Gopichand Khoobchand Sharma and ors. Vs. Works Manager, Loco-shops, Western Railway, Dohand and anr.

LegalCrystal Citation : legalcrystal.com/736570

Court : Gujarat

Decided On : Jun-25-1965

Reported in : AIR1967Guj27; (1966)GLR291

Judge : P.N. Bhagwati and; N.G. Shelat, JJ.

Acts : Constitution of India - Articles 226 and 227; Payment of Wages Act, 1936 - Sections 7, 7(2), 8, 15, 15(2), 15(3), 24 and 26; Indian Railway Establishment Code - Rule 2044; Payment of Wages (Railways) Rules, 1938 - Rule 14

Appeal No. : Special Civil Appln. Nos. 600, 781 and 782 of 1962

Appellant : Gopichand Khoobchand Sharma and ors.

Respondent : Works Manager, Loco-shops, Western Railway, Dohand and anr.

Advocate for Def. : S.K. Agarwal, Adv.

Advocate for Pet/Ap. : V.B. Patel, Adv. In Spl C.A. No. 600/62 and; M.P. Mehta, Adv. In Spl. C.A. Nos. 781 and 782 of 1962

Judgement :

Bhagwati, J.

(1) The principal question which arises in these petitions relates to the scope and ambit of the power of the Authority under the Payment of Wages Act, 1936 (hereinafter referred to as `the Act') in relation to an application made by an employed person for deducted wages under Section 15 where the claim for deduction is sought to be supported by the employer by reference to the provisions of Section 7(2)(h). The facts giving rise to the petitions are identical save for the name of the petitioner and the amount involved in each case and it will, therefore, be convenient if we set out the facts relating to the petitions together. The petitioner in the first petition was at all material times employed as a material Examiner in the Loco Shop, the petitioner in the second petition was employed as a Fitter in the Electrical Workshop and the petitioner in the third petition was employed as a Fitter in the R.M. Shop of the Western Railway Administration at Dohad. In respect of an incident which took place on 29th March 1955 the petitioners were prosecuted in the Court of the Judicial Magistrate, First Class, Dohad for offences under Sections 147, 332, 342 and 427 read with Section 149 of the Indian Penal Code and the prosecution resulted in the conviction of the petitioners for those offences by the learned Magistrate. On the strength of the conviction so recorded against them, the petitioners were dismissed from service without holding a departmental enquiry by three separate orders dated

22nd March, 1956. The petitioners thereafter preferred an appeal to the Sessions Court, Panchamahals at Godhra, and the learned Sessions Judge allowed the appeal and acquitted the petitioners. The State carried the matter further in revision to the High Court but the High Court by an order dated 1st March 1957 rejected the revision application of the State and confirmed the acquittal of the petitioners. In view of this order passed by the High Court, the General Manager of the Western Railway Administration by an order dated 4th January 1958 reinstated the petitioners in service and in regard to the intervening period between the date of dismissal and the date of rejoining service, directed that the period shall be treated as 'leave with pay to the extent due and the balance as leave without pay'. This last direction was given by the General manager in exercise of his powers under Rule 2044 of the Rules formed by the Government of India, Ministry of Railways, and published in Indian Railway Establishment Code. There was some dispute between the parties as to which Rule 2044 was in force at the time when this order was made by the General Manager; the 1951 edition of the Indian Railway Establishment Code set out Rule 2044 is one form while the 1958 edition of that Code set out Rule 2044 in a revised form. According to the petitioners there was nothing to show when the revised Rule 2044 came into force and the validity of the order made by the General Manager, was therefore, required to be judged by reference to the old rule, while the respondents contended that it was the revised rule which was in force at the relevant time and that governed the validity of the order of the General Manger. We shall advert to this controversy a little later when we deal with the arguments urged on behalf of the parties though we may point out at this stage that in the view we are taking of the main questions of construction, if would be unnecessary to decide the controversy. Proceeding further with the narration of facts following upon the order of the General Manager and in compliance with it , the Works Manager by a separate letter dated 6th January, 1958, intimated to each of the petitioners in the first two petitions that he was reinstated in service, and should, therefore, join duty immediately and that the intervening period between the date of the dismissal and the date of actual rejoining of service. Would be treated as leave with pay to the extent due and the balance as leave without pay. A similar intimation was also given to the petitioner in the third petition by the Divisional Electrical Engineer by a letter of the same date. Each of the petitioners accordingly rejoined duty immediately on 6th January 1958. Thereafter while making payment of wages for the period between the date of dismissal and the date of rejoining the duty of the Works Manager in the case of the petitioners in the first two petitions and the Divisional Electrical Engineer in the case of the petitioner in the third petition gave effect to the direction contained in the order of the General Manager and as result of carrying out the direction the Works Manager deducted a sum of Rs.2513.13 in the case of the petitioner in the first edition and a sum of R.2,985.26 Np. in the first case of the petitioner in the third petition from the wages which would have been payable to each of the petitioners under his contract of service if there had been no order of dismissal and subsequent reinstatement. Each of the petitioners thereupon preferred an application to the Authority under the Act under Section 15 for a direction requiring the Works Manager in the case of the first two petitioners and the Divisional Electrical Engineer in the case of the third petitioner to refund the respective amounts of deducted wages. The applications were opposed on various grounds and one of the contention based on behalf of the Works Manager in the case of the first two petitioners and the Divisional Electrical Engineer in the case of the third petitioner to refund the respective amount of deducted wages. The applications were opposed on various grounds and one of the contentions raised on behalf of the Works Manager and the Divisional Electrical Engineer was that reinstatement amounted to 're-employment'

and that during the intervening period, there was no relationship of master and servant between the petitioners and the Railway Administration which would entitle the petitioner to make applications to the Authority for deducted wages under Section 15 of the Act. This contention found favour with the Authority and the Authority upholding this contention rejected the applications. The petitioners thereupon preferred appeals against the decision of the Authority in each of the applications but the appeals were also dismissed by the District Court on the ground that the District Court had no jurisdiction to entertain the appeals. The petitioners were thereupon driven to file petitions under Articles 226 and 227 of the Constitution in the High Court challenging the view taken by the Authority. The petitions came up for hearing before a Division bench of the High Court consisting of S.T. Desai, C.J., as he then was and Bakshi, J. The Division Bench allowed the petitions by a common judgment delivered on 7th November 1960. The learned Chief Justice who delivered the judgment could not be regarded as one resulting in re-employment of the petitioners and writ of certiorari was accordingly issued quashing the order of the Authority and the applications were sent back to the Authority for disposal according to law.

(2) When the applications once again came up for hearing before the Authority, the main contention raised on behalf of the Works Manager and the Divisional Electrical Engineer was that the deductions made by them were permissible under Section 7(2)(h) of the Act and that the petitioners were therefore, not entitled to the relief claimed by them. The Authority, however, rejected this contention and granted relief to the petitioners. From this decision of the Authority followed appeals to the District Court of Panchmahals at Godhra and the appeals were heard by the learned District Judge. The learned District Judge upheld the contention urged on behalf of the Works Manager and the Divisional Electrical Engineer and upheld that the deductions made by them being deductions coming under Section 7(2)(h) of the Act were permissible and no claim for deducted wages could therefore, be sustained by the petitioners. The learned District Judge in this view of the matter allowed the appeals, set aside the orders of the Authority and dismissed the applications. The petitioners being dissatisfied with this order passed by the learned District Judge preferred the present petitions challenging the view taken by the learned District Judge.

(3) The Works Manager and the Authority under the Act were joined as respondents in the First Petition but the learned District Judge whose order formed the subject matter of challenge in the petition was not joined as a party respondent to the petition. A preliminary objection was, therefore, raised on behalf of the respondents in the first petition, namely, that in the absence of the District Judge the petition was not maintainable. Now there can be no doubt that in a petition for relief under Article 226, the Tribunal whose order is impugned in the petition must be made a party to the petition so that the writ sought from the Court can go against the Tribunal, but if the petition is for relief under Article 227, it is well settled that the Tribunal whose order is impugned in the petition need not be made a party to the petition. The reason is that by entertaining a petition under Article 227 the High Court does not seek to exercise jurisdiction to issue any high prerogative writ; the jurisdiction which the High Court exercises under Article 227 is of superintendence - a jurisdiction somewhat analogous to the revisional jurisdiction which the High Courts have under diverse statutes and just as in application for revision it is not necessary to make the Court whose order is sought to be revised a party to the application, so also in a petition invoking the jurisdiction of the High Court under Article 227, the Tribunal whose order is sought to be challenged is not a necessary party (See the decision

dated 5th May 1964 given by the Supreme Court in Muhammad Enamual Haque v. Muhammad J. Hussain, Civil Appln. No. 985 of 1963 (SC). This being the legal position, Mr. V.B. Patel, learned advocate appearing on behalf of the petitioner stated that he was limiting the relief claimed in the petition of Article 227 and that he was not pressing the claim for relief under Article 226. In view of the statement made by Mr.V.B. Patel, the preliminary objection raised on behalf of the respondents does not survive.

(4) Turning to the merits of the petition, the main ground on which the order of the learned District Judge was challenged was that the deductions made by the Works Manager and the Divisional Electrical Engineer did not fall within Section 7(2)(h) of the Act. It was contended on behalf of the petitioners that in order that an impugned deduction may be justifiable under Section 7(2)(h), the orders of the Court or other competent authority pursuant to which the impugned deduction is made must be a valid and legal order and not a nullity and if the impugned deduction is made pursuant to a null and void order which is no order at all in the eye of the law, it would not be a permissible deduction under Section 7(2)(h). The petitioners did not dispute that the General Manager was the competent authority under Rule 2044 to make the order dated 4th January 1958 but contended that the said order was null and void and the deductions made pursuant to it were therefore not covered by Section 7(2)(h). There were two grounds in the main on which the order of the General Manager to order deduction from wages under Clause (b) of Rule 2044 that the petitioners were not honourably acquitted and this condition was not fulfilled since it was clear from the judgments in the criminal case that the petitioners were honourably acquitted and the order of the General Manager under Clause (b) of R. 2044 was therefore without jurisdiction. It was no doubt true that the General Manager took the view that the petitioners were not honourably acquitted and that is why he made the order under clause (b) of Rule 2044 but the question whether the petitioners were honourably acquitted or not was a collateral question on the decision of which depended the jurisdiction of the General Manager and the General Manager could not by wrong decision of that question invest himself with jurisdiction to make the order under Clause(b) of Rule 2044 and the order made by the General Manager was therefore null and void. The second ground rested on Rule 14 of the Payment of Wages (Railways) Rules, 1938, made by the Central Government in exercise of its powers under S. 26 read with S. 24. The argument was that this rule imposed an obligation on the General Manager to give an opportunity to the petitioners to show cause before he passed an order directing deduction from wages under clause (b) of Rule 2044 and since in the present case no such opportunity was given to the petitioners the order of the General Manager was null and void. The petitioners also urged that in any event the authority under the Act as also the District Judge in appeal were entitled to examine whether the deductions required to be made under the order of the General Manager were lawful deductions authorised under Rule 2044 and since the petitioners were honourably acquitted in the criminal prosecution launched against them and their case fell within clause (a) of Rule 2044, the General Manager was bound to grant full wages to them and was not entitled to order deduction of any amount from their wages and the deductions ordered by him were therefore not lawful deductions, authorised under Rule 2044 and were consequently not within S. 7(2)(h). These were broadly the contentions urged on behalf of the petitioners.

(5) The short answer given to these contentions on behalf of the respondents was that on a true construction of S. 7(2)(h), where it was claimed by an employer that a

deduction made by him was required to be made by order of a Court or other authority competent to make such order, it was not competent to the Authority under the Act to go behind such order and to examine whether it was a legal or illegal order or a valid or void order. The only point into which, it was argued, the Authority under the Act could inquire was whether the order was an order of a Court or where the order was of any authority, whether the authority was competent to make the order. It was urged on behalf of the respondents that once it was shown that the deduction made by the employer was required to be made by order of a Court, or other authority competent to make such order, the Authority was bound to hold that the deduction was a permissible deduction and the employed person could not make any claim in respect of such deduction. It was also contended in the alternative that even if the order referred to in S. 7(2)(h) meant a valid order and not an order which was null and void, the petitioners were yet not entitled to succeed inasmuch as the order of the General Manager in the present case could not be said to be null and void. Both the grounds on which the order of the General Manager was attacked as null and void were disputed on behalf of the respondents and it was urged that the question whether the petitioners were honourably acquitted or not was not a collateral question but was a question which was entrusted by Rule 2044 to the determination of the General Manager and the decision of that question even if wrong did not, therefore, render the order of the General Manager null and void and so far as Rule 14 was concerned, its applicability was denied in so far as the order made by the General Manager under Rule 2044 was concerned.

(6) These were the rival contentions urged before us and in order to appreciate them it is necessary to refer briefly to the scheme of the Act and to some of its relevant provisions. The scheme of the Act is clear. It is intended to regulate the payment of wages to certain classes of persons employed in industry and its object is to provide for a speedy and effective remedy to the employees in respect of their claims arising out of illegal deductions or unjustifiable delays made in paying wages to them. With that object Section 2(vi) has defined 'wages'; S. 4 fixed the wage-periods; S. 5 prescribes the time for payment of wages and then comes S. 7 which deals with deductions which may be made from wages. Sub-section (1) of S. 7 provides that the wages of an employed person shall be paid to him without deductions of any except those authorised by or order the Act and sub section (2) of that section specifies the kinds of deductions which may be made from the wages of an employed person and also provides that those deductions must be made only in accordance with the provisions of the Act. The deductions which may be made from the wages of an employed person under sub-s. (2) of S. 7 include inter alia:

'(h) deductions required to be made by order of a Court or other authority competent to make such order.'

Section 15 sub section (1) authorises the State Government by notification in the Official Gazette to appoint one or more persons to be the Authority or Authorities to hear and decide for any specified area all claims arising out of deductions from the wages or delay in payment of the wages of persons employed or paid in that area. Sub-section (2) of S. 15 enacts that where contrary to the provisions of the Act any deductions have been made from the wages of an employed person or any payment of wages has been delayed, such person himself or any other person specified in the sub-section may apply to the Authority for a direction under sub-section (3) and under sub-section (3) the Authority may on such application direct 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 subject to certain conditions and qualifications. Section 26 confers rule-making power on the State Government for the purpose of carrying into effect the provisions of the Act.

(7) It is clear on a reading of these provisions that under s. 7 sub-section (1) the wages of an employed person must be paid to him in full without deductions of any kind except those specified in sub-section (2) of S. 7. The deductions specified in sub-section (2) of S. 7 are permitted to be made and in respect of the deductions thus permitted or authorised to be made there can be no claim under S. 15. In other words, a claim for recovery of wages cannot be validly made under S. 15 sub-section (2) or awarded under S. 15 sub-section (3) where it can be shown by the employer that the impugned deduction is authorised or justified by S. 7 sub-section (2). If the deduction in question falls within any of the clauses of S. 7 sub-section (2), and is thus permitted or authorised to be made, the claim for recovery of wages made by the employed person must fail. Where, therefore, a deduction is made, the question which must inevitably arise for consideration is whether the deduction is authorised or permitted as falling within any of the clauses of S. 7 sub-section (2). Now, in the present case, it was not admitted by Mr. Agarwal on behalf of the respondents that there was any deduction from the wages payable to the petitioners. He contended that having regard to the rules in the Indian Railway Establishment Code, which govern the relations between the petitioners and the Western Railway Administration, the petitioners were paid what was legally due to them and there was no deduction at all from their wages. Their contention was disputed on behalf of the petitioners and in order to determine its validity it would have been necessary for us to enter upon a consideration of the relevant rules contained in the Indian Railway Establishment Code. But we do not deem it necessary to do so since we are of the view that even if the amounts claimed by the petitioners represented deductions from their wages, the deductions were permissible deductions within Section 7(2)(h). We shall, therefore, proceed on the assumption that in so far as the full wages claimed by the petitioners were not paid to them, there were deductions from their wages. On this assumption the only question which arises for consideration is whether the deductions fall within S. 7(2)(h).

(8) That raises the question as to the true scope and ambit of the inquiry which can be made by the Authority under the Act when a deduction made by an employer is sought to be justified under S 7(2)(h). In order to determine this question, it is necessary to examine closely the language of the provision. It is clear on a plain grammatical construction of the words used in the provision that it refers to deductions required to be made by order of a Court or other authority competent to make such order. Where there is an order of a Court which requires a deduction to be made and the deduction is made by the employer pursuant to the order, the deduction would be a permissible deduction; equally where there is an order of some other authority competent to make the order and the deduction required to be made by the order is made by the employer in pursuance of the order, the deduction would be justified. Of Course, the authority referred to here is an authority empowered by statute to make an order requiring a deduction to be made and does not include an employer seeking to make a decision pursuant to an agreement between him and the employed person. There must be some statute conferring power on an authority to make such order and when such order is made by the authority, a deduction made by the employer pursuant to such order would be permissible deduction within S. 7(2)(h). The principle on which this provision is based is that an order made either by a Court or by any other authority statutorily empowered to make such order must be

obeyed and if in obedience to the order the employer makes a deduction, the employer must be protected, the order may be legal or illegal, it may be valid or null and void, but so long as it stands and is either not set aside or declared null and void it must be carried out and it should not be left to the employer to decide in the exercise of his own judgment whether the order is a good order or a bad order for such a course would be subversive of the rule of law. Moreover, it must be remembered that S. 20 makes it an offence for any person responsible for payment of wages to an employed person to contravene any of the provisions of S. 7 and such offence is deemed to be punishable with fine which may extend to five hundred rupees and consequently if the validity of a deduction made by an employer pursuant to an order of a Court or other competent authority depends on the validity or legality of the order, the employer would be impaled on the horns of a dilemma. If the employer makes the deduction pursuant to the order and it ultimately turns out that the order was illegal or null and void, the employer would be guilty of an offence under S. 20 since the deduction would not in the event fall within S 7(2)(h) and equally if he refuses to make the deduction on the basis that the order is illegal or null and void, he would be defying an order which might ultimately turn out to be a valid and legal order. We should certainly be slow to accept a construction which would place such intolerable burden on the employer. As a matter of fact it is difficult to believe that the Legislature could have intended that the employer should be asked to sit in judgment over the order of a Court or other competent authority requiring him to make the deduction. Such a position would, in our opinion, be contrary to the fundamental principles on which our judicial system is based. Let us first take the case where an order requiring a deduction to be made is made by a Court. Can the employer be asked to sit in judgment over the order and to decide whether the order is illegal or null and void? Can the employer refuse to carry out the order of the Court saying that the order is illegal or a nullity? The answer clearly is 'no'. It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or even void. Lord Cottenham, L.C. said in Chuck v. Cremer, (1846) 47 ER 820.

'A party, who knows of an order, whether null or void, regular or irregular, cannot be permitted to disobey it . . . . . It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or void - whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be disobeyed.'

The employer, would, therefore, be bound to obey the order of the Court even though the order be null or illegal and as observed by the learned Lord Chancellor in the passage quoted above, it would be most dangerous to hold that the employer should himself be permitted to judge whether the order was null or void, legal or illegal. This principle furnishes the raison d' etre of S. 7(2)(h). If the employer carries out the order of the Court and makes the deduction in pursuance of it which he is bound to do, he must be protected and the deduction made by him must be held to be permissible irrespective whether the order is null or valid, regular or irregular. If the deduction is held to be permissible only where it is made in pursuance of an order of

the Court which is valid and legal, the consequence would be that the employer would have to decide for himself whether the order is null or void, legal or illegal and obey it only if he finds it valid or legal and if on the other hand he finds it null or illegal, he can disobey it with impunity without having it set aside or declared null and void and that would be plainly opposed to principle and would be destructive of the rule of law. Moreover such a view would apart from the other infirmities attaching to it which we have already pointed out, involve the addition of words in the section which are not there. Besides, the effect of accepting such a view would be to constitute the Authority under the Act as an authority having supervisory jurisdiction over the orders of a Court. The Authority under the Act would be enabled by this construction to sit in judgment over the orders of a Court which could hardly have been intended by the Legislature. Now, under S 7(2)(h) an order of a Court is placed on the same footing as an order of any other Authority competent to make the order. If, therefore, the Authority under the Act has no power to sit in judgment over the order of a Court, it has equally no power to sit in judgment over the order of any other competent Authority statutorily empowered to make the order. It may also be noted that S 7(2)(h) does not say that the deduction shall be permissible if it is legally made under some statute authorising it. What it says is that it shall be permissible, if it is made pursuant to an order of a Court or other authority competent to make such order. Once there is an order of a Court or an order of any other competent authority statutorily empowered to make the order and in pursuance of that order a deduction is made by the employer, the decision would fall within the terms of S 7(2)(h) and would be permissible under that Section. The order may be null or valid, regular or irregular, that would not be a matter for the Authority under the Act to examine. The existence of the order would be enough and the employer who obeys the order, as he must, would be protected. The only point into which the Authority under the Act would be competent to inquire, where the order is an order of some Authority other than a Court, would be whether the Authority was competent under the statute to make the kind of order which it did. Now, so far as that point is concerned, it was not disputed and indeed having regard to the decision of the Supreme Court in Ganesh Ram v. District Magistrate (1961) 2 Lab LJ 690 (SC) it could not be disputed that the rules in the Indian Railway Establishment Code were statutory rules having the force of law and it was common ground between the parties that the General Manager was the authority competent to make an order under Rule 2044. The only grievance in regard to that order was that it was null and void. But, as we have already held above, that is not a grievance which can be agitated before the Authority under the Act. The grievance could have been ventilated by the petitioners in appropriate proceedings adopted for the purpose of setting aside the order of the General manager or having it declared null and void, but that cannot be done in an application under S. 15 of the Act. We are, therefore, of the view that the deductions complained of being deductions, required to be made by the order of the General Manager, who was statutorily competent under Rule 2044 to make the order, were permissible deductions under S. 7(2)(h).

(9) Before we part with this point, we must refer to two decisions which were cited before us. The first was a decision of the Allahabad High Court in Union of India v. Kundan Lal, AIR 1957 All 363. That was also a case where deduction was made pursuant to an order passed by the competent Authority under R 1702 of the rules contained in the Indian Railway Establishment Code. The deduction was sought to be defended under S. 7(2)(h) and the question which arose was whether the Authority under the Act was entitled to go behind the order of the competent Authority. Chaturvedi J., who decided the case held that on a true construction of S. 7(2)(h) the

Authority under the Act had no right to set aside an order which was covered by S. 7(2)(h) provided the rules applicable to the case had been followed. The learned Judge further observed that the order contemplated in S. 7(2)(h) is an order by a Court or other authority and the mere passing of an order of deduction by a Court or other authority is sufficient for enabling the employer to make the deduction. This decision supports the view we are taking but it introduces a qualification, namely, that the Authority under the Act would have no right to set aside an order covered by S. 7(2)(h) provided the rules applicable to the case have been followed. With great respect to the learned Judge, we do not think this qualification is justifiable unless of course the rules are such that breach of them would affect the competence of the Authority to make the order. If what is meant by the qualification is that the breach of any rules committed by the competent Authority making the order would be sufficient to entitle the Authority under the Act to go behind the order and to set it aside, the qualification would not only be not justified by the language of S. 7(2)(h) but would be opposed to the principle on which the section is based. There my be an infinite variety of cases in which an order may be made by a competent Authority and in some of them the employer may not be a party; in such cases when the employer is served with the order of the competent Authority it would be extremely difficult, if not impossible, for the employer to ascertain whether the rules applicable to the case have been followed by, the competent Authority and whether the deduction which is required to be made by the order is permissible deduction or not. We, therefore, agree with the view taken in this decision but do not accept the qualification introduced in it. The other decision which was cited before us was the decision of the Rajasthan High Court adopted the view taken in the Allahabad decision and the observations made by us in regard to the Allahabad decision would, therefore, apply equally to this decision of the Rajasthan High Court.

(10) On this view, it would be unnecessary to consider the other questions raised in these petitions but since they were fully debated before us, we think it fair that we should express our opinion on them. We have no doubt that even if the order referred to in S. 7(2)(h) meant a valid order as distinguished from an order which is null and void and it was, therefore, competent to the Authority under the Act to examine whether the order of the General Manager was a valid order or a nullity the petitioners must yet fail for the order was a valid order and not a null and void order. Both the grounds on which it was contended on behalf of the petitioners that the order was null and void are, in our opinion, not well founded. Turning to the first ground it is apparent that the first question that requires to be determined is as to which Rule 2044 applied in the present case - the old rule or the revised rule. On that question there can be little controversy, for the slip attached to the Indian Railway Establishment Code showing the substitution made in Rule 2044 shows that the substitution was made with effect from 23rd April 1952, and therefore, it was the revised rule which applied at the time when the order was made, by the General Manager. The revised rule consists of several clauses. Clause (i) says that when a railway servant who has been dismissed, removed or suspended is reinstated, the Authority competent to order reinstate shall consider and make a specific order - (a) regarding the pay and allowances to be paid to the railway servant for the period of his absence from duty and (b) whether or not the said period shall be treated as period spent on duty. Clause (ii) provides that where the competent Authority holds that the railway servant has been fully exonerated or in the case of suspension, that it was wholly unjustifiable, the railway servant shall be given the full pay to which he would have been entitled had he not been dismissed, removed or suspended as the case may be, together with any allowances of which he was in receipt prior to his

dismissal, removal or suspension and in the remaining cases, clause (iii) says that the railway servant shall be given such proportion of such pay and allowances as the competent Authority may prescribe. It is clear on a reading of these clauses that the question whether a railway servant has been fully exonerated or not is entrusted by the rule-making authority to the determination of the Authority competent to act under R. 2044 and it is not a collateral question on the decision of which depends the jurisdiction of the competent Authority to act under Rule 2044. The competent Authority has jurisdiction to act under Rule 2044 and it is left to the competent Authority to decide in the exercise of that jurisdiction whether the railway servant has been fully exonerated or not. It must therefore, follow that even if the decision of the competent Authority that the petitioners were not fully exonerated is erroneous, it cannot be said that the competent authority acted without jurisdiction in making the order or that the order of the competent Authority was therefore wrong or erroneous but certainly not null and void. The same conclusion would appear to follow even if the rule applicable were the old rule, for there is no substantial difference between the old rule and the revised rule save in one respect, namely, that in the old rule, the expression used is 'honourably acquitted' whereas in the revised rule it is 'fully exonerated' in so far as it concerns the case of reinstatement after dismissal or removal. It was then contended as a subsidiary argument under the same ground that in the event the General Manager had not applied his mind and come to the conclusion that the petitioners were not honourably acquitted or fully exonerated and the order was therefore, null and void. This contention is, in our opinion, wholly devoid of merit. Merely, from the absence of any statement in the order that in the opinion of the General Manager the petitioners were not honourably acquitted or fully exonerated, it does not follow that the General Manager did not apply his mind or come to any such finding. It must be remembered that clause (iii) in the case of the revised rule and clause (b) in the case of the old rule is a residuary clause which applies to all cases not covered by clause (ii) or clause (a) as the case may be, and where the General Manager acts under the residuary clause, it would not be necessary for him to set out in express terms that he is acting under the residuary clause because the railway servant in question has not been honourably acquitted or fully exonerated and clause (ii) or clause (a) as the case may be, does not apply. That is implicit in the making of the order under the residuary clause and unless it can be shown from the face of the order that the General Manager did not apply his mind or that he came to the conclusion that the railway servant was honourably acquitted or fully exonerated and yet made the order under the residuary clause, the order cannot be challenged on the ground either that there was no application of mind or that the order was made under the wrong clause.

(11) So far as the second ground is concerned, namely, that the order was made by the General Manager in contravention of the Provisions of Rule 14 of the Payment of Wages (Railways) Rules, 1938, that ground is also, in our opinion, without substance. The contention urged on behalf of the petitioners was that Rule 14 imposed an obligation on the General Manager to give an opportunity to the petitioners to show cause before making an order under Rule 2044 and that since admittedly no such opportunity was given to the petitioners, the order was in the eye of law a nullity. Now Rule 14 having been made in exercise of the rule-making power conferred on the Central Government under Section 26 read with Section 24, is a statutory rule and there can, therefore, be no doubt that if this rule is a mandatory rule and is applicable to the General Manager acting under rule 2044, a breach of it would have the effect of rendering the order of general Manager null and void. But the question is whether this rule has any application in such a case. It was on this point that the

respondents joined issue with the petitioners. The respondents contended that if this rule were read in the context of the provisions of the Act, it was clear that in so far as fines were concerned, the rule had reference to S. 8 of the Act and in so far as deductions were concerned, the rule had reference to S. 10 of the Act and that the rule could not possibly apply in respect of a deduction falling within section 7(2)(h). We find that there is great force in this contention urged on behalf of the respondents and it does appear on a proper reading of S. 8, S.10, S. 26 sub-section (3) clause (f) and rule 14 that the fines referred to in Rule 14 are fines dealt with in S. 8 read with S 7(2)(a) and deductions referred to in Rule 14 are deductions dealt with in S. 10 read with S.7(2)(c) and do not include deductions covered by any of the other clauses of S. 7(2). If deductions within meaning of Rule 14 are read to include all deductions which may be lawfully made under any clause of S. 7 sub-section (2) an impossible situation would arise, for even while making deductions of income-tax payable by the employed person from his wages under S. 7(2)(g) the employer would have to give him an opportunity to show cause against the deduction every time tat the wages are paid to him for each wage period. But it is not necessary for us to decide this wider question since we are of the view that in any event deductions falling within S. 7(2)(h) are not covered by Rule 14. Rule 14 contemplates that before a deduction is made from the wages of an employed person, the employed person must be given an opportunity of showing cause against such deduction is made from the wages of an employed person, the employed person must be given an opportunity of showing cause against such deduction. The rule clearly affects the person, whether he be the employer or the pay master, who proposes to make the deduction and lays an obligation on him to given an opportunity to the employed person to show cause before he makes the deduction. The rule on its plain language does not apply to a Court of other competent Authority referred to in Section 7(2)(h) for it is not the Court or other competent Authority which makes the deduction the deduction is made by the employer or the paymaster pursuant to the order of the Court or other competent Authority merely requires the deduction to be made by the employer or the paymaster. Whether the Court or other competent authority should give an opportunity to the employed person to show cause against the order proposed to be made is a question which would depend upon the terms of the statute which empowers the Court or other competent Authority to make the order. Rule 14 on a plain grammatical construction of its language does not impose any such obligation on the Court or other competent Authority and as a matter of fact it cannot do so, for otherwise it would be beyond the power of the Central Government under Section 26 read with Section 24 which is confined only to making rules for the purpose of carrying into effect the provisions of the Act. It was also urged on behalf of the petitioners and this argument was elaborated by Mr. R.K. Patel who appeared on behalf of the first respondent in special Civil Application No.729 of 1962 which was heard by us along with the present petitions, that even if Rule 14 applied only to the employer or the paymaster who made the deduction, the employer or the paymaster was bound to given an opportunity to the employed person to show cause against the deduction under rule 14 even where the deductions was made by him pursuant to an order of a Court or other authority competent to make the order. We cannot accede to this contention. The provision of giving an opportunity to an employed person to show cause against the deduction postulates that the employer or the paymaster who proposes to make the deduction has the capacity to refuse to make the deduction in case proper cause is shown against the deduction. It is only were the employer or the paymaster has a choice in the matter and can in the exercise of his judgment make the deduction or refuse to make it that the giving of an opportunity of showing cause can serve any useful purpose. Where however, the employer or the paymaster has no

choice but is bound to carry out the order of the Court or other competent authority, the provision of giving an opportunity to the employed person to show cause against the deduction would have no meaning, even if proper cause be shown it would be fulfill, for it would not be open to the employer or the paymaster to sit in judgment over the order of the Court or other competent Authority and to refuse to follow it, nor does the Legislature expect it do so. Rule 14 clearly, therefore, cannot have application where the deduction made by the employer or the paymaster falls within S.7(2)(h).

(12) We are, therefore of the view that the deductions made by the Works Manager in the first two petitions and by the Divisional Electrical Engineer in the third petition were permissible deductions under S. 7(2)(h) and the applications of the petitioners were rightly dismissed. In the result the petitions fail and the rules are discharged. There will be no order as to costs of the petitions.

(13) Petitions dismissed.