

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

**PAYMENT OF WAGES ACT WITH SPECIAL
REFERENCE TO ‘THE JODHPUR CENTRAL COOP.
BANK VS NAIM SINGH AND ANR. ON 19 SEPTEMBER,
1989’---A CRITICAL STUDY.**

AUTHORED BY – AYALI NATUA & DEBARJUN DEY

INTRODUCTION

The Jodhpur Central Coop. Bank vs Naim Singh and Anr. On 19 September, 1989:

The above case is between The Jodhpur Central Coop. Bank and Employees of the bank. In this case the employees of Jodhpur Central Coop. Bank named Naim Singh and Anr have filed a claim application under Section 15(2) of the Payment of Wages Act, 1936 (hereinafter referred to as the Act of 1936) and claimed the over-time wages for working on the days which were declared as holidays under Section 25 of the Negotiable Instruments Act, 1881. It is alleged that the declared holidays are June 30, 1984, December 31, 1984, June 29, 1985 and December 31, 1985. But the Authority disallowed the claim of the petitioner with regard to the overtime claimed for working on June 30, 1984 being barred by time.

Now we shall discuss about the provisions of The Payment of Wages Act, 1936 which are directly linked in this case:

The Act extends to the whole of India (Sec. 1 (2)). It was extended to Jammu and Kashmir by the Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970.

The Act applies to the payment of wages to persons employed in any factory, to persons employed (otherwise than in a factory) upon any railway by a railway administration and to an industrial or other establishment specified in Clauses (a) to (g) of Sec. 2 (II) (which defines industrial or other establishment). The persons employed upon a railway by a railway administration may have been employed either directly or through a sub-contractor by a person fulfilling a contract with a railway administration (Sec. 1 (4)).¹ The State Government may after giving 3 months' notice extend the provisions of the Act to the payment of wages to any class of persons employed in any industrial

¹ It also provides against irregularities in payment of wages and unauthorized deductions therefrom by the employers (Arund Mills Ltd. V. Gadgil, A.I.R. (1941) Bom. 26 Armugham v. Jawahar Mills, A.I.R. (1956) Mad. 79]. Further, it ensures payment of wages in a particular form and at regular intervals without unauthorized deductions.

establishment or class of establishments specified by the Central Government or a State Government under Clause (h) of Sec. 2 (1) [Sec. 1 (5)]. In case of industrial establishments owned by the Central Government, such notification can be issued with the concurrence of the Central Government (Proviso to Sec. 1 (5)).

DEFINITIONS

Appropriate Government means in relation to railways, air transport services, mines and oil fields the Central Government and in relation to all other cases, the State Government (Sec. 2(1)1.²

1. Employed person (Sec. 2 (fa)). Employed person includes the legal representative of a deceased employed person.
2. Employer [Sec. 2 (ib)]. Employer' includes the legal representative of a deceased employer.

When there is a manager who is entrusted with the affairs of a company, the directors of the company cannot be said to be employers [Superintendent & Remembrancer of Legal Affairs v. B.C. Saha, (1974) 45 F.J.R. 4891.

3. Wages [Sec. 2 (vi)]. Wages' means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment. Simply stated, 'wages' means all Remuneration due to any worker or employee if the terms of contract of employment are fulfilled.

The definition of expression 'wages' is made sufficiently wide by including within the expression:

- a. any remuneration payable under any award or settlement between the parties or order of a Court;
- b. any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period: (c) any additional remuneration³ payable under the terms of employment (whether called a bonus or by any other name);
- c. any sum which by reason of the termination of employment of the person employed is Payable under any law, contract or instrument which provides for the payment of such

²The Payment of Wages Act, 1936 was passed to regulate the payment of wages to certain classes of persons employed in industry (D'Costa, A.V., G.I.P. Rly. V. B.C. Patel, A.L.R. (1955) S.C. 412].

³ It is essentially meant for the benefit of industrial employees not getting very high salaries and the provisions of the Act were enacted to safeguard their interest [Milkhi Ram v. State of Punjab, A.I.R. (1964) Punj. 513].

sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

- d. any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

The expression 'wages' does not include:

1. Any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
2. The value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
3. Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
4. Any travelling allowance or the value of any travelling concession;
5. Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; and
6. Any gratuity payable on the termination of employment in cases other than those specified in Clause (d) above.

The definition of the expression 'wages' comprises 3 parts:

The first part declares that 'wages' means all remunerations which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed, in respect of his employment. This clause presents no difficulty whatsoever for it declares in an unambiguous language that an employee is entitled to receive wages in accordance with the terms of his contract.

The second part says that the expression 'wages' shall include any bonus or other remuneration of the nature aforesaid which would be so payable, i.e., payable in accordance with the terms of the contract.

The third part declares that the expression 'wages' shall include any sum payable to such person by reason of the termination of his employment. The language of this clause is wide enough to embrace not only a sum payable to an employee under the terms of a contract but also a

sumpayable to him under the provisions of any law.

Wages to be paid before 7th or 10th day.

Wages to be paid on a working day.

DEDUCTIONS WHICH MAY BE MADE FROM WAGES (Sec. 7)

Sec. 7 provides that the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under the Payment of Wages Act, 1936 [Sec. 7 (1)].

KINDS OF DEDUCTIONS

The deductions from wages of an employed person referred to in Sec. 7 (1) may be of the following kinds only, namely;

Deductions for fines [Secs. 7 (2) (a) and 8]

Deductions for absence from duty [Secs. 7 (2) (b) and 9]

Deductions may be made on account of the absence of an employed person from duty (Sec. 7 (2) (b)) from the place or places where, by the terms of his employment, he is required to work. The absence may be for the whole or any part of the period during which he is so required to work [Sec. 9(1) | But the ratio between the amount of such deductions and the wages payable shall not exceed the ratio between the period of absence and total period within such wage-period (Sec. 9 (2)]. It has however been held in *K.S.R.T. Employees' Assn. v. General Manager, K.S.R.T.*, (1985) Lab. I.C. 552 (Ker.) that in a strike by workers in a public utility like transport service, if employees absent for a part of the day without notice, deduction of full day's wages would not be unjustified or illegal.

If, however, 10 or more employed persons, acting in concert, absent themselves without due notice and without reasonable cause, the deduction for absence from duty from any such person may include such amount not exceeding his wages for 8 days as may be due to the employer in lieu of notice (Proviso to Sec. 9(2)) In this regard any employed person shall be deemed to be absent from the place where he is required to work if he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work (Explanation to Sec. 9)

Deductions for services [Secs. 7(2)(d) (e) and 11]

Deductions for recovery of advances [Secs. 7 (2) (f) and 12]

Deductions for recovery of loans [Secs. 7 (2) (fff) and 12-A]

Deductions for payments to co-operative societies and insurance schemes [Secs. 7 (2) (i) and (k) and 13]

LIMIT ON DEDUCTIONS [Sec. 7 (3)]

The total amount of deductions which may be made under the above heads (Sec. 7 (2)) in a wage-period from the wages of any employed person shall not exceed 75 per cent of such wages in cases where such deductions are wholly or partly made for payments to co-operative societies under Sec. 7 (2) (j). In any other case, they shall not exceed 50 per cent of such wages [Sec. 7 (3)]. Where the total deductions authorized under Sec. 7 (2) exceed 75 per cent, or as the case may be, 50 per cent of the wages, the excess may be recovered in such manner as may be prescribed [Proviso to Sec. 7 (3)]

Claims arising out of deductions from wages or delay in payment (Sec. 15)

The scheme of Payment of Wages Act is that all claims arising out of deductions from wages or delay in the payment of wages are to be decided by the Authority appointed by the appropriate Government under Sec 15 and not by a Civil Court

Sec. 15 empowers the appropriate Government to appoint some person as the Authority to hear and decide for any specified area all claims arising out of (a) deductions from the wages, or (b) delay in payment of the wages of persons employed or paid in that area, including all matters incidental to such claims. The appointment shall be made by notification in the Official Gazette. The following may be appointed as the Authority as aforesaid:

(a) any Commissioner for Workmen's Compensation, or (b) any officer of the Central Government exercising functions as,

(i) Regional Labour Commissioner; or

(ii) Assistant Labour Commissioner with at least two years' experience; or

(c) any officer of the State Government not below the rank of assistant Labour Commissioner with at least two years' experience; or

(d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947, or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State, or

(e) any other officer with experience as a Judge of a Civil Court or as a Judicial Magistrate [Sec. 15 (1)]

The appropriate Government may, where it considers necessary so to do, appoint more than an Authority for any specified area. It may, by general or special order, also provide for the distribution or allocation of work to be performed by them under this Act [Proviso to Sec. 15 (1)].

Powers of Authorities appointed under Sec. 15. Sec. 18 provides that every Authority appointed under Sec. 15 (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of

(a) taking evidence and enforcing the attendance of witnesses, and (b) compelling the production of documents.

Further, every such Authority shall be deemed to be a Civil Court for all the purposes of Sec. 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973. under the Act may be filed by

Who may file application? An application for claims arising lal the person employed himself, or

(b) any legal practitioner, or

(c) any official of a registered trade union authorized in writing to act on his behalf, or

(d) any Inspector under the Act, or (e) any other person acting with the permission of the Authority appointed under Sec. 15 (1)

(Sec. 15 (2)

Application to be filed within 12 months. Every application for claims under the Act shall be presented within 12 months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made [Proviso 1 to Sec. 15 (2)].

An application may also be admitted after 12 months if the applicant satisfies the Authority that there was a sufficient cause for not making the application within 12 months [Proviso 2 to Sec. 15 (2)].

Procedure. When any application for claims under the Act is entertained, the Authority shall hear the applicant and the employer or other persons responsible for the payment of wages under Sec. 3, or give them an opportunity of being heard. The Authority shall make such further inquiry as may be necessary. It may direct the refund to be made to the employed person of the amount deducted or the payment of the delayed wages, together with such compensation as it may think fit. The compensation shall not exceed 10 times the amount improperly deducted, and not exceeding Rs. 3,000 but not less than Rs. 1,500 in case of delayed wages. Even where the deducted or delayed wages are paid before the disposal of the application, the Authority may direct the payment of such compensation as it may think fit. This amount of compensation shall however not exceed Rs. 2,000 [Sec. 15 (3)]. No direction if the Authority is satisfied. No direction for the payment of compensation shall be made in the case of delayed wages if the Authority is satisfied that the delay was due to (a) a bona fide error or dispute; or

(b) the occurrence of an emergency or the existence of exceptional circumstances; or (c) the failure of the employed person to apply for or accept payment [Proviso to Sec. 15 (3)].

Dispute as to legal representatives. Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person, the decision of the Authority on such dispute shall be final [Sec. 15 (4-A)].

Inquiry under Sec. 15 is a judicial proceeding. Any inquiry under Sec. 15 shall be deemed to be a judicial proceeding within the meaning of Secs. 193, 219 and 228 of the Indian Penal Code, 1860 [Sec. 15 (4-B)].

Recovery of amount. Any amount directed to be paid under Sec. 15 may be recovered (a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by him as Magistrate, and (b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate [Sec. 15 (5)].

Single application in respect of claims (Sec. 16)

A single application may be presented under Sec. 15 on behalf of or in respect of any number of employed persons belonging to the same unpaid group. When a single application is made, every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified in Sec. 15 (3) [Sec. 16 (2)].

Employed persons are said to belong to the same unpaid group if they are borne on the same establishment, and

- 1.If deductions have been made from their wages in contravention of the Act for the same cause and during the same wage-period or periods, or
- 2.If their wages for the same wage-period or periods have remained unpaid after the day fixed by Sec. 5 [Sec. 16 (1)].

JUDGEMENT

The judgement was given by Justice. Ashok Kumar Mathuras Mr. Parihar, learned Counsel for the petitioner, has submitted that under Section 25 of the Negotiable Instruments Act certain public holidays are declared to save the negotiable instruments from expiry and on those holidays if any negotiable instrument expires, then it will be negotiable on the next preceding day. The explanation clarified that the public holiday includes Sundays and any other holidays declared by the Government by notification in the Official Gazette. Section 25 reads as under:

“25. When day of maturity is holiday- When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation: - The expression “public holiday” includes Sundays and any other day declared by the Central Government, by notification in the Official Gazette to be a public holiday”

Learned Counsel submits that this declaration of public holiday on December 31, 1984 does not mean that the banks were closed and there were holidays for the employees. In fact, it was declared as a holiday under Section 25 of the Act which is an enabling provision for saving the negotiable instruments being expiring and so as to enable them for being exchanged on next preceding business day. The declaration as holiday under Section 25 of December 31, 1984 which was Monday and which was day for annual checking of the accounts would not mean that it was a holiday for the bank employees. By this the submission of Mr. Parihar appears to be justified. On December 31, 1984 and other two days which was closing of the bank account, meaning thereby that on that day there was no commercial transaction and as such it was not a holiday for the employees and when there was no holiday for the employees, petitioner cannot claim overtime for working on those days.

“June 30 and December 31 when declared as such to be holidays for half yearly and yearly closing accounts shall be deemed to be normal working days for all workmen employees in Bank”.

BIBLIOGRAPHY

1. <https://indiankanoon.org/doc/685111/>
2. PAYMENTOFWAGESACT 1936