

Before D. S. Tewatia, J.

DEPUTY CHIEF MECHANICAL ENGINEER, NORTHERN RAILWAY,-

Petitioner

versus

KUNDAN LAL,—Respondent.

Civil Revision No. 1561 of 1974.

February 1, 1983.

*Payment of Wages Act (IV of 1936)—Sections 2(vi) and 15—Manual of Railway Pension Rules, 1950—Chapter III Para 313—Employee of a Railway establishment—Whether could enforce his claim for gratuity under the Act—Gratuity payable under the Railway Pension Rules—Whether forms part of wages as defined in section 2(vi).*

*Held*, that a perusal of clause (6) of sub-section (vi) of section 2 of the Payment of Wages Act, 1936 would show that a sum payable as gratuity which is not covered by clause (d) of sub-section (vi) would alone not form part of the wages. Clause (d) is a comprehensive provision and brings within its sweep, any sum which by reason of the termination of the employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made. Gratuity is an amount which is payable on the termination of the employment. The gratuity payable as provided by para 313 of Chapter III of the Manual of Railway Pension Rules, 1950, is payable under law. Sub-clause (6) aforesaid refers to a gratuity which is not payable in terms of clause (d), that is, an amount which is not payable under any law, contract or instrument, could not be recovered under the Act as the same stands excluded. Thus, there is no escape from the conclusion that gratuity payable to an employee of the Railway establishment forms part of his wages as being covered by clause (d) of sub-section (vi) of section 2 of the Act and a claim thereto is enforceable through the instrumentality of the authority prescribed under the Act. (Para 5).

*Petition under section 115 CPC read with article 227 of the Constitution of India for the revision of the order of the court of Shri Des Raj Mahajan, Additional District Judge, Amritsar dated the 21st August, 1974 affirming that Shri R. K. Synal, authority under the Payment of Wages Act, Amritsar directing the respondent to pay Rs. 3,933 to the petitioner within one month from today failing which the petitioner shall be entitled to apply for execution of this order.*

R. L. Garg, Advocate for the Petitioner.

Nemo for the Respondent.

## JUDGMENT

D. S. Tewatia, J.—(Oral).

(1) The short question that falls for consideration in this revision petition is—as to whether an employee of the Railway establishment could enforce his claim to gratuity under the Payment of Wages Act, 1936.

Both the prescribed authority under the Act as also the District Judge, on an appeal against its order, held that the concerned employee was entitled to enforce his claim for gratuity under the Payment of Wages Act, 1936 through the instrumentality of the prescribed authority thereunder.

(2) Mr. Garg, learned counsel for the petitioner has canvassed, as it was done before the courts below, that Section 2(vi) of the Payment of Wages Act, 1936 itself expressly excluded gratuity from wages, that is, the relevant provisions of the Act did not recognize gratuity as the part of the wages and therefore, the same could not be recovered under the Payment of Wages Act, 1936. Mr. Garg also placed reliance on Division Bench judgment of Patna High Court, reported as *Tata Iron and Steel Co. Ltd. v. Bir Singh and another*, (1).

(3) Before proceeding with the consideration of the contentions advanced on behalf of the petitioner—Northern Railway Locomotive Workshop, the relevant provisions of the Wages Act deserve noticing at the very outset:—

“Wages” means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes—

- (a) any remuneration payable under any award or settlement between the parties or order of a Court ;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

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- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) any sum which by reason of termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within which the payment is to be made;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include—

- (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
- (2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (4) any travelling allowance or the value of any travelling concession;
- (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)."

(4) Learned counsel for the petitioner drew my pointed attention to sub-clause (6) of clause (e) of sub-section (vi) of Section 2, which is said to be excluding gratuity from being considered part of wages.

(5) Perusal of the said sub-clause would show that a sum payable as gratuity which is not covered by clause (d) of sub-section (vi) would alone not form part of the wages. Clause (d) is a comprehensive provision and brings within its sweep, any sum which by reasons of the termination of the employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made. Gratuity is an amount which is payable on the termination of the employment. The gratuity in the present case is payable as provided by the Manual of the Railway Pension Rules, 1950, Chapter-III, Para 313. Thus it would be seen that the gratuity in the present case is payable under law. Sub-clause (6) aforesaid refers to a gratuity which is not payable in terms of clause (d), that is, an amount which is not payable under any law, contract or instrument, could not be recovered under the Payment of Wages Act as the same stands excluded. For the reasons aforementioned, there is no escape from the conclusion that the gratuity claimed by the respondent formed part of his wages as being covered by Section 2 sub-section (vi) clause (d) of the Payment of Wages Act, 1936 and claim thereto was enforceable through the instrumentality of the authority prescribed under the Payment of Wages Act.

(6) As regards *Tata Iron and Steel Co. Ltd's case* (supra), relied by Mr. Garg — learned counsel for the petitioner, it may be observed that the court in that case was dealing with the payment of gratuity under the provisions of the Industrial Disputes Act, 1947, where gratuity, without any qualification stood expressly excluded from the definition of the expression 'wages'. The definition of expression 'wages' in the Industrial Disputes Act, 1947, which is in the following terms, is not *pari materia* with the definition of expression 'wages' as given in the Payment of Wages Act:—

“Wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to

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a workman in respect of his employment, or of work done in such employment, and includes:—

- (i) such allowances (including dearness allowance) as the workman is for the time being entitled to ;
- (ii) the value of any house accomodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles ;”

(7) What is more, Industrial Disputes Act, 1947 is a general Act while the Payment of Wages Act, 1936 is a special Act dealing with wages and the enforcement of payment thereof. Therefore, it is the definition of the ‘wages’ as given in the Payment of Wages Act, 1936, which would prevail over the one given in the Industrial Disputes Act, 1947.

(8) Before parting with the judgment, it may be observed that the learned counsel also urged that the authorities could withhold the payment of the gratuity in view of deduction permitted under Section 7 of the Payment of Wages Act. For one thing, this point was not canvassed before the appellate authority and for another the prescribed authority under the Payment of Wages Act could recognize a deduction from the wages of an employee, if the deduction in question had been effected either in pursuance of an order of the court or of a competent authority thereunder. Such is not the case here. No order of any competent authority or court was placed before the prescribed authority. Only one witness was examined who merely stated that the respondent-employee had handed over charge to him and after the taking of the charge, some shortage was noticed in the store. The prescribed authority held that his statement did not prove that respondent-employee was responsible for the shortage in the store. It was also observed that the employee was working only as a clerk and had nothing to do with the stores as admitted by Kartar Singh witness examined on behalf of the Railway authorities.

(9) For the reasons aforementioned, there is no merit in this petition and the same is dismissed. No costs.

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N.K.S.