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**(2001) 02 MP CK 0030**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Writ Petition No. 866/96

Union of India

APPELLANT

Vs

R.B. Shukla and others

RESPONDENT

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**Date of Decision:** Feb. 6, 2001

**Acts Referred:**

- Payment of Wages Act, 1936 - Section 15, 15(2), 2

**Citation:** (2001) 2 MPHT 66

**Hon'ble Judges:** Shravan Shanker Jha, J

**Bench:** Single Bench

**Advocate:** Shri N.K. Gupta, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

S.S. Jha, J.

Petition is by Union of India, challenging the order passed by the Authority under the Payment of Wages Act, Labour Court, Gwalior. S.P.C. was sent to the respondent No. 1 for hearing of the case, for today ie., 6-2-2001 but none appears for respondent No. 1. Earlier also, respondent No. 1 though appeared in the Court and sought adjournment in spite of adjournment, he is not appearing in the Court. Respondent No. 1 insisted that a counsel should be appointed for him by the Court, which is not permissible under the law. Respondent No. 1 was directed to approach the Legal Service Authority for appointment of a counsel for him, but he has not approached the Legal Service Authority for appointment of a counsel for him.

2. Respondent No. 1 moved an application u/s 15 of Payment of Wages Act, praying that the respondent No. 1 was appointed in Western Railway, Kota Division, on the post of Ticket Collector. Then, he was sent on deputation as Inspector Ticket Checking in the year 1971. Later on, respondent No. 1 was transferred from Western Railway to Central

Railway as Train Ticket Examiner. The respondent No. 1 was an employee of Western Railway, wherefrom he was transferred to Central Railway.

3. The respondent No. 1 was transferred in the year 1973 in Jhansi Division and he claimed that his pay be revised from the year 1973 onwards and seniority list be revised and difference of salary be paid to him. The authority under Payment of Wages Act has passed the orders granting seniority to the respondent No. 1 as well as Payment of Wages from the year 1973 onwards.

4. Payment of Wages Act is a special Act for payment of wages. If wages are not paid or unlawful deduction from the salary is made then petition u/s 15 of Payment of Wages Act can be filed before the Authority under Payment of Wages Act. Proviso to sub-section (2) of Section 15 of Payment of Wages Act provides that 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 the wages was due to be made, as the case may be. Thus, the period of limitation for filing application for deduction in wages or non- payment of wages is only twelve months. No petition u/s 15 of Payment of Wages Act could be filed after inordinate delay for wages and determination of seniority. The question of determination of seniority and direction of seniority is not covered under the Payment of Wages Act.

5. The "Wages" are defined in Section 2(vi) of Payment of Wages Act. Section 2(vi) is reproduced below:--

"2 (vi) "Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deduction, but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include-

(1) any bonus whether under a scheme of profit sharing or otherwise, which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of this employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)."

On mere perusal of the definition, it is apparent that the dispute raised before the Authority under Payment of Wages Act does not fall within the meaning of "wages", therefore, the petition filed before the Authority under Payment of Wages Act itself was not maintainable. The presumption was drawn by the Authority under Payment of Wages Act that the respondent No. 1 is entitled for seniority. The question of seniority or other dispute is a service matter, which could be decided by an appropriate forum. The Authority under Payment of Wages Act has no jurisdiction to decide the question as to the wages payable to the respondent No. 1 twelve months prior to filing of the petition. In the present case, the Authority under Payment of Wages Act has not determined the wages of past 12 months but considered respondent No. 1 for promotion from the year 1972 and directed for payment of wages and Dearness Allowance from the year 1972 in a petition filed in the year 1992. Such petition itself was barred by limitation and the Authority has exceeded its jurisdiction in passing the award. The Authority under Payment of Wages Act has entrusted the jurisdiction upon itself which was not vested in it. Therefore, the orders (Annexures P-3 and P-4) so passed are without jurisdiction and are quashed.

6. The petition succeeds and is allowed. There shall be no order as to costs.

7. Writ Petition allowed.