

JURISDICTIONAL POWERS OF CONCERNED AUTHORITIES FOR DEDUCTION OF PAYMENTS UNDER “THE PAYMENT OF WAGES ACT, 1936” – A CASE STUDY

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ABSTRACT

During the period of the early nineteenth century, the slavery system was seen in every place where the people were exploited by rich people. It was extended even in the twentieth century. People have to work for a very low amount with a longer duration of time which extends up to 18 hours a day. This was running since by birth i.e. grandfather, father, son, son's son, etc. All the family members have to work with the rich family members. This leads to the unrest of the people and started to fight for rights. Kumari Sharanya has appealed to Saradevi about work conditions and requests for regular payments either by daily wages or weekly payments or monthly payments this appeal sent to the British Government where in which it is implemented. To eradicate this system, the British Government has introduced a lot of changes in society by enforcing many acts. Work is compensated in terms of money and to check any violations labour laws were introduced. The paradigm shift in this process resulted to emerge The Payment of Wages Act 1936 even though many attempts made in 1925 results came only in 1936. Here, we discuss only certain sections including their subsection viz., 1, 14 to 18 highlighting the disbursement of payment Authorities with their powers, and to monitor the same. If any violation found in fulfilling the norms laid down as per ACT punishment leads imprisonment and/or fine including the attachment of the property, seal down the Organization, etc. Since the Act is very vast an attempt made to mention only important sections with case laws as an example. Here, the priority is given to Denied payment and delayed payment. The inspector inspects the Organization and observes the facilities to be afforded to Inspectors further Section 15 Authority to hear Claims, Meaning of deduction, how to present the application with the procedure. Recovery of amount and Scope of jurisdiction powers to dispose of all the similar application as a single application in respect of claims from unpaid groups a special appeal made for conditional attachment of property of the employer or other person responsible for Payment of Wages, power of authorities appointed under Section 15 explained in section 18.

KEYWORDS: Payment of Wages Act 1936, Section 1 Application, Section 14 –Inspector, Section 14-A – Facilities, Section 15 – Authority to hear Claims, Section 16- Single application, Section 17-Appeal, Section 18- Powers of Authority-Delayed Payment – Denied Payment

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INTRODUCTION

The need to protect the wages earned by the worker had been felt from the early years of the twentieth century, but it was as early as 1925 that a Private Bill called the “Weekly Payment Bill” was for the first time introduced in the Legislative Assembly. At that time different periods of payment of wages were prevalent. An attempt was to remedy some of the evils viz., delay in payment, non-payment of wages, deductions made from wages on account of fines imposed by the employer etc. The Bill was, however, withdrawn on an assurance of the Government that the matter was under consideration of the Government. The imposition of fines by employers on workers and deduction of even double the amount of wages for absence period by way of the fine was very much customary in those days. The desirability of regulating the extent of fines and other deductions through legislation was felt by the Government in 1926.

The Royal Commission on Labour in India made some valuable recommendations. The Present Act is mostly based on those recommendations. The commission was of the opinion that legislation regarding deductions from wages and fines was essential. The following recommendations are worth citing:

- Children should be exempt from fine.
- The minimum amount which could be deducted by way of fine should not exceed in any month half an anna in the rupee of the worker’s earnings.
- The sum realized as fine should be utilized for some purpose beneficial to the employees as a class and should be approved by some reorganized authority.
- A notice specifying the acts and omissions, in respect of which, fines may be imposed should be posted and any other fine should be deemed to be illegal.
- Any deduction made for goods having been damaged should not exceed to be illegal and the wholesale price of the goods damaged.
- Deductions may be made on account of provision for housing accommodation and of tools and raw materials.
- The imposition of any fine and deduction made, which is not permitted by law should be made penal.

A Bill of Payment of Wages Act, based on the recommendations of the Royal Commission on Labour was introduced in the Legislative Assembly in 1933 but could not take the shape of the Act because of the dissolution of the Assembly. The Payment of Wages Act was passed in 1936 and came into force on 21st March 1937.

OBJECT

The Preamble of the Act states that the object of the Act is “to regulate the payment of wages to certain classes of employed persons.” The regulation contemplated by the Act is twofold: first the date of payment of wages, and secondly the deductions from wages whether as fine or otherwise. To ensure payment of wages to persons covered by the Act certain provisions have been made in this Act.

The Bombay High Court in **Arvind Mills Ltd.,V/SK. R. Gadgil, AIR 1941 Bom 26**, observed that “the general purpose of the Act is to provide that employed persons shall be paid their wages in a particular form and at regular intervals without any unauthorized deduction.” The use of the expression “Certain classes of persons” in the Preamble is important for the Act applies to persons drawing on average wages less than one thousand six hundred rupees a month.

Any deduction from the wages or salaries of the workmen governed by the Payment of Wages Act, unless authorized by the Act shall be deemed to be illegal. Any deduction from the wages of the workmen, under a settlement between to be representative union and employer can, however, permit a deduction at it is the outcome of an understanding between the parties even though such deduction may not be authorized or legally permissible under the Act.

APPLICATION – SECTION 1

The payment of Wages Act, 1936 extends to the whole of India. It came into operation on 28 March 1937.

AUTHORITIES UNDER THE ACT

SECTION 14 INSPECTORS

Section 14 of the Act makes provision for three kinds of inspectors which are as follows:-

- An Inspector of factories appointed under Section 8(1) of the Factories Act shall be an Inspector for the purpose of this Act in respect of all factories within the local limits assigned to him.
- In respect of all persons employed upon a railway otherwise than in a factory, to which this Act applies, the State Government is empowered to appoint Inspector for the purpose of this Act.
- The State Government is further empowered to appoint such other persons, as it thinks fit, as Inspectors for the purpose of this Act in respect of persons employed in case of factories and industrial or other establishments as specified by such Government by a Gazette notification. The State Government shall also define the local limits within which such inspectors shall exercise their functions.

POWERS OF THE INSPECTORS

Section 14 (4) lays down that an Inspector may:

- Make such examination and inquiry as thinks fit in order to ascertain whether the provision of this Act or rules made there under are being observed;
- Enter, inspect and search any premises of any railway, factory or industrial or other provisions of this Act or rules made there under are being other establishments at any reasonable time for the purpose of carrying out the object of this Act. They have the power to take any assistance which they think necessary for any of the above purposes;
- Supervise the payment of wages to purpose employed upon any railway or in any factory or industrial or other establishments;
- Required by a written order the production at such place, as may be prescribed, of any register or record maintained in pursuance of this Act. He can also take on the spot or otherwise statement of any persons which he considers- necessary for carrying out the purposes of this Act;
- Seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offense under this Act which he has reason to believe has been committed by an employer, and
- Exercise such other power as may be prescribed.

But according to sub-section (4) of Section 14, no person shall be compelled to answer any question or make any statement tending to incriminate himself. The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to any search or seizure under this sub-section as they apply to any search or seizure made under the authority of a warrant issued under Section 94 of the said code. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code, 1860.

SECTION 14-A. FACILITIES TO BE AFFORDED TO INSPECTORS

Section 14-A provides that every employer shall afford an Inspector all reasonable facilities for making an entry, inspection supervision, or inquiry under this Act.

SECTION 15 AUTHORITIES TO HEAR CLAIMS

The appropriate Government may, by notification in the Official Gazette appoint -

- Any Commissioner for Workmen's Compensation; or
- Any officer of the Central Government exercising functions as, -
 - Regional Labour Commissioner; or
 - Assistant Labour Commissioner with at least 2 years' experience; or
- Any officer of the State Government not below, the rank of Assistant Labour Commissioner with at any Labour Court at least two years' experience; or
- A presiding officer of any Labour Court or Industrial Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or
- Any other officer with experience as a Judge of a Civil Court or Judicial Magistrate

MEANING OF DEDUCTION

In the Union of India V/S Kameshwar Dubery and Other, the point for consideration by the court was the difference between “deducted wage” and “delayed wage”. It was held that the difference depends upon the intention of the employer. If his intention is to deny the liability to pay and the wages or to deny the right of the workmen to receive the same, it would be a case of “wages deducted”. But if the employer concedes the liability to pay and does not dispute the workmen's right to the same, it would be a case of “delayed payment”. The word “deduction” in Section 15 of the Payment of Wages Act is used in a wider sense. It means “to take away” or denying the liability to pay wages. It includes withholding of wages by the employer whether partially or wholly.

PRESENTATION OF APPLICATION

An application in respect of the following claim can be made to the authority mentioned above;

- Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person; or
- Where contrary to the provisions of this Act, any payment of wages has been delayed, an application may be made by any one of the following:

- The employed person himself; or
- Any legal practitioner authorized in writing to act on his behalf; or
- Any official of a Registered Trade Union authorized in writing to act on his behalf; or
- Any Inspector under this Act; or
- Any other person acting with the permission of the authority appointed to hear such claims under Section 15 (1).

Every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of wages due to being made, as the case may be, but any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

The first proviso to Section 15 (2) ex face indicates two alternatives, namely:

- The date on which deduction from wages was made, or
- The date on which the payment of the wages was due to be made. The first relates to the ‘deduction of wages’ and the second to the ‘wages delayed’. These two expressions do not carry the same meaning. The very fact that two distinct starting points of limitation referable to two distinct concepts have been stated in the proviso shows that the Legislature had visualized that the date of deduction of wages and the due date of delayed wages, may not always coincide.

Jodhpur Central Co-op. Bank Ltd. V/S Naim Singh and Another (1979 1 LLJ 245 (Rajasthan))

An application was filed under Section 15 (2) of the Payment of Wages Act, 1936 claiming overtime wages for working on the days which were declared as holidays under the Negotiable Instruments Act, 1881. It was held that the declaration of public holidays on 31 December 1984 which was the day for annual checking of the accounts would not mean that it was a holiday for the bank employees. The other two days, namely, 29th June and 31 December 1985 are the days on which there was no commercial transaction and they are days for the closing of the Bank accounts. It was not a holiday for the employees. Therefore employees cannot claim overtime for working on the above 3 days.

PROCEDURE

Section 15 (3) lays down the procedure to be followed by the Authority entertaining an application under Section 15(2), (3) when any application under sub-section (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 inquiry, 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 three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees:

Provided that a claim under this act shall be disposed of as far as practicable within three months from the date of registration of the claim by the authority.

Provided further that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just manner.

Provided also that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to:

- A bona fide error or bona fide dispute as to the amount payable to the employed person; or
- The occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or
- The failure of the employed person to apply for or accept payment.

Prem Nath Gupta and Others V/S Appropriate Authority and Others

The high court held that proviso to Section 15(3) of the Payment of Wages Act, 1936 can be invoked only in case of liability to pay compensation for delayed wages. No retrenchment compensation or one month's wages in lieu of notice period can be ordered under Section 15(2) and 15(3) of the Payment of Wages Act, 1936.

Section 15(4) lays down that if the Authority hearing the application for claims is satisfied that the application was either malicious or vexatious it can direct the person presenting the application to pay a penalty not exceeding three hundred seventy-five rupees to the employer or other person responsible for the Payment of Wages (2005) LLJ 917 (P. & H).

RECOVERY OF AMOUNT

Section 15(5) lays down that any amount directed to be paid under Section 15 may be recovered -

- If the Authority is a Magistrate, by the Authority, as if it were fine imposed by him as Magistrate; and
- If the Authority is not a Magistrate, by any Magistrate to whom the Authority made an application for recovery of the amount as if it were a fine imposed by such Magistrate.

SCOPE OF THE JURISDICTION UNDER SECTION 15

The scope of jurisdiction in which the Authority under Section 15 exercises in deciding claims is limited. Where complicated questions of fact or law are raised and a prolonged inquiry becomes necessary, the Payment of Wages Authority would have no jurisdiction to the claim before it.

Mohammed Ayub V/S M/S. Mohammed and Sons (1995) 1 LLJ 978 (Raj)

That the jurisdiction of Authority appointed under Section 15 of the Act is limited and it cannot determine complicated questions of law and fact. The Authority has no jurisdiction to decide the question relating to termination of employment and reinstatement. The Authority cannot decide whether an employer-employee relationship exists or not as this question cannot be said to be incidental to the claims that can be determined under the Act.

SECTION 16 SINGLE APPLICATIONS IN RESPECT OF CLAIMS FROM UNPAID GROUP

It may be noted here that it is not always necessary for employees to file individually separate applications. If there are several employees borne on the same establishment and if their wages for the same wage period have remained unpaid after the due date, the workers are said to belong to the same unpaid group and single claims application can be filed on behalf of all such employees. The ‘same unpaid group’ can exist only in the case of a delayed payment of wages and not in the case of wrongful deductions from wages. In such cases, every person may be awarded maximum compensation to the extent specified in Section 15(3).

If several applications are filed by employees belonging to the same unpaid group, the authority can deal with them as if it was a single application by an unpaid group.

State of U.P. V/S Presiding Officer, Payment of Wages Officer, Varanasi, and Others, (2003) III LLJ 519 (All)

Respondents No. 2 to 7 were engaged on daily wage basis in the department/form of the petitioner. They were not paid wages from December 1992 to August 1993 and therefore they filed their claim application for wages and penalty under Section 15(2) read with Section 16(2) of the Payment of Wages Act before the prescribed authority. Notices were issued to both the parties for an appearance on September 28, 1993, before the prescribed authority but none appeared on behalf of the petitioner, hence ex parte proceedings were initiated and the prescribed Authority recorded its findings of facts that wages were not paid for the period January 1993 to August 1993. Therefore, a direction was issued to the petitioner to make payment to workmen of the deducted wages with two times penalty. This direction was challenged before the High Court. It was held that the petitioner could not succeed in showing sufficient cause for not appearing before the prescribed authority in spite of notice. Further, it did not avail of the alternative remedy of appeal but chose to file the writ petition consequently it was dismissed.

Section 16(3) lays down that if several applications are pending, presented under Section 15 by employees belonging to the same unpaid group, the Authority can deal with them as if it was a single application by an unpaid group.

SECTION 17 APPEAL

Section 17 of the Act provides that an appeal may be preferred from the following orders or directions of the Authority:

- An order directing the employer or the persons responsible for payment of wages, to refund the deductions wrongfully made or to pay the delayed wages;
- An order directing payment of compensation to the employee under section 15(3)
- An order imposing penalty whether on the employee under Section 15(4).

An appeal under this section can be made within thirty days of the date on which the order or direction was made in the presidency town before the court of Small Causes and elsewhere before the District Court within whose jurisdiction the industrial establishment is situated.

An appeal may be filed 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
- Search direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees.

An appeal may be filed by an employed person or any legal practitioner or any official of a registered Trade Union authorized in writing to act on his behalf or any inspector under this Act, or any other person permitted by the authority to make an application under Section 15 (2) if the total amount of wages claimed to have been withheld:

- From the employed person exceeds twenty rupees; or
- From the unpaid group to which the employed person belongs or belonged exceeds fifty rupees.

An appeal may also be preferred by any person directed to pay a penalty under Section 15(4) of the Act.

No appeal shall lie as afore said unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

Rakesh Kumar Jaiswal alias Guddu V/S Prescribed Authority (Payment of Wages Act) Deoria and Others (2002) III LLJ 369 (All.)

The prescribed authority under Payment of Wages Act, 1936 allowed the workmen's application for payment of wages and compensation under Section 16 and 15(2) of the Act. Aggrieved by the said order the employer made an application for recalling of ex parte order dated October 18, 1995. This application was rejected by respondent No 1 on the ground of limitation. Thereafter, the employer preferred an appeal under Order XLIII of the Civil Procedure Code before respondent No 2 praying that order dated October 18, 1995, has been passed ex parte and the restoration application has also been rejected by respondent No 1. Respondent No 1 while rejecting the restoration application filed by the employer observed that the order dated October 18, 1995, has been passed after hearing both the parties and the employer was directed to pay wages and compensation with the cost within one month. But the employer instead of paying the wages etc., to the workman has filed this restoration application after the expiry of the limitation period. The employer has stated before respondent No 2 that the application dated December 21, 1995, was filed under Order IX, Rule XIII of the C.P. Code for setting aside the ex parte order passed against petitioner and therefore the employer is entitled to file an appeal under Order XLIII of Code of Civil Procedure and that is why this appeal has not been filed under Section 17 of the Payment of Wages Act.

SECTION 17-A. CONDITIONAL ATTACHMENT OF PROPERTY OF EMPLOYER OR OTHER PERSON RESPONSIBLE FOR PAYMENT OF WAGES

Section 17- A of the Act makes provisions for conditional attachment of so much of the property of the employer or other person responsible for payment of wages as is, in the opinion of the authority of the court, sufficient to satisfy the amount which may be payable under the direction. The conditional attachment may be made in the following circumstances:

- When the application under Section 15(2) or an appeal under Section 17 has been filed by the employed person or any official of a registered Trade Union authorized in writing to act on his behalf, or any legal practitioner or an Inspector or any other person permitted by the authority under Section 15(2) of the Act;
- When the authority or the court is satisfied that the employer or other person responsible for the payment of wages under Section 3 is likely to evade payment of any amount that may be directed to be paid under Section 15 or Section 17;
- When the authority of the court is of the opinion that the ends of justice would be defeated by the delay.

SECTION 18 POWER OF AUTHORITIES APPOINTED UNDER SECTION 15

Section 18 of the Act lays down that every Authority appointed under Section 15 of the Act shall have all the powers of a Civil Court under the code of civil procedure, 1908, for the purpose of:

- Taking evidence;
- Enforcing the attendance of witnesses; and
- Compelling the production of documents.

It is further provided that any such Authority shall be deemed to be a Civil Code for all purposes of Section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1898.

Kantilal R. Shah V/S State of Gujarat (1984) 1 LLJ 99 (Gujarat)

Certain applications were filed under the Payment of Wages Act against the petitioner mail and it's Managing Director. The Kanti Cotton Mills Private Ltd. was declared as a relief undertaking under the Bombay Relief Undertaking (Special Provisions) Act, 1958.

CONCLUSIONS

The Payment of Wages Act is a regulation drawn up to protect the employee's rights from being infringed by the employer. The employee should be paid on time and should not be harassed against anything during the employment. It has however given a lot of protections to employees and will continue to do so in the future as well. The employer must display in his factory or establishment a notice containing the abstract of the Act and the rules made for there under in English, and also in the language understood by the majority of the persons.

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