A.D. Divekar Vs Dinesh Mills Ltd. and Others

Court: Bombay High Court

Date of Decision: July 25, 1955

Acts Referred: Industrial Disputes Act, 1947 â€" Section 2(oo), 25P(b), 25F, 25F(b)
Payment Of Wages Act, 1936 â€" Section 2(vi), 15, 15(1), 15(2), 15(3), 15(4), 17, 22
Constitution Of India, 1950 â€" Article 19(1)(g), 226, 227

Citation: (1955) 2 LLJ 501

Hon'ble Judges: Shah, J; Bavdekar, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Bavdekar, J.
This is an application under Articles 226 and 227 of the Constitution, which arises out of an application made by the district

labour officer and inspector under the Payment of Wages Act to the authority under the Payment of Wages Act at Baroda in respect of

compensation payable to 450 workmen and 20 clerks of opponent 2, Sri Dinesh Mills, Ltd. whose services were terminated by the mill on the

ground that the mill was being closed. It was the contention of the inspector that there was payable to the employees of the mill, under the

provisions of Section 25F, Clause (b), of the Industrial Disputes Act, retrenchment compensation was ""wages"" within the meaning of that term as

defined in the Payment of Wages Act. The mill has failed to pay this amount, and consequently there was either deduction of wages or delay in

payment of wages, upon which he was entitled to make an application to the authority under the Payment of Wages Act u/s 15 of that Act.

2. The application was opposed on behalf of the mill, and the only contentions which it will be necessary to state for the purpose of this application

are that the authority under the Payment of Wages Act had no jurisdiction to hear the application of the inspector, and in the second instance the

representative union, acting on behalf of the workers, had made an application to the industrial court that the services of the employees were not

properly terminated and the employees continued in service. An appeal from the unfavourable decision of the court had been filed to the Appellate

Tribunal, and the employees could not, in the same breath, contend in one of that their retrenchment was illegal and they still continued in service

and then ask from another court compensation for retrenchment, which must be upon the basis that the termination of the services of the employees

was perfectly legal. The mill contended that the authority under the Payment of Wages Act had no jurisdiction to hear the dispute, because Section

25F, Clause (b), was ultra vires the Constitution, because awarding compensation restricts the right of the employer to carry on his business, which

included the right to close his business, when he liked. They contended, in the second instance, that even if the Act was not void of the

Constitution, there was no compensation payable to the employees, inasmuch as the closure of the mills was obligatory upon the mill, as it could

not carry on the business of manufacture profitably and the employees could not be said to be retrenched. The mills said, in the third Instance, that

assuming that compensation was payable to the employees u/s 25F, Clause (b), of the Industrial Disputes Act, it could not be said that it was

wages."" ""Wages"" have been defined in the Payment of Wages Act to include, among other things, sums payable upon the termination of services.

But this Court has taken the view in Sarin v. Patil 53 Bom. L.R. 674, that damages claimed by a workman upon the wrongful dismissal of his

services did not amount to ""wages"" within the meaning of that term as defined by the Payment of Wages Act. Compensation payable upon the

termination of services would not, therefore, fall within the part of the definition, which includes therein sums payable to any person by reason of

the termination of his employment. ""wages"" has also been defined to mean

remuneration Ã¯Â¿Â½which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable whether conditionally upon

the regular attendance, good work or conduct or other behaviour of the person employed or otherwise....

But compensation payable upon termination of service would not amount to remuneration, nor could the amount claimed by the employee be said

to be payable. The mill contended finally that in any case the contentions which they raised included questions like Section 25P, Clause (b), being

void as contravening Article 19(1)(g) of the Constitution, and the authority under the Payment of Wages Act had no jurisdiction to decide such

complicated questions. Its jurisdiction (sic) is delay in payment of wages, when it was admitted that wages were due to the employees. When the

employer was flatly denying his liability to pay the alleged wages, and as a matter of fact even the constitutionality of the provisions of the Industrial

Disputes Act, under which the employees were claiming compensation, the authority constituted under the Payment of Wages Act had no

jurisdiction to decide the question.

2. The learned authority under the Payment of Wages Act has decided that he had no jurisdiction to decide the payability of the compensation,

because it was not ""wages,"" and above he said that inasmuch as it appeared the representative union had made an application to the industrial

court, from the decision in which an appeal had been filed to the Labour Appellate Tribunal in which the employees maintained that the termination

of their services were wrongful and they still continued in service, they could not, in the same breath, by another application, claim that

compensation was payable to them upon termination of their services.

3. The inspector has come to this Court under Articles 226 and 227 of the Constitution for quashing the order of the authority under the Payment

of Wages Act and giving a suitable direction to it; and it is obvious, in the first instance, that inasmuch as the inspector contended that there was

compensation payable to the employees upon termination of their services, and such compensation amounted to ""wages"" which had not been paid,

the authority under the Payment of Wages Act had to decide the question whether what the employees claimed amounted to ""wages"" or not. The

jurisdiction of the authority depended upon the claim of the employees being for ""wages,"" and the authority had jurisdiction to decide every

question of fact or law which arose in determining as to whether the claim was in respect of deduction or delay in payment of wages. If the amount

which the employees claimed amounted to wages, and they were not paid, it is obvious that there was either deduction or delay in payment of

wages, and the authority had jurisdiction consequently to determine as to whether the amount which the employees claimed was ""wages."" The

inspector said that the amount was payable to the employee u/s 25F, Clause (b), of the Industrial Disputes Act. The mill challenged that this law

was unconstitutional, contending that it offended against Article 19(1)(g) of the Constitution. This question has admittedly now been decided by a

Division Bench of this Court in K.N. Joglekar and Others Vs. Barsi Light Railway Co. Ltd., which decision is binding upon all the courts and

tribunals subordinate to this Court. The section is held not to offend against Article 19(1)(g), and so far as this part of the contention of the mill is

concerned there is nothing for the authority under the Payment of Wages Act to decide hereafter. The second question which was raised by the

mill as to whether compensation was payable to the employees upon the termination of their services u/s 25F, Clause (b), has again been decided

by this Court in the same case, where it was held that Section 2(oo) defined ""retrenchment"" to mean the termination by the employer of the service

of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and whatever the reason for

which the employer may have terminated the service of a workman if it was not by way of punishment, the termination amounted to retrenchment

within this definition. In any case, even if this Court had not decided these two questions in K.N. Joglekar and Others Vs. Barsi Light Railway Co.

Ltd., , whether any amount would be payable to the employees or not under the provisions of Section 25P, Clause (b), of the Industrial Disputes

Act would depend upon the decision of the question as to the unconstitutionality of that section and whether the amount, which the employee

claimed under the provisions of that section could be said to be claimable by him at all, on the ground that he was retrenched when his services

were terminated by the employers on the ground that they were closing an unprofitable manufacturing plant. It could be convenient to go into the

question whether the authority constituted under the Payment of Wages Act had jurisdiction to decide these questions later. But it had authority to

decide the question as to whether, assuming that the employees were entitled to the sum which they claimed under the provisions of Section 25F

Clause (b), of the Industrial Disputes Act, it could be said that this amount fell within the term ""sum payable upon the termination of their services....

as used in the definition of ""wages"" or it could be said to be ""remuneration payable to the employees"" and therefore ""wages"".

4. It is no doubt true that the authority has gone into some of these questions, and it has held, in the first instance, that Section 25F, Clause (b), of

the Industrial Disputes Act was not unconstitutional. It had not gone into the question as to whether it could be said that the employees were

retrenched, which had to be found before it could be said that they were entitled to compensation u/s 25F, Clause (b), of the Industrial Disputes

Act. But it has held that even upon the footing that the employees were entitled to the compensation referred to in Section 25F, Clause (b), of the

Act, it did not fall within the definition of ""wages"" under the Payment of Wages Act. Following certain observations in Sarin v. Patil 53 Bom. L.R.

674, quoted by it, it had held that the amount which was claimed must be payable under the terms of the contract of service before it could be said

to be wages.

5. Now, it is quite true that in the case of Sarin v. Patil, a Division Bench of this Court took the view in the first instance that damages which were

claimed for wrongful dismissal did not fall within the meaning of the term, ""the sum payable upon the termination of the services,"" and there are

observations in the case which would tend to suggest that this conclusion was reached because of the view that the sum which was payable must

be payable under the terms of the contract. But another Division Bench in a subsequent case had to consider the question as to whether, when any

sum was payable to an employee under the terms of an award made by the industrial court, it could be said that this sum was ""wages"" within the

meaning of the definition given in the Payment of Wages Act, and the contention that the amount must be payable under the contract of service was

replied in that decision. That was the decision in civil revision applications Nos. 1378 and 1379 of 1951, dated 11 March 1952 1953 I L.L.J.

577, This decision is a later decision. It is true that this Court was concerned in that case not with any sum payable under the terms of a statute, but

a sum payable to an employee under the terms of an award made by the industrial court; but that does not make difference. If at all the meaning of

the word "" payable"" in the definition of ""wages "" under the Payment of Wages Act is to be restricted, it must be upon the footing that the meaning is

restricted by its context, which requires that the sum which is payable should be payable under a contract; if that contention is repelled, there are

no reasons whatsoever for limiting the general word...payable"" used to sums payable, for example, under an award made by the industrial court, or

payable in any other manner.

6. The learned authority constituted under the Payment of Wages Act was obviously wrong, therefore, in coming to the conclusion that upon the

footing that there was any amount payable to the employees under the provisions of Section 25P, Clause (b), of the Industrial Disputes Act, it was

not ""wages"" because the same was not payable under a contract.

7. Mr. Palkhivala, who appears on behalf of the mill, has tried, however, to support the conclusion of the authority under the Payment of Wages

Act that the amount payable u/s 25P, Clause (b), assuming it to be payable, is not ""wages"" on other grounds. He says, in the first instance, that

even if we prefer to follow the later case of this Court in civil revision applications Nos. 1378 and 1379 of 1951 1953 I L.L.J. 577 the amount

payable to the employees u/s 25P, Clause (b) of the Industrial Disputes Act is not compensation payable to the employees upon the termination of

their services, because the authority of the case of Sarin v. Patil 53 Bom. L.R. 674, in so far as it decided that damages claimable by an employee

upon wrongful dismissal, were not wages, is not shaken by the later decision. It appears to us, however, that compensation payable to an

employee upon the termination of a service, if such termination is lawful, as in this case, at any rate, the employees contended that it was, is entirely

different from damages which are payable to an employee upon his wrongful dismissal, and there is nothing in the case of 53 Bom. L.R. 674, which

prevents us from disposing of the question as to whether what the employee claimed is or is not ""wages"" in accordance with the usual rules of

interpretation. Now, the definition of ""wages"" is in two parts. First of all, it has been defined as remuneration payable to the employees, leaving

aside for the moment the various other qualifications. In the second instance, it founded that ""wages"" include, among other things, sum payable to

the employees on termination of their services, and in this case Section 25F, Clause (b), does provide that sums mentioned in that sub-section

should be payable to the employees when their services are terminated. There are no reasons whatsoever for putting any limitation upon the

perfectly general term ""payable"" which has been used in the first part of the definition of ""wages."" I have already mentioned that a Division Bench of

this Court has taken the view that so far as the word ""wages"" is concerned, there are no reasons whatsoever for saying that it means ""payable

under the contract of service."" But assuming for the purpose of argument that this was not correct, there are no reasons whatsoever for importing

any limitation which has been placed in the first part of the definition into the second part, where wages are defined to include, among other things,

sums payable to an employee on the termination of his service. Whenever a legislature proceeds to define a particular term and to say later on that

term includes some things, the part of the definition which says that the term includes other things is to prevent any agitation of the question as to

whether what is included in that part could be included in the first part. It occurs to the legislature that there may be a doubt as to whether certain

things, which it proposes to include in the definition, would or would not be included in the definition which it has made. To avoid all disputes upon

the point, it then says in effect that whether the things which it wishes to include do or do not fall within the first part of the definition, the term

defined would include them. It is impossible to accept that, notwithstanding that, there must be imported into the construction of the words which

follow in the subsequent part which follows the words included ""limitation from the first part."" We have no doubt consequently that the words

sums payable upon termination of the services"" must be given their nationwide possible meaning, and giving them that meaning, there can be no

doubt that in the first instance retrenchment compensation payable to the employees u/s 25P, Clause (b), of the Industrial Disputes Act will be sum

payable to the employees on the termination of their services, and therefore wages.

8. But we have no difficulty in holding that the sums payable to the employees u/s 25F, Clause (b), of the Industrial Disputes Act are also

remuneration payable to the employees, I have already mentioned that these sums are not payable under the contract; but that does not make any

difference; they are payable under a statute, and the word payable"" in the definition of ""wages"" includes all sums payable, whether under a contract

under an award of the industrial court, or under the terms of a statute, :like Section 25F, Clause (b), or for the matter of that, in any other manner.

It is said that the legislature has provided that this amount should be given to the employees as compensation. Their services are terminated, and

compensation is different from remuneration. We notice, however, that this amount depends upon the length of service which has been put in by an

employee. It is said that the object of requiring the employer to make such a payment was to enable the employee to tide over any difficulty which

he may have in obtaining employment after his services are terminated. Secondly, another object of the legislature in making the amount payable is

to deter the employer from terminating the services of his employees. But, in the first instance, the amount is payable to the employee upon the

termination of his service, whether he obtains immediately employment or not. It does not follow, merely because the amount is classed as

compensation, that it does not come within the term of remuneration, being regarded as deferred pay. It is true that merely because a thing is made

to depend upon another, it does not necessarily partake of the nature of the other. But nobody is contending in this case that the compensation

which is made to depend upon the length of the service put in by the employees partakes of the nature of the length of the service or the service

itself. There are various amounts payable to an employee after the termination of his services. There is, for example, pension, which is always

regarded as deferred pay. Similarly, there is gratuity which has been excluded from the definition of ""wages"" for certain reasons: but if it had not

been so excluded, it could easily have been again regarded as deferred pay or remuneration. Our decision that the amount falls within the latter part

of the definition of ""wages"" makes it unnecessary to decide as to whether it is also remuneration; but if it was necessary to so decide, we would

hold that the amount falls in the first part of the definition of ""wages"".

9. The next point which has been made by Mr. Palkhivala is that the amount is really gratuity, and in support of this contention it has been pointed

out that when Section 25F was first enacted in the form of an Ordinance, the Ordinance used the word ""gratuity."" That does not, however, make

any difference. Subsequently the Act was amended, and the amendment substituted the word ""compensation."" The amendment was also made re

trospective from the date upon which the Ordinance was promulgated. It is obvious, therefore, that the legislature has shown clear intention to

distinguish the amount which is payable upon retrenchment from a gratuity. Mr. Palkhivala says that that does not necessarily show that the

intention of the legislature was that this amount should fall within the definition of ""wages."" There was another reason, why the legislature might have

changed the word ""gratuity"" into compensation. There was payable frequently to the employees gratuity under the terms of their contract. When the

employees asked for gratuity upon the termination of their services, a dispute was raised by the employers that from the amount which was payable

under the contract should be deducted. Now that may be one of the reasons why the legislature changed the word "" gratuity"" into compensation.

But that does not make any difference. The legislature deliberately chose to change the nomenclature, and there is no particular reason for saying

that when it did so, it evinced an intention that the change should be confined, to the question which arises under the Industrial Disputes Act. If that

was the intention, it could well have provided that the gratuity which was payable to an employee under the terms of a contract would not be

deducted from the gratuity which was payable under the terms of Section 25P, Clause (b).

10. Lastly Mr. Palkhivala argues under this head that the question which arose before the authority under the Payment of Wages Act could not

possibly be meant to be a question tried by him, because this was a case in which the employers said that they were not at all liable to pay the

amount which the employees claimed under the provisions of Section 25F Clause (b), of the Industrial Disputes Act. It is only in the case of

admitted wages, where there is either deduction from the wages, or delay in paying it, that the authority under the Payment of Wages Act had

jurisdiction. Mr. Palkhivala concedes that he would not go so far as to say that an employer would be permitted mala fide to deny that wages were

due, but he says that if the employer could show that he had really a bona fide contention to raise about his liability to make the payment, then the

jurisdiction of the authority under the Payment of Wages Act is ousted. Now, it appears to us that the Payment of Wages Act was enacted in

order to enable the employees to obtain quickly the amount due to them. How complicated the questions would be which the Payment of Wages

Authority would have to determine would be seen from the definition of payment of wages and the sorts of questions which could be raised as Mr.

Palkhivala''s argument in this case has demonstrated, by an employer. It may"" be, of course, that sometimes very complicated questions may arise

in determining as to whether claim of the employees falls within the definition of wages. But there is no authority whatsoever for saying that the

jurisdiction of the authority is limited to cases where wages are admitted. There are observations to that effect in 53 Bom. L.R. 674, but there are

contrary observations in the same case, where it has been pointed out that if an employer were to deny that he had employed a person, the

authority would have jurisdiction to go into that question. Similarly, if there was a dispute between the employer and the employees under the

contract where the authority will again have jurisdiction to decide the dispute, one must not, therefore, lay too much stress upon an isolated

observation in that case. It is true that when the employees in that case claimed compensation for wrongful dismissal and also went on to claim that

they should be paid wages upon the footing that the dismissal was wrongful, it was held that the Payment of Wages Authority had no jurisdiction to

decide the question as to whether the employees were dismissed wrongfully, or whether any compensation was payable to them upon that footing,

or then on the footing that they continued in service. But that does not alter the fact that the case is no authority for the proposition that the authority

under the Payment of Wages Act has jurisdiction merely to decide the question of deduction or delay when wages were due or admitted. As I

have already mentioned, in case any sum which is claimable falls within the definition of ""wages"" and it is not paid, then there is obviously either

delay in payment of the wages or deduction out of them, and the authority under the Payment of Wages Act would have jurisdiction to determine

that question. If at all it is necessary to put in any limitations, as was done in the case of 53 Bom. L.R. 674 by holding that the authority had no

jurisdiction to determine as to whether there was a wrongful dismissal and consequently wages were still due to the employees and if so, what

these limitations are, it is not necessary to go into for the purpose of the present application. In this case the employees claimed compensation u/s

25F, Clause (b), of the Industrial Disputes Act, upon the footing that they were entitled to it, it amounts to wages. The authority under the Payment

of Wages Act had, therefore, jurisdiction to decide whether they were so entitled to it.

11. So far as the other contention upon which the Authority under the Payment of Wages Act dismissed the application of the inspector is

concerned, there is force in it. The employees cannot have it both ways. They cannot both have their wages upon the footing that the termination of

their services is wrongful, and the compensation upon the footing that their services have been terminated, which means, terminated lawfully. The

learned authority under the Payment of Wages Act was inclined to take the view that the employees had to be put to an election. He does not say,

however, in his judgment that he had put them to one. As a matter of fact, we think that there was some difficulty in asking the inspector, who

presented the application in the present case, to elect, because even though another application on behalf of the employees had been made to the

industrial court, that application was not made by him, but was made by the representative union on behalf of the employees. But the authority

under the Payment of Wages Act would have, after determining whether any amounts are payable to the employees or not, jurisdiction in case it

holds that the employees are entitled to compensation to say that its order would not be executed till the determination of the appeal before the

Appellate Tribunal be subject to the final order to that proceeding.

12. We vacate the order of the authority constituted under the Payment of Wages Act under Article 227 and direct him to dispose of the matter

further in accordance with the law. The applicants having succeeded substantially, opponent 2 will pay the applicant"s costs of this application.

Shah, J.

13. The district labour officer and inspector under the Payment of Wages Act, Baroda, has filed this application for a writ of certiorari and a writ of

mandamus and also for an order under Article 227 of the Constitution of India for quashing the order passed by the authority appointed under the

Payment of Wages Act at Baroda in application No. 154 of 1954, and for an order against the authority directing the authority to dispose of the

application on its merits.

14. Sri Dinesh Mills, Ltd., is a company registered under the Indian Companies Act having its office at Baroda. The company was running a

woollen mill at Baroda for the last several years. The mill used to work in two shifts day and night and used to employ about 450 workmen and 20

clerks. On 30 October 1953 the management of the mill put up a notice declaring its intention to close the entire mill from 1 December 1953. On

19 November 1953 the management put up another notice withdrawing the earlier notice and declaring its intention to close down the second shift

with effect from 20 December 1953. Thereafter on 8 December 1953 the management put up a third notice informing the workmen that the

second shift would be closed from 20 December 1953 and the first shift would be closed from 8 January 1954. Similar notices in respect clerks

were also put up, and the clerks were intimated that their services would be terminated with effect from 19 January 1954. On 27 April 1954 the

district labour officer and inspector under the Payment of Wages Act filed an application u/s 15 of the Payment of Wages Act, 1936, before the

Payment of Wages Authority for an order for payment of the delayed wages amounting to Rs. 1,67,000 and for payment of compensation of Rs.

10 to every employee retrenched by the mill. It was the case of the district labour officer that the mill was liable to pay every employee as

retrenchment compensation wages equivalent to fifteen days" average pay for every completed year of service or any part thereof in excess of six

months as required u/s 25P(b) of the Industrial Disputes (Amendment) Act of 1953. The application was resisted by the mill. It was contended

inter alia that the Payment of Wages Authority had no jurisdiction to hear the application, that Section 25F(b) of the Industrial Disputes Act was

inconsistent with Article 19(1)(g) of the Constitution of India, and that a representative union of the employees of the mill had submitted an

application to the labour court at Ahmedabad for a declaration that the discharge of the employees was not valid and that they were still employees

of the mill and that application being still pending before the labour officer for payment of retrenchment compensation on the footing that the

employment of the employees was terminated was not maintainable. The mill also raised various contentions on the merits of the application.

15. The authority under the Payment of Wages Act raised certain preliminary issues for determination, and held that he had no jurisdiction to hear

the application as the same was not maintainable. He also held that the application was maintainable because a representative union of the

employees of the mill had submitted an application to the labour court at Ahmedabad pleading that there had been no lawful termination of

employment and that application was pending. The authority expressed the view that the question about the constitutionality of Section 25P(b) of

the Industrial Disputes Act should be divided into two parts. He observed that if Section 25F(b) was held applicable only to those workmen who

were retrenched when the concern was running, then the provision was valid and constitutional; but if it was intended to apply even after the

closure of the business of the employer, it was unconstitutional and inoperative. In the view of the authority Section 25F(b) imposed liability to pay

compensation equally on all concerns whether profitable or not and equally on all employers who had closed their business on justifiable grounds

or otherwise, and imposition of an unconditional liability general in its terms amounted to an unreasonable restriction on a citizen''s right to close his

business. He further expressed the view that in some cases imposition of such liability would be oppressive and penalizing and amounted to an

unreasonable restriction on the right of the employer to close his business at any time when he chose and the law which justified imposition of that

liability was ultra vires the Constitution and void. The authority, however, did not record any formal finding on the issue as to the constitutionality of

the section. On the view, that he had no jurisdiction to entertain the application, and that the application was not maintainable, the authority

dismissed the application. Against the order of dismissal the district labour officer presented an appeal to the district court at Baroda u/s 17 of the

Payment of Wages Act. That appeal has not till now been disposed of. It is stated in the affidavit of the manager of the respondent mill that the

application filed by the representative union of the employees before the labour court at Ahmedabad under the Bombay Industrial Relations Act of

1946 was disposed of on 16 March 1955 and against that decision the representative union has preferred an appeal before the Labour Appellate

Tribunal at Bombay, and that appeal is also pending.

16. Mr. Palkhivala who appears on behalf of the mill has raised two preliminary contentions as to the maintainability of this application. He

contended that the district labour officer having preferred an appeal against the order of the authority to the district court at Baroda u/s 17 of the

Payment of Wages Act and which is pending, this application invoking jurisdiction under Articles 226 and 227 of the Constitution of India is not

maintainable. Counsel further urged that the employees have made contradictory claims before the Payment of Wages Authority and the labour

court. He submits that whereas before the Payment of Wages Authority it was contended that the employees were retrenched and ceased to be

employees of the mill, a claim has been made before the labour court that the employees were still in the employment of the mill and entitled to

relief on that basis. Counsel contends that the employees are not entitled to proceed in two different tribunals for relief on two contradictory claims.

Mr. Palkhivala also points out that in the petition filed to this Court there is no reference to any proceedings before the labour court, and he has

submitted that the district labour officer having failed to bring to the notice of the court the pendency of the application under the Industrial

Relations Act, this Court should decline to exercise its jurisdiction in favour of the employees.

17. It is true that an appeal has been filed against the judgment of the Payment of Wages Authority, and that appeal is pending in the district court

at Baroda. Section 17 of the Payment of Wages Act of 1936 provides for an appeal against a direction made under Sub-section (3) or Sub-

section (4) of Section 15. Now the direction contemplated to be made under Sub-section (3) of Section 15 is a direction for payment of the

amount deducted from the wages or for payment of delayed wages. Sub-section (4) of Section 15 contemplates a direction to be made for

payment of penalty where the application made under the section is found to be malicious or vexatious. It appears that no appeal is provided for by

the legislature against an order of dismissal for application upholding a plea that the authority has no jurisdiction to entertain the same. This Court

has held in C.S. Lal Vs. Shaikh Badshah and Others, that in order that an employee should have a right of appeal u/s 17 of the Payment of Wages

Act, 1936, not only must the petition be entertained, but there must be a refusal to give a direction on the merits of the application. Therefore,

where the authority under the Payment of Wages Act holds that the employee is not entitled to any relief, not on the ground that he has no case on

the merits, but on the ground that he has no jurisdiction to entertain the application, this does not amount to a refusal to give a direction which is

subject to appeal u/s 17 of the Act: it is clear from the decision in Lal case that the appeal filed against the authority to the district court at

Ahmedabad is incompetent. It appears that at the time when the appeal was presented by the district labour officer to the district labour court, he

was not properly advised as to the competence of the appeal. The maintainability of the present application cannot therefore be affected by the

pendency of an appeal in another court which is plainly incompetent. It is also true that proceedings were taken by the representative union of the

employees in the labour court at Ahmedabad for relief under the Industrial Relations Act. But the application has been filed in the tribunal by the

representative union of the employees, and not by the district labour officer. The district labour officer is an inspector appointed under the Payment

of Wages Act, and he is entitled . u/s 15(2) of the Act to apply for a direction under Sub-section (3) of Section 15 to make a claim arising out of

deduction in wages of or delay in payment of the wages to, the employees. He is a public servant upon whom is conferred authority to make claims

on behalf of the employees on what he regards as the proper view to take of the action of the employer in a given case. This is not a case in which

the same person has taken two different proceedings in two different tribunals for reliefs on inconsistent claims. The representative union of the

labour court has taken action(?) on the footing that the services of the employees were not terminated, and they have not been retrenched. The

district labour officer has taken the proceedings before the Payment of Wages Authority on the footing that the services of the employees have

been terminated, and they are entitled to retrenchment compensation. We do not think that we would be justified in rejecting the application filed

by the district labour officer if it is otherwise maintainable on the ground only that another application has been made by the representative union of

the employees for relief on an inconsistent claim.

18. Two out of the questions which were canvassed before the authority under the Payment of Wages Act have been answered by a recent

judgment of a Division Bench of this Court, and we are bound by that judgment. It has been held that Section 25F(b) of the Industrial Disputes Act

of 1947 does not place an unreasonable restriction upon the right of a citizen to carry on business. It has also been held that retrenchment referred

to in Section 25F(b) need not be of workmen employed in a running business. Even if retrenchment of workmen has been made with a view to

close down a business, retrenchment compensation is payable by the employer. In K.N. Joglekar and Others Vs. Barsi Light Railway Co. Ltd., ,

the question arose whether the workmen whose services were terminated when the employer decided to close down his business were to be

regarded as ""retrenched"" within the meaning of the Industrial Disputes Act of 1947; and it was held that termination of the services of the workmen

by the employer for enabling him to close his business amounts to ""retrenchment"" u/s 2(oo) of the Industrial Disputes Act, 1947, the company was

liable to pay compensation for retrenchment u/s 25F of the Act. It was observed in the course of the judgment by the learned Chief Justice that

Section 25F of the Industrial Disputes Act, 1947, imposes a statutory liability upon the employer to pay compensation when he terminates the

services of an employee, and that liability is not affected by the fact that the termination of services is effected with the object of a business in which

the employer was suffering losses. It was also held in that case that imposition of an obligation to pay retrenchment compensation to an employee

whose services were terminated with a view to facilitate closing of the business did not amount to placing an unreasonable restriction upon the right

of the employer to carry on business. In view of this decision, it is not open to Mr. Palkhivala to contend that Section 25F(b) of the Act is injuring

any fundamental rights of the employer under the Constitution. Mr. Palkhiwala has stated before us that even though he does concede the

correctness of the propositions laid down in the Barsi Light Railway case, no useful purpose would be served by his arguing the same questions

over again in this Court.

19. The question which then survives is whether the Payment of Wages Authority had jurisdiction to entertain an application for non-payment of

retrenchment compensation u/s 25F(b) of the Industrial Disputes Act, 1947. Section 15 of the Payment of Wages Act, 1936, authorizes the State

Government to appoint an authority

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 (3) of Section 15 requires the authority appointed under Sub-section (1) to entertain the application under Sub-section (2) and to hear

the applicant and the employer or other person responsible for the payment of wages or to give them an opportunity of being heard, and, after such

further enquiry, if any, as may be necessary, he is authorized to direct refund to the employed person of the amount deducted, or the payment of

delayed wages, together with such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and

not exceeding ten purposes in the latter. The proviso to Sub-section (3) of Section 15 restricts the jurisdiction of the authority in the matter of

payment of compensation in the case of delayed wages. If the authority is satisfied that the delay was due to a bona fide error or a bona fide

dispute as to the amount payable to the employed person or the occurrence of an emergency or the existence of exceptional circumstances such

that the person responsible for the payment of wages was unable, though exercising reasonable diligence, to make prompt payment, or in the case

of failure of the employed person to apply for or accept payment. Section 2(vi) of the Act defines the expression ""wages"" as meaning

all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were

fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct, or other behaviour of the person employed, or

otherwise to a person employed in respect of his employment or work done in such employment, and includes any bonus or other additional

remuneration of the nature aforesaid which would be payable and any sum payable to such person by reason of the termination of his employment.

The definition then proceeds to exclude the value of any house accommodation and other amenities, the contribution paid by the employer to any

pension fund or provident fund, travelling allowance or the value of any travelling concession sums paid to the persons employed to defray special

expenses entailed upon him by reason of the nature of the employment, and any gratuity payable on discharge. It is clear from the terms of Section

15 that the jurisdiction of the Payment of Wages Authority is limited to hear or decide claims arising out of deductions in wages or delay in

payment of wages. Section 22 of the Act excludes the jurisdiction of the civil courts to entertain suits for recovery of wagas or any deduction from

wages, in so far as the same claim forms the subject-matter of an application u/s 15 or forms the subject-matter of a direction u/s 15 or which

would have been recovered by an application u/s 15; by Section 15 of the Payment of Wages Act special jurisdiction has been conferred upon the

authority, and the jurisdiction of the civil courts to entertain proceedings in respect of the same matters which have been or could have been

brought before the authority, is included. Section 15 seeks to limit the jurisdiction of the ordinary civil courts, and must be strictly construed. A

claim which does not arise out of deduction from wages or delay in payment of ""wages"" as defined in the Act cannot be tried by the Payment of

Wages Authority u/s 15.

20. Section 25F of the Industrial Disputes Act, 1947, provides, in so far as that section if material, that no workman employed in any industry who

has been in continuous service for not less than one year under an employer shall be retrenched by the employer until the workman has been given

one month''s notice in writing indicating the reasons for retrenchment and the workman has been paid, at the time of retrenchment, compensation

which shall be equivalent to fifteen days ''average pay for every completed year of service or any part thereof in excess of six months and notice in

the prescribed manner is served on the appropriate Government. Section 25F evidently restricts the right of an employer to terminate the

employment of workman. The employer is required to serve a notice upon the employee of one month''s duration setting out the reasons for

retrenchment. The employer is also required to pay to the employee wageÃ¯Â¿Â½ for the period of notice and also to pay at the time of retrenchment

compensation which should be equivalent to fifteen days'' average pay for every completed year of service or any part thereof in excess of six

months. This is a statutory liability imposed upon the employer by the legislature. By the terms of Section 25F the employer is required at the time

of retrenchment to make payment of the compensation for a period which is to be equivalent to fifteen days'' average pay for every completed year

of service or any part thereof in excess of six months. The liability to pay compensation having been imposed by the statute, the initial question

which must be answered is whether the compensation payable u/s 25F to a workman on account of retrenchment from service is ""wages"" within

the meaning of the Payment of Wages Act. If compensation payable u/s 25F is not wages within the meaning of the Payment of Wages Act, the

liability to-pay the same cannot be enforced under the Payment of Wages Act.

21. Now, ""wages"" under the Payment of Wages Act mean all remuneration which becomes payable to a workman if the terms of the contract of

employment are fulfilled; and include any bonus or other additional remuneration to be payable to the employee. Wages also include any sum

payable to the employee by reason of termination of his employment. Mr. Palkhiwala contended that retrenchment compensation cannot be called

remuneration"" within the meaning of the definition of ""wages"" and that in any event not being ""payable"" under the terms of any contract of

employment it could not be regarded as ""wages."" (We are unable to accept that contention. The legislature has (sic.) a special definition of the

expression ""wages"".

22. According to the definition, wages include remuneration which is payable if the terms of contract of employment, express or implied, are

satisfied, and include any sum payable to an employee by reason of termination of his employment. The sum payable to an employee by reason of

termination of his employment is not required by the terms of the definition to be ""remuneration."" Even if, therefore, retrenchment compensation is

not ""remuneration "" within the first part of the definition, it is still a sum payable to the employee by reason of the termination of his employment and

clearly falls within the definition. It also appears that the legislature has related the amount of retrenchment compensation to the length of service

which the employee puts in; and that may indicate that the legislature regarded ""retrenchment compensation"" as deferred payment of salary or

wages payable on termination of the employment.

23. It was strenuously urged by Mr. Palkhiwala that the legislature enacted Section 25F of the (Industrial Disputes Act, 1947, with a view to put a

restraint upon the arbitrary exercise of the right of employers to retrench workmen. It was urged that the employer from retrenching workmen from

employment compensation payable there under could not be regarded as ""wages"" within the meaning of the definition of that expression as given in

the Payment of Wages Act, 1936. We are, however, not concerned with the reason why the legislature made the provision. We are concerned

with the question whether the artificial definition which the legislature has evolved of the expression ""wages"" would include ""retrenchment

compensation"" and we see no ground for holding that it does not. When the employer is required to pay to the employee an amount, which

depends upon the length of service which the employee had put in, at the time of his retirement from service, the amount may be regarded as a sum

payable to an employee on termination of employment, or as deferred salary. It was urged that a workman who had not put in one year''s service

is not entitled to any compensation u/s 25F and that indicated, argued Mr. Palkhiwala, that the legislation did not regard retrenchment

compensation as deferred salary or wages. It was, however, open to the legislature to regard an employee as having qualified for deferred salary

or wages, if he has put in service for a certain period, and not otherwise. The fact that the employees whose services are comparatively short may

not qualify for receiving retrenchment compensation does not alter the essential nature of the compensation payable to the employees who have

qualified for the same.

24. It was urged that the retrenchment compensation was in the nature of gratuity and gratuity having been excluded from the definition of ""wages,

no claim under the Payment of Wages Act can be made in respect thereof before the authority. Reliance in support of that argument was sought to

be placed upon the fact that the ordinance which was promulgated by the President for imposing retrenchment compensation on 24 October 1953

called that compensation ""gratuity."" Now Section 25P which falls in Chap. VA of the Industrial Disputes Act, 1947 was added by Act XLIII of

1953, which came into force on 23 December 1953. Act XLVII of 1953 was preceded by the Industrial Disputes Amendment Ordinance of

1953, and the Ordinance provided for payment of gratuity to employees in case of retrenchment. The Ordinance was repealed by the Industrial

Disputes (Amendment) Act XLIII of 1953 ; and the Act was given retrospective operation as from 24 October 1953. Even though the Ordinance

of 1953 called the retrenchment compensation ""gratuity,"" under the Act it is called "" compensation,"" and not "" gratuity."" The legislature having given

the amending Act of 1953 retrospective operation as from 24 October 1953, the nature of the payment to be made to retrenched employees will

have to be judged by reference to the provisions of the Act of 1953, and not by reference to the Ordinance of 1953. Gratuity is an ex gratia

payment made by the employer to an employee on termination of his employment. The liability to pay retrenchment compensation is imposed upon

the employer by the State, and it is not an ex gratia payment. It would, therefore, be difficult to regard compensation, which the statute says shall

be made at the time of retrenchment as ""gratuity.

25. It was also urged that the expression ""payable"" as used in the definition of the expression ""wages"" must mean ""payable"" under a contract

express or implied, and if the obligation to pay arises, not by the terms of a contract, but as a result of a statutory imposition, the definition would

not cover such amounts. We are unable to accept that contention also. There is nothing in the definition of ""wages"" which supports the assumption

that the amount payable must be ""payable"" under the terms of a contract express or implied. It in terms means all remuneration or other sums which

become payable if the terms of the contract of employment, express or implied, are fulfilled by the employee. That an employee must fulfil the

terms of his employment, express or implied, for being entitled to claim wages cannot be disputed. But if an employee fulfils the terms of his

employment, the extent of the right to receive payment of wages does not depend upon the terms of the contract of employment. Even if by an

award payment is directed to be made by an employer, such award not forming part of the contract of employment, that payment would have to

be made by the employer to the employee, and would fall within the definition of ""wages."" Similarly, if liability for payment of any amount to an

employee is imposed upon an employer by statute that liability has also to be satisfied by the employer, even though the contract between the

parties of employment did not contemplate the same. In this view we are supported by a judgment of this Court reported in Prabha Mills, Ltd. v.

R. H. Naik 1953--I L.L.J. 577. It was held in that case that if an employee has served his master and carried out the terms of the contract of

service and fulfilled his obligations, any amount payable by the employer to the employee would be ""wages"" within the meaning of the definition.

Therefore, ""wages "" do not only include remuneration payable by the employer under the terms of the contract, express or implied; it also included

any amount which the employer legally becomes liable to pay to the employee on the fulfilment of the contract. It was held in Prabha Mills case that

an award of the industrial court fixing higher wages and dearness allowance can be enforced under the Payment of Wages Act, the employer

becomes liable to pay the additional wages and dear ness allowance to the employees; and such additional wages and dearness allowance are

wages"" within the meaning of Section 2(vi) of the Payment of Wages Act. The Court in that case negatived the contention raised by the employer

that the expression ""wages"" only means to payments which was imposed upon the employer by the terms of the contract of employment to make

and held that all amounts which the employer is legally liable to pay to the employee on fulfilment of the contract of employment are ""wages"" within

the meaning of the definition of that expression.

Mr. Palkhiwala relied upon the judgment of this Court reported in A.R. Sarin v. B.C. Patil (1951-53) Bom. L.R. 674,in support of his contention

that a liability which arises otherwise than under the terms of the con tract of employment cannot be enforced by an application u/s 15 of the

Payment of Wages Act. In that case an employee of the B. B. & C. I. Railway was suspended from service for misconduct, and was ultimately

removed from service. The employee filed an application to the authority under the Payment of Wages Act for recovery of wages due to him

during the period of suspension. The Payment of Wages Authority awarded to the employee the amount claimed by him, as in his view the order of

removal of the employee from service was not a valid order, and the employee should be deemed to be in service of the employer. Against that

order the employer applied to the High Court for a writ under Article 226 of the Constitution. This Court held that it was not open to the Payment

of Wages Authority to decide whether the contract of service between the parties had been properly and validly terminated, nor was it open to the

authority to decide whether the dismissal of an employee was wrongful. It was pointed out in that case that the Payment of Wages Authority being

a special tribunal created under the Act, his jurisdiction could not be inferred by implication; it had to be expressly conferred and if the jurisdiction

of the civil courts in matters which are entrusted to the special tribunal is ousted, it can only be regarded as ousted to the extent of the jurisdiction

expressly conferred upon the special tribunal.

26. Now the point which expressly fell to be decided in Sarin case can have no bearing on the question to be decided in this case. But strong

reliance was sought to be placed upon the observations made at p. 676 of the report:

Looking to the whole scheme of the Act (the Payment of Wages Act, 1936) and looking to the earlier part of the definition (the definition of the

expression ""wages,"") in my opinion, the sum payable by reason of the termination of his employment is not any damages or compensation to which

a servant would be entitled on a wrongful termination of the service. The sum payable here referred to is only a sum payable under the terms of the

contract.

Relying upon these observations it was urged by Mr. Palkhiwala that any sum which is payable otherwise than under the terms of the contract of

service, express or implied, cannot be included within the definition of ""wages.

27. We are unable to accept that contention. As I have pointed out earlier, the Court in that case was concerned to decide the question, whether

the Payment of Wages Authority had jurisdiction to decide that there had been a wrongful termination of service of the employee; and it was held

that the Payment of Wages Authority had no such jurisdiction. It was not necessary in that case to decide, whether payment which becomes due

under a statute to an employee on termination of his employment can be regarded as wages within the meaning of the definition of that expression.

Nor was the Court called upon in that case expressly to consider the question, whether payment due to an employee for the period of notice

would, when there was no express agreement of notice pay, be regarded as wages. In that case the amount which was claimed could have

become payable to the employee only if his dismissal was wrongful, and not otherwise. It was held that it, was not within the jurisdiction of the

authority under the Payment of Wages Act to decide the question whether the termination of employment was wrongful. On that view, evidently

the authority could not decide that any amount was due to the employees on the footing that there had been a wrongful termination of employment.

In the present case, however, the liability to pay retrenchment compensation is imposed by a statute. The source of the liability is not in dispute.

The fact that the amount has become payable is also not in dispute. The only dispute that survives is, whether the Payment of Wages Authority is

the proper forum for enforcement of that liability. We are unable to hold that observations made by the Court in discussing a question relating to a

disputed liability, which might arise only on proof of facts, which the Court held were not within the competence of the authority to decide, can

have any application to the present case where the liability is not in dispute; it must also be pointed out that the apparently wide observations which

were made in the case of A.R. Sarin Vs. B.C. Patil and Another, , were explained in a subsequent judgment in K.P. Mushran Vs. B.C. Patil and

Another,]. The learned Chief Justice who delivered the judgment in that case pointed out at p. 1017 of the report that what was intended ""to he

decided in Sarin case was that"" it is only when the contract of employment is put an end to and the liability to pay damages for wrongful dismissal is

disputed that the authority has no jurisdiction to consider the question with regard to wrongful dismissal,"" Therefore, we are unable to hold that

there is anything in A.R. Sarin v. B.C. Patil case which compels us to take the view that an amount which is directed by statute to be paid to an

employee in certain circumstances is not an amount which is payable within the meaning of the definition of ""wages"" as given in Section 2(vi) of the

Payment of Wages Act.

28. It was then urged by Mr. Palkhiwala that in any event the refusal to pay retrenchment compensation did not involve delay in payment of wages;

and the payment of wages authority had therefore no jurisdiction to decide the application filed before him. Mr. Palkhiwala contended that it is only

in the case of an admitted liability that an application can lie to the authority under the Payment of Wages Act for enforcement thereof. According

to Mr. Palkhiwala the Payment of Wages Authority is a tribunal constituted merely to provide a machinery for enforcement of an admitted liability,

and is not a tribunal which is entitled to decide disputed questions as to liability. In support of that contention also counsel relied upon the judgment

in A.R. Sarin Vs. B.C. Patil and Another, and the following observations made by the learned Chief Justice at p. 67 of the report:

Delay in payment of wages can only mean delay in payment of wages which are admitted. Wages are due but for some reason or other those

wages have not been paid at the time when they should have been paid under the law. Mr. Seervai wants us to read "delay in payment of wages"

as if it meant the same thing as refusal to pay wages. In this case there is not delay on the part of the petitioner to pay wages. He has refused to pay

wages, rightly or wrongly, contending that respondent 2 is not his employee; he has dismissed him and therefore nothing is due to him. Therefore,

the issue which really arises and which the authority has assumed jurisdiction to decide is whether the refusal of the petitioner to pay wages is

justified or is valid in law.

The observations relied upon by Mr. Palkhiwala are not susceptible of the interpretation suggested by him. It does appear from the observations

made in the judgment that the Payment of Wages Authority is concerned merely to direct payment of admitted wages. It has been decided in that

case that it is competent to the authority under the Payment of Wages Act to construe the terms of employment in order to determine what wages

are payable, and even if the contract of employment has been terminated, it is open to him to construe its terms in order to determine whether any

sums are payable by reason of termination. It is also

open to him to determine whether a person has been employed or not, because the question of contract of employment and the terms of the

contract can only arise provided the person seeking relief was employed. The mere denial of the factum of employment cannot oust the jurisdiction

of the authority. If the employer denies or disputes the fact that the servant was employed by him, it will be for the authority to decide that question;

and it is only after the question of employment had been decided that the question would arise as to what are the terms of the contract and what is

the liability of the master under the terms with regard to wages.

29. It is evident from these observations that it was not held in Sarin case that the Payment of Wages Authority was concerned merely to direct

payment of admitted wages. It was observed in that case that the authority has jurisdiction to decide, whether the liability had arisen and whether

the liability can be enforced under the Payment of Wages Act.

30. Section 15 of the Payment of Wages Act confers jurisdiction upon the authority to entertain claims arising out of deductions or delay in

payment of wages. The section does not limit the jurisdiction of the authority to . entertain admitted claims arising out deductions from wages or

delay in payment of wages There is also nothing in Section 15 which justified that restriction upon the jurisdiction of the authority; and Sub-section

(3) of that section indicates that the authority is entitled to hold an enquiry, to hear the parties to give them an opportunity of leading evidence and

to decide the claim made by the employees to deduction or delay in payment of wages, If admitted wages can only be directed to be paid by the

authority, it is difficult to appreciate what enquiry could be made under Sub-section (3) by the authority. Again, if the contention raised by counsel

has force it would always be open to the employer in an application made u/s 15 of the Payment of Wages Act to oust the jurisdiction of the

authority by denying the claim made by the employee. Once a claim is denied, if the argument of Mr. Palkhiwala is accepted, there would be no

jurisdiction left in the authority to decide the claim. However, the enquiry which is contemplated to be made by the authority can only be in respect

of disputed claims. Again, inherent in the proviso to Sub-section (3) is clear indication that the authority is entitled to make an enquiry into a dispute

raised by the employer. Sub-section (3) of Section 15 invests the authority with jurisdiction to pass an order for payment of compensation for

delay in payment of wages, but that jurisdiction of the authority is restricted, when there is bona fide error or bona fide dispute as to the amount

payable, or occurrence of an emergency or existence of exceptional circumstances mentioned in Clauses (b) and (c) to the proviso. The existence

of bona fide error or a bona fide dispute or of circumstances mentioned in the proviso can only be ascertained if the authority is entitled to hear and

decide disputed questions and not otherwise.

31. Mr. Palkhiwala concedes that a mala fide denial of liability does not exclude the jurisdiction of the authority, but he contends that where a bona

fide dispute is raised as to liability, the authority would have no jurisdiction to decide the dispute, and the employee must have recourse to another

tribunal which can give him relief. But if it is within the jurisdiction of the authority to decide whether the denial is bona fide or mala fide, there is

nothing in Section 15 which disables the authority from deciding other questions which have to be determined for adjudicating upon a claim arising

out of deduction or delay in payment of wages. We are unable to hold that the legislature intended to restrict the jurisdiction of the authority to hear

only in cases of admitted liability claims arising out of deduction from wages or delay in payment of wages.

32. In the present case by Section 25P(b) of the Industrial Disputes Act, 1947, the employer is bound to pay, at the time of retrenchment

compensation to the employee. The mill having declined to pay the retrenchment compensation, it is evident that there has been delay in payment of

wages of the employees. The refusal of payment of the retrenchment compensation, therefore, necessarily involves delay in payment of wages due

to the employees and the application clearly falls within the terms of Section 15 of the Payment of Wages Act. In our view the Payment of Wages

Authority had jurisdiction to entertain and decide the claim made by the district labour officer and that the authority was bound to entertain and

decide the application to him. In refusing to entertain the application the authority has, in our judgment, failed to exercise the jurisdiction vested in

him by law; and in exercise of our powers under Article 227 of the Constitution, we must set aside the order passed by him.