REVISIONAL CIVIL.

Before Bishan Narain and Grover, JJ.

SHRI RAM LUBHAYA BHATIA,—*Petitioner.*

versus

THE DIVISIONAL SUPERINTENDENT, NORTHERN RAILWAY, NEW DELHI,—*Respondent.*

Civil Revision No. 106-P of 1955.

1957

Nov., 20th

Payment of Wages Act (IV of 1936)—Sections 15 and 17—Application under section 15, dismissed—Appeal therefrom—Whether competent—Right of Appeal—Whether can be presumed.

Held, that no appeal lies under section 17 of the Payment of Wages Act, 1956, from an order refusing to make a direction or dismissing an application in toto under section 15 of the said Act.

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 the right of appeal cannot be presumed unless it has been expressly conferred.

Case referred by Hon'ble Mr. Justice Mehar Singh, Judge, PEPSU High Court, at Patiala, on the 6th February, 1956, to a larger bench for opinion on the legal point involved in the case and later on decided by a Division Bench consisting of Hon'ble Mr. Justice Bishan Narain, and Hon'ble Mr. Justice A. N. Grover, Judges of the Punjab High Court, at Chandigarh.

Petition under Section 115 of Civil Procedure Code for revision of the order of Sh. Ranjit Singh Sarkaria, District Judge, Sangrur, dated the 23rd May, 1955, affirming that of Sh. Kartar Singh, Sub-Judge, 1st Class, Sangrur, dated 10th March, 1955, dismissing the application of the petitioner.

DAYA SARUP NEHRA, for Petitioner.

DAYA KISHAN PURI, for Respondent.

ORDER

Mehar Singh, J.

MEHAR SINGH, J.—The petitioner is a Station Master in the employ of Northern Railway. He alleged that from 13th January, 1954, he was not being paid his full salary and unathorised deductions have been made from it by the railway administration. He, therefore, claimed a total of Rs. 630 as unauthorised deductions up to 2nd November, 1954. This comes out from his two applications made before the authority, the Subordinate Judge 1st Class of Sangrur. The position taken by the respondent was that since 14th January, 1954, the petitioner has been under suspension and has, according to the rules applicable to him, been paid half pay as allowance during suspension. It was stated in reply that the authority had no jurisdiction to go into the legality of the suspension of no appeal is competent under section 17(1) of the application.

The authority entertaining the application under section 15 of the Payment of Wages Act, 1936, dismissed the application on the ground that the petitioner was being paid subsistence allowance according to rules during the period of suspension and was not entitled to full wages. The order is dated 10th March, 1955. Against this order the petitioner went in appeal to the District Judge of Sangrur, who, by his order, dated 23rd May, 1955, has dismissed the appeal on the ground that no direction has been made by the authority and so no appeal is competent under section 17(1) of the said Act.

The petitioner has filed this petition against the order of the learned District Judge, first, as a revision petition under section 115, C.P.C., and secondly, as one under Article 227 of the Constitution.

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The question involved in this petition is whether or not an appeal was competent to the learned District Judge under section 17(1) of the said Act even though the authority dismissed the application of the petitioner and whether such dismissal can be said to be a 'direction' within the meaning and scope of that section ? The opinion of the learned Judges in various High Courts is not agreed on the answer to the question.

Of the cases relied upon on behalf of the petitioner, the first is *Mir Mohammed Haji Umar* v. *Divisional Superintendent, N. W. Railway* (1), in which the authority had dismissed the application on the ground that it was not competent. There was an appeal against the order and it was urged that there was no direction under subsection (3) of section 15 and so no appeal was competent under section 17 of the Act. The learned Judge held that the word 'direction' in section 17 should be taken to include a refusal to make a direction. He, therefore, over-ruled the objection. The second case is *C. S. Lal* v. *Shaikh Badshah and others* (2), in which a Division Bench of the Bombay High Court has held that "the right of appeal which is conferred is not limited to a case where the authority gives a direction to the employer to pay an amount to the employed person. The right of appeal would also arise if the authority refuses to give a direction in the sense that he holds on the merits of the application that the employee is not entitled to any amount ; in other words, he dismisses the application of the employee after considering the merits of his case." But in that case the application had been dismissed by the authority holding that it had no jurisdiction to entertain it and not on merits and the learned Judges were of the opinion that this did not amount to a 'direction'.

(1) A.I.R. 1941 Sind 191.
(2) A.I.R. 1955 Bom. 75

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It would thus appear that the observation of the learned Judges that an appeal under section 17 of the Act is competent when a direction is refused is obiter. The last case is *A. C. Arumugham and others* v. *Manager, Jawahar Mills, Limited, Salem Junction* (1). In this also a single Judge of the Madras High Court has held that an order rejecting a claim *in toto* is appealable, for the word 'direction' in subsection (1) of section 17 must be construed as including a refusal to make a direction. But here again the point was not directly in question and this observation is also in the nature of the obiter.

On behalf of the opposite side reliance is placed upon four reported cases and of those four cases *Khema nand* v. *East Indian Railway Administration* (2), really does not decide the point because in that case the authority refused to entertain the application and that was why the learned Judge held that refusal to entertain an application under section 15 of the Act is not refusal to give direction and therefore, no appeal under section 17 of the Act is competent. The second case is *P. Kumar* v. *The Running Shed Foreman E. I. Railway Administration* (3), in which this point arose directly and Thomas, C.J., has held that under section 17 an appeal may be preferred against a direction made under section 15(3) or (4). 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 an order rejecting the application. Same view has been taken by a Division Bench of the

(1) A.I.R. 1956 Mad. 79
(2) A.I.R. 1943 All. 243
(3) A.I.R. 1946 Oudh. 148

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Calcutta High Court in *Rajendranath Karmakar and others* v. *Manager, French Motor Car Co., Ltd.* (1), The last case is *Mohd Matin Kidwai* v. *District Executive Engineer, N. E. Railway* (2), in which relying upon *P. Kumar* v. *The Running Shed Foreman, E. I. Railway Administration* (3), the learned Judges have held that in the case of rejection of an application under section 15, no appeal lies under section 17 of the Act.

It will be seen that even dropping from consideration those cases in which the point was not directly for decision, there is conflict of judicial opinion. There is no reported case of this Court on the point. I am inclined to agree with the opinion in *Mir Mohamed Haji Umar* v. *Divisional Superintendent, N. W. Railway* (4), because, as the learned Judge has pointed out, an employee has a right of appeal when his claim is allowed only in part and the result is somewhat remarkable if the argument is accepted that he has no right of appeal when his claim is rejected *in toto*. But it is an important question and I consider it proper that it should be authoritatively decided by a larger Bench. The case will, therefore, be placed before the Hon'ble the Chief Justice for constitution of the Bench.

JUDGMENT

Grover, J.

GROVER, J.—The question involved in this petition for revision which has been referred to a Division Bench is whether there is any right of appeal under section 17(1) of the Payment of Wages Act,

(1) A.I.R. 1952 Cal. 928
(2) A.I.R. 1955 All. 180
(3) A.I.R. 1946 Oudh. 148
(4) A.I.R. 1941 Sind. 191

1936, (hereinafter called the Act) when an application under section 15 has been dismissed by the Authority constituted under the Act.

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Briefly the facts are that the petitioner is a Station Master in the employ of Northern Railway. He filed two applications under the Act. His allegations were that since 13th January, 1954, he had not been paid his salary in full and that unauthorised deductions had been made therefrom by withholding increments in contravention of the Act. He claimed a refund of Rs. 1,130 and also compensation at ten times the amounts deducted by the Railway Administration. The position taken by the respondent was that the petitioner had been under suspension and had been paid half pay as allowance during the period of suspension in accordance with the rules. It was further stated that the Authority had no jurisdiction to go into the legality of the suspension of the petitioner.

On 10th March, 1955, the Authority dismissed the application on the ground that the petitioner was being paid subsistence allowance during the period of suspension and was not entitled to full wages. Against this order the petitioner preferred an appeal to the District Judge of Sangrur. By his order dated 23rd May, 1955, the District Judge dismissed the appeal on the ground that no direction had been made by the Authority and, therefore, no appeal was competent under section 17(1) of the Act. The petitioner then preferred a petition for revision to the then Pepsu High Court which was heard by Mehar Singh, J., who noticed the conflict of authority on the question and referred the matter for decision by Division Bench.

Section 17 confers the right of appeal against a direction made under subsection (3) or subsection (4) of section 15 of the Act and if the appeal

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is by the employer or other persons 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. If the appeal is by an employed person then the total amount of wages claimed to have been withheld from him should exceed rupees fifty A difficulty has arisen with regard to the meaning and interpretation of the word "direction". A similar point came up for decision before a Division Bench of this Court in Civil Revision No. 54 of 1947, decided on 27th December, 1948. It was contended before the Bench that the word "direction" was synonymous with the expression "order" and even if the application under section 15 was dismissed that would amount to an order and an appeal would lie from the said order. It was contended, on the other hand, that the word "direction" must be regarded as a positive order directing one person to make a payment to the other. Bhandari, J., as he then was, examined the matter fully and after discussing the relevant authorities came to the following conclusion :—

> "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 claim was refused."

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The view that no appeal lay from an order refusing to make a direction was approved. That decision must be followed by this Court unless it can be shown that it was erroneous in which case the matter might have to be examined by a larger Bench.

Mr. D. S. Nehra, has invited our attention to several cases according to which an order refusing to make a direction under section 15(3) of the Act is appealable under section 17(1). He has relied particularly on *Mir Mohd . Haji Umar* v. *Divisional Superintendent, N. W. Railway* (1), *C. S. Lal* v. *Shaikh Badshah and others* (2), *A. C. Arumugham and others* v. *Manager, Jawahar Mills, Limited Salem Junction* (3), *Payment of wages Inspector M. B. Government and another* v. *Bramhodatta Bagrodia* (4), *Anant Ram and others* v. *District Magistrate Jodhpur and another* (5),

The Sind case was examined in the previous judgment of this Court, but the view of Weston, J. was not followed. Mr. Nehra has not been able to point to any particular reasoning which may have escaped the notice of the Bench.

In *C. S. Lal* v. *Shaikh Badshah and others* (2), the question was whether the Authority under the Payment of Wages Act, 1936, had jurisdiction to entertain the application and an objection was taken that the petition was not maintainable inasmuch as there was a right of appeal under section 17 of the Act. In that connection it was observed that the right of appeal which had been conferred by section 17 was not limited to a case

(1) A.I.R. 1941 Sind 191
(2) A.I.R. 1955 Bom. 75
(3) A.I.R. 1956 Mad. 79
(4) A.I.R. Madhya Bhtrat 152
(5) A.I.R. 1956 Rajasthan 145

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where the Authority gave a direction to the employer to pay an amount to the employed person. The right of appeal would also arise if the Authority refused to give a direction in the sense that it held on the merits of the application that the employee was not entitled to any amount. In this case there is hardly much discussion of the exact point which is involved in the present case nor is the contrary view examined at all.

In *A. C. Arumugham and others* v. *Manager, Jawahar Mills, Ltd., Salem Junction* (1), Ramaswami, J., was of the view that an order rejecting a claim *in toto* was appealable under section 17(1) of the Act, for the word "direction" in subsection (1) must be construed as including a refusal to make a direction. It was observed at page 84 :

> "The limits in regard to preferment of appeal from directions or orders are as follows. An order rejecting a claim *in toto* is also appealable, for the word 'direction' in subsection (1) must be construed as including a refusal to make a direction: *Mir Mohd Haji Umar* v. *Divisional Superintendent, N. W. Railway* (2), *Rajendranath Karmakar and others* v. *Manager, French Motor Car, Co. Ltd.* (3), *P. Kumar* v. *The Running Shed Foreman, E. I. Railway Administration* (4), *Khemanand* v. *East Indian Railway Administration* (5)."

It is true that the Sind case supported this view, but it is not understood how the Oudh case has been pressed into service in favour of the aforesaid view. In the Oudh case Thomas, C.J., held

(1) A.I.R. 1956 Mad. 79
(2) A.I.R. 1941 Sind. 191
(3) A.I.R. 1952 Cal. 928
(4) A.I.R. 1946 Oudh. 148
(5) A.I.R. 1943 All. 243

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that the language of section 15 indicated that a direction under that section was an order to one side to make payment to the person to whom the wages were due. But where an application of the employee under section 15 had been rejected, it must be taken that there was no direction and hence no appeal lay against the order rejecting the application.

The Allahabad and the Calcutta cases referred to by the learned Judge of the Madras High Court also supported the view of Thomas, C. J., expressed in the Oudh case.

In *Payment of Wages Inspector, M. B. Government and another* v. *Bramhodatta Bagrodia* (1), Dixit, J., dissented from *P. Kumar* v. *The Running Shed Foreman, E. I. Railway Administration* (2), and came to the conclusion that the word "direction" in section 17(1) with reference to an appeal by an employed person must be construed as including a refusal to make a direction and an appeal would be perfectly competent against an order rejecting on merits an application of the employee under section 15. Even Dixit, J., had to agree that the use of the words "direction made" in section 17 no doubt lent support to the contention that it was only a positive direction made under section 15(3) or section 15(4) which was appealable under section 17. He decided more on the unfortunate result which follows if the Oudh and the Allahabad view were to be accepted, namely, that there would be a right of appeal if the claim is allowed even to a very small extent but that no appeal would be competent if there was total rejection.

Wanchoo, C. J., and Modi, J., considered this question in *Anant Ram and others* v. *District Magistrate* (3), They were of the opinion that though sec-

(1) A.I.R. 1956 Madhya Bharat 152
(2) A.I.R. 1946 Oudh. 148
(3) A.II.R. 1956 Raj. 145

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tion 15(3) did not say in so many words that the Authority might refuse to give a direction, it was obvious that it had the power to refuse to give a direction on the merits. That refusal would obviously be an order under section 15(3), and amounted to a direction that nothing was due to the employee. The main reason given for taking this view was that the right of appeal given under section 17 to an employee did not depend upon the amount disallowed, but upon the total amount of the claim which must be more than Rs. 50. Wanchoo, C . J., prefered the Sind and the Bombay view to the Calcutta, Allahabad and Oudh view.

In *Mohd. Matin Kidwai* v. *District Executive Engineer, N. E. Railway, Izatnagar and another* (1), Raghubar Dayal and Roy, JJ., examined the question at length and followed the Oudh and previous Allahabad view and did not accept the Sind and Bombay view. The Allahabad Bench considered the illogical and curious result which flowed from the acceptance of the aforesaid view but made the following observations which deserve notice :—

> "It is not necessary to elucidate this logical position for the purpose of this case, as we are of opinion that even if the interpretation of the precise language used in the statute leads to that conclusion the court is not to interpret the precise language in any different manner merely because the Legislature had not been logical in providing for all the eventualities in connection with the certain dispute."

The previous Bench decision of this Court adopted a similar view and if such a view is

(1) A.I.R. 1955 All. 180

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plausible and can be taken there seems to be no reason why the same should not be accepted for the purposes of this case. As was observed by Bhandari, J., as he then was, 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 the right of appeal cannot be presumed unless it has been expressly conferred.

Mr. D. S. Nehra has not been able to give any cogent and strong reasons which should persuade us to differ from the view already adopted by this Court and which has also prevailed in the Calcutta, Ahmedabad and Oudh Courts. No question, therefore, arises of referring this matter to a larger Bench, as has been strenuously urged by Mr. Nehra.

It will be proper to point out that the provision relating to appeal in the Act certainly needs amendment by the Legislature inasmuch as section 17, as it stands at present, has led to a great deal of conflict of opinion which has already been noticed. It does seem very anomolous that there should be a right of appeal if any direction is made in favour of an employee, say for a refund of only rupee one, but that there should be no right of appeal if his claim is dismissed *in toto*. It is high time that the Legislature made its intention clearer. For the present, however, it must be held that no appeal lies from an order refusing to make a direction or dismissing an application *in toto* as was done in the present case.

The counsel for the respondent contends that there are other points involved apart from the question of law referred to the Bench. This matter must, therefore, be set down for hearing before a learned Single Judge for final disposal. There will be no order as to costs.

Bishan Narain, J.

BISHAN NARAIN, J.—I agree.