**SUPREME COURT OF INDIA**

Ganeshi Ram

Vs.

District Magistrate

C.A.Nos.331 to 333 of 1957

(P. B. Gajendragadkar, K. Subba Rao and M. Hidayatullah, JJ.)

10.08.1961

**JUDGEMENT**

**GAJENDRAGADKAR, J.:**

**1.** These three appeals arise out of three respective writ petitions filed by the appellants in the High Court of Judicature for Rajasthan challenging the orders passed by the authority under the Payment of Wages Act, 1936 (4 of 1936) (hereafter referred to as the Act) on their respective applications made before it. The appeals raise common questions of law and are based on substantially similar facts. We would, therefore, refer to the facts in Civil Appeal No. 331 where the appellant is Ganeshi Ram, and deal with the common question. Our decision in Civil Appeal No. 331 will govern the decision of the two other companion appeals.

2. The appellant was employed in the service of the then Jodhpur Railway. He was suspended from service on February, 3, 1950 and finally removed from service on February 24, 1950. He preferred an appeal against this order terminating his service, but it appears that while his appeal was pending the impugned older of removal from service was set aside on April 30, 1954 and he was reinstated on May 1, 1954. On the same day, however, he was resuspended and an enquiry was held against him. Eventually on December 7, 1954, he has been reinstated in service. When the order of removing him from service was set aside on May 1, 1954, the Assistant Personnel Officer directed that the said order of removal should be cancelled and Ganeshi Ram should be put hack on duty with immediate effect and posted as gangman in permanent extra gang MWT. The order then added that the period of Ganeshi Ram's absence from the date of his removal from service to the date he was put back to duty will be treated as leave without pay. After the fresh enquiry was held and it was decided to reinstate Ganeshi Ram a similar order was passed by the Divisional Personnel Officer, Jodhpur Division, on December 7, 1954. This order stated that it was decided to reinstate Ganeshi Ram with immediate effect and it was added that the period of his absence from February 24, 1950 to April 30, 1954, which had already been treated as leave without pay would be so treated and that for the periods of his suspension from February 3, 1950 to February 23, 1950 and from May 1, 1954 to December 7, 1954, he would not be entitled to any more payment. In the present case we are concerned with the appellants claim for wages from February 24, 1950 to April 30, 1954.

3. At this stage we may add that rule 2044 (F. R. 54) (1) provides, inter alia, that where a railway servant who had been dismissed, removed or suspended is reinstated the authority competent to order the reinstatement shall consider and make a specific order, amongst other things, regarding the

pay and allowance to be paid to the railway servant for the period of his absence from duty, and it authorises him to make such order in respect of such period as he may deem fit. Since this point has not been disputed before us it is unnecessary to set out the relevant rule and to consider its effect.

4. The appellant applied to the District Magistrate Jodhpur, who is the authority under the Act, under S. 15 alleging that it was a case of illegal deduction of his wages and claiming an older for the payment of proper amount to him for the said period. The defence raised by the Railway was that the impugned deduction was allowable under S. 7 (2) (h). It was a deduction required to be made by an authority competent to make such an order, and so it was urged that the application made by the appellant for the recovery of his wages during the period in question was misconceived. The authority who heard the application upheld the plea raised in defence and dismissed the application. It was held that the deduction made was authorised and permissible and so there was no cause of action for the claim made by the appellant. It is the correctness and validity of this order passed by the authority under the Act that was challenged by the appellant by his writ petition before the Rajasthan High Court.

5. In the High Court four questions were raised for decision by the parties before it. The appellant and his colleagues who had made similar writ petitions before the High Court had impleaded to their writ petitions as respondent 1 the authority under the Act and as respondent 2 the General Manager. Northern Railway Baroda House, New Delhi. In the writ petitions thus filed it was prayed that a writ of certiorari and other appropriate writ or direction or order to quash the decision of the authority should be issued and the authority may be asked to issue direction for the payment of proper amounts due to the petitioners. It was urged by respondent 2 before the High Court that the writ petitions were incompetent because an appeal lay against the order of the authority. It was also urged on the merits that the deductions in question were justified and as such there was no substance in the claim made in the writ petitions. In other words, the plea was that the authority was fully justified in rejecting the applications made before it by the petitioners. On these pleadings four points were framed for decision by the High Court. The High Court held that the writ petitions were not incompetent, but on the merits it came to the conclusion that the orders passed by the Assistant Personnel Officer, Jadhpur Division and the Divisional Personnel Officer, Jodhpur Division, amounted to deductions required to be made by order of an authority competent to make such an order and as such they fell under S. 7 (2) (h) of the Act. That being so, according to the High Court the writ petitions could not succeed on the merits.

6. The position under the Act is clear. Under S. 7 certain specified 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 shown 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.

7. The narrow question which arose for the decision of the High Court was whether the deduction ordered attracted the provisions of S. 7 (2) (h) or not. The High Court has held that this deduction was made under the Railway Rule 2044 (F. R. 54) (l), and according to it since this rule was a statutory rule the authority competent to make an order under the said rule fell within the description of the competent authority under S. 7 (2) (h). The view taken by the High Court that the rules framed by the Government of India, Ministry of Railways, and published in the Indian Railway Establishment Code, constitute statutory rules is clearly right. In fact, subsequent to the decision of the Rajasthan High Court under appeal, this Court has had occasion to consider a similar

question and its decision fully supports the view taken by the judgment under appeal (Vide: State of Uttar Pradesh v. Babu Ram Upadhya, AIR 1961 SC 751). In fairness we ought to add that Mr. Malik, for the appellant, did not contend before us that the finding of the High Court on this point is erroneous in law.

8. He, however, wanted to raise two points both of which unfortunately cannot be permitted to be argued. The first contention which he wanted to raise was that the appellant's removal from service on February 24, 1950, was wholly illegal and void, because in making the said order a proper enquiry had not been held against the appellant and the constitutional right guaranteed to him under Art. 311 had been violated. According to Mr. Malik, it was realised by the Railway administration that the appellant's removal was illegal and so it cancelled the said order of removal and held a fresh enquiry. If the removal from service on February 24, 1950, was thus void in law the appellant must be deemed to have been in service between February 24, 1950, and April 30, 1954, and under such circumstances no deduction could be made from his wages even though the authority making the order may be a competent authority under S. 7 (2) (h) of the Act. Mr. Malik suggested that the course of conduct adopted by the Railway administration in dealing with the case of the appellant and his companions plainly suggests that it was realised by the Railway administration that the first order of removal from service was invalid; but the difficulty in entertaining this interesting argument is that it has not been raised before the High Court and it is an argument which can be adequately and properly dealt with only after the relevant and material facts are brought before the Court. The judgment under appeal elaborately deals with the points raised before the High Court by both the parties, and it is not even suggested that the judgment has failed to consider the present point though it was urged before the High Court. Therefore, we would be justified in assuming that this point was not argued before the High Court at all. That is the main difficulty in the way of Mr. Malik.

9. He, however, invited our attention to the fact that in the writ petition filed in the High Court it was alleged by the appellant that "the finding of the learned District Magistrate that not to comply with the provisions of Art. 311 is mere technical error is against the established law of the land that an order that violates the provisions of the said article is not only irregular but void and thus this error on the face of the record is not only of formal nature but goes to the root of the case". The same ground almost in identical terms is repeated in the application made by the appellant before the High Court for certificate; but the fact that some such ground was in a general way set out in the petition or the application for the certificate does not show that it was urged before the High Court. The judgment on the writ petition order on the application for certificate unambiguously show that this point was not mentioned to the High Court at all; and it is clear that a point the decision of which would necessitate a further enquiry into the material questions of fact cannot be allowed to be raised for the first time in the appeal.

10. Mr. Malik then relied on an averment made in the respondents' statement of case that the cancellation of the order terminating the service of the appellant was on the ground that there was a defect in the procedure adopted in the removal proceedings. Mr. Malik says that this amounts to an admission that Art. 311 had been contravened; but in considering this averment in the statement of case we will also have to bear in mind a specific allegation made in the counter-affidavit to the writ petition in the High Court where it has been specifically stated that there has been no breach of Art. 311 of the Constitution in the proceedings taken against the appellant. Besides, even the averment in the statement of case is not as clear and unambiguous as it should have been before it could legitimately be treated as an admission of the facts on which Mr. Malik's argument is based. Therefore, in our opinion, it is not open to Mr. Malik to assume at the appellate stage that the

termination of the appellant's service in the first instance was void because before passing the said order the constitutional safeguard provided by Article 311 had not been respected.

11. Then Mr. Malik attempted to argue another point of law which had not been argued before the High Court and which is not taken even in the statement of the appellant's case before us. He contended that even if the Railway rules are statutory rules and the relevant rule 2044 justified the order on the merits the authority that passed the order was not a competent authority as the power to make such an order had not been delegated to the officer concerned as required by rule 2003 (5). This latter rule provides that the competent authority in relation to the exercise of any power under these rules means the President or any authority to which such power is delegated in Appendix XXXII. Mr. Malik then refers to Appendix XXXII and contends that there has been no delegation in regard to the powers exercisable under rule 2044. This again is a new point which will need further investigation of facts to find out whether there has been any delegation or not. Besides, this point has not been taken even in the statement of case, and it is the usual practice of this Court not to allow the parties to take new points which are not even taken in the statement of case before this Court. Therefore, even this point cannot be allowed to be raised. Since the only points which Mr. Malik wanted to argue in these appeals are not open to him it inevitably follows that the appeals fail and are dismissed. There would be no order as to costs.

Appeals dismissed.