

(1963) 06 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 2171 of 1962

Aroor Carpet Factories, Private Ltd. (in liquidation)

APPELLANT

Vs

K.N. Henry and Others

RESPONDENT

Date of Decision : 20-06-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25FFF(1)
Payment of Wages Act, 1936 — Section 15(2), 15(3), 2, 23, 3

Citation : AIR 1964 Ker 162

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : M.U. Isaac, for the Appellant; K. Velayudhan Nair, V.S. Moothath, K.J. Joseph, M.C. Sen, T.V.B. Nair and T.K.M. Unnithan for Respondent (Nos. 1 to 13) and Govt. Pleader (Labour) for Respondent No. 14, for the Respondent

Judgement

C.A. Vaidialingam, J.—In this writ petition on behalf of the petitioner, Mr. M. U. Isaac, learned counsel, challenges the order Ext. P-5 passed by the authority under the Payment of Wages Act, (Central Act No. IV of 1936), as also the order of the learned District Judge, Alleppey, Ext. P-6, confirming the order Ext. P-5.

2. The petitioner was a private incorporated company, and it is seen that it has since been wound up by order of Court dated 17-11-1960. The said company was engaged in the manufacture of carpets and other coir products, intended for export out of India. According to the petitioner, due to failure of the foreign market and want of orders for its products, the company became unable to carry on its business by the beginning of 1960; and inasmuch as the company had a largo number of workers and a fairly big staff, it became impossible to maintain them without being able to give them work. In view of these circumstances, the management put up a notice, Ext. P-1 dated 944960. It is seen that the management under Ext. P-1 has stated that in view of the then difficult situation, the management finds it difficult to run the factory without reorganisation; and therefore the office and the factory will remain closed for a period of six weeks with effect from 11th April 1960.

It is also mentioned in the said notice that the layoff scheme then in operation in the factory will stand suspended from the last settlement unit, ending 12th March 1960. It is also stated that the said period of stoppage of work will not constitute a break in the service. It is also mentioned that negotiations with the concerned unions will continue during the period and that the management expects that a workable solution will be arrived at very soon. That notice was put up by the management, as mentioned earlier, on 9-4-1960, and copies of the same appear to have been sent to the District Labour Officer, Alleppey, the General Secretary, Kerala Coir, Factory Staff Association, Alleppey, the President, Coir Labour Union, Shertallai and also the General Secretary, Shertallai Taluk Coir Factory Employees Union, Aroor.

2a. We are now concerned in this writ petition only with the Kerala Coir Factory Staff Association, Alleppey, because there is no controversy that respondents 1 to 13 who approached the Payment of Wages Authority u/s 15(2) of the Act for relief, were members of the staff of the management, at the material time. I will also indicate that they were parties through their Association to the conciliation agreement, evidenced by Ext. P-2.

3. I have already indicated that copy of the notice Ext. P-1 was sent to the District Labour Officer Alleppey. Under Ext. P-2 it is seen that 3 memorandum of settlement has been signed. A perusal of Ext. P-2 will show that the management was represented by Shri V. V. Job, and the workmen were represented by Messrs. K. C. Eapen and A. Subramaniam representing the Kerala Coir Factory Association.

Ext. P-2 states that a dispute has arisen between the Aroor Carpet Factories Ltd., and their workmen, represented by (a) the Shertallai Taluk Coir Factory Employees Union, (b) the Coir Labour Union, and (c) the Kerala Coir Factory Staff Association. The subject of the dispute is also stated to be the closure of the establishment. It is also stated that due to the persistent loss and financial difficulties, in which the establishment has landed, due to the paucity of orders, the work in the establishment came to a standstill. A conference that appears to have been held by the Labour Commissioner on 6-5-1960 when the whole position was discussed, is also referred to. It is also noted that one of the Unions, namely the Shertallai Taluk Coir Factory Employees Union, was not prepared to accept the conciliation agreement, on the ground that it could not agree to the closure of the establishment then effected by the management, as it is of the view that it was possible to find employment in the near future.

But Ext. P-2 clearly states that the Coir Labour Union and the Staff Association, with which we are now concerned have felt that they could not wait for the off chance of the opening of the factory and that they would be prepared to accept the closure and receive compensation. The terms of the settlement indicated therein, were also arrived at between the management on the one hand, and the Staff Association and the Labour Union on the other. The terms of settlement were also mentioned in Ext. P-2, which are to the effect, namely (1) the

management agree to pay compensation to the workers and staff at the rate of ten days' total earnings per year for a maximum period of 20 years, (2) the payment of this compensation amount will be made within six months from the date of the agreement, (3) All the arrears due to the workers accepting the retrenchment, will be paid within two months. Ext. P-2 is dated 5-5-1960, and the conciliation conference itself appears to have taken place, as mentioned therein, on the same date. This agreement is signed by a representative of the employer, viz., Shri V. V. Job, and by two representatives of the workmen, namely Shri K. C. Eappen and Shri A. Subramaniam, as also by the conciliation officer, (Labour Commissioner).

4. There is no controversy that respondents 1 to 13 in these proceedings were members of the staff of the management at the material time and they were represented by the appropriate Association. In consequence of the conciliation agreement, the management issued notice under Ext. P-3 on 23-5-1960. In Ext. P-3 the management refer to the notice Ext. P-1 issued on 9-4-1960 and also stated that the workers and staff are thereby informed that as per the memorandum of settlement dated 5-5-1960, arrived at in the Trivandrum conference, the agreement mentioned therein has been reached. Then the terms of the agreement, which have been already adverted to by me, and as embodied in Ext. P-3, are also mentioned in Ext. P-3. This notice, again, was published on 23-5-1960.

5. On 28-7-1960, respondents 1 to 13, who, as already stated, were members of the Kerala Coir Factories Staff Association, filed an application, evidenced by Ext. P-4, before the Authority under the Payment of Wages Act, Central Act No. IV of 1936. The application itself was u/s 15(2) of the said statute. The claim of the applicants appears to be briefly as follows. The petitioners therein, namely Ext. P-4, are all persons whose names appear in the attached schedule and have been employed in the factory, namely the present management. After giving the description of the management and other particulars, it is stated in paragraph 3 that the applicants wages have not been paid for the following wage periods; namely (a) March 1960, (b) April 1960, and (c) 5 days in May 1960. That is one item of claim. The second item of claim is one month's wages in lieu of notice as, per Section 25F of the Industrial Disputes Act. The third item of claim is retrenchment compensation as per Section 25-F of the Industrial Disputes Act. The fourth and fifth item relate to the arrears of wages due by way of annual increment and payment in lieu of un-availed of leave.

6. Therefore, it will be seen that their claim was regarding the payment of salary for particular months, payment of one month's wages in lieu of notice u/s 25F of the Industrial Disputes Act, and retrenchment compensation u/s 25F of the Industrial Disputes Act, apart from the arrears of wages due by way of annual increment and also payment in lieu of unavailed leave. The applicants also state that their services have been terminated with effect from 5th May 1960. That probably is the date on which the conciliation agreement has been signed under

Ext. P-2; and according to them, the payments are due to them, and the management is continuing the business and therefore there is no bona fide closure. On these contentions, respondents 1 to 13 prayed for issue of necessary directions u/s 15(3) of the Payment of Wages Act, for payment of delayed wages, estimated by them in the sum of Rs. 34,559-15, or any greater or lesser amount as may be found due to them. They also claim compensation in accordance with law.

7. Therefore, it will be seen that the substantial relief that appears to have been asked for, is on the basis of Section 25F of the Industrial Disputes Act. There is also no doubt the averment that the management is continuing the business and that it cannot be considered that there is a bona fide closure of the business in the circumstances of the case, and the claim itself amounts to about Rs. 34,559-15. As to how exactly this amount has been arrived at has been mentioned in considerable detail in a tabular form, In the order passed by the Authority under the Payment of Wages Act, namely Ext. P-5. The years of service, as well as the claims made under the various heads by the 13 petitioners in Ext. P-4, have been Indicated; and that is how the amount of Rs. 34,559-15 has been arrived at. The management appears to have contested the stand taken by the applicants before the Authority under the Payment of Wages Act, on several grounds. No doubt, a contention appears to have been taken that the claims made by the petitioners cannot be considered to be "wages", and therefore the Payment of Wages Authority has no jurisdiction to investigate those claims. But such a contention does not arise for consideration in these proceedings at any rate, before me.

8. The main contentions raised by the management, to the claims of the members of the Staff Association, appear to have been two-fold, namely (1) that no, retrenchment compensation can be paid at all u/s 25F of the Industrial Disputes Act, and (2) that in view of the conciliation agreement evidenced by Ext. P-2, the rights of the parties, if any, must be restricted only to the matters provided therein, and that respondents 1 to 13 are not entitled to claim any larger rights than those indicated in the conciliation agreement.

9. The Authority under the Payment of Wages Act considered both those aspects. No doubt the Authority was not prepared to accept the stand taken by the management that the claim of the applicants before it for payment of retrenchment compensation cannot be Investigated in those proceedings. The Authority adverts to the definition of the expression "wages" occurring in the Act, and in particular to the definition contained in Section 2(vi) of the Act, and ultimately is of the view that the claim for retrenchment compensation can be considered and also awarded by the Authority under the Payment of Wages Act. But it will be seen that it is not very clear whether the authority proceeds on the basis that the claim has to be adjudicated as a retrenchment compensation u/s 25F of the Industrial Disputes Act, or whether It is to be adjudicated on the basis of a claim for compensation for closure u/s 25-FFF of the Industrial Disputes Act.

But whatever it is, ultimately it refers here and there to the fact that the services of the applicants before it have been terminated with effect from 5-5-1960. It also refers to the termination and the consequence of the closure which took place on that date. Ultimately the position will be, as I will indicate later, that unless the management has been specifically able to take up the position that this is a closure coming u/s 25FFF(1) covered also by the proviso therein, the basis to be adopted for award of compensation, loses all importance. Because, if it is only a closure, not coming within the proviso to Section 25FFF(1), compensation is payable substantially in accordance with Section 25-F. The authority was prepared to accept the claim of the applicants before it in toto, and ultimately awarded the amounts claimed by them. The Authority is also of the view that a further compensation in this case, must be directed to be paid u/s 15(3) of the Payment of Wages Act; and, in this view, it awards a compensation of Rs. 7/- to each of the applicants before it,

10. The second contention that appears to have been raised before the authority, as I mentioned earlier, was that the rights of parties are to be governed only by the conciliation agreement, namely Ext. P-2. But this stand, taken up by the management, appears to have been controverted by the Staff Association, on the ground that the said agreement Ext. P-2 is hit by the provisions of Section 23 of the Payment of Wages Act. I will have to advert to the provisions of Section 23 a little later, but, for the present, it will be noted that the Staff Association admitted that there was a conciliation settlement; but they took up the stand that the said settlement is hit by Section 23 of the Act. The Payment of Wages Authority quotes Section 23 of the Payment of Wages Act, and is of the view that the conciliation agreement is a contract in law and it certainly deprives the applicants before it of the rights conferred by the Act. On this basis, the plea raised by the management, that Section 23 of the Act has no application was, so to say, summarily rejected by the Authority. Ultimately the claim made before it by the applicants was completely allowed by the authority.

11. The management challenged the order Ext. P-5 passed by the authority under the Payment of Wages Act, by taking up the matter in appeal before the learned District Judge, u/s 17 of the Payment of Wages Act. The learned District Judge, ultimately by his order Ext. P-6, accepted all the findings arrived at by the authority, and dismissed the appeal filed by the management. The appellate authority is also of the view that the various claims made by the applicants under Ext. P-4 can be entertained by the authority and that those claims can certainly be considered when a claim for delayed wages is made under the Act.

Again, the view taken by the Payment of Wages Authority regarding the bar of Section 23 of the Act was canvassed before the learned District Judge by the management. But so far as that is concerned, here again, the learned District Judge is of the view that a plain reading of Section 23 shows that an employee is prohibited from contracting away his rights which are given under the Act, but nevertheless the Section does not prevent the employee from entering into an

agreement advantageous or beneficial to him. The decision of the Assam High Court reported in *Dinaram v. Kakajan Tea Estate* AIR 1958 Ass77, was relied upon by the management; but it was distinguished by the learned District Judge. Ultimately he agreed with the view of the Authority under the Payment of Wages Act that the conciliation agreement Ext. P-2 is hit by Section 23 of the Payment of Wages Act.

12. Pausing here for a minute, it is rather regrettable that the learned District Judge, at any rate when this legal question was raised before him and the view expressed by the Authority under the Payment of Wages Act was being challenged should have investigated the matter a little more closely, instead of summarily rejecting the contention controverting the bar to Section 23 of the Payment of Wages Act. I have already mentioned that the Authority under the Payment of Wages Act has only quoted Section 23 and held that Section 23 is a bar to the agreement in question. More or less the same procedure has been adopted by the learned District Judge also. As to what exactly is the scheme of the Act, as to what are the rights given under the statute and what are the terms of the agreement which according to the learned District Judge take away or abridge the rights of the parties under the Act I regret to say, have not been considered much less discussed by the learned District Judge. But I am only referring to these aspects to show that there is no assistance provided by either of the orders under attack, as to how exactly they have come to the conclusion that the conciliation agreement Ext. P-2 is hit by the provisions of Section 23 of the Payment of Wages Act.

13. It appears to have been urged by the management before the learned District Judge that compensation should have been awarded in this case only as and for closure, and that having due regard to the proviso to Section 25-FFF (1) of the Industrial Disputes Act. Therein it is provided, that where an undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under Clause (b) of Section 25-F shall not exceed his average pay for three months; i.e., the liability, if the employer is able to establish those circumstances, will be considerably reduced if Section 25-FFF (1) read with the proviso is applied. But so far as that is concerned, the learned appellate Judge is of the view, that, apart from the fact that the management did not specifically take any such contention that the closure was due to unavoidable circumstances beyond the control of the management, the evidence on record does not show that the closure of the undertaking was beyond the control of the management. Ultimately the learned District Judge also accepted in toto the view expressed by the authority under the Payment of Wages Act and dismissed the appeal. These are the orders which are under attack in these proceedings, by Mr. M. U. Isaac, learned counsel for the petitioner management.

14. The two contentions that have been reiterated before me by the learned counsel for the petitioner are that the applicants, namely respondents 1 to 13,

came with a specific claim for retrenchment compensation before the Payment of Wages Authority and that authority having come to the conclusion that this is a case of closure, ought to have rejected the claim for compensation straightaway. The second contention urged by the learned counsel is that the views expressed by the Authority under the Payment of Wages Act as well as by the learned District Judge, regarding the conciliation agreement Ext. P-2 being hit by Section 23 of the Payment of Wages Act, is erroneous in law and cannot be sustained.

15. The stand taken by the learned counsel for the petitioner on both these aspects, has been very strenuously controverted by Mr. K. Velayudhan Nair, learned counsel appearing for the respondents. So far as the first contention of Mr. M. U. Isaac, learned counsel for the petitioner is concerned, it need not detain me any longer, it will be seen that in the application filed by respondents 1 to 13, namely Ext. P-4, they rest their claim mainly on the basis of compensation as per Section 25F of the Industrial Disputes Act. But it will also be seen that they have specifically stated therein that the management is continuing the business and therefore there is no bona fide closure. They have even, in anticipation, challenged a stand that may be taken by the management when it appears on the scene that this is a case of bona fide closure coming u/s 25-FFF(1) of the Industrial Disputes Act read with the proviso to that Section. They have urged already that it cannot be considered to be a case of bona fide closure.

16. When this stand was taken by the applicants before the Payment of Wages Authority, in my view, there was an obligation on the part of the management, if they are entitled to under law, not only to controvert the claim made as and by way of retrenchment compensation, but also to take the alternative plea that if the applicants are entitled to any delayed wages, it must really be as compensation payable for them as and for closure and that it is a bona fide closure coming u/s 25-FFF(1) of the Industrial Disputes Act. So far as I could see, no such plea appears to have been taken in the written statement filed by the management. But ultimately, as I mentioned earlier, that question becomes purely academic, because even treating it as a closure for any reason whatsoever, If the matter stood by itself, the compensation payable u/s 25-FFF (1) without the proviso, is substantially again the compensation that is payable u/s 25-F of the Industrial Disputes Act as and by way of retrenchment compensation. It is only when the proviso to Section 25-FFF(1) applies, and the management is able to establish that the undertaking is closed down for any unavoidable circumstances beyond the control of the management, that the compensation may get reduced, in which case the amount to be paid under Clause (b) of Section 25-F shall not exceed his average pay for three months.

17. But that is a specific plea that the management should have taken; arid if they had taken that plea, a further plea -- if it was available -- could have been taken by the Staff Association, namely that the Explanation to the Proviso to Section 25-FFF(1) of the Industrial Disputes Act will also stand attracted and the management is not entitled to plead that the undertaking is closed down due to

unavoidable circumstances beyond the control of the employer. Unless these specific averments had been made, there would have been no occasion at all for the authority concerned to investigate; and those are all facts which have to be investigated before the claim made by the management in this case before me that it is a case of bona fide closure can be either accepted or rejected. It is there that the learned District Judge has considered this aspect and adverted to the fact that in the objection petition filed by the management, they have not claimed that the closure was due to unavoidable circumstances beyond the control of the management. No doubt it is also stated that the evidence on record does not show that the closure was due to the reasons mentioned therein. But in my view that approach is perfectly justified in the circumstances of this case.

18. Then the question is whether the views expressed by both the Authority under the Payment of Wages Act, as well as by the learned District Judge in appeal, that the conciliation agreement Ext. P-2, is hit by Section 23 of the Payment of Wages Act, can be accepted. In this connection it is necessary to advert particularly to the scheme of the Payment of Wages Act, as well as to some of the provisions in the Industrial Disputes Act.

19. The Payment of Wages Act, 1936 (Central Act IV of 1936) is an Act to regulate the payment of wages to certain classes of persons employed in industry. Section 2 of the said Act defines the expression "wages"; and it also includes, in particular u/s 2(vi)(d), any sum which, by reason of the termination of employment of the person employed, is payable under any law, contract or instrument, which provides for the payment of such sum, but does not provide for the time within which the payment is to be made. Pausing here for a minute, it may be stated that Section 2(vi) of the Payment of Wages Act, as it now stands, was incorporated, by the Payment of Wages (Amendment) Act, Central Act 68 of 1957. As I mentioned earlier, there was a controversy raised before the Payment of Wages Authority, as to whether the claim for retrenchment compensation can be considered to be "Wages" coming u/s 2(vi)(d). But before me, Mr. M. U. Isaac, learned counsel for the petitioner, has accepted the position that the claim for retrenchment compensation will be a sum which, by reason of the termination of employment of the person employed, is payable under any law, contract or instrument. Therefore, that question need not be further considered.

20. I have to proceed on the basis that Section 2(vi)(d) of the Payment of Wages Act takes in also a claim that may be made for payment of any sum, which by reason of the termination of employment of the person employed, is payable under any law, contract or instrument.

21. Section 3 of the Act makes the employer responsible for payment, to persons employed by him, of all wages required to be paid under that Act. At this stage I may mention that according to Mr. K. Velayudhan Nair, learned counsel for the contesting respondents, when once it is accepted that Section 2(vi)(d) takes in 3

claim for payment of retrenchment compensation and Section 3 makes it obligatory on the part of the employer to pay all wages, which will include also retrenchment compensation, it must be considered that there is a right conferred on the employees under the Act for getting retrenchment compensation according to law and therefore the conciliation agreement Ext. P-2 is void u/s 23 of the Payment of Wages Act. I will deal with this contention a little later. But now I am only indicating the stand that is taken by the respondents in these proceedings.

22. Section 4, again, fixes the wage periods. In particular it states that no wages period shall exceed one month. Section 5 deals with the time of payment of the wages, and it is provided among other matters that the wages of every person employed is to be made within the period stated in Section 5(1)(a), (b) after the last day of the wage period in respect of which the wages are payable, that such payment shall be made on a working day, and that all wages shall be paid in current coin or currency notes, or in both. Then Section 7 deals with deductions which may be made from wages. This Section states the various categories under which deductions from wages of an employed person shall be made. It makes it very specific that those deductions can be made only in accordance with the provisions of this Act and may be in the manner indicated by one or other of the various sub-clauses mentioned therein. These sub-clauses themselves have been dealt with in Sections 8 - 13; and I do not think it necessary to consider those sub-sections in any great detail.

23. Therefore, it will be seen that Section 4 fixes the wage periods and also provides that the wage period is not to exceed one month; and Section 5, as I have already shown, provides that all payments of wages shall be made on a working day and shall be paid in current coin or currency notes or in both. Section 7, read with Sections 8 - 13, clearly shows the particular deductions, which alone can be made from the wages of an employed person.

24. Section 15 is the Section which gives the right to the employees to approach the Payment of Wages Authority to deal with the claims arising out of (a) deductions from wages, and (b) delay in payment of the wages. Section 15(1) relates to the constitution of the Payment of Wages Authority, and Section 15(2) provides for an employee making application to such authority for that purpose. Section 23 of the Payment of Wages Act, the interpretation of which is in controversy, is as follows:

"Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right."

These are the broad features of the Payment of Wages Act

25. Coming to the Industrial Disputes Act, that again is an Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes. Section 2(d) defines the expression "conciliation officer". Section 2(e)

defines "conciliation proceeding", as any proceeding held by a conciliation officer or Board, under the said Act. Section 2(oo) defines "retrenchment", and Section 2(p) defines the expression "Settlement". In Section 2(p) it is stated that "settlement" means a settlement arrived at in the course of conciliation proceedings, and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings, and such agreement has been by the parties thereto. Therefore, the expression "settlement" means a settlement arrived at in the course of conciliation proceedings, as well as a written agreement between the employer and the workmen, otherwise than in the course of the conciliation proceedings.

Section 12 deals with the duties of conciliation officers, and states as to how exactly the conciliation officer is to bring about a settlement. Sub-section (1) of Section 12 itself says that where any industrial dispute exists or is apprehended, the conciliation officer shall hold the conciliation proceedings in the prescribed manner. In this connection it may be noted that in the conciliation agreement Ext. P-2 it is clearly stated that a dispute has arisen between the Aroor Carpet Factories Ltd., and their workmen represented by the Staff Association and two other Unions referred to therein.

26. Then Section 18 refers to the persons on whom settlements and awards are binding; and it makes it clear that a settlement arrived at by agreement between the employer and workmen, otherwise than in the course of conciliation proceedings, are binding on the parties to the agreement. It also states that a settlement arrived at in the course of conciliation proceedings under the Act, is binding on the parties mentioned in Section 18(3) a to d. Then Section 19 deals with the period of operation of settlements and awards. So far as the award is concerned, unless action is taken u/s 19(6), it states that it will remain in operation for a period of one year. So far as settlement is concerned, it also states the period during which it enures, and that provision is contained in Section 19(2). In this proceeding it is not the case of any party that at any time any notice was issued by respondents 1 to 13 indicating an intention to terminate the agreement u/s 19(2) of the Industrial Disputes Act.

27. The only other chapter of the Industrial Disputes Act which has to be adverted to is Chapter V-A, dealing with Lay-off and Retrenchment. In particular, Section 25F deals with as to how exactly the compensation that is payable to the retrenched worker is to be calculated and Section 25FFF deals with the compensation payable to the workmen in case of closing down of undertakings. I have already indicated that unless the proviso to Section 25-FFF(1) applies, by and large the principle; of compensation payable both for retrenchment u/s 25F and where an undertaking is closed down for any reason whatsoever u/s 25-FFF(1), are substantially the same.

28. Then the question is whether the view taken by the authorities concerned, namely that Section 23 of the Payment of Wages Act hits the conciliation agreement Ext. P-2, is sound in law. It will be noticed that two conditions will

have to be satisfied before Section 23 of the Payment of Wages Act can be applied as a bar, namely (1) there must be an agreement made before or after the commencement of the Act, and (2) By that agreement the employed person "relinquishes any right conferred by the Act" The consequence of that, is stated in Section 23 itself, namely that such a contract or agreement will be null and void, in so far as it purports to deprive him of such right. Ultimately the answer to the question whether in this case Ext. P-2 is hit by Section 23 of the Payment of Wages Act depends on the answer to the further question, whether under that agreement the employees have relinquished any rights conferred by this Act, namely the Payment of Wages Act.

29. Then the question naturally arises as to what are the rights that are conferred by the Payment of Wages Act on the employee and what are the rights if any, that he could be said to have relinquished under Ext. P-2. Before I proceed further I may also advert to one aspect, namely that a question has no doubt been raised as to whether the agreement in this case. Ext. P-2, which has been entered into not by an individual workman, but by an Association representing a body of workmen, is also taken in by the "contract or agreement" by an employed person, referred to in Section 23. But I do not think it necessary to adjudicate on the same. I will assume that if an agreement that has been entered into by a single employee will be hit by Section 23, a similar agreement that may have been entered into by a Union, representing a number of workmen may also be hit by Section 23. But I should not be understood to express an opinion one way or the other. I am only assuming that such will be the position in law. But the question still arises as to whether, in this case, under Ext. P-2, the employees can be considered to have relinquished any rights conferred under the Payment of Wages Act.

According to the learned counsel for the petitioner -- which stand has also been supported by the learned Government Pleader appearing in these proceedings -- the right to get retrenchment compensation is not a right conferred by the Minimum Wages Act, but a special right conferred by the Industrial Disputes Act, especially under Chapter VA of the said Act. No doubt the Payment of Wages Act is a sort of procedural machinery available to the employee to get quickly the amounts that he has to get from the employer, either as delayed wages which may include retrenchment compensation and which claim may have to be summarily investigated by the authorities constituted under the Payment of Wages Act. And from the fact that retrenchment compensation can be claimed as Wages u/s 2(vi)(d) of the Payment of Wages Act, it does not follow that the right to get retrenchment compensation is a right conferred by the Minimum Wages Act itself.

30. This stand is no doubt controverted by Mr. K. Velayudhan Nair, learned counsel for the contesting respondents. I have already indicated, when considering Section 2(vi)(d) of the Payment of Wages Act, the stand that Mr. Velayudhan Nair has taken. According to the learned counsel, Section 2(vi)(d)

includes within the definition of "wages", the claim for retrenchment compensation. Section 3 of the Payment of Wages Act makes it obligatory on the part of the employer to pay to the persons employed by him all the wages required to be paid under the Act. If that is so, it follows that a right is given to the employee to demand of the employer retrenchment compensation as wages which can be enforced as delayed wages u/s 15(2) of the Payment of Wages Act. If so, Ext. P-2 is void u/s 23.

In my view, this contention of Mr. K. Velayudhan Nair, learned counsel for the contesting respondents, cannot be accepted. Acceptance of this contention will amount to this, namely that a conciliation agreement, which is not only encouraged but also recognised as legal under the Industrial Disputes Act, and which is binding as against the parties to that agreement, will have to be given the go by, and the Payment of Wages Authority can consider the retrenchment compensation claim do here the agreement that has been entered into by the parties (sic). Such a situation will lead to the anomalous result, namely that the conciliation agreement, which is legal and valid under the industrial law and recognised by the Industrial Disputes Act, will have to be considered to be void u/s 23 of the Payment of Wages Act. That position, in my view, will have to be avoided, if it is possible, after having due regard to the material provisions contained in the two enactments.

31. I have already indicated that the object of the Payment of Wages Act itself is, as the preamble shows, "to regulate the payment of wages to certain classes of persons employed in industry". The actual scope of Section 23 of the Payment of Wages Act has been considered by the Federal Court in a very early decision reported in AIR 1949 142 (Federal Court). In that decision the learned Judges have stated that Section 23 of the Payment of Wages Act is only enacted to prevent an employee from contracting away his rights, which were given by the Payment of Wages Act. Therefore, emphasis is laid by the learned Judges on a right that has been given to an employee under the Payment of Wages Act.

The question arose before the Supreme Court in *Swadeshi Cotton Mills Co. Ltd., Kanpur Vs. Rajeshwar Prasad and Others*, as to whether a compromise, that was sought to be entered into by the parties before the Supreme Court in an appeal, which had been taken against the decision of the Labour Appellate Tribunal, will contravene the provisions of Section 23 of the Payment of Wages Act. The Supreme Court rejected the contention that in those circumstances a compromise which is sought to be entered into will be hit by Section 23 of the Payment of Wages Act. The observations made by their Lordships of the Supreme Court in that decision are very pertinent, if I may say so with respect. At page 710 (of Lab U) : (at p. 431 of AIR), their Lordships, dealing with this contention, refer to the fact that just as an industrial dispute could have been settled between the parties, either before it was referred for adjudication to the industrial tribunal, or after it was referred and before the award was pronounced by the tribunal so would it be open to the parties to settle the dispute so long as

it was pending either before the Labour Appellate Tribunal or before the Supreme Court. In this view, the Supreme Court rejected the contention that was advanced before it that the proposed compromise will be hit by Section 23 of the Payment of Wages Act.

32. The Scheme of the Payment of Wages Act has again been considered by the Supreme Court in the recent decision reported in *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*, . At page 974 of the report, the learned Judges deal with the scheme of the Act in the following manner :

"The scheme of the Act is clear. The Act was intended to regulate the payment of wages to certain classes of persons employed in industry and its object is to provide for a speedy and effective remedy to the employees in respect of their claims arising out of illegal deductions or unjustified delay made in paying wages to them. With that object, Section 2(vi) of the Act has defined "wages". Section 4 fixes the wage period. Section 5 prescribes the time of payment of wages; and Section 7 allows certain specified deductions to be made. Section 15 confers jurisdictions on the authority appointed under the said Section to hear and decide for any specified area claims arising out of deductions from wages or delay in payment of wages of persons employed or paid in that area. It is thus clear that the only claims which can be entertained by the authority are claims arising out of deductions or delay made in payment of wages. The jurisdiction thus conferred on the authority to deal with these two categories of claims is exclusive, for Section 22 of the Act provides that matters which lie within the jurisdiction of the authority are excluded from the jurisdiction of ordinary civil Courts. Thus in one sense the jurisdiction conferred on the authority is limited by Section 15, and in another sense it is exclusive, as prescribed by Section 22."

After referring to the fact that the Payment of Wages Act was intended to regulate the payment of wages to certain classes of persons employed in industry, the Supreme Court states that the object of the Act is to provide for a speedy and effective remedy to the employees in respect of their claims arising out of (a) illegal deductions or (b) unjustified delay made in paying wages to them. The Supreme Court then refers to the definition of the expression "wages" occurring in Section 2(vi) of the statute as well as to the fixing of the wage period under Section 4 and prescribing the time of payment of wages u/s 5 and also the permissible deductions that have to be made by the employer u/s 7. Ultimately the Supreme Court winds up the discussion on this part of the case, by stating that the various provisions referred to by them clearly show that the only claims which can be entertained by the authority are claims arising out of deductions or delay made in the payment of wages. Their Lordships also stated that the jurisdiction thus conferred on the authority to deal with these two categories of claims u/s 15(2) is a very limited one.

33. As to how far the Authority under the Payment of Wages Act can ignore an award that has been passed by an Industrial Tribunal under the Industrial Disputes Act, has again come up before the Supreme Court in the decision

reported in *Bombay Gas Co. v. Shridhar Bhau*, AIR 1961 SC 1196. In that case it will be seen that a particular concession appears to have been made by the Workers' Union before the Industrial Tribunal that the workmen concerned are not entitled to the benefit of the Factories Act; and on that basis an award was made by the Industrial Tribunal. But evidently not being satisfied with the award, the employees in that case invoked the jurisdiction of the Payment of Wages Authority under the Payment of Wages Act and claimed higher wages or double wages on the ground that they were entitled to the benefits u/s 59 of the factories Act.

The matter was taken up before the Supreme Court, and the Supreme Court expressed the view that so long as the award under the Industrial Disputes Act stands and so long there is no proof that there has been a change in the conditions of service after the award, necessitating reconsideration of the matter, the Authority under the Payment of Wages Act has no jurisdiction to go behind the award and grant higher relief than that given by the Industrial Tribunal itself. The Supreme Court also emphasises that if the position that the Payment of Wages Authority can go behind the award of the Industrial Tribunal is accepted, then it would be recognising appellate power over the Tribunal in the Payment of Wages Authority, which is not certainly contemplated in the Payment of Wages Act. Therefore, the Supreme Court ultimately says that the directions given by the Payment of Wages Authority contrary to the direction in the award of the Industrial Tribunal have to be set aside; and accordingly the relief granted by the Authority to the workmen u/s 59 of the Factories Act was directed to be cancelled.

34. I am referring to this judgment of the Supreme Court to show that if the Payment of Wages Authority, functioning under a limited statute, namely the Payment of Wages Act, is not entitled to go behind the award of the Industrial Tribunal passed under the Industrial Disputes Act, in my view, the position regarding a conciliation agreement will be exactly the same. The Payment of Wages Authority is not entitled to go behind a legal and lawful conciliation agreement entered into by the parties under the provisions of the Industrial Disputes Act.

Unfortunately these aspects have not been dealt with or adverted to by any of the subordinate authorities in this case. It is not possible for me to accept the contention of the learned counsel for the contesting respondents that the right to receive retrenchment compensation is a right given to the employees concerned under the Payment of Wages Act, in which case alone the provisions of Section 23 of the Payment of Wages Act will stand attracted. I have already indicated that the statute itself is a procedural one enabling the employees concerned for summarily collecting the wages which have been withheld either as delayed wages or illegal deductions. The fact that u/s 2(vi)(d), the definition of the expression "wages" may also take in a claim for retrenchment compensation, does not automatically lead to the conclusion that the right to the said retrenchment compensation is a right conferred on an employee under the

Payment of Wages Act.

35. The question appears to have arisen before the learned Judges of the Assam High Court in the decision reported in AIR 1958 Ass 77. In that case the question arose as to whether the management was entitled, by a further circular which was issued on the basis of an agreement entered into, to reduce the emoluments payable to the workers. That no doubt was challenged as a deduction in wages which was not permissible under the Payment of Wages Act. But the learned Judges of the Assam High Court were not prepared to accept it. The learned Judges advert to the fact that the Payment of Wages Act may enable workmen to get the wages which have been agreed to between the employer and the employee. But as to the quantum of the amount payable as wages, the learned Judges emphasise, is not a right which is conferred on the employee under the Payment of Wages Act, but it is really a right which flows from the terms of the contract entered into or from the contract of service itself. The learned Judges again emphasise that it is open to the parties, i.e., the management and the employees concerned to enter into a revised contract of service and that contract, according to the learned Judges, is not hit by Section 23 of the Payment of Wages Act.

That decision of the learned Judges was taken up in appeal before the Supreme Court the decision in which is reported in *Dinaram Chutiya v. Kakajan Tea Estate*, 1963-1 Lab IC 267 (SC). But it is seen that these aspects which have been dealt with and considered by the learned Judges of the Assam High Court, have not been adverted to by the Supreme Court. But the appeal had been dismissed on another ground, namely on the basis of the findings arrived at by both the learned Judges of the Assam High Court and the subordinate authorities that the emoluments that the employees were getting cannot in any manner be said to be substantially less than what was originally given to them. But so far as I could see, the Supreme Court does not express dissent regarding the view held by the High Court.

The learned Judges of the Assam High Court, in their decision in AIR 1958 Ass 77, at page 79, observe :

"The only right under the Act is to get his wage? under the contract. The question as to what actual wages are and what is the contract between the parties, is not a right which has been conferred under the Act to an employee, that is, a right which the employee claims under the contract"

This proposition, if I may say so with respect, represents the correct legal position.

36. Therefore, having due regard to all these circumstances in this case, the view taken by the two authorities that the conciliation agreement, Est. P-2 is hit by Section 23 of the Payment of Wages Act, cannot be accepted. Under Est. P-2, the employed person has not relinquished any right conferred by the Payment of Wages Act. For instance, if an employed person agrees to have deductions made

from his wages, of items not covered by Section 7, that agreement will be void u/s 23. It is not the case of any party in this case, that action has been taken u/s 19(2) of the Industrial Disputes Act, to terminate the conciliation agreement, Ext. P-2. No doubt, it is open to an employee, to seek relief at the hands of the Payment of Wages Authority by filing an application u/s 15(2). The claim for retrenchment compensation can be investigated and suitable directions given. But the quantum of such compensation, which could be awarded, can be only, as declared by any law, contract, or instrument, which provides for such payment.

The wording of Section 2(vi)(d) also shows that the right to get retrenchment compensation, is not one conferred by that Act. Read in that light, it will be seen that the obligation imposed u/s 3 on an employer, can only be to pay retrenchment compensation as per any law, contract, or instrument, providing for payment of such sum. It will be seen that even u/s 2(vi)(d) it is provided that the expression "wages" will also include any sum, which, by reason of the termination of employment of the person employed, is payable under (a) any law (b) contract, or (c) instrument, which provides for the payment of such sum. So far as I could see, if there is no contract or instrument, valid under the Industrial Disputes Act, providing for payment of retrenchment compensation, it will be open to the Payment of Wages Authority to find out what exactly will be the amount that will be payable "under any law", meaning thereby the provisions of the Industrial Disputes Act bearing on the same. But if there is a contract or agreement entered into between the parties, and which is legal and binding under the provisions of the Industrial Disputes Act, or if there is a valid contract or Instrument for payment of a particular sum, in my view, even assuming that under law a larger amount can be awarded, the Payment of Wages Authority can grant relief only on the basis of the contract that has been entered into between the parties.

No doubt, if there is any dispute between the parties regarding the construction to be based on the contract, there will be jurisdiction in the authority to construe the contract and ascertain the amount that is to be awarded. But the contract must form the basis for the award. I am emphasising this aspect because even Section 2 (vi)(d) specifically refers to a "contract" and therefore, the Payment of Wages Act does recognise contracts providing for payment of retrenchment compensation; and which will also have to be enforced. Therefore, the contention that any contract, by which the parties may have accepted, to take a reduced amount than that provided under the Industrial Disputes Act, will be void u/s 23 of the Payment of Wages Act, cannot be accepted. If that is so, the second contention of the learned counsel for the petitioner will have to be accepted and the orders under attack set aside.

37. Mr. Sen, continuing the arguments for Mr. K. Velayudhan Nair, learned counsel for the contesting respondents, urged that if this Court comes to the conclusion that the view of the authorities concerned that the conciliation agreement Ext. P-2 is hit by Section 23 of the Payment of Wages Act, is not

correct, then there are certain other contentions which have been raised by his client but have not been adverted to by the authority. Therefore the learned counsel urged that some directions will have to be given to that authority for investigating into these aspects. In particular, Mr. Sen urged that even under Ext. P-2 the conciliation agreement relied upon by the management, it is made clear that "all the arrears due to the workers accepting retrenchment will be paid within two months". Based upon this, the learned counsel urged that in this case respondents 1 to 13 have not accepted retrenchment compensation and therefore the agreement Ext. P-2 does not bind them.

I have no hesitation in rejecting this contention of the learned counsel. As pointed out by Mr. M. U. Isaac, learned counsel for the petitioner, the agreement itself starts by saying that a dispute has arisen between the management and their workmen represented by two unions and the Staff Association, namely the Shertalai Taluk Factory Employees Union, the Coir Labour Union and the Kerala Coir Factory Staff Association, regarding the closure of the establishment. In the body of the agreement it has been specifically stated that the Shertalai Taluk Coir factory Employees Union was not prepared to accept the agreement for the closure then effected by the management and that they are prepared to wait for the off-chance of opening the factory. And it is also provided that the Staff Association, of which respondents 1 to 13 are members and the Coir Labour Union have felt that they could not wait for the off-chance of opening of the factory and they would be prepared to accept the closure and to receive compensation. It also states that the following terms of settlement were therefore arrived at. Therefore the learned counsel for the petitioner urged --and quite rightly in my opinion, that having due regard to the fact that it is stated that one Union was not accepting the arrangement and the other Labour Unions, namely the Coir Labour Union and the Staff Association were accepting the arrangement, it was specifically provided that the amounts mentioned therein are to be paid to the Workers who are members of the Coir Union as well as the Kerala Staff Association. I do not think there is any ambiguity or doubt in the conciliation agreement Ext P-2. Therefore there is nothing further to be investigated by the authority.

38. In consequence of the setting aside of the two orders the position now will be that the parties will be bound by the conciliation agreement Ext. P-2 and respondents 1 to 13 will certainly be entitled to any amounts that they have to get when the compensation is computed in terms of the conciliation agreement Ext. P-2. That has not been considered at all so far by the authorities concerned. Therefore, while setting aside the orders of the Authority under the Payment of Wages Act, as well as that of the learned District Judge the matter will go back to the authority under the Payment of Wages Act for the limited purpose of considering the agreement Ext P-2 and giving suitable directions for payment to respondents 1 to 13 of the amounts that they may be entitled to on the basis of the conciliation agreement.

39. Whatever it is, in the circumstances, the award of compensation at Rs. 7 by the authority was absolutely unjustified. Here is an agreement entered into by the Staff Association, and ignoring it they have made an application u/s 15(2) of the Payment of Wages Act. The management was taking up the stand that the parties are not bound by the terms of the agreement. This is an aspect which the authority should have taken into account to consider whether there is really a doubt as to whether the parties are governed by the agreement, or whether the Staff Association is entitled to ignore the agreement. But, without having any regard to those matters and the proviso to Section 15(3), the direction given to the management by the Authority to pay compensation u/s 15(3) of the Payment of Wages Act, in the circumstances, is absolutely unjustified. But this aspect does not now assume any importance, as I have set aside both the orders on the merits. I am mentioning this aspect because the authority has not even considered some of these aspects, which should have been taken into account.

40. Subject to these directions and observations, the orders under attack are set aside, and the application filed by respondents 1 to 13 is remitted back to the Authority under the Payment of Wages Act, for the limited purpose of passing an order in terms referred to above. Parties will bear their costs.