Before N.K. Sodhi, J.

THE GENERAL MANAGER, PUNJAB ROADWAYS, HOSHIARPUR,—*Petitioner.*

versus

AJIT SINGH,—*Respondent.*

C. R. No. 1487 of 1997

5th July, 1999

Payment of Wages Act, 1936—Stoppage of annual increments with cumulative effect—Employee making grievance before the prescribed authority—No enquiry held before imposing major penalty—Jurisdiction of the authority—Whether wrongful reduction.

[General Manager, Punjab Roadways, Jalandhar vs. Nanak Singh, Driver, 1987 (4) SLR 750 (S.B.) does not lay down correct law]

Held, that under Section 15 of the Act, jurisdiction is conferred upon the authority to hear and decide all claims arising out of deductions from wages or delay in the payment of wages. If an employer pleads that a penalty of stoppage of increments was imposed on account of misconduct of the employee, the imposition of that penalty would be for "good and sufficient reasons" because it is commonly understood that if an employee misconducts himself he can be punished. If a penalty is imposed on an employee arbitrarily or for no reason whatsoever then the consequent reduction in his wages would not be for "good and sufficient cause" so as to make the deduction authorised. The authority constituted under the Act has no jurisdiction to interfere with orders passed by the employer in disciplinary proceedings.

(Para 5)

A.S. Masih, AAG, Punjab,—*for the Petitioner.*

C.M. Chopra,—*for the Respondent.*

ORDER

N.K. Sodhi, J.

(1) This order will dispose of eight revision petitions 1487 to 1489 and 1530 to 1534 of 1997 filed under Article 227 of the Constitution challenging the order of the Appellate Authority affirming that of the prescribed Authority under the Payment of Wages Act, 1936 (for short the Act) in which common questions of law and fact arise. Since the

main arguments were addressed in Civil Revision 1487 of 1997, the facts are being taken from this case.

(2) Ajit Singh respondent is working as Conductor with Punjab Roadways, Hoshiarpur. He was served with a show cause notice alleging that he did not issue tickets to the passengers after receiving the fare from them. He gave his reply controverting the allegations and the same was not found satisfactory by the General Manager. By an order dated 20th January, 1982 the General Manager, Punjab Roadways, stopped his two annual increments with cumulative effect. It may be mentioned that till the decision on the Supreme Court in *Kulwant Singh Gill*, vs. *State of Punjab* (1) stoppage of increments with or without cumulative effect was regarded as a minor punishment within the meaning of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short the Rules) and a regular departmental inquiry was not required to be held for imposing such a penalty. The Supreme Court held that stoppage of increments with cumulative effect was a major punishment and a regular inquiry had to be conducted in accordance with Rules 8 and 9 of the Rules before imposing such a penalty. After the decision of the Supreme Court in *Kulwant Singh Gill's* case (supra) the respondent moved an application under section 15 (2) of the Act before the Prescribed Authority alleging that contrary to the provisions of the Act his salary had been reduced by Rs. 30 per month on the basis of the order dated 20th January, 1982 imposing a penalty of stoppage of two annual increments with cumulative effect. The prayer made in the application was that the order dated 20th January, 1982 be declared void and illegal and the employer directed to refund the amount illegally deducted from his salary since 20th January, 1982. On receipt of notice from the Prescribed Authority, the General Manager contested the application on the plea that the Authority had no jurisdiction to entertain the application and examine the validity of the order dated 20th January, 1982 punishing the respondent. It was also pleaded that the application was barred by time since the order stopping the increments had been passed on 20th January, 1982 whereas the application was filed on 26th September, 1991 after a lapse of more than nine years. The prescribed Authority relying on the judgment of the Supreme Court in Kulwant Singh Gill's case (*supra*) took the view that stoppage of increments of an employee with cumulative effect was a major punishment and the same could not be imposed summarily without holding a regular enquiry in accordance with the procedure prescribed for imposing such a penalty. The order was held to be void and illegal because the respondent had been served only with a show cause notice and no departmental enquiry had been

(1) 1991 (1) R.S.J. 413

held. As regards the plea of limitation, it was held that the order dated 20th January, 1982 caused a recurring loss to the applicant-respondent and that he could apply within twelve months from the date on which the deduction from his wages had been made and, therefore, the application was held to be within time. The application was allowed and the General Manager directed to refund the deductions made by him from the salary of the respondent for a period of twelve months preceding the date of the application. A further direction was given not to make deductions from the salary of the respondent in future on the basis of the aforesaid order. Feeling aggrieved by the order ot the Prescribed Authority, the General Manager filed an appeal before the District Judge, Hoshiarpur who by his order dated 26th February, 1994 dismissed the same. Hence the present petition.

(3) The learned Assistant Advocate General strenuously contended that the Prescribed Authority under the Act could not examine the validity of the order of punishment passed by the Punishing Authority and, therefore, its order and also the appellate order affirming the same are without jurisdiction and that the application filed by the respondent deserves to be dismissed. He relied on an order passed by the Supreme Court in *State of Punjab and others* vs. *Baldev Singh, Conductor* (2). Learned counsel for the respondent, on the other hand, urged that the procedure prescribed for imposing a major punishment was not followed by the General Manager and, therefore, the order dated 20th January, 1982 was null and void and any deduction made on its basis would be unauthorised within the meaning of the Act and that the respondent was justified in applying to the Prescribed Authority for its refund. He referred to Explanation II to Section 7 (1) of the Act to contend that since the prescribed procedure was not followed the penalty imposed could not be said to be for 'good and sufficient cause' and, therefore, an unauthorised deduction shall be deemed to have made from his wages. Reliance in this regard has been placed on a Single Bench Judgment of this Court in *General Manager, Punjab Roadways, Jalandhar* vs. *Nanak Singh, Driver* (3).

(4) Having given my thoughtful consideration to the rival contentions of the parties, I find merit in the argument of the learned Assistant Advocate General appearing on behalf of the petitioner. The Act has been enacted for the purpose of ensuring regular payment of wages to small salary holders so that they may be able to make their both ends meet. It ensures that such employees are paid their wages in a specified or particular form at regular, determined interevals without

(2) (1998) 9 S.C.C. 325
(3) 1987 (4) S.L.R. 750

unauthorised deductions. It prohibits the employers to delay or withhold payment of the amount earned by workmen beyond the period specified in the Act. It is in pursuance to this general public policy that the Legislature has made mandatory provisions for payment of wages to the employees covered by this enactment before a prescribed date and deductions which can legitimately be made from the wages have also been clearly and exhaustively laid down and Section 7 of the Act expressly provides that wages must be paid to an employee without deductions of any kind except those authorised by or under this Act. The only deductions which an employer is permitted to make from the wages of his employee are the deductions referred to in Section 7 and elaborated in Sections 8 to 13 of the Act. There was a conflict of judicial opinion as to whether reduction in wages consequent upon any punishment imposed like suspension, stoppage of increments, reduction to a lower post or scale, etc. would be deductions authorised under the Act and in order to clarify the position the Legislature introduced Explanation II to Section 7 (1) of the Act by Amending Act 68 of 1957 with effect from 1st April, 1958. The Statement of Objects and Reasons in regard to Explanation II as contained in the Amending Act is as under :—

> "The question whether reduction in wages, consequent upon any punishments imposed like suspension, stoppage of increments, reduction to lower post or scale, etc., would be deductions authorised under the Payment of Wages Act has been a subject of conflicting rulings by courts of law. The intention of Government has been that the deductions consequent upon punishments under service rules should be authorised deductions under the Act. It is, therefore, intended to make it clear that any deduction, in wages consequent upon imposition of punishments under the service rules, will be authorised deductions under the Act."

It is thus, clear that the intention of the Legislature has been that deductions consequent upon punishments under service rules should be authorised deductions under the Act and Explanation II was added to clarify the intention. This Explanation reads as under :—

> "Explanation II.—Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, namely :—
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> (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 not 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 this behalf by the State Government by notification in the official Gazette."

(5) Under Section 15 of the Act jurisdiction is conferred upon the Authority to hear and decide all claims arising out of deductions from wages or delay in the payment of wages. If an employer fails to pay wages within the time allowed by the Act he would be guilty of delay in payment and the Authority can compel him to pay the wages. If, on the other hand, while paying the wages he makes any unauthorised deduction then also the Authority would have jurisdication to compel the employer to pay the full wages. A reading of Explanation II as reproduced above, makes it clear that loss of wages resulting from the imposition of any of the panalties mentioned therein 'for good and sufficient cause' would not be deemed to be a deduction from wages in any case where the Rules framed by the employer for the imposition of that penalty are in conformity with the requirements, if any, which may be specified by the State Government. The words 'for good and sufficient cause' as referred to in the Explanation would mean the reason, the motive or the ground for which a penalty is imposed should be good and sufficient as commonly understood. These words, in my opinion, do not refer to the procedure that the employer has to follow under the service Rules for imposing any penalty. In other words, if the employer pleads that a penalty of stoppage of increments was imposed on account of misconduct of the employee the imposition of that penalty would be for good and sufficient reasons because it is commonly understood that if an employee misconducts himself he can be punished. If, on the other hand, a penalty is imposed on an employee arbitrarily or for no reason whatsoever then the consequent reduction in his wages would not be for 'good and sufficient cause' so as to make the deduction authorised. The Explanation does not refer to the procedure which the employer may have to follow under the service Rules and even if in a given case the employer does not follow the correct procedure for imposing a penalty it cannot be said that the penalty has not been imposed for good and sufficient cause provided it has been imposed for a cause commonly understood to be good and sufficient as for instance-misconduct of an employee. Wrong procedure

followed by the employer may give a cause of action to the employee to challenge that action separately in an appropriate forum but not before the Prescribed Authority under Section 15 of the Act. The jurisdiction of the Authority under Section 15 of the Act is limited only to the delay in payment of wages or unauthorised deductions therefrom. This jurisdiction is similar to that of an executing Court and just as an executing Court cannot go behind the decree, the Authority also cannot go behind the order of punishment once it is shown that the employer has imposed a penalty by way of punishment. The Authority cannot, thus, examine the validity of an order imposing a punishment nor can it sit in judgment over the order of punishment to examine whether the same was imposed by following proper procedure. In the case before us, it is the admitted position of the parties that the penalty of stoppage of two increments with cumulative effect was imposed on the respondent on account of his misconduct. It must, therefore, be held that the penalty imposed was for good and sufficient cause notwithstanding the fact that the General Manager did not follow the procedure prescribed for imposing a major penalty. This being so, the consequent reduction in his wages would not amount to a deduction within the meaning of Explanation-II to Section 7(1) of the Act and, therefore, the Prescribed Authority had no jurisdiction to entertain the application filed by the respondent. In this view of the matter, the impugned order of the Appellate Authority affirming that of the Prescribed Authority cannot be sustained as they have exercised jurisdiction not vested in them. The view that I have taken finds support from the observations made by R.S. Pathak, J (as His Lordship then was) in the *Divisional Personnel Officer, Northern Railway and another* vs. *Chhotey Lal Saxena and others* (4). It also finds support from the order of the Supreme Court in *Baldev Singh's* case (supra) where the Hon'ble Judges of the Supreme Court accepted the argument of the learned counsel for the appellant therein that the Authority constituted under the Act has no jurisdiction to interfere with orders passed by the employer in disciplinary proceedings.

(6) Let me now examine the judgement of this Court in *Nanak Singh's* case (supra) on which strong reliance was placed by the learned counsel for the respondent and also by the Authorities below. Annual increments of Nanak Singh driver were withheld by the General Manager by his order dated 6th August, 1982. Instead of challenging that order in an appropriate forum Nanak Singh filed an application under Section 15 (2) of the Act seeking recovery of wages which, according to him, were unauthorisedly deducted by the General Manager on the basis of his order dated 6th August, 1982. The

(4) 1971 Lab. I.C. 592

prescribed Authority held that the order dated 6th August, 1982 was not a speaking order and did not satisfy the requirements of law and, therefore, deduction of wages in pursuance thereof was unauthorised. Appeal against that order was dismissed by the Appellate Authority. It was contended before the learned Single Judge that the prescribed Authority did not have the jurisdiction to adjudicate upon the validity of the order withholding annual increments by way of punishment. The argument was negatived while relying on Explanation II to Section 7(1) of the Act. The learned Judge was of the view that since no reasons were recorded as to why the explanation furnished by the delinquent employee was not satisfactory which led to the passing of the order of punishment withholding annual increments, the same was illegal and, therefore, the penalty imposed could not be said to be 'for good and sufficient cause'. The learned Judge did not examine the object with which Explanation II was inserted and, with respect, I disagree with the view expressed by him. Since I am not in agreement with the view of the learned Judge in *Nanak Singh's* case (supra) I was inclined to refer this case to a larger Bench for the reconsideration of that view but that is not necessary because of the judgment of the Supreme Court in Baldev Singh's case (supra) which is binding on this Court. It is true that the learned Judges of the Supreme Court did not examine the provisions of Explanation II to Section 7(1) of the Act but that does not take away the effect of the judgment because it has been clearly held therein that the Authority constituted under the Payment of Wages Act has no jurisdiction to interfer with the orders passed by the employer in disciplinary proceedings. Since the view expressed by the learned Single Judge in *Nanak Singh's* case (supra) is contrary to what has been held by their Lordships of the Supreme Court, I have no hesitation in holding that *Nanak Singh's* case (supra) does not lay down the correct law.

(7) Since I have accepted the first contention of the learned Assistant Advocate General that the Authority under the Payment of Wages Act has no jurisdiction to examine the validity of the order of punishment imposed by the employer and held that the impugned orders were without jurisdiction the question of limitation does not arise though the learned Assistant Advocate General was right that even a void order has to be set aside by a competent authority within a period of three years as prescribed under the Limitation Act.

(8) In the result, the revision petitions were allowed and the impugned orders quashed. There is no order as to costs.

S.C.K.