdiction to hear that

application, and therefore an order with regard to jurisdiction is passed under Sub-section (2) and not under Sub-section (3). In our opinion it is

strictly unnecessary to consider that aspect of the case, though it may be pointed out that a plea as to jurisdiction may be taken at any stage, and if

a Court or authority has no jurisdiction, even the fact that a party does not raise the plea of jurisdiction will not confer jurisdiction upon that Court

or authority.

But even assuming that Mr. Baptista is right, and in this particular case the application was entertained after the delay had been condoned, it is not

mere entertaining an application that is sufficient for the purpose of deciding the question as to whether the right of appeal had ensued to the

employee or not. In order that an employee should have a right of appeal u/s 17, not only must the petition be entertained, but there must be a

refusal to give a direction on the merits of the application. Therefore, two conditions are necessary and not one in order to give rise to the right of

appeal u/s 17.

In this case only one condition was satisfied, assuming Mr. Baptista is right as to the argument with regard to the expression ""entertained."" The

Authority entertained the application. Having entertained it, the Authority did not proceed to dispose of it on merits, but held that he had no

Jurisdiction to dispose of the application. It is impossible to accept the contention that because the application was entertained for the purpose of

determining the preliminary issue as to jurisdiction, the decision of the Authority that he had no jurisdiction was tantamount to refusal to give a

direction on merits.

Therefore, it is clear that in this particular case as the Authority refused to assume jurisdiction and refused to deal with the respondents' application

on merits the only remedy they had was to come to this Court on a petition to compel the Authority to assume jurisdiction and dispose of the

application of the respondents on merits. They had no right to appeal u/s 17 as there was no decision on merits which they could appeal against.

4. Turning to the merits of the matter, the Jurisdiction under which the respondents claim the wages is, in our opinion, capable only of one

construction. The notification gives the option to the employees of the Railway Company of serving in the future Pakistan State or in the rest of

India, and it provides that option should be exercised before 30-6-1947. It then goes on to say:

Employees Who are unable to make up their minds finally within this period, should fill in the form provisionally, as a further opportunity will be

afforded to them to make a final choice within six months from the date of transfer of power.

And Clause 2 of the notification provides:

It should be clearly understood that the existing terms and conditions of service are guaranteed by the representatives of both the future

Governments and that a provisional choice now exercised will not in any way prejudice the employee's seniority or other conditions of service.

Now, it is not disputed that in the answer to the questionnaire which was submitted to these respondents they did not finally opt for Pakistan, but

their choice was provisional, and they ultimately decided to come to India and serve the Railway Company in India. The first question that we have

to consider is, what was the position of these respondents during the period they were in Pakistan? Did they cease to be in the service of the

Railway Company or their rights as employees were merely suspended during that interregnum. It is clear from the fact that the Railway Company

guaranteed to these employees their seniority and other conditions of serving that the respondents did not cease to be in the service of the Railway

Company during the period when a right was given to them to think over their own position and ultimately decide.

The relationship of employer and employee did not cease, that relationship was merely suspended, and as soon as the option was exercised by the

respondents, the suspension came to an end and the employees became entitled to all the conditions and rights of service with the Railway

Company, It is true that the option was unilateral, but that was the whole object of the notification. Once that unilateral option was exercised by the

employee, it was not open to the employer to say: "Although I gave you the option, although I guaranteed you your conditions of service, now that

you have exercised that option I will not take you in my service or I will not pay you the wages although you are ready and willing to serve." That is

exactly the attitude taken up by the Railway Company.

It is not suggested that the respondents were not ready and willing to render services from 10-2-1948. The attitude taken up by the Railway

Company is that although the respondents were ready and willing, it was left to their own discretion when they should employ them and from what

date they should pay for their services. If this attitude is justified, then the assurance given to the respondents was meaningless and was not worth

the paper on which it was given. Mr. Baptists contends that under Clause 2 of the notification the seniority & the conditions of service were not.

guaranteed by the Railway Company in India, but an assurance was given to guarantee their seniority and other conditions of service in case they

were absorbed by Pakistan.

It is difficult to understand how such an interpretation is possible. They were not concerned With Pakistan. The Railway Company were concerned

with the terms of service of their own employees in India, and as these respondents were serving in India before partition, they were concerned

with what rights they should safeguard as far as their employees were concerned, and inasmuch as the employees did not make their final choice in

favour of Pakistan and inasmuch as a "locus penitential "was given to the respondents, the Rly. Co., guaranteed to them their seniority and other

conditions of service provided within the time indicated in the notification they made their final choice in favour of India, and inasmuch as the

respondents made their choice in favour of India and reported themselves for service, the Railway Company became liable to pay their wages.

5. Mr. Baptista further argues that at best this is merely a case of a breach of undertaking on the part of the Railway Company and it may give a

right to the respondents to sue for damages or compensation and not for wages. Now, a question of damages or compensation would only arise

provided the respondents had ceased to be in the service of the Railway Company, and when they were absorbed, they were being re-employed.

But it is clear that there was no question of re-employing the respondents. They always continued to be in service, their service was temporarily

suspended, and their service was resumed as soon as they showed their readiness and willingness to offer their services to the Railway Company.

The question of a breach of undertaking would only arise on the assumption that the respondents were no longer in the service of the Railway

Company and they were claiming to be in service by reason of the undertaking given by the Railway Company. In our opinion that is not the true

position that arises under the notification.

6. We are, therefore, of the opinion that the learned Judge Mr. Justice Desai was right in the view that he took. The result is that the appeal fails

and must be dismissed with costs.

7. Appeal dismissed.