THE INDIAN LAW REPORTS

PUNJAB SERIES

REVISIONAL CIVIL

Before Bhandari and Harnam Singh, JJ.

MR. ABDUL LATIF,—*Petitioner*

versus

THE DIVISIONAL SUPERINTENDENT, LAHORE DIVISION, NORTH WESTERN RAILWAY,—*Respondent.*

Civil Revision No. 54 of 1947.

1948

Dec. 27th.

Payment of Wages Act (IV of 1936)—Sections 15 and 17 —Order refusing to make direction under section 15— Whether appealable under section 17—Right of appeal— Nature of—Whehter can be presumed in certain cases.

Held, that no appeal lies under section 17 of the Payment of Wages Act from an order refusing to make a direction under section 15 of the Act. While the legislature was anxious to confer a right of appeal against a direction made under section 15 of the Act of 1936, it did not wish to confer a similar right in respect of an order refusing to make a direction. Nor can such right be presumed on the ground only that it is somewhat unreasonable that while the legislature had provided for an appeal where the claim was partially allowed by the Authority it had failed to provide for a remedy when the whole of the claim was refused.

Held, that a right of appeal cannot be presumed on vague surmisings and the Legislature cannot be presumed to have done something which the Courts consider it should have done. An appeal is a creature of the statute and a right of appeal cannot be presumed unless it has been expressly conferred.

Case law discussed.

Case referred by Hon'ble Mr. Justice A. N. Bhandari on 30th September, 1948, to a Division Bench for opinion on the

legal point involved in the case and later on decided by Hon'ble Mr. Justice A. N. Bhandari and Hon'ble Mr. Justice Harnam Singh, on 27th December, 1948.

Petition under Section 115, Civil Procedure Code, for revision of the order of Shri S. S. Dulat, Additional District Judge, Amritsar, dated 23rd July, 1946, affirming that of Shri Ghulam Rabbani, Senior Sub-Judge, Amritsar, the authority appointed under the Payment of Wages Act, 1936, dated 22nd December, 1945, dismissing the petitioner's application.

BHAGIRATH DAS, for Petitioner.

NARINJAN SINGH KEER, for Respondent.

Order of Reference

Bhandari, J.

BHANDARI, J.—The only point for decision in the present case is whether an appeal lies from an order refusing to make a direction under section 15 of the Payment of Wages Act (IV of 1936). It appears that one Abdul Latif who was employed as a Booking Clerk under the North-Western Railway Administration, was discharged on the 9th August, 1942. He submitted a number of petitions under section 15 of the Act of 1936 for payment of delayed wages including one dated the 31st August, 1945, which is now under consideration. He claims a sum of Rs. 468 on account of wages for the period commencing with the 1st April, 1945 and ending with the 30th September, 1945. Mr. Ghulam Rabbani, who was appointed an authority under the provisions of the Statute, dismissed the petition on the 22nd December, 1945, on the ground that an application by a person who has been discharged does not lie within the scope of the Act of 1936. The petitioner appealed to the District Judge of Delhi, but the latter came to the conclusion that an appeal is not competent from an order of this kind. The petitioner has come to this Court in revision and the question in

this Court is whether the learned District Judge has come to a correct determination in point of law.

Section 15 of the Payment of Wages Act (IV of 1936) relates to claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. Subsection (3) is in the following terms : —

> "When any application under subsection (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further enquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter....."

Then follows a proviso which is not material for the purposes of this case.

Subsection (4) runs as follows :—

> "If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the

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employer or other person responsible for the payment of wages by the person presenting the application."

Section 17 enacts that an appeal against a direction made under subsection (3) or subsection (4) of section 15 may be preferred—

(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or

(b) by an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under subsection (4) of section 15.

The provisions reproduced above have given rise to two sets of arguments. Mr. M. L. Sethi, who represents the petitioner contends that the word "direction" which appears in subsection (3) of section 15 and in subsection (1) of section 17 must be deemed to be synonymous with the expression "order". It is, accordingly argued that if an authority constituted under the Payment of Wages Act makes a direction, i.e., an order, an appeal would lie from the said order.

Mr. Narinjan Singh, who represents the Railway Administration, on the other hand, contends that the word "direction" must be regarded as a positive order directing one person to make a

payment to the other. A number of authorities have been cited in support of the respective propositions.

In *Mir Mohamed Haji Umar* v. *Divisional Superintendent, N. W. Railway* (1), Weston, J., held that although the use of the word "direction" lends some support to the argument that no appeal would lie unless an order of the nature explicitly contemplated by section 15(3) had been made, it would be a remarkable result if an employed person were held to have a right of appeal only if he had obtained an order allowing a part of a claim, and to have no right of appeal if his claim had been rejected *in toto*, however much it might have been. The learned Judge, therefore, entertained no doubt whatever that the Legislature did not intend such a result and that the word "direction" in section 17 should be taken to include a refusal to make a direction. In this case an application by an employee was entertained but was dismissed on the merits by an authority appointed under the Payment of Wages Act. The employee took the matter up in appeal to the Chief Court of Sind. Weston, J., held that under clause (b) of subsection (1) of section 17, the right of appeal depends on the monetary value of the claim and not on any finding of the trial Court. According to the learned Judge the word "direction" in section 17 should be taken to include a refusal to make a direction. This view appears to have been endorsed in Civil Revision No. 454 of 1946 which was decided by the High Court of Lahore. In this case Sir Abdur Rahman, J., took the view that as it had been clearly provided in section 17(b) that an appeal was competent to "an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which

(1) 198 I.C. 814

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he belonged exceeds fifty rupees", it was extremely unreasonable to hold that the Legislature could have intended to allow a right of appeal to a person who had been allowed a part of his claim but that it did not allow a similar right to a person whose claim was totally dismissed. After reproducing the language of clause (b) of section 15, the learned Judge observed as follows :—

> "This means that the only qualification for an employed person to appeal as laid in section 17 of the Act is that his claim must exceed a sum of Rs. 50, and not that any part of his claim should have been decreed by the first Court. Had that been so, it would have been clearly stated. If the contention advanced by learned counsel for the petitioner were to be upheld, it would mean that the Legislature had omitted in subsection (b) of section 17 of the Act to provide for cases where the claim happens to be totally refused. It seems to be wholly unreasonable to contend that while the Legislature had provided for an appeal where a claim was partially allowed by the Authority under the Payment of Wages Act it had failed to provide for a remedy when the whole of the claim was refused altogether. It would be anomalous to hold that while an appeal would be competent when a claim was allowed to some extent yet the decision of the Authority under the Payment of Wages Act would be final when it was negatived *in toto*. One must rebel against a construction which would lead to such absurdities. The obvious meaning to be attached to subsection (1) of section

17 in my view is that the word "direction" under subsections (3) and (4) of section 15 of the Payment of Wages Act covers cases both when the direction is to pay and when there is a direction not to pay."

A contrary view has been taken in *Khema Nand* v. *East Indian Railway Administration* (1), and *P. Kumar* v. *The Running Shed Foreman, E. I. Railway Administration* (2). In the Allahabad case Hamilton, J., held that the language of section 15 indicates that a direction is an order to one side to make a payment to the other side. When the application of the employee under section 15 is rejected as time barred without even entering into the merits it must be taken that not merely was there no direction but that the application was not even entertained. There is nothing in the Act which provides for an appeal in such cases. The learned Judge examined the case reported in *Mir Mohamed Haji Umar* v. *Divisional Superintendent, N. W. Railway* (3), and held that although it is somewhat hard that there should not be an appeal in certain cases, it was difficult to hold that refusal to make a direction is a direction. In dealing with this argument he expressed himself as follows :—

"It may be that the Legislature held that if an employee had made good his claim in part he should have a right of appeal as regards the part as to which he had failed but the Legislature thought that if he had entirely failed then he had not made out a *prima facie* case so he should have no right of appeal."

(1) A.I.R. 1943 All. 243
(2) A.I.R. 1946 Oudh. 148
(3) A.I.R. 1941 Sind. 191

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A similar view was taken in *P. Kumar* v. *The Running Shed Foreman, E. I. Railway Administration* (1), There, Thomas, C.J., held that the language of section 15 indicates that a direction under that section is an order to one side to make payment to the person to whom the wages are due. But where an application of the employee under section 15 has been rejected, it must be taken that there was no direction and hence no appeal lies against the order rejecting the application.

In view of the diversity of opinion which has manifested itself, it is desirable that the question whether an appeal is or is not competent in cases of this kind ought to be decided by a larger Bench. I would accordingly suggest that if my Lord the Chief Justice has no objection this case might be referred to a Division Bench for disposal.

JUDGMENT

Bhandari, J.

The short point for decision in the present case is whether an appeal lies from an order refusing to make a direction under section 15 of the Payment of Wages Act, 1936. It appears that one Abdul Latif who was employed as a Booking Clerk on the North-Western Railway was removed from service of the Crown on the 9th August, 1942. He submitted a number of petitions under section 15 of the Act of 1936 for payment of delayed wages, including the one dated 31st August, 1945, which forms the subject of the present case and in which he claims payment of delayed wages for the period commencing with the 1st April, 1945 and ending with the 30th September, 1945. The Authority appointed by the Provincial Government to hear and decide the claims arising under the statute came to the conclusion that there was a *bona fide*

(1) I.L.R. 1946 Oudh. 148

dispute between the employer and the employee as to whether the removal was or was not valid in the eye of law, and, consequently, that in view of the proviso to subsection (3) of section 15 the Authority was not at liberty to make a direction for the payment of wages. The application was accordingly dismissed without issuing a notice to the opposite party. The petitioner appealed to the District Judge of Delhi, but the latter declined to entertain the appeal on the ground that no appeal could lie against an order refusing to make a direction. The petitioner has come to this Court in revision and the question for this Court is whether the learned District Judge has come to a correct determination in point of law.

Subsection (3) of section 15 provides that when any application under subsection (2) of the said section is entertained, the Authority may direct the refund to the employed person of the amount deducted from his wages, or the payment of the delayed wages, together with the payment of such compensation as the Authority may think fit. Subsection (4) empowers the Authority to direct that a penalty not exceeding Rs. 50 be paid to the employer if the application is malicious or vexatious. Subsection (1) of section 17 is in the following terms :—

> "(1) An appeal against a direction made under subsection (3) subsection (4) (4) of section 15 may be preferred, within 30 days of the date on which the direction was made.....
>
> (a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or

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(b) by an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under subsection (4) of section 15."

Section 17 provides clearly and in unambiguous language that in certain circumstances an appeal can be preferred against a direction made under subsection (3) or subsection (4) of section 15, but it is completely silent as to whether an appeal can lie from an order *refusing* to make a direction. The question which arises and which is by no means free from difficulty is whether the expression "direction" can be deemed to include the expression "failure to make a direction" or "refusal to make a direction".

A diversity of judicial opinion has manifested itself in regard to the meaning that should be attached to the expression "direction" appearing in subsection (1) of section 17. According to one view the word "direction" must be deemed to be synonymous with the word "order" so that if an authority constituted under the Payment of Wages Act makes a direction (that is, an order under section 15), an appeal would lie from the said direction or order, whatever the nature of such direction or order may be. According to this view an appeal would lie from an order even if such order omits or refuses to make a direction. According to another view the word "direction" must be regarded as a positive order directing one person to make payment to the other and cannot be said to include a negative order, for example, an order that no payment should be made.

Two authorities have been cited in support of the first proposition. In *Mir Mohamed Haji Umar* v. *Divisional Superintendent, North-Western Railway* (1), Weston, J., held that although the use of the word "direction" in section 17 lends some support to the argument that no appeal will lie unless an order of the nature explicitly contemplated by section 15(3) has been made, it would be a remarkable result if an employed person were held to have a right of appeal only if he has obtained an order allowing a part of claim, and to have no right of appeal if his claim has been rejected *in toto*, however, large it may have been. The learned Judge, therefore, entertained no doubt whatever that the Legislature did not intend such a result, and that the word "direction" in section 17 should be taken to include a refusal to make a direction. This view was endorsed in *Civil Revision No. 454 of 1946*, decided by the High Court at Lahore in which Abdur Rahman, J., held that as it has been clearly provided in section 17(b) that an appeal was competent to an employed person, if the total amount of wages claimed to have been withheld from him exceed Rs. 50, it was extremely unreasonable to hold that the Legislature could have intended to allow a right of appeal to a person who had been allowed a part of his claim and that it could not have intended to allow a similar right of appeal to a person whose claim was totally dismissed. In the course of his order the learned Judge observed as follows :—

> "This means that the only qualification for any employed person to appeal as laid in section 17 of the Act is that his claim must exceed a sum of Rs. 50 and not that any part of his claim should have been decreed by the first Court. Had

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

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that been so, it would have been clearly stated. If the contention advanced by learned counsel for the petitioner were to be upheld, it would mean that the Legislature had omitted in sub-clause (b) of section 17 of the Act to provide for cases where the claim happens to be totally refused. It seems to be wholly unreasonable to contend that while the Legislature had provided for an appeal where a claim was partially allowed by the Authority under the Payment of Wages Act, it had failed to provide for a remedy when the whole of the claim was refused altogether. It would be anomalous to hold that while an appeal would be competent when a claim was allowed to some extent yet the decision of the Authority under the Payment of Wages Act would be final when it was negatived *in toto*. One must rebel aginst a construction which would lead to such absurdities. The obvious meaning to be attached to sub-section (1) of section 17 in my view is that the word 'direction' under sub-sections (3) and (4) of section 15 of the Payment of Wages Act covers cases both when the direction is to pay and when there is a direction not to pay."

A contrary view has been taken in *Khema Nand* v. *East Indian Administration* (1), and *P. Kumar* v. *The Running Shed Foreman, E. I. Railway Administration* (2), In the Allahabad case Hamilton, J., held that the language of section 15 indicates that a direction is an order to one side to

(1) A.I.R. 1943 All. 243
(2) A.I.R. 1946 Oudh. 148

make a payment to the other side. When the application of the employee under section 15 is rejected as time-barred without even entering into the merits it must be taken that not merely was there no direction but that the application was not even entertained. There is nothing in the Act which provides for an appeal in such cases. The learned Judge examined the case reported in *Mir Mohammed Haji Umar* v. *Divisional Superintendent, N. W. Railway* (1), and held that although it is somewhat hard that there should not be an appeal in certain cases, it was difficult to hold that a refusal to make a direction is a direction. In dealing with this argument he expressed himself as follows :—

> "It may be that the Legislature held that if an employee had made good his claim in part he should have a right of appeal as regards the part as to which he had failed but the Legislature thought that if he had entirely failed then he had not made out a *prima facie* case so he should have no right of appeal".

A similar view was taken in *P. Kumar* v. *The Running Shed Foreman, E. I. Railway Administration* (2), In that case Thomas, C.J., held that the language of section 15 indicates that a direction under that section is an order to one side to make payment to the person to whom the wages are due. But where an application of the employee under section 15 has been rejected, it must be taken that there was no direction and hence no appeal lies against the order rejecting the application.

The construction which the Courts have placed on a similar provision in another enactment leads

(1) A.I.R. 1941 Sind. 191
(2) A.I.R. 1946 Oudh. 148

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me to the same conclusion. Section 39 of the Guardian and Wards Act empowers a Court to remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument and clause (g) of section 47 allows an appeal against an order *removing* a guardian. The Courts have held again and again that an order *refusing to remove* a guardian does not fall under that clause and is final and not appealable *Mohima Chunder Biswas* v. *Tarini Sunker Ghose* (1), *Pakhwanti Dai* v. *Indra Narain Singh* (2), *In Re. Bai Harkha* (3), *Imtiaz-un-Nissa* v. *Anwar-ul-Lah* (4), *Subedar Major Ram Kishan and others* v. *Thakur Dass* (5), *Majid Fatima Begam and others* v. *Ali Akbar* (6), *Venganat Raja Vasudeva Ravi Verma Raja Avergal* v. *Naithhilath Matathil Raman Kutty Menon and others* (7), *Suraj Narayan Sing.* v. *Bishambhar Nath Bhan* (8).

Had the Legislature intended that an appeal should lie not only from an order making a direction but also from an order refusing to make a direction, it could have had no difficulty in manifesting its intention in clear and unambiguous language as it has done in the various clauses of rule 1 of Order 43 of the Code of Civil Procedure. Clause (j), for example, provides that an appeal shall lie from an order under rule 72 or rule 92 of Order 21 setting aside or refusing to set aside a sale. Similarly, clause (l) declares that an appeal shall lie from an order under rule 10 of Order 22 giving or refusing to give leave. Again clause (m) confers a right of appeal from an order under rule 3 of Order 23, recording or refusing to record an agreement, compromise or satisfaction.

(1) I.L.R. 19 Cal. 487
(2) (1896) I.L.R. 23 Cal. 201
(3) (1896) I.L.R. 20 Bom. 667
(4) (1898) I.L.R. 20 All. 433
(5) (1912) 14 I.C. 56
(6) I.L.R. 42 All. 514
(7) 56 I.C. 199—206
(8) A.I.R. 1925 Oudh. 260

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The only inference that may reasonably be drawn from these provisions of law is that while the Legislature was anxious to confer a right of appeal against a direction made under section 15 of the Act of 1936, it did not wish to confer a similar right in respect of an order refusing to make a direction. Nor can such right be presumed on the ground only that it is somewhat unreasonable that while the Legislature had provided for an appeal where the claim was partially allowed by the Authority it had failed to provide for a remedy when the whole of the clai mwas refused. A right of appeal cannot be presumed on such vague surmisings and the Legislature cannot be presumed to have done something which the Courts consider it should have done. It has been held repeatedly that an appeal is a creature of the statute and that a right of appeal cannot be presumed unless it has been expressly conferred.

For these reasons, I have no hesitation in endorsing the view taken by the learned District Judge that no appeal lies from an order refusing to make a direction and that the appeal preferred in the present case could not be entertained. The petition will be dismissed but there will be no order as to costs.

HARNAM SINGH, J.—I concur in the order proposed by my learned brother. Harnam Singh, J.

B.R.T.

FULL BENCH

Before Bishan Narain Chopra and Gosain, JJ.

MELA RAM AND OTHERS,—*Petitioners*

versus

DHARAM CHAND AND AMRIT LAL,—*Respondents.*

Civil Revision No. 301/P-1953.

1957

Oct. 10th.

Code of Civil Procedure (Act V of 1908)—Section 144—Right to restitution under—When accrues—Whether enforceable by a miscellaneous application or by an application for