THE
INDIAN LAW REPORTS

PUNJAB SERIES

REVISIONAL CIVIL

Before S. R. Das, C. J. and Achhru Ram, J.

RURA RAM,—*Petitioner*

versus

DIVISIONAL SUPERINTENDENT, N. W. RAILWAY,—

Respondent

1949

April, 6th

Civil Revision No. 762 of 1945

Government of India Act, 1935—Section 241(2)—Rules framed by Governor-General and duly published—Presumption of correctness—Whether attaches to the publication—Rule 1711—Whether gives power to suspend an employee—Rules Nos. 2043 and 2044—Whether suspended employee entitled to full salary or only subsistence allowance provided for in the rules for the period of suspension.

Held, that the rules purporting to have been made by the Governor-General in Council in the exercise of the powers conferred on him by subsection 2 of section 241 had been duly published under the authority of the Government of India, Railway Department, and a presumption of correctness attaches to this publication. Further in the absence of any evidence to the contrary it has also to be presumed that all the necessary formalities had been duly observed in the making of the rules.

Held, that the Railway Administration did possess the power under Rule 1711, to suspend an employee pending an enquiry into his conduct and the Railway Administration having duly suspended the petitioner he is not entitled to any salary for the period of suspension excepting the subsistence grant not exceeding ¼th of his salary provided for in the rules.

Warburton v. *Taff Valley Railway Co.* (1), *Hanley* v. *Pease and Partners, Limited* (2), *Wallwork* v. *Fielding and others* (3), *Secretary of State* v. *Surendra Nath Goswami* (4), *Padmakant Motilal Vora* v. *Ahmedabad Municipal Borough* (5), *Co-operative Central Bank, Daryapur* v. *Trimbak Narayan Shinganwadikar* (6), and *Debidutt Dube* v. *Central India Electric Supply Co., Ltd., Lahore* (7), relied on; *Peoples' Co-operative Bank Ltd., Patna City* v. *Rameshwar Prasad Varma* (8), dissented.

Case referred by Mr. Justice Mehr Chand Mahajan, of the High Court of Judicature at Lahore to a Division Bench by order dated 23rd May, 1947. The case was transferred from West Punjab to East Punjab and was heard by the above Division Bench.

Petition under section 115 of Act V of 1908, for revision of the order of S. Nawab Singh, District Judge, Amritsar, dated the 4th June, 1945, affirming that of Ch. Rubbani, Senior Sub-Judge, Amritsar, dated the 27th January, 1945, dismissing the application with costs.

PETITIONER, in person.

MR. NIRANJAN SINGH, Advocate, for Respondent.

ORDER

Mahajan, J. MAHAJAN, J. Civil Revisions Nos. 762 of 1945 and 483 of 1946, raise two questions of some importance under the Payment of Wages Act IV of 1936. The first question is whether an employee, who has been suspended while investigation is being conducted about his conduct in the discharge of his duties, and who during the period of suspension has been paid ¼th of his salary as an allowance, is entitled to the full salary of that period up to the time that a final decision about his case is made, in other words till such time that he is either reinstated, dismissed, or put back. It was conceded before me that if the employee is reinstated he is entitled to the full salary that he was drawing on the date of his suspension. It was, however, suggested that

(1) 18 T.L.R. 420
(2) (1915) 1 K.B. 698
(3) (1922) 2 K.B. 66
(4) A.I.R. 1938 Cal. 759
(5) A.I.R. 1943 Bom. 9
(6) A.I.R. 1945 Nag. 188
(7) A.I.R. 1945 Nag. 244
(8) A.I.R. 1942 Pat. 452

if he is dismissed then he is not entitled to the salary for the period of his suspension and, therefore, no order in his favour can be made under the Payment of Wages Act, as the case does not fall within the purview of section 15(3) of the Act. The case involved in these two applications, however, does not fall either under the first category of cases or under the second class of cases. The petitioner after investigation was reverted to a lower post than he was originally holding at the time of suspension. The salary of that post was smaller than of the post that he was originally holding. The question that arises for determination is whether for the period of suspension, he is entitled to the full salary which he was drawing at the time when he was suspended or he is only entitled to the reduced salary which after his reversion he was entitled to draw or whether he can get nothing for this period than the allowance allowed to him. The Court below has held that an employee during a period of suspension is not entitled to anything more than his subsistence allowance which amounts to ¼th of his salary under the rules. This view seems to run counter to a decision of the Patna High Court in *Peoples' Co-operative Bank Ltd., Patna City* v. *Rameshwar Prasad Varma* (1), where it was held that even when an employer is entitled to suspend an employee and withhold his wages during the period of suspension, the employee is entitled to wages during the period of suspension, if he is dismissed at the end of that period. The question concerns the jurisdiction of the authority under the Payment of Wages Act, and arises quite often. In my opinion, therefore, it is proper that this matter should be authoritatively decided by a Division Bench.

The second question that arises in one of these applications also concerns the jurisdiction of the authority under the Payment of Wages Act. That question is this: "When an employee is reverted and that reversion is as a result of a finding against him about his conduct in the discharge of his duties, whether the order of reversion can be questioned before the authority appointed under

(1) A.I.R. 1942 Pat. 452

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the Payment of Wages Act." If the order of reversion can be so questioned, then it is obvious that the authority has to examine the question of the validity or the invalidity of the reversion order and if it finds that the order of reversion is invalid then it would have power to grant relief to the employee under the Payment of Wages Act. On the other hand if it is found that the authority has no jurisdiction to consider the validity of the order of reversion then obviously it cannot pass an order under the Act, and grant relief to the employee as contemplated by the Payment of Wages Act. As I have already said, this question is of importance and frequently arises. I, therefore, consider that this matter should also be authoritatively settled and decided by a Division Bench.

For the reasons given above, I refer both these applications in revision to a Division Bench and direct that the papers be laid before the Hon'ble the Chief Justice for constituting a Bench for hearing these two petitions.

JUDGMENT OF THE DIVISION BENCH

Achhru Ram, J.

ACHHRU RAM, J. The petitioner was an employee of the North Western Railway. He was posted as a Station Master at Manawala Railway Station. He was suspended on 2nd November, 1944. After some enquiry, on 14th February, 1945, orders were passed reverting the petitioner to the grade of an Assistant Station Master, with a salary of Rs. 75 per mensem. His basic salary when he was a Station Master, was Rs. 86. For the period 3rd November, 1944 to 2nd December, 1944, the petitioner was paid a sum of Rs. 30-2-0 by the railway administration. On 6th December, 1944, he applied to the Senior Subordinate Judge of Amritsar, who had been appointed by the Provincial Government, under the provisions of subsection 1 of section 15 of the Payment of Wages Act, to be the authority to hear and decide for the area concerned all claims arising out of deductions from wages, etc., of persons employed in that area, under subsection 2 of section 15, and under subsection 1 of section 20 of the aforesaid Act, for directions being issued to the Pay Master of North Western Railway, Lahore

Division, for payment to him of a sum of Rs. 55-14-0, being the difference between his substantive pay of Rs. 86 for the period mentioned above and the sum of Rs. 30-2-0 already received by him. Another application was made to the officer appointed to be the authority for the purpose mentioned above for the area of Lahore to which he had been transferred in the meanwhile as Assistant Station Master for similar directions for payment of the difference between his salary at the above rate for the remaining period of suspension and the amount actually paid to him by the Railway Administration for the said period.

The application for directions in respect of the period between the 3rd November, 1944 and 2nd December, 1944, was finally disposed of on 27th January, 1945. The authority was of the opinion that no wages were due to the petitioner for the period between 3rd November, 1944 and 2nd December, 1944, by reason of his having been under suspension for the said period. On this finding the petitioner's application for directions was dismissed. His appeal having also been dismissed by the District Judge of Amritsar, he went up in revision to the High Court of Lahore.

The petitioner was, however, more lucky in the application made by him at Lahore, wherein the authority gave directions to the Railway Administration for payment to him of the difference between the salary claimed by him and the amount actually received by him. From that order of the authority the North Western Railway administration filed a petition for revision in the High Court of Lahore.

The present petition for revision as well as the other petition for revision filed by the Railway administration, namely, C.R. No. 482 of 1946, were heard by Mahajan, J., on 23rd May, 1947, at Lahore. Finding that the two petitions raised some questions of law of difficulty and importance the learned Judge was pleased to refer them both to a Division Bench for hearing and disposal. Soon after this the Province of the Punjab was divided. In accordance with the provisions of the Punjab High Courts Order promulgated by the Governor-

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General of India, the petition for revision arising out of the application heard at Amritsar, was sent to this Court while the other petition for revision remained in the Lahore High Court. Accordingly there is only one petition, namely, C.R. No. 762 of 1945, before us for disposal.

During the course of the hearing of the petition a number of interesting and difficult questions arose. One of these questions was whether in view of the provisions of subsection 2 of section 17 of the Payment of Wages Act, the order of the learned District Judge dismissing the petitioner's appeal was open to revision. Another question that arose was whether the order of the authority refusing to give any of the directions contemplated by section 15(3) of the Act, was appealable under section 17 of the same Act. The third question that arose was whether, assuming that the said order was not appealable and that subsection 2 of section 17 had not the effect of barring proceedings by way of revision, the authority should be treated as a Court subordinate to the High Court within the meaning of section 115 of the Civil Procedure Code, and the present petition could be treated as one for revision of the order of the authority. In a Single Bench judgment of the Court of the Judicial Commissioners, Sind, in *Mir Mahomed Haji Umar* v. *Divisional Superintendent, N. W. Railway* (1), an order refusing to give directions was held to be an order within the meaning of section 15 of the Act, from which an appeal was allowed by section 17. A Full Bench of Lahore High Court in *Works Manager, Carriage and Wagon Shops, Moghalpura* v. *K. G. Hashmat* (2) held that section 17(2) did not bar proceedings in revision and that the authority appointed by the Provincial Government under section 15(1) in dealing with applications filed under subsection 2 of section 15, acted as a Court subordinate to the High Court within the meaning of section 115 of the Code of Civil Procedure. The

(1) A.I.R. 1941 Sind 191

(2) A.I.R. 1946 Lah. 316

correctness of these decisions was challenged by the learned counsel for the respondent. In view, however, of the fact that after hearing the learned counsel for the parties we have reached the conclusion that the petition must fail on the merits, we do not consider it necessary to go into any of these questions or to express any opinion regarding the correctness or otherwise of the Sind and the Lahore decisions just adverted to.

In his statement before the authority the petitioner admitted that he had been suspended but he challenged the order for his suspension as *ultra vires* and the same contention was repeated by him before us.

Rule 1711 of the rules made by the Governor-General in Council under subsection 2 of section 241 of the Government of India Act of 1935, governing the services of railway servants subject to the rule-making control of the Governor-General in Council deals with the question of suspension. Clause (b) of the aforesaid rule runs as follows :—

> "A railway servant may, at the discretion of the competent authority, be placed under suspension when his conduct is undergoing investigation on a charge, the maximum penalty for which is dismissal or removal from the service, and he may be kept under suspension until his case has been finally decided by the competent authority."

It cannot be seriously disputed that the above rule governs the petitioner. It was urged by the petitioner that the terms of his service were contained in an agreement of service executed at the time of his employment and that his suspension was not warranted by those terms. The petitioner, however, never relied on any such agreement of service in the first Court or in the appellate Court, nor did he make any attempt to produce or to have produced such an agreement, if any existed. The rules

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purporting to have been made by the Governor-General in Council in the exercise of the powers conferred on him by subsection 2 of section 241, had been duly published under the authority of the Government of India, Railway Department, and the above rule is to be found at page 164 of the first volume. There is a presumption of correctness attaching to this publication and in the absence of any evidence to the contrary it has also to be presumed that all the necessary formalities had been duly observed in the matter of the making of the rules. In the circumstances, there can be no doubt that the Railway Administration did possess the power to suspend the petitioner pending an enquiry into his conduct. The order for his suspension cannot, therefore, be said to be *ultra vires*.

Rule No. 2043 provides that a railway servant under suspension is entitled to a subsistence grant on such rates as the suspending authority may direct, but not exceeding one-fourth of his pay. Rule No. 2044 provides that when the suspension of a railway servant is held to have been unjustifiable or not wholly justifiable, or when a railway servant who has been dismissed, removed or suspended is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty—

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal, removal or suspension ; or

(b) if otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribe.

In the present case the petitioner, after enquiry, was found to be guilty of dereliction of duty for which he was punished by the reduction in his grade. It is admitted that for the period of one

month of suspension now in question he received a sum of Rs. 30-2-0 which was more than one-fourth of his substantive salary for the said period. It was contended by the petitioner that he was legally entitled to the full salary for the period of suspension and that the refusal to pay the balance of Rs. 55-14-0 amounted to a deduction from his wages within the meaning of the Payment of Wages Act for which he was entitled to relief. In support of his contention he relied on a judgment of a Division Bench of the High Court of Patna in *Peoples' Co-operative Bank Ltd., Patna City* v. *Rameshwar Prasad Varma* (1). In this case Rameshwar Prasad Varma was an employee of the Peoples' Co-operative Bank Ltd., Patna, and was suspended by the Secretary of the said Bank, on 7th November, 1935. On 25th May, 1936, the Board of Directors adopted a resolution dismissing him from service. On 9th February, 1937, the Board while dealing with an application made by the aforesaid Rameshwar Prasad for arrears of his salary for the period between 8th November, 1935 and 25th May, 1936, resolved that his dismissal should take effect as from 8th November, 1935. Rameshwar Prasad brought a suit for the recovery of his salary for the said period. The suit was decreed by the Court of Small Causes on the findings that it had not been proved that under the terms of the contract of service the Bank could withhold the plaintiff's pay for the period of suspension and that it was not open to the Board to relate back the order of dismissal actually passed on 25th May, 1936 to 8th November, 1935. A plea raised on behalf of the Bank that fundamental rules governed the terms of the plaintiff's service was negatived, it being also pointed out that the subsistence grant provided for in those rules had never been granted to the plaintiff. On revision the High Court affirmed the decision of the Court of Small Causes. The actual decision of the Court proceeded on the ground that, it not having been proved that the Bank had the power to suspend, it could not be held that it had the power to withhold the plaintiff's salary during the period of suspension. However, during the course of discussion

(1) A.I.R. 1942 Pat. 452

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Agarwala, J., who wrote the judgment of the Bench, while referring to the decision in *Warburton* v. *Taff Valley Railway Co.* (1), observed that the said decision was an authority for the proposition that when an employer is entitled to suspend an employee and withhold his wages during the period of suspension, the employee is entitled to wages during the period of suspension if he is dismissed at the end of that period. We, however, do not consider that the decision in *Warburton's case*, does in fact justify the broad proposition stated by the learned Judge. The judgment of the learned Chief Justice in that case, with which Darling and Channell, JJ., concurred, proceeded on a much narrower ground, namely, that in the absence of a rule empowering the railway company concerned to withhold the wages of the plaintiff during the period of his suspension the latter was entitled to recover such wages, even if the company had eventually dismissed him from service. It is obvious that according to this judgment, where the rules governing a particular case do provide for not more than a certain fraction of the substanitve salary being paid for the period of suspension, the employee, on dismissal, cannot lay claim to more than the prescribed fraction of his salary, and that it is only in the absence of any rule empowering the employer to withhold the whole or any fraction of the salary for the period of suspension that the employee on dismissal can claim the whole of the salary for the period during which he remained under suspension.

Out of the two other English decisions adverted to in the judgment of Agarwala, J., the case of *Hanley* v. *Pease and Partners, Limited* (2), was also a case in which the employer, under the terms of the contract of service, had no power to suspend the employee although he had the power to dismiss him and the employee was held entitled to his full salary for the period during which he was alleged to have remained under suspension on the ground

(1) 18 T.L.R. 420
(2) (1915) 1 K.B. 698

that the suspension itself was *ultra vires* and, therefore, *non est.* Lush, J., in delivering the main judgment of the Court observed :—

> "Assuming that there has been a breach on the part of the servant entitling the master to dismiss him, he may, if he pleases, terminate the contract, but he is not bound to do it, and if he chooses not to exercise that right but to treat the contract as a continuing contract notwithstanding the misconduct or breach of duty of the servant, then the contract is for all purposes a continuing contract subject to the master's right in that case to claim damages against the servant for his breach of contract. But in the present case after declining to dismiss the workman after electing to treat the contract as a continuing one—the employers took upon themselves to suspend him for one day ; in other words to deprive the workman of his wages for one day, thereby assessing their own damages for the servant's misconduct at the sum which would be represented by one day's wages. They have no possible right to do that. Having elected to treat the contract as continuing it was continuing. They might have had a right to claim damages against the servant, but they could not justify their act in suspending the workman for the one day and refusing to let him work and earn wages."

Rowlatt, J., in expressing his concurrence with Lush, J., observed :—

> "As regards the point of substance it is obvious that the employer has no implied power to punish the workman by suspending him for a certain period of his employment, the contract subsisting all the time. He has power if the occasion arises but there is no finding in the

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present case that the occasion had arisen to dismiss a workman and propose a new employment to begin on the next day which the workman may or may not accept. The facts, however, do not support that view of the case."

The third Judge, i.e., Atkin, J., expressed his concurrence with the judgment proposed to be delivered by Lush, J., in the following words :—

> "On the other point I entirely agree that in the circumstances of this case the master had no power to suspend the contract in the sense which really means the fining of the employee in the sum of one day's wages for his previous default."

The decision of the King's Bench Division in *Wallwork* v. *Fielding and others* (1), as pointed out by Agarwala, J., clearly lays down that where under the terms of employment the employer has got the power to suspend the employee and does suspend him in the exercise of those powers the employer is entitled to withhold the pay for the period of suspension and the employee can have no legitimate claim thereto. Lord Sterndale, M.R., in dealing with this subject observed as follows at page 71 of the report :—

> "That disposes of the first point, but a second is taken, namely, that granted the power to suspend, that does not import the power to withhold the pay during the suspension. I should have thought that power to suspend the operation of a contract necessarily suspended its whole operation including not only the performance of duty but also the right to pay during the period of suspension. It seems to me that is quite clearly stated by Lush, J., in *Hanley* v. *Pease and Partners* (2). *** There was no power of suspension but only power of dismissal. The master had not exercised his

(1) (1922) 2 K.B. 66
(2) (1915) 1 K.B. 698

power of dismissal, but had purported to suspend without any power to do so, and the Court held that having no power to suspend pending an investigation of the charge, there was no power to withhold payment during the time that the master chose to prevent the man from working. * * * * * All these learned Judges treat it, it seems to me, as indisputable that if there is a power of suspension which is exercised, the whole contract is suspended, the obligations on both sides are supended. It seems to me that is the inevitable meaning of suspension, and if there be any power necessary, there was express statutory power here to suspend the man from duty and that involves the suspension of payment for the discharge of the duty. The contract is suspended with regard to its performance by both sides, not only by one; therefore I think that point also fails."

Warrington, L. J., in expressing his concurrence with the Master of Rolls observed at page 74 of the report as follows :—

"If the employed is suspended from his function as an employed person, it seems to me the effect of that is to suspend the relation of employer and employed for the time being ; to excuse the servant or the employed person from performing his part of the contract, and at the same time to relieve the employer from performing his part of the contract. It would be a most extraordinary thing if suspension (assuming that there is power to effect suspension) were to be so one-sided that the servant were to be excused from performing his part of the contract while the employer was to remain liable to perform his. It seems to me that suspension suspends for the time being the contractual relation between the parties on both sides; the suspension, therefore, by the Watch Committee does involve suspension of

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payment by them, as well as of the performance of the duty by the police constable."

In our opinion the three English decisions mentioned by Agarwala, J., if properly considered, can be taken to lay down only that where the employer has no power to suspend the employee, he remains under an obligation to pay to such employee the full salary for the period for which he, without actually dismissing him, does not allow him to work, professing to have suspended him for that period. Where however the employer in the exercise of a lawful power vested in him to suspend an employee does suspend him, he cannot be said to be under any obligation to pay any salary to the employee for the period of suspension unless the terms of service themselves provide for payment of the whole or a part of such salary.

The question came up for decision before a Division Bench of the High Court of Calcutta in *Secretary of State* v. *Surendra Nath Goswami* (1) and the learned Judges constituting the Bench were pleased to take the same view of the law. They held that there is no implied power in the employer to punish a servant by suspension and that if a servant is suspended when there is no power of suspension, he can sue for damages for not being allowed to work, if he was ready to work, but that if there is a power to suspend, the effect of the suspension is to suspend the contract of service as a whole, with the result that the servant cannot insist on working or claim his pay for the period of suspension.

The same view of the law was taken by a Single Judge of the Bombay High Court in *Padmakant Motilal Vora* v. *Ahmedabad Municipal Borough* (2), and by a Single Judge of the Nagpur High Court in *Co-operative Central Bank, Daryapur* v. *Trimbak Narayan Shinganwadikar* (3), and in *Debidutt Dube* v. *Central India Electric Supply Co. Ltd., Lahore* (4).

As has been pointed out before, in the present

(1) A.I.R. 1938 Cal. 759
(2) A.I.R. 1943 Bom. 9
(3) A.I.R. 1945 Nag. 183

case the Railway Administration had an indisputable power to suspend the petitioner and the said administration having duly suspended him in the exercise of that power the petitioner is not entitled to any salary for the period of suspension excepting the subsistence grant not exceeding 1/4th of his salary provided for in the rules which he has already received. In the circumstances, we are of the opinion that his claim, which has given rise to the present petition, is without any substance and has been rightly disallowed by the Courts below. We accordingly dismiss the petition with costs.

CIVIL REFERENCE

Before Falshaw and Kapur, JJ.

M/s KALSI MECHANICAL WORKS, NANDPUR,—
Petitioner

versus

THE COMMISSIONER OF INCOME-TAX, SIMLA,—
Respondent

Civil Reference No. 7 of 1953

July, 1st
1953

Income-tax Act (XI of 1922)—Sections 26, 26A, 28 and Rules 2, 3, 4 and 6A (framed under section 59)—Firm came into existence in June 1944 by oral agreement—Instrument of Partnership drawn up in May 1949, and registered before the Joint Sub-Registrar in August 1949—Application by the firm under section 26A for registration made to the Income-tax Office, during the assessment year 1949-50, for the purpose of the assessment of the accounting year 1949-50—Whether firm entitled to registration for the purpose of assessment for 1949-50.

The following question was referred under section 66(1) by the Income-tax Appellate Tribunal, Bombay, to the High Court :—

> " Whether a firm which is alleged to have come into existence by a verbal agreement in June, 1944, is entitled to be registered under section 26A, for the purpose of the assessment for 1949-50, where the Instrument of Partnership was drawn up only in May, 1949, after the expiry of the relevant previous year ? "

Held, that for the purpose of registration it is necessary that the firm should be constituted by an instrument of partnership and the rules read with sections 26 and 28 of the Act, indicate that such a firm as is constituted under an instrument of partnership should have been in existence during the account period and should not come into existence during the assessment year, and if it was not in existence during the account period it cannot be registered so as to affect the liabilities of the partners of income-tax accruing during the account period.