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The Hind Samachar Ltd., Jalandhar v. Kewal Krishan Mahendru and another (J. V. Gupta, J.)

six months from the date of his arrest. The trial Court shall also take into consideration while awarding sentence, the period of harassment which this accused has undergone during the pendency of this appeal before this Court. This appeal stands accepted. Baldev Singh, respondent is directed to appear before the trial Court on 9th October, 1991 and furnish requisite bonds to its satisfaction.

J.S.T.

Before : J. V. Gupta, J.

THE HIND SAMACHAR LTD., JALANDHAR,—*Petitioner.*

versus

KEWAL KRISHAN MAHENDRU AND ANOTHER,—*Respondents.*

Civil Revision No. 2501 of 1988.

4th September, 1989.

Payment of Wages Act, 1936—Ss. 7 & 15—Unauthorised deduction—Bar of limitation—Burden of proof—Onus lies on workman—Order of authority under Payment of Wages Act placing onus of proof on employer is bad—Burden to prove issues shifted on workman.

Held, that it is for the workman to prove that the alleged deductions were not justified as contemplated under S. 7 of the Payment of Wages Act, 1936 and similarly whether the application was within the time or not was for the workman to prove. It is for the workman to prove that the alleged deductions have been wrongly made by the employer. Consequently, the impugned order is set aside and the burden of both the issues is shifted on the workman.

(Para 3)

Petition Under Article 227 of the Constitution of India read with section 115 and 151 of the Code of Civil Procedure 1908 praying that the petition be accepted, order Annexure P/4 set aside and respondent No. 2 directed to place the onus of issues 2 and 6 on respondent employee.

Mr. N. K. Sodhi, Sr. Advocate with Mr. Nitin Kumar, Advocate and Mr. Rupinder Singh Khosla, Advocate, *for the Petitioner.*

None, *for the Respondents.*

ORDER

J. V. Gupta, J.

(1) This is a petition under Article 227 of the Constitution of India against the order of the authority appointed under the Payment of Wages Act, Jalandhar, dated September 19, 1988, whereby the application filed by the employer for shifting the onus of the issue was dismissed.

(2) The workman filed a petition under section 15 of the Payment of Wages Act. On the pleadings of the parties, two issues were framed, (i) whether the application is barred by time ? and (ii) whether the deductions are justified ? An application was moved on behalf of the employer to shift the onus of the said issues on the workman. The said application has been dismissed by the learned Authority primarily on the ground that in view of the provisions of section 7 of the Payment of Wages Act, the onus of the issues have been rightly placed on the employer.

(3) Learned counsel for the petitioner, submitted that the whole approach of the learned Authority was wrong and illegal and, thus, he has acted illegally and with material irregularity in the exercise of its jurisdiction. It is for the workman to prove that the alleged deductions were not justified as contemplated under section 7 of the Act and similarly whether the application was within the time or not was for the workman to prove because admittedly he is claiming wages with effect from May 1985, whereas the application has been filed on September 10, 1986, i.e., beyond a period of one year. In support of his contention, he referred to 1982 Labour Industrial Cases 551 and *Shankar Chakravarti v. Britannia Biscuit Company,* (1). In *Shankar's case* (supra) the Supreme Court observed that the rules, of fair play demand where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary. The Supreme Court further observed that "can it for a moment be suggested that this elementary principle does not inform industrial adjudication ? The answer must be an emphatic "no". Thus, keeping into consideration the facts and circumstances of the case, the

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(1) 1979(2) LLJ. 194.

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burden of the two issues should have been on the workman, who has approached the authority under the Payment of Wages Act. It is for the workman to prove that the alleged deductions have been wrongly made by the employer. Consequently, this petition succeeds; the impugned order is set aside and the burden of both the issues is shifted on the workman. There will be no order as to costs.

(4) Since further proceedings were stayed at the time of motion hearing by this Court, the parties are directed to appear before the said Authority on September 19, 1989.

R.N.R.

Before G. R. Majithia, J.

MANJEET SINGH DOLE,—*Petitioner.*

versus

GURU NANAK DEV UNIVERSITY, AMRITSAR,—*Respondent.*

Civil Writ Petition No. 9963 of 1990.

19th December, 1990.

Constitution of India, 1950—Art. 226—Guru Nanak Dev University Calendar, Vol II, 1986—Ord. 10(j)(h) & 13 read with Ord. 11— Spot checking at examination Centre—Report as to open use of unfair means by candidates—Petitioner's answer-sheet sent for scrutiny to subject-expert—Mere opinion that he copied from answer-sheet of another candidate—In the absence of material on record,. Standing Committee cannot disqualify him from appearing in any University examination for one year—Decision of Standing Committee holding the petitioner guilty of misconduct is illegal.

Held, that a candidate can be held guilty under Ordinance 10(h) if he is found copying from some objectionable material found in his possession or copying from the answer sheet of another candidate or assisting other candidate to copy from the objectionable material in his possession or from his answer book. There is no allegation much less proof that any objectionable material was found from the possession of the petitioner from which he had copied while answering the question paper or that he assisted another candidate from copying from the objectionable material or from his answer sheet. The Standing Committee could arrive at the conclusion on evidence