

**(1968) 04 BOM CK 0028**

**Bombay High Court**

**Case No:** Miscellaneous Petition No. 623 of 1967

Krishna S. Gokavi

APPELLANT

Vs

Doiphode (S.R.) and Another

RESPONDENT

**Date of Decision:** April 23, 1968

**Acts Referred:**

- Payment of Wages Act, 1936 - Section 7

**Citation:** (1968) 2 LLJ 80

**Hon'ble Judges:** R.M. Kantawala, J

**Bench:** Single Bench

### **Judgement**

1. The petitioner, Krishna S. Gokavi, has filed this petition to challenge the validity of an order made by respondent 1, the additional authority under the Payment of Wages Act, rejecting the application of the petitioner in respect of certain claim for bonus and leave wages.

2. The petitioner is an employee of respondent 2, United Works (Private), Ltd. Respondent 2 declared bonus for the year 1965-66 for the workmen. The petitioner claimed that on this basis he is entitled to bonus amounting to Rs. 260. Respondent 1 in his order dated 8 September, 1967 has found that the petitioner is entitled to bonus amounting to Rs. 207.55; the petitioner was also entitled to leave wages amounting to Rs. 87.50. The petitioner made a claim for bonus and leave wages and filed an application on 3 February, 1967 before the authority under the Payment of Wages Act.

3. The case of respondent 2 before the authority was that the petitioner was entitled to a sum of Rs. 207.50 as and by way of bonus and Rs. 87.50 as and by way of leave wages. They, however, contended that they were entitled to set off the damages caused to them by the petitioner wilfully spoiling the materials entrusted to him for production and for remaining absent without leave.

4. Respondent 1 by his order dated 8 September, 1967 has found that the petitioner is entitled to bonus amounting to Rs. 207.55 and leave wages amounting to Rs. 87.50. However, he has taken the view that as against this claim of the petitioner, respondent 2 is entitled to set off a sum of Rs. 393.84 as and by way of damages for spoiling the materials entrusted to the petitioner for production. The order does not show any discussion in respect of the claim for damages by reason of the petitioner remaining absent without leave.

5. The contention on behalf of the petitioner is that respondent 1 has arrived at a finding in respect of a claim for damages without proper evidence, and secondly the claim for damages is not in respect of a deduction for damage to or loss of goods expressly entrusted to the petitioner for custody and is therefore not capable of falling within the provisions of Clause (c) of Sub-section (2) of S. 7 of the Payment of Wages Act, 1936.

6. The scheme of S. 7 of the payment of Wages Act shows that every employer is liable to pay the wages of an employed person without deductions of any kind except those authorized by or under this Act. If an employer claims any deduction, the burden will specifically and clearly lie upon him to prove that the deduction is of a nature which is capable of falling within the several clauses of Sub-section (2) of S. 7 of the Act. In the present case the claim for damages has been allowed without properly appreciating the nature of liability of an employee in respect of the claim for deduction that is permissible under the Act. In the order of respondent 1 it is inter alia stated that it is admitted by the petitioner that he has spoiled the articles in respect of which a chargesheet was preferred against him and that the value of such articles comes to Rs. 393.84. I asked Sri Naronha, the learned counsel for respondent 2, where such admission was made by the petitioner, and he was unable to point out the specific record wherein such admission was made by the petitioner. Further, the claim for damages is considered on the footing of value of the eighteen tap assemblies which, according to respondent 2, were spoiled by the petitioner. There is no material before me, nor is there any discussion in the order whether these eighteen tap assemblies were total scrap or entirely useless. The order does not show the nature of the neglect or default on the part of the petitioner for which such a claim could be made by the employer, respondent 2. It appears from the explanation of the petitioner offered during the course of an enquiry pursuant to the chargesheet that tap assemblies are not merely handled by the petitioner alone. After the assemblies are prepared by the petitioner, they go for drilling and grinding to other employees. In the order of respondent 1 there is no discussion showing whether the damage in respect of which the claim is made by respondent 2 is attributable to the mere neglect and default on the part of the petitioner only or it is also attributable to the neglect and default of the other employees who did the drilling and grinding work in respect of those tap assemblies. As the burden of establishing a claim for damages for which a deduction is asked for is on respondent 2, it was for respondent 2 to lead proper evidence on which a deciding

authority can come to a proper conclusion as regards the quantum of damages suffered by the employer by reason of the neglect or default on the part of the employee in respect of goods expressly entrusted to him for custody. As the order of respondent 1 does not show whether any such evidence was led by respondent 2, it was not open to respondent 1 to come to a finding that the damages amount to Rs. 393.84 being the value of eighteen tap assemblies alleged to be spoiled by the petitioner. The finding of respondent 1 on the claim for set-off is, therefore, based without proper appreciation of the evidence and there was no proper application of mind on the part of respondent 1 in allowing the claim for set-off. On this ground the order passed by respondent 1 is liable to be set aside so far as it pertains to the claim for set-off.

7. Having regard to the view that I have taken on the first submission of the petitioner, it is unnecessary to consider whether in the present case the claim for set-off is in respect of damage to or loss of goods expressly entrusted to the employed to the employed person for custody. I do not for the purpose of the present petition and it necessary to go into that question.

8. The result, therefore, is that the order of respondent 1 in so far as it allowed the set-off in respondent of damages for Rs. 393.84 is set aside. The order of respondent 1 allowing the petitioner's claim for bonus amounting to Rs. 207.55 and leave wages amounting to Rs. 87.50 is not open to any challenge. The result is that respondent 2 will be liable to pay to the sum of Rs. 207.55 by way of bonus and Rs. 87.50 by way of leave wages. I direct accordingly. Respondent 2 to pay the costs of this petition to the petitioner.