The Divisional Engineer, G.I.P. ... vs Mahadeo Raghoo And Another on 2 March, 1955

Equivalent citations: 1955 AIR 295, 1955 SCR (1)1345, AIR 1955 SUPREME COURT 295

Author: Bhuvneshwar P. Sinha

Bench: Bhuvneshwar P. Sinha, Vivian Bose, B. Jagannadhadas

PETITIONER:
THE DIVISIONAL ENGINEER, G.I.P. RAILWAY

Vs.

RESPONDENT:
MAHADEO RAGHOO AND ANOTHER.

DATE OF JUDGMENT:
02/03/1955

BENCH:
SINHA, BHUVNESHWAR P.
BENCH:
SINHA, BHUVNESHWAR P.
BOSE, VIVIAN
JAGANNADHADAS, B.
AIYYAR, T.L. VENKATARAMA

CITATION:
1955 AIR 295 1955 SCR (1)1345

ACT:
Payment of Wages Act, 1936 (IV of 1936), s. 2 (vi)WagesHouse rent allowance-Whether falls within the definition of wages under the Act-Rule 3(i) of the statutory Rules framed by the Government-Legal effect thereof.

HEADNOTE:
The Railway Board under the Ministry of Railways of the Gov-ernment of India introduced a scheme with effect from the 1st
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November 1947 granting compensatory (city) allowance and house rent allowances at certain rates to certain Railway employees (including the 1st respondent who was a railway

employee since 1945) stationed at specified head-quarters. The first respondent drew this' allowance along with his salary up to the 18th August 1948, when he was offered by the Government, quarters 'suitable to his post, but he refused to occupy the same and the house rent allowance was stopped from the date of his refusal to occupy the quarter offered to him.

Rule 3(i) of the Statutory Rules framed by the Government and put into effect on 1st November 1947 runs as follows:

"The house rent allowance will not be admissible to those who occupy accommodation provided by Government or those to whom accommodation has been offered by Government but who have refused".

Held, that the house rent allowance is admissible only so long as an employee is stationed at one of the specified places and has not been offered Government quarters. The rules distinctly provide that the allowance will not be admissible to those who occupy Government quarters or those to whom such quarters have been offered but who have refused to take advantage of the offer. Once an employee of the description given above has been offered suitable house accommodation and he has refused it, he ceases to be entitled to the house rent allowance and that allowance ceases to be "wages" within the meaning of the definition in s. 2(vi) of the Act because it is no more payable under the terms of the contract.

The grant of house rent allowance does not create an indefeasible right in the employee at all places wherever he may be posted and in all circumstances, irrespective of whether or not he has been offered Government quarters.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 208 of 1952. Appeal by Special Leave from the Judgment and Order dated the 28th day of September 1951 of the Authority under the Payment of Wages Act, Bombay in Application No. 500 of 1951. M. C. Setalvad, Attorney-General for India (G. N. Joshi, PorUs A. Mehta and P. G. Gokhale, with him), for the appellant.

J. B. Dadachanji, M. V. Jayakar and Rajinder Narain, for respondent No. 1.

1955. March 2. The Judgment of the Court was delivered by SINHA J.-This is an appeal by special leave from the orders dated the 28th September 1951 passed by the 2nd respondent, the Authority appointed under section 15(1) of the Payment of Wages Act (IV of 1936), (which hereinafter will be referred to as the Act) allowing the 1st respondent's claim for house rent allowance as part of his wages. In this case the facts are not in dispute and may shortly be stated as follows: The 1st respondent is a gangman in the employ of the Central Railway (which previously used to be known as the G.I.P. Rly.), since April 1945. At that time his wages were Rs. 18 per month plus dearness allowance. With effect from the 1st November 1947 the Railway Board under the Ministry of

Railways of the Government of India introduced a scheme of grant of compensatory (city) allowance and house rent allowance at rates specified in their memorandum No. E47 CPC/14. This scheme was modified by the Railway Board's letter No. E47 CPC/14 dated 1st December 1947. As a result of this scheme certain railway employees stationed at specified headquarters were eligible for the allowance aforesaid at certain specified rates. The 1st respondent thus became entitled to the allowance of Rs. 10 per month. This allowance the 1st respondent drew along with his salary until the 18th August 1948 when he was offered by the Government, quarters suitable to his post, but he refused to occupy the same. On his refusal to occupy the quarters offered by the Government, the house rent allowance was stopped with effect from the 19th August 1948. On the 8th June 1951 the 1st respondent put in his claim before the Authority for Rs. 290 on the ground that the appellant, the Divisional Engineer, G.I.P. Ry., who was the authority responsible under section 4 of the Act for payment of wages, had stopped payment of house rent allowance to him from the 19th August 1948. The claim covered the period the 19th August 1948 to the 18th January 1951 at the rate of Rs. 10 per month. The appellant appeared before the Authority and by his written statement contested the claim on the ground that the house rent allowance which was the subject matter of the claim was not "wages" within the meaning of section 2(vi) of the Act. It was, therefore, submitted by the appellant who was the opposite party before the Authority that it had no jurisdiction to entertain the claim which should be dismissed in limine. It was further pleaded that the claim was inadmissible on the ground that there had been no illegal deduction from the respondent's wages inasmuch as the respondent had been allotted railway quarters of a suitable type and as he had refused to occupy those quarters he was not entitled under the rules to any house rent allowance. Alternatively, it was further pleaded by the appellant that so much of the claim as, related to a period preceding six months immediately before the date of the application was time-barred under the first proviso to section 15(2) of the Act.' The Authority condoned the delay and that part of the order condoning the delay is not in controversy before us.

On the issues thus joined between the parties the Authority came to the conclusion that the house rent allowance was "wages" as defined in the Act that as a matter of fact, accommodation was offered to the 1st respondent and he refused it; but that even so, the appellant was not entitled to withhold the house rent allowance. Accordingly the claim for Rs. 290 was allowed by the Authority.

The short point to be decided in this case is whether the house rent allowance claimed by the 1st respondent came within the purview of the definition of "wages" contained in the Act. There being no difference on questions of fact between the parties, the answer to the question raised must depend upon the construction to be placed upon the following material portion of the definition of "wages" in section 2(vi) of the Act:-

> 'Wages' means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed or other-
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> wise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature

> aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include-
>
> (a)the value of any house-accommodation, supply of light, water, medical Attendance or other amenity, or of any service excluded by general or special order of the State Government.....

Shorn of all verbiage, "wages" are remuneration payable by an employer to his employee for services rendered according to the terms of the contract between them. The question then arises, what are the terms of the contract between the parties. When the 1st respondent's employment under the railway administration represented by the appellant began, admittedly be was not entitled to any such house rent allowance. As already indicated, the scheme for payment of house rent allowance was introduced with effect from the 1st November 1947 when the rules were framed, admittedly under sub-section (2) of section 241 of the Government of India Act, 1935, by the Governor-General. Those rules were amended subsequently. We are here concerned with the amendment made by the Railway Board by its letter No. E47CPC/ 14 dated the 1st December 1947, particularly rule 3(i) which is in these terms:-

> "The house rent allowance will not be admissible to those who occupy accommodation provided by Government or those to whom accommodation has been offered by Government but who have refused it".

It has been argued on behalf of the appellant that the terms of the contract between the parties include the rule quoted above and that therefore the position in law is that there is no absolute right in the 1st respondent to claim the house rent allowance; in other words, it is contended that there is a condition precedent to the claim for house rent allowance being admissible, namely, that the employee should be posted at one of those places, like Bombay, Calcutta, Madras' etc., before the claim for house rent allowance could arise and that there is a condition subsequent, namely, that the employee posted at any one of those places will cease to be entitled to the - allowance if either the Government provides accommodation to the employee in question or the employee-refuses to occupy the accommodation so offered to him. On the other hand, it has been argued on behalf of the 1st respondent that the employee's right to the allowance accrues as soon as he has fulfilled the terms of the contract of employment including regular attendance, good work or conduct and his other behaviour in terms of the definition of "wages" as contained in the Act. It was also argued on behalf of the 1st respondent that the terms of the definition have to be construed consistently with the provisions of sections 7 and 11 of the Act; that rule 3(i) quoted above is inconsistent with some of the terms of the definition of "wages" and the provisions of sections 7 and 11 and that in any event, if rule 3(i) aforesaid were to be considered as a part of the terms of the contract between the parties, section 23 of the Act prohibits an employee from entering into such a contract as has the effect of depriving him of his vested rights.

It should be noted at the outset that the learned Attorney- General appearing on behalf of the appellant has not pressed the argument which appears to have been raised in the written statement of the appellant and also before the Authority as would appear from the orders passed by him, that

clause (a) excluding "the value of any house accommodation" clearly showed that house rent allowance was not included in "wages" as defined in section 2(vi) of the Act. As will presently appear, this argument proceeds on the unwarranted assumption that house rent allowance is synonymous with the value of any house accommodation referred to in -the definition of "wages" and in section 7(2)(b) and section 11 of the Act.

The answer to the question whether house rent allowance is "wages" may be in the affirmative if the rules framed by the department relating to the grant of house rent allowance make it compulsory for the employer to grant house rent allowance without anything more: in other words, if the house rent allowed had been granted without any conditions or with conditions, if any, which were unenforceable in law. But the statutory rules framed by the Government governing the grant of house rent allowance do not make it unconditional and absolute in terms. The house rent allowance in the first instance is not admissible to all the employees of a particular class. It is admissible only to such railway employees as are posted at specified places in order "to compensate railway servants in certain costlier cities for excessive rents paid by them over and above what they might normally be expected to pay"; nor is such an allowance "intended to be a source of profit" or to be "an allowance in lieu of free quarters", as specifically stated in the preamble to the letter No. E47CPC/14, dated 1st December 1947, issued by the Railway Board. The argument on behalf of the 1st respondent would have been valid if the rules in terms contemplated the grant of house rent allowance to every employee of a particular category but the rules do not make the grant in such absolute terms. The house rent allowance is admissible only so long as an employee is stationed at one of the specified places and has not been offered Government quarters. The rules distinctly provide that the allowance will not be ad- raissible to those who occupy Government quarters or to those to whom such quarters have been offered but who have refused to take advantage of the offer. Once an employee of the description given above has been offered suitable house accommodation and he has refused it, he ceases to be entitled to the house rent allowance and that allowance thus ceases to be "wages" within the meaning of the definition in the Act, because it is no more payable under the terms of the contract.

In our opinion, it is clear beyond all reasonable doubt that the rules which must be included in the terms of contract between the employer and the employee contemplate that an employee posted at one of the specified places would be entitled to house rent allowance; but that as soon as he is offered Government quarters for his accommodation, he ceases' to be so entitled., whether he actually occupies or does not occupy the quarters offered to him. Hence the grant of house rent allowance does not create an indefeasible right in the employee at all places wherever he may be posted and in all circumstances, irrespective of whether or not he has been offered Government quarters.

But it has been argued on behalf of the respondent that such a conclusion would be inconsistent with the provisions of sections 7 and 1 1 of the Act. We do not see any such inconsistency. Section 7 of the Act deals with such deductions as may be made from the wages as defined in the Act, of an employee. Subsection (2) of section 7 categorically specifies the heads under which deductions may lawfully be made from wages. Clause (d) of this sub-section has reference to "deductions for house accommodation sup- plied by the employer", and section 11 provides that such a deduction shall not

be made unless the house accommodation has been accepted by the employee and shall not exceed the amount equivalent to the value of such accommodation. The definition of "wages" in the Act also excludes from its operation the value of house accommodation referred to in sections 7 and II as aforesaid. The legislature has used the expression "value of any house accommodation" in the definition of "wages" as denoting something which can be deducted from "wages". The one excludes the other. It is thus clear that the definition of "wages" under the Act cannot include the value of any house accommodation supplied by the employer to the employee; otherwise it would not be a legally permissible deduction from wages. It Is equally clear that house rent allowance which may in certain circumstances as aforesaid be included in "wages" is not the same thing as the value of any house accommodation referred to in the Act. That being so, there is no validity in the argument advanced on behalf of the 1st respondent that rule 3(i) aforesaid is inconsistent with the provisions of sections 7 and 11 of the Act.

It remains to consider the last argument advanced on behalf of the 1st respondent that section 23 of the Act prohibits an employee from relinquishing such a right as is the subject matter of rule 3(i) quoted above. This argument proceeds on the assumption that house rent allowance which is a right conferred on the employee is an absolute right. It has already been held above that the Act read along with the rules which constitute the terms of the contract between the employer and the employee does not create any absolute right in the employee to the house rent allowance. That being so, there is no question of the employee relinquishing any such right as is contemplated by section 23. For the reasons aforesaid, the appeal succeeds. The orders passed by the Authority are set aside. In the special circumstances of this case there will be no order as to costs.

Appeal allowed.