CHAPTER 2

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Earning a livelihood by working for others has been a common practice in many a society from times immemorial. In olden days the system of remuneration for labour was payment in kind.\(^1\) With the introduction of money, labour was rewarded by payment in cash as well as in kind\(^2\) and at later stages remuneration in kind gave way almost completely to payment in cash.\(^3\) Even now where the vestiges of feudal hegemony exist the system of wages in kind is still prevalent. Whatever be the

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1. In the Vedic period, payment for services rendered by the labourers was made in kind. Workers were given food, clothing and other essential commodities, in lieu of wages. During the Sutra ages and Paninian periods, the system of payment remained the same. Purushottam Chandra Jain, *Labour in Ancient India* (1971), p.228.

2. In the Buddhist period the ancient system of payment in kind gave way partly to payment in metal coins, though more importance was given to the barter system. *Ibid.*

3. In some areas, however, the system of payment of wages in cash and kind exists. The Minimum Wages Act 1948, S.11(2), permits payment in kind where such a custom exists.
system of payment, the remuneration paid to an employee for services rendered is popularly known as wages. It is the return for the effort or strain, physical or mental or a combination of the two, made by an employee in producing goods or in rendering services.

The term 'wages' is defined as an amount paid periodically for the time during which a worker or a servant is at the disposal of the employer.4 'Wages' are also regarded as a contractual income.5 This definition implies the existence of a contract which brings in a relationship of master and servant. In other words, unless an employee is engaged by the employer to do services, the employer is not bound to pay remuneration.6 Accordingly,

4. The Concise Oxford Dictionary (1964), p.1462. See also Black's Law Dictionary (1951), p.1750 which defines wages as a compensation given to a hired person for his or her services, the compensation agreed upon by a master to be paid to a servant or any other person hired to do work or business for him.

5. "Like interest and rent, wages are contractual income; wage rates, whether piece rates or time rates or whether fixed in money or in goods, are agreed upon by the payers and recipients of wages before the product is sold". Encyclopaedia of Social Sciences (1957), p.292.

non-fulfilment of the terms of contract whether express
or implied, will disentitle a worker to receiving wages.\textsuperscript{7}

Another definition looks at 'wages' as the earnings of
labourers and artisans.\textsuperscript{8} In precise economic terminology,
the term 'wages' indicates the price of labour.\textsuperscript{9} These
definitions view wages as payments made to a hired person,
by one who avails of his services, for a specified period,
in accordance with a predesigned agreement.

'Wages' and 'Salary'

Though salary and wages refer to payment in return
for work, they are not synonymous. Etymologically the
word 'wages' means any remuneration for services. How-
ever, the popular meaning is slightly different — it is
generally used to refer to payments to a lower class of
workers. The term used to refer to payments for services
of the higher classes is 'salary' or 'pay'.\textsuperscript{10} The term
'wages' is not used to refer to the remuneration of a high

\textsuperscript{7} O.P. Malhotra, \textit{The Law of Industrial Disputes} (1981),

In ancient period artisans were also regarded as
labourers and their remuneration was considered to
be wages. See also Purushottam Chandra Jain, \textit{op.cit.},
pp.80-122.

\textsuperscript{9} Campbell R. MaConnel, \textit{Economics: Principles, Problems

or important officer of the State or of a company but to
the remuneration of domestic servants, labourers and
persons of a similar description.11

In the view of the High Court of Madras, if the
remuneration is paid monthly and it is fairly high, con-
sidering the general standards of payment, the remuneration
has to be understood as salary.12 The Madras view is
based on two criteria, namely, monthly payment and compa-
ratively higher remuneration. It may be noted that there
is no statutory provision suggesting that monthly payment
would exclude the remuneration from the purview of wages.
On the contrary, such remuneration is statutorily included
within the term wages.13 The other criterion, namely,

court (at p.46) held that the 'salary' of a secretary
to a Company was not 'wages' of a 'servant' within
the Wages Attachment Abolition Act (33 and 34 Vict.
C.30) and therefore salary of the secretary was not
exempted from attachment under the Act.

12. In Re R.V.V. Sarma, A.I.R. 1953 Mad. 269, per Govinda
Menon, J. at p.278. If in a department only less
than ten persons receive wages, and the rest receive
salary, such department would not be a factory within
the meaning of the Factories Act 1948. The Court
therefore had to examine the question whether the
remuneration received by the employees was 'wages',
or 'salary', in order to find whether the respondent's
film studio was a factory within the meaning of the
Factories Act 1948.

13. For instance, S.4 (2) of the Payment of Wages Act 1936
says that no wage period shall exceed one month.
the amount of remuneration, is also not a sound one. Since it is based on comparison, the possibility cannot be ruled out of the same remuneration becoming wages at one time and salary at another time, depending on the rise and fall of the amount of remuneration with which it is compared. A worker paid weekly may get a high amount in a month as remuneration. Yet his remuneration is not considered as salary. The quantum of remuneration is not therefore decisive.

The Supreme Court made an attempt, in *Mohammed Ali v. Union of India*,¹⁴ to formulate the test of 'status'. The status of 'salaried employees' was given by the Court to persons who were permanent employees and did not belong to the category of manual labourers or unskilled labourers. The Court observed,

"Salary . . . is remuneration paid to an employee whose period of engagement is more or less permanent in character, for other than manual or relatively unskilled labour."¹⁵

The criteria of monthly payment formulated by the Madras High Court did not receive approval of the Supreme Court.

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¹⁴. A.I.R. 1964 S.C. 980. The question was whether the Employees' Provident Funds Act, 1952 applied only to wage earners. The Court held that the Act covered both wage earners and salaried employees.

¹⁵. *Id.* at p.985 *per* Sinha, J.
The Court said,

"Both 'salary' and 'wages' are emoluments paid to an employee by way of recompense for his labour ... Both may be paid weekly, fortnightly or monthly; though remuneration for the day's work is not ordinarily termed 'salary'."16

The other criteria on which the Madras view was based, namely, 'quantum' of remuneration, also did not appeal to the Supreme Court.17 The Court added that there is no distinction, in principle, between wages and salary18 and observed that it cannot be said that the monthly remuneration received by a skilled worker is not wages.19

16. Ibid.
17. Ibid. The Court observed,

"Simply because wages for the month run into hundreds, as they very often do now, would not mean that the employee is not earning wages, properly so called."

Even the payment of Wages Act 1936 does not seem to distinguish wages and salary on a quantum basis. S.1 (6) of this Act reads,

"Nothing in this Act shall apply to wages payable in respect of a wage-period which, over such wage-period, average one thousand six hundred rupees a month or more."

18. Ibid. The Court said,

"A clerk in an office may earn much less than the monthly wages of a skilled labourer. Ordinarily he is said to earn his salary. But, in principle, there is no difference between the two."

19. Ibid. The Court remarked,

"The distinction between skilled and unskilled labour itself is not very definite and it cannot be argued ... that the remuneration for skilled labour is not 'wages'."
The Supreme Court reaffirmed its view in *Gestetner Duplicators Pvt. Ltd. v. The Commissioner of Income Tax*\(^{20}\) that conceptually there is no difference between salary and wages. According to the Court, the wages could be either a specified sum for a given time of service or a fixed sum for a specified work. Thus, wages could be estimated either on the basis of the time spent in service or on the basis of work alone.\(^{21}\) Similarly in the case of salary the recompense could be determined wholly on the basis of time or wholly on the basis of work, or partly on the basis of work and partly on the basis of time.\(^{22}\) The status test was opted to differentiate 'wages' from 'salary'.\(^{23}\)

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20. *A.I.R. 1979 S.C. 607* at p.613. The Company was paying contributions towards provident funds on the basis of salary and commission paid to the salesmen. The company claimed income tax deductions arguing that such contributions will be wages and hence allowable deductions under the Indian Income Tax Act 1961. The question was whether commission given to an employee will amount to salary or not.

21. *Id.* at p.614.


23. The Court attributed 'salary' to the reward for services of non manual workers and 'wages' to services of manual workers.
The definition of 'wages' in the Payment of Wages Act 1936 reinforces the view that there is no inherent distinction between wages and salary. Opinion at international level indicates that the term 'wages' would include all forms of remuneration, however designed or calculated, received by manual as well as non-manual workers. However, 'salary' is more commonly used to denote payments to government or industrial employees, who have permanency and do work of a non-manual nature. In other words, the term 'salary' is used to refer to the remuneration paid to the 'white collared' employees.

24. s.2 (vi). The relevant portion reads, "Wages means all remuneration whether by way of salary, allowances or otherwise expressed in terms of money or capable of being so expressed .... ."


26. The classification into 'white collar' and 'blue collar' is made on the basis of the clothing, which the employees wear during working hours. The white collar occupations enable the employees to wear street clothes at work. Their working dress is not a prescribed uniform. It is not distinct from clothing generally suitable for street wear. 'Blue-collar' means the wage-worker. The wage-worker (blue-collar) may wear standardised street clothes off the job, but the white-collar worker can wear them on the job as well. See C. Wright Mills, White Collar (1977), p.241. Generally non-manual workers are termed white-collar employees. See, L.C.Hunter and D.J. Robertson, Economics of Wages and Labour (1969), p.36.

Hence the term 'wages' means remuneration paid to the 'blue collared' employees.

**Statutory Definitions**

The term 'wages' is defined differently in various labour enactments. Almost all statutory definitions of 'wages' contain three parts: the first part giving a general meaning, the second part including certain payments and the third part excluding certain items from the purview of the definition. The purpose of each labour statute varies and the definition of 'wages' also varies to suit the general purpose of the statute.

The main purpose of wage policy should be to fix proper wages and to ensure its prompt payment to employees. The Payment of Wages Act 1936 is designed to protect from unauthorised deductions the earned wages of an industrial employee. A definition of wages suited to this purpose

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29. For instance, the purpose of the Workmen's Compensation Act 1923 is to compensate, in monetary terms, the loss of earning capacity of a workman due to accident or occupational disease. The definition of wages under this Act, therefore, includes all benefits or privileges enjoyed by the workman, which could be computed in terms of money, so that the loss could be properly compensated.
is found in this Act. Therefore, the definition of 'wages' under the Payment of Wages Act is important in relation to wage policy.

'Wages' under the Payment of Wages Act 1936

Originally the definition in the Act was very narrow. An employee was entitled only to the amount of remuneration specified in the contract of employment. If a higher remuneration is fixed in an award, should it again be incorporated in the contract of employment, to become wages? The views of the Bombay and Calcutta High Courts differ on this point. The Calcutta High Court in

30. Payment of Wages Act 1936, s.2 (vi). As originally enacted it read,

"Wages means 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 regular attendance, good work or conduct or other behaviour of the person employed or otherwise, to a person in respect of his employment, or of work done in such employment and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable to such person by reason of the termination of his employment but does not include ... ." (emphasis supplied)
observed that 'wages' consisted of amounts fixed by the parties by agreement between them. The agreement may be express or implied. The express terms are found in the contract and the implied terms are those "which may be attached to the contract by implication that the parties agreed to those terms". The Court considered the definition of 'wages' from the point of view of the terms of the contract of employment, express or implied and held that the contract contained no implied term to pay wages fixed by awards. The Court observed that it cannot be conceived that the parties agreed, at the time of contract, that if any higher amount was payable by virtue of an award in an industrial dispute, that amount would be paid by the employer as wages. The Court apparently failed to take note of the statutory expression in the definition, 'remuneration ... payable' on the fulfilment of the contract.

31. A.I.R. 1951 Cal.29. The respondent claimed enhanced wages on the basis of an award by the industrial tribunal. The claim was preferred under S.15 of the Payment of Wages Act. In appeal under S.17 of the Act the claim was allowed. In further proceedings the High Court upheld the orders of the Authority under Section 15 of the Act and revised the orders of the Appellate Authority under S.17.

32. Id., p.30.

33. Justice Sen observed,

"It seems to us that it would be very farfetched if we are to take the view that these matters were in the minds of the parties when they entered into the contract. An implied term must be a term which was in the minds of the parties at the time of the contract and which although they did not so express they had agreed to carry out." Ibid.
The increased amount became payable when the employees fulfilled their part of the contract of employment. This aspect was never discussed by the Calcutta High Court. Thus the Court took a very narrow view of the matter by interpreting the term 'wages' to mean not the amount payable on the fulfilment of the contract but the amount of remuneration fixed by the contract of employment.

The Bombay High Court held a different view. In V.B. Godse v. R.H. Naik, the court interpreted the definition to include wages directed to be paid by industrial adjudication. According to the court, what is to be considered is whether or not any amount is payable by the employer by reason of the fact that the employee has fulfilled the contract of employment. If the employee has carried out his obligation and on that being done if

34. V.B. Godse, Manager, Prabha Mills Ltd. v. R.H. Naik, (1953) I L.L.J. 577 (Bom.). The Industrial Court passed an award increasing the wages and dearness allowance of the employees of Prabha Mills. The Mills failed to pay the increased sum. An Application was filed before the Authority under the Payment of Wages Act. An order directing the Mills to pay the amount was passed by the Authority. The Appellate Authority confirmed the order. From this order a revision was filed in the High Court of Bombay. The question before the High Court was whether or not the definition of 'wages' in the Payment of Wages Act 1936 was wide enough to cover a sum fixed by an award of a tribunal.
a certain amount is payable by the employer to the employee that sum would be 'wages'. An award of a tribunal, modifying the contract, being legally binding on the parties, no fresh contract was necessary to incorporate the terms of an award in the contract of employment. 35

A similar question came up before the Supreme Court in A.V. D'costa v. B.C. Patel. 36 The question was whether the respondent was entitled to higher wages on the basis of a scheme introduced by the Railway Employees Classification

35. Though the High Court of Bombay agreed with the view of the Calcutta High Court that there was no term 'express or implied' to pay higher wages fixed by industrial adjudication, it was observed that the Calcutta decision failed to consider the impact of that part of the definition which said that any amount 'payable' on fulfilment of the terms of the contract will be wages. Chagla, J. said,

"We entirely agree with the Calcutta High Court that the liability to pay under the award is neither an express nor an implied term of the contract. But, with respect, where we disagree is that the definition of 'wages' under the Act is much wider than wages being merely confined to what is payable under the express or implied terms of the contract of employment."

Id. at p.579.

The Court by a majority held that the respondent was not entitled to higher wages since the amount had not become legally payable to him by virtue of an order implementing the scheme. The majority view was that it was not legally payable since a further decision by the administrative authorities confirming the respondent as a permanent employee was necessary. The dissenting view was that the amount was legally payable since

37. The respondent employee was a daily rated casual labourer. Under a scheme introduced by the Railway Employees Classification Tribunal, daily rated temporary workers were graded to be made monthly rated permanent employees. Rejecting the respondent's claim, some of his juniors were promoted as permanent monthly rated employees. The employee preferred a claim under Section 15 of the Payment of Wages Act 1936 for higher wages on the ground that he was entitled to be promoted as monthly rated permanent employee. According to him, his legitimate wages was deprived by promoting juniors to higher posts.

38. The Bench consisted of Vivian Bose, Jagannadhadas, Venkatarama Ayyar and Sinha, JJ. Justice Jagannadhadas, dissented with the opinion of the majority. The Court, by majority, held that the respondent "... would be entitled to higher wages if his claims to be placed on the higher wages scheme had been recognized and given effect to ..." A.V. D'Costa v. B.C. Patel, A.I.R. 1955 S.C. 412 at p.416 per Sinha, J.

39. In his dissenting judgment Jagannadhadas, J. held that the amount had become legally payable since there was a direction of the Railway Board to implement the scheme. Id., p.418.
the only question involved was the correct application of the applicable rules. It becomes, therefore, clear that the term 'wages' means the amount which becomes legally payable to the employee on fulfilment of the terms of the contract.

The Patna High Court took the view, in Mohammed Quasim Lari v. Mohammed Shamsuddin,⁴⁰ that any 'wage' fixed by an award of a tribunal or by a conciliation proceeding must necessarily mean the wages which must be taken to have been impliedly agreed upon between the parties.⁴¹

In appeal⁴² the Supreme Court expressed the opinion that when an industrial tribunal decides a dispute by suggesting a new wage structure it must be deemed to be a fresh contract of employment which binds the parties.⁴³ The position

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⁴⁰ A.I.R. 1957 Pat.683. An Industrial Tribunal made an award fixing the pay of the employees of the Sasamusa Sugar Works at a certain rate per day. In pursuance of that award the management came to an agreement that the employees would be paid at that rate. However, the management was paying only at a lesser rate. The balance, according to the employees amounted to unauthorised deduction. The Authority under the Payment of Wages Act, as well as the High Court, upheld this contention.

⁴¹ Id. at p.684 per Sinha, J.


⁴³ Gajandragadkar, J. said, "The true legal position is that when industrial disputes are decided by industrial adjudications, and awards are made, the said awards supplant contractual terms in respect of matters covered by them and are substituted for them".

Id. at p.1700.
is thus made clear that whenever a change occurs in wages due to a binding settlement or award, the new wage gets the protection under the Payment of Wages Act 1936. By an amendment to the definition of wages\textsuperscript{44} this position was statutorily confirmed.\textsuperscript{45}

\textsuperscript{44} Payment of Wages Act 1936, S.2(vi) as amended by Act 65 of 1957. According to the amended definition, 'wages' means:

"all remuneration whether by way of salary, allowance 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 ..." (emphasis supplied).

\textsuperscript{45} The Statement of Objects and Reasons to the above amendment, \textit{inter alia} mentioned the purpose of the amendment thus:

"Now-a-days the terms of payment under the contracts of employment are frequently modified by the award of tribunals or by the term of binding settlements. The wages revised statutorily through adjudication, arbitration, conciliation or similar statutory processes should also be deemed to be wages for the purposes of the Act".

See Gazette of India (1957) Extraordinary Part II S.2, p.910. In \textit{Mohammed Quasim Lari v. Mohammed Shamsuddin} A.I.R. 1964 S.C. 1699, \textit{supra}, n.42, the Supreme Court was concerned with the interpretation of the definition as it stood before the amendment. But the court took note of the amended provision and observed at p.1701 that the amendment "has merely clarified what, in our opinion, was included in the unamended definition itself".
All remuneration payable, if the terms of employment, express or implied, were fulfilled, would come under the definition of wages though it may not be part of the terms of 'the original contract' of employment. In other words, 'wages' must be regarded as remuneration, including any additional amount made payable in return for services rendered. Now the emphasis is not on the terms of the original contract but on the recompense payable during the period of employment on account of any understanding, settlement or otherwise.

The question then arises whether the enlarged definition of wages, would imply that a valid claim for wages could be made by a dismissed employee who has not been reinstated? In other words can wages be claimed even if there is no subsisting contract of employment? This question came up for consideration before the High Court of Bombay in Nemdeo Sharwan Lokhande v. Chocks Canning and Mining Ltd. The Court had to consider whether a

46. Sreedharan Nair v. Sanku Sreedharan (1969), 1 L.L.J. 627 (Ker.). Certain payments like production bonus and preparation charges of trees payable to the toddy-tappers on the basis of a settlement were delayed. The Court came to the conclusion that, these payments came within the definition of 'wages' in the Payment of Wages Act 1936.

47. A.I.R. 1962 Bom. 303. The petitioner was dismissed from service. He took no steps to get the order set aside under S.16 of the C.P. and Berar Industrial Disputes Settlement Act 1947. He did not file any contd...
declaration by the industrial court that a dismissal was illegal was sufficient to claim back wages. The Court answered in the affirmative. The Court upheld the contention of the petitioner that since the dismissal was illegal, the dismissed employee had the right to urge that he continued in the employment. The Court opined that having regard to the provisions of the C.P and Berar Industrial Disputes Settlement Act 1947, a mere declaration to the effect that a dismissal was illegal would fall within the ambit of the expression "terms of employment express or implied" in the amended definition. 48 In this case the respondent did not appear before the High Court. The employee had failed to invoke Section 16 49 of the C.P. and Berar Industrial Disputes Settlement Act 1947, for claiming relief of reinstatement and back wages. The counsel

f.n. contd...
claim for back wages under S.16(2) of the Act. (For text of S.16(2) see infra, n.49). But he obtained an order from the District Industrial Court declaring that the dismissal was illegal. Consequently he filed an application before the Payment of Wages Authority for wages during the period of dismissal. The claim was dismissed on the ground that there was no order for reinstatement or back wages. The view was confirmed by the Appellate Authority. By a Special Civil Application, the matter was taken to the High Court of Bombay.

48. Id. at p.304 per Kotval, J.
49. The relevant portion of S.16(2) reads, "Any employee, working in an industry to which the notification under sub-section (1) applies, may, within six months from the date of such dismissal, discharge, removal or suspension, apply to the Labour Commissioner for reinstatement and payment of compensation for loss of wages".
failed to bring to the notice of the court, Section 16 of the Act. It was in these circumstances that the court held that a declaration of the Industrial Court was by itself sufficient to enable the employee to prefer a claim for wages under Section 15 of the Payment of Wages Act.

Hence the view in Namdeo Sharwan Lokhande did not survive for long. In Manager, General Motor Owners' Association v. Mahamoodkhan Vasir Khan, a Full Bench of the High Court of Bombay held that Namdeo Sharwan's case was wrongly decided. The Court observed that when the law provides special rights and creates special remedies, the parties must resort only to the special remedy for enjoying the special rights. According to the provisions of

50. Supra, n.47.
51. A.I.R. 1968 Bom. 395. The respondent employee was dismissed from service. He challenged this in the Industrial Court and obtained an order declaring the dismissal illegal. After this the employee filed a claim under S.15 of the Payment of Wages Act. The Authority allowed the claim on the strength of Namdeo Sharwan's case (Supra, n.47).
52. Supra, n.47.
53. The Court was following the decision of the Supreme Court in N.P.Ponnsuswami v. Returning Officer, Namakkal, A.I.R.1952 S.C.64, wherein Fazil Ali, J. observed, "It is now well-recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of." Id. at p.69.
the C.P. and Berar Industrial Disputes Settlement Act, a dismissed worker could file an application for reinstatement and back wages and if the Labour Commissioner finds that the dismissal is illegal, he may direct reinstatement and payment of wages for the whole period from the date of dismissal. This special provision is indicative of the fact that a mere declaration that a dismissal is illegal will not enable an employee to claim wages. The Court, therefore, held that the employee must get an order of reinstatement under Section 16 of the C.P and Berar Industrial Disputes Settlement Act in his favour.

54. C.P. and Berar Industrial Disputes Settlement Act 1947, S.16 (2); supra, n.49.

55. The relevant portion of the Section 16 (3) reads,
"On receipt of such application, if the Labour Commissioner ... finds that the dismissal ... was in contravention of the provisions of the Act ... he may direct

(i) either that the employee shall be reinstated forthwith or by a specified date and paid for the whole period from the date of dismissal ... to the date of the order of the Commissioner, or

(ii) that the employee shall, in addition to the wages from the date of dismissal ... to the date of the order of the Labour Commissioner be paid by the employer such sum not exceeding rupees two thousand five hundred by way of compensation having regard to the loss of employment and the possibility of getting suitable employment thereafter."

56. A.I.R. 1968 Bom. 395 at p.398, per Kotval, C.J.
Once the employer is legally bound to pay an amount as remuneration, that amount will be covered by the protection of the Payment of Wages Act 1936. Hence, where there is an order of reinstatement of a dismissed workman by an appropriate tribunal, the worker may be deemed to be in the service of the employer, even if the employer refuses to reinstate him. In such an event, the worker is entitled to wages at the rate he was entitled to prior to the date of his dismissal.\(^{57}\)

Payments due to the employee by reason of the termination of employment may come under the definition of 'wages'. In Payment of Wages Inspector v. Surajmal Mehta,\(^ {58}\)

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57. The Payment of Wages Act 1936, S.15 gives jurisdiction to the authority under the Act, to decide claims arising out of unauthorised deduction or delay in payment of wages.

58. 1969 Lab. I.C.867 (S.C.). The Licence of Barnagar Electric Supply Co. was revoked by the Madhya Pradesh Government and the Company was taken over by the Madhya Pradesh Electricity Board. The respondent, the Managing Director of the Company, served notices on the employees that their services were no longer required from a specified date. Thereupon the appellant, along with some other workmen, filed an application under S.15 (2) of the Payment of Wages Act to recover wages for the notice period and compensation payable under S.25 FF of the Industrial Disputes Act 1947. The respondent questioned the jurisdiction of the Authority under the Payment of Wages Act. The Authority affirmed jurisdiction. The High Court of Madhya Pradesh, however, held that the Authority had no jurisdiction. Against this order the employees filed an appeal before the Supreme Court.
one of the questions was whether compensation payable to workmen whose services were terminated on transfer of an industrial undertaking\(^5\) would amount to wages\(^6\) under the

\(5\) Industrial Disputes Act 1947, S.25 FF. It reads,

"Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service ... shall be entitled to notice and compensation in accordance with the provisions of S.25 F as if the workman had been retrenched ..."

Section 25 FF, it may be noted, does not make payment of compensation a condition precedent. Transfer can validly take place without notice or payment of a month's wage in lieu of the notice or payment of compensation.

\(6\) In order to come within the definition of 'wages' a provision for payment of compensation should not be a pre-condition. The 1957 amendment to the definition of 'wages' in the Payment of Wages Act, S.2 (vi) (d) included within the term

"... any sum which by reason of termination of employment of the person employed is payable under any law, contract or instrument which provides for payment of such sums whether with or without deductions but does not provide for the time within which the payment is to be made."
Payment of Wages Act. Such compensation according to the Court, could be wages as defined in the Payment of Wages Act.

Wages under the Industrial Disputes Act 1947

The definition of the term wages in the Industrial Disputes Act 1947 is more or less similar to that in the

61. The court observed,

"Since Section 25 FF ... does not contain any conditions precedent, as in the case of retrenchment under Section 25 F, and transfer and closure can validly take place without notice or payment of a month's wages in lieu thereof or payment of compensation, S.25 FF can be said not to have provided any time within which such compensation is to be paid. It would therefore, appear that compensation payable under Section 25 FF, would be 'wages' within the meaning of s.2 (vi) (d) of the Act".


62. Industrial Disputes Act 1947, S.2 (rr). It reads,

"'wages' means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes:

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles,

(iii) any travelling concession, but does not include

(a) any bonus
(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force.
(c) any gratuity payable on the termination of his service."
Payment of Wages Act. The remuneration in respect of employment would become payable when the worker has fulfilled the express or implied terms of the contract of employment. Allowances and facilities to which a workman is entitled to by reason of his employment will also come under the term 'wages'. Wages are payable to a workman in respect of his employment or work done in such employment. If so, a worker who has failed to perform his part of the contract of employment, is not entitled to remuneration. According to the strict law of contract, in such an event the employer is perfectly justified in refusing payment to his workers. However, industrial jurisprudence views such an instance in a different perspective.

In Churakulam Tea Estate v. Its Workmen the Supreme Court held that where the strike is not illegal and also not unjustified, the workmen are entitled to wages for the period. Similarly if the employer, by declaration of an

63. 1969 Lab. I.C. 1396 (S.C.). On a dispute about the bonus, the workers of a tea factory went on strike for half a day to show their protest on the attitude of the management. The management declined to pay wages for that day to the factory workers. The management also laid off without compensation all the workers of the estate for a week. On a dispute over this, the tribunal found that the strike was not illegal and justifiable and that the workers were entitled to wages for the strike period. The tribunal held that the lay off declared by the management was without a just cause, and so the employer was liable to pay wages for the lay off period. The case came up before the Supreme Court in appeal by special leave. The Court agreed with the view of the tribunal.
illegal lay off, refuses to employ workmen, the workers will be entitled to wages. Hence wages would be payable if the strike or nonperformance of a contractual duty by the workman is found to be on justifiable grounds. Otherwise the employees are not entitled to wages. A pro-rata deduction from wages may also be permissible in cases of strike for part of a day in appropriate cases.

64. Id., p.1401.

65. Algemene Bank Nederland v. Central Government Labour Court, 1978 Lab. I.C. 47 (Cal.). The question in the case was whether the Bank was justified in making a proportionate deduction from the wages of an employee who went on strike. A bank employee remained absent from work, shouting slogans inside the premises and without doing any work, for certain hours on a particular day. The bank paid him wages on a prorata basis for the period he had rendered services. When the matter went up to the High Court of Calcutta, the court observed that the right of the employee to receive wages depends upon the performance of his work during the period of employment. On policy considerations of avoidance of undue hardship to employees a prorata payment may be made. The Court therefore held that prorata payment was justified (at p.55). However, the High Court of Kerala held in Shenoy v. Central Bank of India, 1983 K.L.T. 381, that when an officer of a bank is absent for a short time of a day, deduction of the entire salary for the day will be justified. In K.S.R.T.C. Employees' Association v. General Manager, K.S.R.T.C., 1985 Lab.I.C. 552 (Ker.), the Kerala High Court upheld a regulation providing for deduction of the whole day's wages for absence for a portion of the day and also for deduction of eight day's wages when such absence amounted to misconduct.
Definition of wages under other enactments

Definitions similar to the one under the Industrial Disputes Act 1947, laying stress on the contract of employment, appears in the Minimum Wages Act 1948, the Employees' State Insurance Act 1948 and the Payment of Bonus Act 1965.

Under the Minimum Wages Act 1948, wages is defined to include house rent allowance. Other amenities are totally excluded from the purview of the Act. For the purpose of the Payment of Bonus Act 1965 salary or wage includes the basic wage which is payable on fulfilment of the terms of employment and dearness allowance payable on account of rise in the cost of living.

The Workmen's Compensation Act 1923 defines the term in order to determine the compensation for injuries caused to a workman. The quantum of compensation depends on the wages of the workman. Those who come within the purview of the Act would get compensation geared to their

66. Minimum Wages Act 1948, S.2 (h)  
67. Id., S.2 (21).  
68. Id., S.2 (m).  
69. Prior to the amendment of S.2(n) by Act 22 of 1984, the Act was applicable only to workmen receiving monthly wages not exceeding one thousand rupees. Act 22 of 1984 took away this monetary limit. The amendment has been brought into force w.e.f. 1.7.1984.
wages. Therefore the Act attempts to bring in, all amounts received by the employee except certain specified items, within the purview of 'wages'.

The definitions vary according to the purpose of each legislation.

**Uniform definition**

The elements which ought to constitute 'wages' and the need for a uniform definition of wages engaged the attention of the National Commission on Labour. Attention of the Commission was drawn to the desirability of framing a Common Labour Code with uniform definitions of the terms differently defined in various labour statutes. After an

70. *Id.*, S.2 (m) "'Wages' includes any privilege or benefit which is capable of being estimated in money, other than travelling allowance or the value or any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment." See also supra, n.29.

71. The Commission, under the Chairmanship of Justice P.B. Gajendragadkar was appointed by the Government of India, Ministry of Labour, Employment and Rehabilitation, by Resolution No.36/14/66 I & E. Report of the National Commission on Labour (1969), Appendix I.

72. *Id.*, p.316.

73. The Study Group on Labour Legislation appointed by the National Commission on Labour evolved a Common Labour Code, namely, the Labour Code 1969, incorporating uniform standards. With the adoption of such a code what was intended was contd...
elaborate discussion the Commission finally concluded that in view of the variety of subjects covered under labour legislations it was not a practical idea to evolve a Common Labour Code with uniform definitions. Though the idea of a common code was not favoured by the National Commission, inorder to attain a measure of simplification, it was suggested that an attempt be made for the integration of those enactments which cover subjects having a common objective.

f.n.contd...

(i) to achieve a set of definitions of the basic terms,

(ii) to attain uniformity in the application of procedures, and

(iii) to reduce the multiplicity of administrative authorities.

The code was subjected to a thorough examination by the employers, workers and governmental agencies. None of them supported the code in toto. See Report of the National Commission on Labour (1969), pp.316,317

74. Id., pp.316-318.

75. The Commission said,

"We do not think it will be practicable to formulate a Single Common Labour Code having uniform definitions all through and applying to all categories of industrial labour employed all over the country without any distinction."

Id. at p.318.

76. Ibid.
In the draft Code prepared by the Study Group on Labour Legislation, wages and allowances were made part of the definition of the term 'remuneration'. Remuneration included wages, allowances, payments made to the


78. Id., S.2(23). It reads, "'remuneration' means earnings or emoluments, however designed or calculated, capable of being expressed in terms of money in a written or unwritten contract of employment, payable by an employer to an employee for work done or to be done or for services rendered or to be rendered and includes wages, allowances, payments made to the employees to defray expenses, commission, bonus, incentive payments, contributions, unemployment compensation and terminal benefits ..."

79. Id., S.2(23) (i). It reads, "'Wages' means that part of remuneration which is payable as a basic wage, a dearness allowance or cost of living allowance, house rent allowance, sickness allowance, food subsidy or any other monetary or non-monetary benefit regularly received by the employee which goes to defray his living expenses and which are capable of being computed in terms of money whether paid as a consolidated sum or otherwise but does not include allowances, expenses, commission, bonus, incentive payments, contributions, unemployment compensation, terminal benefits ..."

80. Id., S.2(23) (ii). It reads, "'Allowances' means that part of the remuneration which is payable for occasional service like overtime or a fixed allowance or a commuted payment made for specific purpose other than the allowance or payments included in the term 'wages'"
employees to defray expenses, commission, bonus including customary, festival and other types of bonus not related to profits, incentive payments, contributions to social security funds, unemployment compensation and terminal benefits. 'Wages', here, is depicted as a set of specified payments, excluding a number of other payments.

81. Id., S.2 (23) (iii).
82. Id., S.2 (23) (iv). It reads, "'Commission' means payment made to any person in relation to sale of goods, or for rendering any services."
83. Id., S.2 (23) (v).
84. Id., S.2 (23) (vi).
85. Id., S.2 (23) (vii).
86. Id., S.2 (23) (viii). It reads, "'Unemployment compensation' means lay off compensation payable according to S.60 of the Code."
87. Id., S.2 (23) (ix). It reads, "'Terminal benefits' means that part of the remuneration which is payable to an employee on his ceasing to be in employment such as, gratuity, pension or retrenchment compensation."
All those excluded items are, however, included within the purview of 'remuneration'. Hence a distinction is made between 'remuneration' and 'wages' in the Code and the contents of 'wages' have been made clear and specific. However, as mentioned earlier,\(^88\) the National Commission was of the view that it is not practicable to formulate a uniform definition.\(^89\)

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88. Supra, n.75

89. The Commission, however, expressed the view that the definition of wages in the Industrial Disputes Act 1947 required modification by including regular items in workman's remuneration like bonus, contribution to provident fund and gratuity. Report of the National Commission on Labour (1969), p.484. Inspite of this recommendation, no substantial change in the definition of wages in the Industrial Disputes Act was brought about. The only amendment brought about was to include "any commission payable on the promotion of sales or business" within the definition of wages. See Industrial Disputes (Amendment) Act 1982 (Act 46 of 1982), S.2.