authority has to be made in a fair and just manner with a judicial approach. The rules of natural justice are beyond doubt attracted in such a case and it would be highly arbitrary if an employee is imposed on a Committee without giving it an opportunity to place its view point before the State Government.

(4) In the instant case, there has been a grave violation of the rules of natural justice in reversing the order of the Administrator and of the Deputy Commissioner on appeal without affording an opportunity to the Committee to be heard in support of those orders.

(5) For the foregoing reasons the writ petition is allowed with costs and the impugned order, Annexure "B", passed by the State Government, whereby respondent 4 was reinstated in service of the Municipal Committee, Kharar, quashed. The costs will be paid by the State to the petitioner. Counsel's fee is assessed at Rs. 200.

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*N. K. S.*

REVISIONAL CIVIL

*Before Harbans Singh, C.J. and Gurdev Singh, J.*

THE DIVISIONAL PERSONNEL OFFICER, DELHI DIVISION NORTHERN RAILWAY, NEW DELHI, ETC.—*Petitioners.*

*versus*

JASWANT RAI ETC.,—*Respondents.*

**Civil Revision No. 389 of 1969**

April 27, 1972.

*Payment of Wages Act (IV of 1936)—Section 15—Authority under—Whether has jurisdiction to go into the legality of the order of the punishing authority resulting in the deduction of wages.*

*Held*, that the Authority under section 15 of the Payment of Wages Act, 1936, dealing with the claims arising out of deductions made in the payment of wages can go into the question as to whether the authority imposing punishment resulting in the deduction of wages had the jurisdiction and that its order is not in violation of any mandatory provision of law. If the order of the punishing authority on the face of it is valid and is *prima facie* not contrary to any provision of law or relevant

rules, the Authority dealing with the claim under section 15 of the Act has no option but to give effect to that order. If, on the other hand, the objection raised necessitates some enquiry or involves complicated question of law or fact, such authority is not competent to go into that matter. (Para 9).

*Case referred by Harbans Singh, C.J. to the Division Bench for decision of an important question of law and the Division Bench consisting of Hon'ble Harbans Singh C.J. and Gurdev Singh, J, finally decided the case.*

*Petition under Article 227 of the Constitution of India, praying hat the impugned order dated 20th January, 1969 of respondent No. 2 be revised and set aside with costs throughout.*

H. S. Gujral, Advocate, *for the petitioners.*

Mrs. Surjit Bindra, Advocate and Surjit Singh, Advocate, *for the respondents.*

JUDGMENT

Judgment of the Court was delivered by:—

GURDEV SINGH, J.—This order will dispose of Civil Revision Petitions Nos. 389 of 1969 and 389-A of 1969, which are directed against the order of the Authority, under the Payment of Wages Act, Ambala City, whereby the respondents' applications under section 15(2) of the Payment of Wages Act, 1936 (hereinafter referred to as the Act), for recovery of the amounts deducted from the wages because of the stoppage of their increments have been allowed. In view of the fact that they raise common question of law with regard to the competence of the Appellate authority under the Act to go behind the order of the punishing authority, my Lord, the Chief Justice, before whom these petitions originally came up, referred these cases for decision to this Bench.

(2) Jaswant Rai and Bhagwati Parshad, the respondents before us, were awarded punishment of stoppage of increments for one and two years respectively by competent authority as a result of enquiries held against them on various charges, the details of which are not relevant for our purposes. Both had applied for recovery of the amounts deducted from their wages because of stoppage of their increments. The Authority appointed under the Act had allowed their prayer holding that the orders stopping their increments were illegal. The short question that arises for our consideration is whether the Authority appointed under the Act has the jurisdiction to go into the validity of these orders of he punishing auhority.

(3) Before dealing with that question, it may be observed here that in both the cases before us, the orders of the punishing authority do not give any reasons in support of its findings that the charges against the respondents Railway officials were proved. In holding that these orders were un-enforceable, the Authority appointed under the Act has relied upon *Debi Deen* v. *the Divisional Operating Superintendent, Northern Railway and others* (1) and the rule of law laid down by their Lordships of the Supreme Court in *Ganeshi Ram, etc.* v. *District Magistrate and another* (2), that the order of quasi-judicial authority must state reasons on which it proceeds. Reliance was further placed upon paragraph 1716 of the Railway Establishment Code (hereinafter referred to as the Code), which lays down the procedure for imposing minor penalties and prescribes that the record of proceedings in such cases shall include the order on the case together with reasons therefor.

(4) The question whether the Authority under the Act had the jurisdiction to pronounce upon the validity of the order of punishment is not *res integra*. There has been a considerable divergence of opinion on this matter to which a reference is made in some of the earlier decisions of this Court. It will suffice here to refer to *N. Venkatyaradan* v. *Sembiam Saw Mills* (3) and *Union of India* v. *Babu Ram* (4). *In Venkatyaradan's case* (3) (supra) it was ruled that the question whether the services of a Government employee had been validly terminated was a matter outside the scope of the Authority appointed under the Act. Similar view was taken by the Bombay High Court in *A. R. Sarin* v. *B. C. Patil and another* (5) and in *Viswanath Tukaram* v. *General Manager, Central Railway and others* (6). Dhavan J., of the Allahabad High Court however, did not agree with this view and ruled in *Union of India* v. *Babu Ram* (4), that the Authority under the Act could determine whether the termination of services or dismissal of employees were wrongful.

(5) The scope of the jurisdiction of the Authority appointed under the Act has been considered by their Lordships of the

(1) A.I.R. 1968 All. 355.
(2) A.I.R. 1967 S.C. 356.
(3) A.I.R. 1955 Mad. 597.
(4) A.I.R. 1962 All. 52.
(5) A.I.R. 1951 Bom. 423.
(6) A.I.R. 1958 Bom. 111 (F.B.)

Supreme Court in *Shri Ambica Mills co., Ltd.* v. *Shri S. B. Bhatt and another* (7), where it was observed as follows:—

> "In dealing with claims arising out of deductions or delay made in payment of wages the authority inevitably would have to consider questions incidental to the said matters. In determining the scope of these incidental questions care must be taken to see that under the guise of deciding incidental matters the limited jurisdiction is not unreasonably extended. Care must also be taken to see that the scope of these incidental questions is not unduly limited so as to affect or impair the limited jurisdiction conferred on the authority. * * * *
>
> But we do not propose to consider these possible questions in the present appeal, because, in our opinion, it would be inexpedient to lay down any hard and fast or general rule which would afford a determining test to demarcate the field of incidental facts which can be legitimately considered by the authority and those which cannot be so considered."

(6) There are three decisions of this Court in which the extent of the jurisdiction of the Authority under the Act had been considered. In *Union of India and others* v. *Joginder Singh* (8), S. S. Dulat and D. K. Mahajan, JJ., after adverting to *Shri Ambica Mills' case* (7) and noticing divergence of opinion between Bombay and Allahabad High Courts, expressed their agreement with the view taken by the Bombay High Court observing as follows:—

> "To us, there seems to be no inconsistency whatever in the matter. As observed by the Supreme Court in *Shri Ambica Mills's case* (7), the tribunal while dealing with the matters which it is called upon to decide under the Act would have to consider questions incidental to the said matters, that is, the questions incidental to the claims arising out of deductions or delay made in payment of wages. Incidental questions in the contest means really incidental and not such questions as would rightly require determination by the ordinary courts of land. The decided

(7) A.I.R. 1961 S.C. 970.

(8) C.M. No. 566 of 1962 decided on 10th October, 1962.

cases really turn, in our view, on the basis—where simple questions of fact are required to be determined, the tribunal would go into them and determine them but, where complicated questions of law and particularly as to the interpretation of the Constitution of India are to be determined, the tribunal will not go into such matters or in other words the tribunal will have no jurisdiction to deal with such matters. The question in this case is one primarily of the interpretation of the Constitution of India and that is hardly a matter which can be envisaged to have been entrusted to the tribunal for decision. It is a fundamental rule of law that the jurisdiction of the special tribunal should not be enlarged. All civil matters fall for determination by the Civil Courts and whenever their jurisdiction is sought to be ousted the ouster has to be precise and clear. It cannot be implied. Therefore both on principle and on authority, it seems to us that the view of the Bombay High Court to the effect that the tribunal has no jurisdiction to determine the question of the legality and validity of the order terminating the petitioner's services is correct and decision of Dhavan, J., with utmost respect, does not seem to lay down a correct rule of law."

In another Bench decision *Divisional Superintendent, Delhi Division, Northern Railway* v. *Satvender Nath Kapur Chand and another* (9), C. B. Capoor and P. C. Pandit, JJ., held that where the punishing authority imposed punishment of withholding increments in violation of paragraphs 1702 and 1712 of the Code, the Authority could validly hold that the loss of wages resulting from the order amounted to unauthorised deduction from wages under Explanation 11 to section 7(1) of the Act. That decision is, however, distinguishable on facts as the Divisional Superintendent who made the order was not competent to make the impugned order. While disposing of that case, the learned Judges observed—

"Actually it is not really necessary in this case to direct one's attention to the question whether there was good and sufficient cause or not for the imposition of the penalty under the impugned order, because it is abundantly clear

(9) A.I.R. 1964 Pb. 242.

that the Divisional Superintendent did not have the jurisdiction to make that order."

(7) Both these Bench decisions were considered by A. N. Grover J (now Hon'ble Judge of the Supreme Court), in *Divisional Personnel Officer, Northern Railway, Delhi Division*, v. *Guru Dass* (10). In that case the Authority under the Act, held that the penalty of withholding of increment for one year imposed by the Assistant Mechanical Engineer, Delhi Division, on the Railway employee concerned was not a valid order as the procedure prescribed in paragraph 1716 of the Code had not been observed. On a reference to the various authorities bearing on the point and decisions of their Lordships in *Shri Ambica Mills's case* (7) (supra) and *Ganeshi Ram etc.* v. *The District Magistrate and another* (2), it was held that the Authority under the Act was competent to pronounce upon the legality and validity of the order by which the punishment of withholding of increment had been imposed. In coming to this conclusion, the learned Judge observed as follows:—

"While the trend of decisions is that the legality and validity of reversion and dismissal etc., from service cannot be enquired into by an authority under the Act, the present case relates to a different point. Moreover, Mr. Partap Singh had not been able to show that the notification which had been relied upon by Capoor J. in *Divisional Superintendent, Delhi Division, Northern Railway* vs. *Satvander Nath, etc.* (9) and which had been issued pursuant to Explanation II to sub-section (1) of section 7 of the Act, came up for consideration in any of the cases cited by him. I am bound by the Bench decision and respectfully following the same I would affirm the orders of the learned District Judge. * * *".

This Single Bench decision and the decision in *Divisional Superintendent, Delhi Division, Northern Railway* v. *Satyender Nath Kapur Chand and another* (9) (supra) are clearly distinguishable on facts from the case before us as in both those cases it was found that the order of the punishing authority was in contravention of paragraph 1712 of the Code and without jurisdiction. In the present case there is no complaint that the order was made without jurisdiction or in violation of the procedure laid down in paragraph 1712 of

(10) C.R. No. 46 of 1966 decided on 12th May, 1967.

the Code. It has been struck down merely on the ground that it does not disclose reasons on which it proceeds. Had any reasons been indicated in the order, it could validly be urged that the Authority appointed under the Act had no jurisdiction to go into their sufficiency or correctness. It is in clear violation of paragraph 1716 of the Code, clause (b) whereof specifically lays down that record of such proceedings shall include order together with reasons therefor. The order on the face of it is in violation of the mandatory provisions governing enquiries in which it was made.

(8) Though in the case before us there is no complaint that the authorities imposing the punishment lacked jurisdiction, it is, however, urged that the orders passed by them were clearly in violation of rules 1702 and 1716 of Discipline and Appeal Rules for Non-Gazetted Staff, contained in Chapter XVII of Conduct and Discipline Rules, Volume I and, accordingly the ratio of the above two cases will apply. We find good deal of force in this contention. Rule 1702 expressly lays down that the various penalties mentioned therein, including that of withholding of increment, may be imposed "for good and sufficient reasons". This clearly implies that the order imposing such penalties must state the reasons in support of it. Rule 1716 prescribes that the record maintained by the authority imposing any penalty under the rules in that Chapter shall contain *inter alia* "the finding and the reasons therefor". It is, thus, obvious that the orders of withholding increments of the respondents in both the cases before us are violative of both those rules. In coming to the conclusion that the orders were bad in law and could not be given effect to, the Authority dealing with the respondents' applications under section 15(2) of the Act had merely to look to these rules and had not to embark upon any elaborate enquiry or discussion of any complicated questions of law or fact. In doing so, it discharged its duty by going into an incidental question, which, according to the decisions of the Supreme Court in *Shri Ambica Mills* (7) and *Ganeshi Ram's* (2) cases, it was competent to do.

(9) What emerges from the various decisions of this Court and those of the Supreme Court, to which reference has been made earlier, is that the Authority dealing with the claims under section 15 of the Act can go into the question whether the order of the authority imposing punishment had the jurisdiction and that its order is not in violation of any mandatory provision. In the order on the

face of it is valid and is *prima facie* not contrary to any provision of law or relevant rules, the Authority dealing with the claim under section 15 of the Act has no option, but to give effect to that order. If on the other hand the objection raised necessitates some enquiry or involves complicated question of law or fact, the Authority concerned will not be competent to go into the matter.

(10) Reference may here be made to section 7 of the Act that lays down the "deductions which may be made from wages". Explanation II to section 7(1) of the Act provides:—

> "Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, namely:—
>
> (i) the withholding of increment or promotion (including the stoppage of increment at an efficiency bar);
>
> (ii) the reduction to a lower post or time scale or to a lower stage in a time scale; or
>
> (iii) suspension;
>
> shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette."

This clearly indicates that where a part of the claim relates to increment withheld, the Authority dealing with the claim has to see whether the deductions from wages in such cases on that account are in conformity with the rules framed by the employer for imposition of any such penalty, if any, as may be specified by the State Government in the Official Gazette. Section 7(2) of the Act lays down the deductions that can be made from the wages of an employed person. In clause (h) thereof such deductions include "deductions required to be made by order of a Court or other authority competent to make such order".

(11) This further makes it clear that a deduction on account of stoppage of increments will be taken as a valid deduction only if the order under which it is made is passed by competent Court or a authority. This clearly contemplates that the Authority dealing

with the application for recovery of wages is competent to determine whether the order imposing punishment of stoppage of increment has been made by competent Court or the authority and strengthens the conclusion to which we have already arrived at.

(12) We accordingly find that none of the impugned orders of the Authority appointed under section 15(2) of the Act suffers from any infirmity. Both the petitions, thus, fail and are dismissed with costs.

*B. S. G.*

APPELLATE CIVIL

*Before H. R. Sodhi and Rajinder Nath Mittal, JJ.*

UNION OF INDIA,—*Appellant.*

*versus*

NAND LAL, ETC.,—*Respondents.*

**Regular First Appeal No. 84 of 1961**

May 1, 1972.

*Evidence Act* (1 *of* 1872)—*Sections* 101 *to* 104—*Code of Civil Procedure* (*Act V of* 1908)—*Order* 21 *Rule* 63—*Assertion of a transaction being* benami—*Burden of proof of*—*On whom lies*—*Such burden*—*Whether shifts in a suit under Order* 21 *Rule* 63 *of the Code*—*Benami nature of a transaction*—*Factors for the determination of*—*Stated.*

*Held,* that a purchase is to be assumed for the benefit of the person whose name appears as a purchaser in the document of sale unless subsequent dealing with the property and other proved or admitted facts show that the transaction is sham or *benami.* The burden of proof must, under the law as stated in sections 101 to 104 of the Indian Evidence Act, lie on the person who wishes the Court to believe in the existence of any fact and the averments as to *benami* transactions do not form an exception to the rule. The burden of proving *benami* is, therefore, always on the person who alleges it. It is only when a plaintiff wants to go behind the judgment of the executing Court and asserts the same claim which has once been rejected on merits by that Court under Order 21, Rule 61, Code of Civil Procedure, though in a summary manner, that a presumption arises in favour of the successful party in those proceedings and the burden of proof shifts to the plaintiff to establish contrary to what has been held by the executing Court. Where the executing Court has adjudicated on merits upon the nature of the claim and found the same to be