

(1960) 03 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 1322 of 1959

Balaram Abaji Patil

APPELLANT

Vs

Ragojiwalla (M.C.)

RESPONDENT

Date of Decision : 22-03-1960

Acts Referred:

Factories Act, 1948 — Section 21, 24, 25, 59

Minimum Wages Act, 1948 — Section 12, 12(2), 14, 14(2), 15

Citation : (1960) 2 LLJ 491

Hon'ble Judges : V.R. Datar, J; V.M. Tarkunde, J

Bench : Division Bench

Judgement

Tarkunde, J.—Two questions arise for decision in this petition filed under Art. 227 of the Constitution of India, and the questions are :

(1) whether wages which are required to be paid by statute, over and above the wages stipulated by contract, fall within the definition of "wages" in the Payment of Wages Act; and

(2) whether in the case of workers covered by both the Payment of Wages Act and the Minimum Wages Act, the jurisdiction of the Authority under the Minimum Wages Act to direct the employer to pay the unpaid balance of minimum wages is exclusive so as to oust the jurisdiction of the Authority under the Payment of Wages Act to grant the same or similar relief.

The facts on which these questions arise are these :

The petitioners were employed by respondent 2 for the work of preparing salt in certain salt pans. The concern of respondent 2 was a factory under the Indian Factories Act and the petitioners are accordingly covered by the Payment of Wages Act. By a notification issued on 16 June 1953, under S. 27 of the Minimum Wages Act, the category of employment to which the petitioners belonged was brought within the purview of that Act, and by the same notification, the minimum wages payable to the workers in that category were

declared to be Rs. 56 per month. Under S. 12 of the Minimum Wages Act, the employer was liable to pay, and the workers entitled to receive, wages at a rate not less than the minimum rate fixed by the notification. Contracting out of the benefits granted by the Act was prevented by S. 25 which provided that any contract or agreement, whether made before or after the commencement of the Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages, was null and void in so far as it purports to do so. In spite of these provisions, respondent 2 and the petitioners agreed that the petitioners should be paid wages at a rate varying between Rs. 41 and Rs. 43 per month. The petitioners, having been paid contractual wages and not minimum wages for the period between 1 April 1954 and 7 June 1954, filed an application on 30 April 1955 for the recovery of the balance. The authority before whom the application was filed was constituted an authority both under the Payment of Wages Act and under the Minimum Wages Act, and the petitioners application was initially filed under both the Acts. Later, however, they filed a statement (a purshis) before the authority stating that their application should be treated as an application under the Payment of Wages Act only. The reason for filing this purshis was presumably this, that by virtue of an amendment introduced by the Bombay legislature in the Payment of Wages Act, the period of limitation for filing an application thereunder was extended to one year, whereas the period of limitation for applications under the Minimum Wages Act continued to be six months. Besides the present petitioners, several other workers of the same category had also filed several applications before the same authority against the same or other employers, and all these applications were consolidated and heard together by the authority. Respondent 2 and the other employers did not resist the workers' claims on the merits, but raised a number of objections to the jurisdiction of the authority. We are here concerned with two such objections, one of which was rejected and the other accepted by the learned authority. The learned authority rejected the employers' contention that the Authority under the Minimum Wages Act has exclusive jurisdiction to issue directions to an employer for the payment of the difference between minimum wages and the amounts actually paid. The learned authority held that, where the workers concerned are covered by both the Acts, the remedy to apply under the Payment of Wages Act was not barred on account of their having a similar remedy under the Minimum Wages Act. The learned authority, however, accepted the other objection taken on behalf of the employers that the jurisdiction of the Authority under the Payment of Wages Act was confined to the granting of wages stipulated by contract and did not extend to claims based upon statute. Being of this view, he rejected all the applications filed before him. While doing so, he gave a finding with regard to the amounts to which the workers would have been entitled in each case, if their applications were tenable. The amount which he found due to the present petitioners was R. 587.47.

2. Dealing first with the question whether the definition of "wages" in Payment of Wages Act covers statutory wages as distinguished from contractual wages, we

are satisfied that the learned authority was in error in finding this issue in the negative. The present case is concerned with the definition of "wages" in S. 2(vi) of the Payment of Wages Act prior to the amendment introduced therein by Act No. 68 of 1957. The definition, in so far as it is material, was in the following terms :

". . . "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 . . . to a person employed in respect of his employment or of work done in such employment . . ."

It is clear from the definition that all remuneration would be "wages," if the remuneration satisfied two conditions :

(1) that it should be payable to "a person employed, in respect of his employment or of work done in such employment," and

(2) it should be payable "if the terms of the contract of employment, express or implied, were fulfilled."

3. In the present case, it is not disputed that the remuneration which is claimed as minimum wages was payable to persons employed in respect of their employment or of work done in their employment. It is, however, disputed that the remuneration claimed by way of minimum wages satisfies the other condition, namely, that it should be payable if the terms of the contract of employment, express or implied, were fulfilled. Now it seems clear that the expression "if the terms of the contract of employment express or implied were fulfilled refer only to such of the terms of the contract of employment as are required to be fulfilled by the employed person. The expression has no reference to the terms of the contract which are to be fulfilled by the employer. This is obvious from the fact that, if all the terms of the contract of employment were fulfilled by both the parties to the contract, i.e., by the employer as well as the employee, no question of unpaid wages would arise in those cases where the workers are entitled only to contractual wages. It follows that the definition of "wages" does not confine that expression to contractual wages. The definition does not define "wages" as the remuneration which is payable to the employed person under the terms of the contract of employment, express or implied, but defines it as all remuneration which is payable to the employed person if the latter fulfils the terms of the contract of employment, express or implied. Moreover, the definition uses the words "all remuneration," with the result that, once the worker has fulfilled his part of the contract, whatever he is entitled to receive from the employer in respect of his employment or of work done in his employment amounts to wages, provided the right of the worker to the remuneration in question flows directly from the fulfilment of his part of the contract. The definition makes no reference to the origin of the employer's obligation to pay the remuneration. The obligation may arise from contract, from a binding award, or from a statute. In all such cases, if the amount which the

employer is obliged to pay is an amount payable to his employee in respect of his employment or of work done in such employment, and if further the amount becomes payable in consequence of the worker having fulfilled the terms of the contract of employment, the amount is "wages" within the definition.

4. In the present case, what the petitioners have claimed are minimum wages, and there is no difficulty in holding that the right of the petitioners to receive them was directly connected with their fulfilment of the terms of the contract of employment. It must follow that the minimum wages claimed by the petitioners are "wages" within the definition of that term in S. 2(vi) of the Payment of Wages Act.

5. This conclusion is reinforced by the fact that the definition of "wages" given in S. 2(h) of the Minimum Wages Act is identical with that part of the definition of "wages" in S. 2(vi) of the Payment of Wages Act which is relevant for our purpose and which has been quoted above. Under the Minimum Wages Act, minimum wages are undoubtedly "wages" and in view of the identity of the definition of the term "wages" in both the Acts, it must follow that minimum wages are also wages under the Payment of Wages Act.

6. In a number of decisions of this Court it has been held that the workers' right to apply to the Authority under the Payment of Wages Act for the recovery of amounts due to them is not confined to their dues under the terms of the contract of their employment. In *V. B. Godse, Manager, Prabhat Mills, Ltd. v. R. H. Naick* 1953 I L.L.J. 577 a Division Bench consisting of Chagla, C.J., and Bhagwati, J., held that wages and dearness allowance awarded by the industrial court over and above the wages and dearness allowance stipulated by contract between the parties could be recovered as wages under the Payment of Wages Act. Rejecting the argument that only contractual claims can be made under the Payment of Wages Act, Chagla, C.J., observed in the course of his judgment (p. 578) :

" . . . Clearly, the fallacy underlying this argument is that "wages" only refer to those payments which are made obligatory upon the employer by the terms of the contract. If that were the intention of the legislature, the legislature would have defined wages as remuneration capable of being expressed in terms of money payable under the terms of the contract. But that is not the language used by the legislature. The legislature has advisedly used the words "if the terms of the contract of employment, express or implied, were fulfilled." Therefore the emphasis laid by the legislature is not upon the terms of the contract but upon what liability is imposed upon the employer to pay his employee when the contract has been fulfilled."

Referring to the higher wages and dearness allowance claimed by the workers by virtue of the award of the industrial court, the learned Chief Justice observed (p. 578) :

" . . . What the workers were claiming before the Payment of Wages Authority

was what was due to them by reason of the fact that they had fulfilled their contract. It was upon the fulfilment of the contract that not only the wages and dearness allowance due to them under the contract was payable to them, but also the additional amount awarded by the industrial court."

The same view was taken by a Bench consisting of Bavdekar and Shah, JJ., in *A.D. Divekar Vs. Dinesh Mills Ltd. and Others*, . The case related to the claim of workers for retrenchment compensation. In the course of his judgment, Shah, J., observed (p. 513) :

". . . There is nothing in the definition of "wages" which supports the assumption that the amount payable must be "payable" under the terms of a contract express or implied. It in terms means "all remuneration or other sums which become payable if the terms of the contract of employment, express or implied, are fulfilled by the employee" . . . Therefore "wages" does not merely mean remuneration payable by the employer under the terms of the contract, express or implied; it includes any amount which the employer legally becomes liable to pay to the employee on fulfilment of the contract."

The decisions in *Valajibhai Avcharbhai and Others Vs. Chimanlal Hemraj Joshi and Another*, and *Balkrishna v. A. S. Rangnekar* 1958 I L.L.J. 215 are instances in which the amount claimed by workers as overtime wages under S. 59 of the Indian Factories Act were regarded as "wages" under the Payment of Wages Act.

7. The learned authority, in accepting the plea advanced on behalf of the employer that the petitioners' claim to minimum wages cannot be entertained under the Payment of Wages Act, relied on two decisions of the Supreme Court in *D'Costa v. Patel* 1955 I L.L.J. 363 and *Bala Subrahmanya Rajaram Vs. B.C. Patil and Others*, . We find that the decision in *D'Costa* case has no bearing on the question which the learned authority had to decide. In that case, the worker had applied under the Payment of Wages Act for the recovery of the additional amount of wages which would have been payable to him if he had been taken in a cadre higher than the cadre in which he was actually placed, and the Supreme Court held that such a claim for potential wages was not maintainable under the Payment of Wages Act. The claim of the petitioners in the present case is for actual and not potential wages.

8. In *Bala Subrahmanya Rajaram Vs. B.C. Patil and Others*, the Supreme Court was concerned with the question whether a bonus made payable by an award of the industrial court could be recovered as "wages" under the Payment of Wages Act, and their lordships held that it could not. It is clear from the judgment delivered by Bose, J., that the decision of the question turned on whether the bonus claimed by the workers as remuneration "which would be payable if the terms of the contract of employment, express or implied, were fulfilled." His lordship held that the bonus claimed by the workers in that case had "nothing to do with the fulfilment or otherwise of the terms of the contract of employment, except indirectly." This decision thus makes it clear that the remuneration which

is claimed as wages under the Payment of Wages Act must have a direct connexion with fulfilment of the terms of the contract of employment by the workers, that, in other words, the right of the workers to the remuneration and the liability of the employer to pay it, must follow as a consequence of the workers having fulfilled their part of the contract.

9. There is one essential difference between the case with which we are dealing and the case dealt with by the Supreme Court, and the difference is that, whereas wages (as the term is ordinarily used) are necessarily a part of the contract of employment and are necessarily payable on the workers fulfilling their obligations under the contract, the payment of bonus by an employer may not be provided for in the contract of employment and the liability to pay it may not necessarily follow from the workers having fulfilled the terms of the contract of their employment. This is precisely what has been emphasized in the judgment of the Supreme Court.

10. Mr. Phadke, who appeared on behalf of the employer before us, laid particular stress on a certain passage occurring in the judgment of Bose, J. After referring to the definition of "wages," the learned Judge observed (p. 776) :

". . . Now the question is whether the kind of bonus contemplated by this definition must be a bonus that is payable as a clause of the contract of employment. We think it is, and for this reason.

If we equate "bonus" with "remuneration," the definition says clearly enough that the bonus must be such that it is payable "if the terms of the contract are fulfilled," that is say, it will not be payable if the terms are not fulfilled."

11. According to Mr. Phadke, the above passage means that only those amounts can be claimed as wages as are payable under the terms of the contract of employment. We do not think that such an interpretation can properly be placed on the judgment of the Supreme Court. Indeed, if the Supreme Court had desired to lay it down that the term "wages" is confined only to claims under the contract between the parties, much of the discussion which is found in the judgment would have been unnecessary. The above passage deals with the question : What kind of bonus can possibly satisfy the requirement that it should be payable if the terms of the contract of employment were fulfilled by the workers ? And it is in this context that the Court observed that the kind of bonus contemplated by the definition must be a bonus that is payable as a clause of the contract of employment. It is obviously difficult to conceive of a bonus which becomes payable on the workers' fulfilment of their part of the contract unless it is recoverable as a clause of the contract of employment. That in certain exceptional circumstances a bonus may fall within the definition of "wages" without being payable under the terms of the contract of employment is clear from the passage immediately following (p. 776) :

". . . Now we can understand a position where a statute declared that whenever the terms of the contract of employment are fulfilled the bonus shall be payable;

equally, we can envisage a situation in which an employer engages to pay a bonus should the terms of the contract of employment be fulfilled, by a separate and independent agreement that is not part of the contract of employment. In either case, the matter could be said to fall within this part of the definition."

This passage makes it abundantly clear that, if the payment of bonus is enjoined by statute and is not a term of the contract between the parties, the bonus would amount to wages and be recoverable as such under the Payment of Wages Act, provided the statute makes the payment of bonus conditional upon the workers' fulfilment of the terms of the contract of employment. Since minimum wages provided by the Minimum Wages Act are payable if the terms of the contract of employment are fulfilled by the workers, it must follow on the authority of the above passage in the judgment of the Supreme Court that minimum wages are "wages" under the Payment of Wages Act.

12. Mr. Phadke next relied upon the decision of the Federal Court in *F.W. Heilgers & Co. v. N. C. Chakravarthi* 1949 L.L.J. 493. That case also dealt with the question whether the claim of workers for bonus was a claim for "wages" as defined in the Payment of Wages Act, and the Federal Court held that it was not. The case has been referred to in the judgment of the Supreme Court in *Bala Subrahmanya Rajaram Vs. B.C. Patil and Others*, and since we have found support for our view in the Judgment of the Supreme Court it does not appear necessary to consider whether a different view might have been justified on the decision of the Federal Court.

13. Reliance was placed by Mr. Phadke on another case of the Supreme Court in *The Divisional Engineer, G.I.P. Railway Vs. Mahadeo Raghoo and Another*, in support of his contention that the amount recoverable under the Payment of Wages Act must always be payable under the terms of the contract of employment. In this case, a railway worker claimed as "wages" a house allowance which was allowed to certain railway workers under the statutory rules framed under S. 241(4) of the Government of India Act, 1935. The Supreme Court decided the case on the merits and held that the rules did not entitle the worker to claim the house allowance. It appears from the judgment that the statutory rules were regarded by the Court as a part of the terms of the contract of employment, and it was held on that basis that the terms of the contract did not entitle the worker to get the house allowance which he claimed. We do not think that this decision supports Mr. Phadke's contention.

14. We, therefore, hold that the minimum wages claimed by the petitioners are "wages" under the Payment of Wages Act.

15. The second question which we have to decide is whether the jurisdiction of the Authority under the Payment of Wages Act to grant the relief which the petitioners have claimed is ousted by the jurisdiction of the Authority under the Minimum Wages Act to grant the same relief. Although the remedies provided by the two Acts are closely similar, there are some differences between them. In the

first place, a direction given by the Authority under the Payment of Wages Act is subject to an appeal in certain types of cases, whereas a direction given by the Authority under the Minimum Wages Act is not appealable. Another difference arises from the fact that, although the period of limitation for both the proceedings was initially the same, the period was extended from six months to one year in the case of applications under the Payment of Wages Act by a Bombay amendment. Mr. Phadke urged before us that the petitioners are not entitled to give themselves the benefit of the extended period of limitation by applying under the Payment of Wages Act, because the Authority under the Minimum Wages Act had exclusive jurisdiction to deal with the matter. Mr. Phadke urged that it is a well-known canon of construction that, where a special right is created by a statute and a specific remedy for the right is also provided by the same statute, the right must be confined to the remedy, both as to the nature of the remedy and as to its form.

16. The rule of construction on which Mr. Phadke relies has been stated in "Craies on Statute Law," 5th Edn. at p. 213 as follows :-

"Where, in a statute creating a duty, no special remedy is Prescribed for compelling Performance of the duty or punishing its neglect, the Courts will, as a general rule, presume that the appropriate common law remedy by indictment, mandamus or action was intended to apply. "The general rule of law" (or rather of construction) "is that where a general obligation is created by statute and a specific and statutory remedy is provided, that statutory remedy is the only remedy." The scope and language of the statute and considerations of policy and convenience may, however, create an exception showing that the legislature did not intend the remedy (e.g., a penalty) to be exclusive.

"Even where the statute creating the duty also provides a special remedy for its enforcement the common law remedies (of indictment, information by the Attorney-General, mandamus, or action according to subject-matter) are in many cases available cumulatively or alternatively to the special remedy contained in the statute. Whether they are so or not is upon each statute a question of construction."

The same principle is found enunciated in "Maxwell on the Interpretation of Statutes," 10th Edn., in the following passages :

". . . If the statute which creates the obligation, whether private or public, provides in the same section or passage a specific means or procedure for enforcing it, no other method than that thus provided can normally be resorted to for that purpose." (p. 395).

". . . It is, however, a general rule that where an Act of Parliament creates an obligation to pay money, the money may be recovered by action, unless some other specific provision is contained in the Act, that is, unless an exclusive remedy be given, and the question may arise whether the particular remedy given by the Act is cumulative or substantial for this right of action (p. 396)."

It is clear from these passages that the Court is primarily guided by the provisions of the statute itself in deciding whether the specific remedy provided by the statute is the only remedy available to an aggrieved party. Therefore, before examining any of the authorities cited by Mr. Phadke, it would be proper to examine the provisions of the Minimum Wages Act itself for deciding whether the Act has conferred, either expressly or by necessary implication, exclusive jurisdiction on the authority under that Act to adjudicate upon the claims of workers to the recovery of minimum wages.

17. The purpose of the Minimum Wages Act is to provide that no employer shall pay to workers in certain categories of employment wages at rates less than the minimum wages prescribed by notification under the Act. It is, clear that the Act does not create an entirely new right but merely regulates one of the terms of employment in certain categories of labour. The Act creates a machinery very similar to, and as speedy and inexpensive as, the machinery, set up by the Payment of Wages Act for enabling the workers to recover the wages to which they are entitled. The categories of employment to which the Act applied in the first instance are given in parts I and II of the schedule to the Act; and the contents of the schedule show that the Act was intended to give protection to workers many of whom might not be employed in factories and might not have the advantage of either the Factories Act or the Payment of Wages Act. The mere fact that the Act provides an inexpensive and expeditious machinery to enable the workers to realize the benefits conferred by the Act does not, in our opinion, imply by itself that the benefits granted by the Act were necessarily confined to the remedy provided therein. Section 24 of the Act provides that no Court shall entertain any suit for the recovery of wages in certain circumstances and the circumstances specified in the section show, broadly speaking, that suits in civil Courts are barred where the claim of the worker has been, or could have been, the subject-matter of an application under the Act. Although S. 24 provides a bar to the filing of suits for the recovery of wages in certain cases and does not bar the jurisdiction of the Authority under the Payment of Wages Act to entertain applications which could be entertained under the provisions of that Act, Mr. Phadke urged that such a bar should be assumed as a necessary implication of the fact that the Minimum Wages Act has provided a remedy for the rights conferred by it. If Mr. Phadke's contention were correct, S. 24 itself was unnecessary and the jurisdiction of ordinary courts of law would have been barred by implication to entertain any claims for the recovery of minimum wages. It seems to us clear that, if S. 24 had not provided a bar to the filing of suits, the jurisdiction of ordinary courts of law to entertain suits for the recovery of minimum wages would not have been affected by the mere fact that a more expeditious and inexpensive remedy was provided by the Minimum Wages Act. It must follow that, in the absence of any specific provision barring the jurisdiction of the Authority under the Payment of Wages Act to entertain claims which could be entertained under the provisions of that Act, It would not be correct to imply that the legislature Intended that the remedies provided by the Minimum Wages

Act shall be the only remedies for the rights created by that Act.

18. Certain provisions of the Minimum Wages Act show that the legislature was aware, when the Act was passed, that some of the workers covered by the Minimum Wages Act may also be covered by the Payment of Wages Act. Section 12 read with S. 30(2)(d) of the Act provides for rules regarding deductions that may be properly made by an employer from the wages of the employee. Sub-section (2) of S. 12 provides that nothing contained in S. 12 shall affect the provisions of the Payment of Wages Act. Again, S. 14 authorizes the fixing of overtime rates of wages. and Sub-section (2) of that section provides that "nothing in this Act shall prejudice the operation of the provisions of S. 59 of the Factories Act." The provisions contained in Ss. 12(2) and 14(2) were unnecessary if some workers were not likely to be covered both by the Minimum Wages Act and the Payment of Wages Act. Even so, while providing in S. 24 that no Court shall entertain any suit for the recovery of wages in certain cases, no similar bar was prescribed in respect of the jurisdiction of the Authority under the Payment of Wages Act to entertain applications in accordance with the provisions of that Act.

19. It does not, moreover, appear to us that the right to minimum wages which has been granted by the Act is co-extensive with the remedy provided by the Act. Section 20 prescribes the procedure to be followed in advancing claims before the authority; and Sub-section (2) of that section provides that an application to the authority may be made either by the employee himself or some other person authorized to act on his behalf. Section 20 does not cover the case of a claim made by the heirs of a deceased employee in respect of the minimum wages earned by the employee which remained unpaid during his lifetime. If we were to agree with Mr. Phadke that the Authority under the Minimum Wages Act has exclusive jurisdiction to entertain claims for the recovery of minimum wages, the heirs of a deceased employee would be left without any remedy whatsoever; they could neither apply under the Minimum Wages Act nor file a suit for the recovery of the unpaid wages.

20. Other anomalies may also arise if we were to accept Mr. Phadke's contention. One such anomaly is rather glaring. Some workers in the categories of employment to which the Act applies may, under their contract of employment, be entitled to receive a higher wage than the minimum wage. If, in such a case, the employer does not pay any wage to the worker, or pays him less than even the minimum wage, the worker would have to file two applications, one before the Authority under the Minimum Wages Act for the recovery of the amount up to the minimum wages, and another before the Authority under the Payment of Wages Act for the recovery of the difference between the contractual wage and the minimum wage. Moreover, such a worker may have a right of appeal if the decision goes against him before the Authority under the Payment of Wages Act, but will have no right to appeal in the case of an adverse decision given by the Authority under the Minimum Wages Act.

21. We are, therefore, of the view that the legislature did not intend that workers who are covered by the Payment of Wages Act and to whom the Minimum Wages Act is also extended shall be deprived of their remedy under the Payment of Wages Act.

22. Turning to some of the more important cases cited by Mr. Phadke in support of this part of his case, we shall first refer to the decision of the House of Lords in *Pasmore v. Oswaldtwistle Urban Council* 1898 A.C. 387. The case arose out of certain provisions of the Public Health Act, 1875. Section 15 of the Act required the local authority under the Act to provide such sewers as may be necessary for effectually draining their district; and S. 21 gave the right to owners and occupiers within the district to cause their drains to empty into the sewers. Section 299 enabled a complaint to be made to the local Government board for a default made by the local authority in providing sufficient sewers, and the local Government board was authorized, after making due enquiry, to give directions to the local authority, which directions could be enforced in the manner provided by that section. The plaintiff in the case was one of the occupiers who was aggrieved by the alleged default of the local authority, but who, instead of making a complaint to the local Government board under S. 299, brought an action against the local authority for a mandamus. The House of Lords hold that the action was not maintainable. In his address, Earl of Halsbury, L.C., quoted with approval the principle enunciated by Lord Tenterden in *Doe v. Bridges* (1831) 1 B. Ad. 847 in the following terms (p. 859) :

" . . . Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner."

In his address, Lord Macnaghten also referred with approval to the above statement of Lord Tenterden and added (p. 397) :

" . . . Whether the general rule is to prevail or an exception to the general rule is to be admitted, must depend on the scope and language of the Act which creates the obligation and on considerations of policy and convenience."

It is thus clear that the principle approved by the House of Lords was conceived as a general rule subject to exceptions depending upon the intention of the legislature as expressed in the statute in each particular case. In the case before us, the right to minimum wages was intended by the legislature to create an obligation on the part of the employer, the enforcement of which was not confined to the remedy mentioned in the Act. The remedy by way of an application to the Authority under the Payment of Wages Act is as expeditious and inexpensive as the remedy by way of an application to the Authority under the Minimum Wages Act, and there is no reason why, in the case of workers covered by both the Acts, the legislature should be assumed to have intended to bar one remedy in preference to the other.

23. *Barraclough v. Brown* 1897 A.C. 615 is another decision of the House of

Lords which refers to the same principle. This case arose out of certain provisions of the Aire and Caeder Navigation Act, 1889. Section 47 of the Act provided that, if a vessel sank in any part of the navigation of a certain river, it was lawful for a statutory body of undertakers to draw up or remove the vessel and in certain circumstances to recover the expenses from the owner of the vessel "in a Court of summary jurisdiction." The plaintiff in the case was the secretary of the statutory body of undertakers, and instead of filing a suit against the owner of the vessel in a Court of summary jurisdiction for recovery of the expenses incurred, he filed a suit in the High Court for the recovery of the amount. The House of Lords held that the suit was not maintainable and that the plaintiff's only remedy was to proceed in a Court of summary jurisdiction. Lord Herschell, in his address, pointed out (p. 619) :

". . . No words are to be found in that enactment constituting the expenses incurred (by the statutory body of undertakers) a debt due from the owners of the vessel . . . I do not think the appellant can claim to recover by virtue of the statute, and at the same time insist upon doing so by means other than those prescribed by the statute which alone confers the right."

And Lord Watson observed in his address (p. 622) :

". . . The right and the remedy are given uno flatu and the one cannot be dissociated from the other."

In the case before us, once the employee has performed his part of the contract, the minimum wages due to him are, in our opinion, a debt due from the employer. This is all the more so because, in the case of workers whose contractual wage is less than the minimum wage, the term in the contract relating to wages is null and void by virtue of S. 25 of the Minimum Wages Act, and must be deemed not to exist. It cannot, under the circumstances, be held that the right of the worker to receive the minimum wages is only a right to the remedy provided by S. 20 of the Act and is not capable of being dissociated from the remedy.

24. The other cases cited by Mr. Phadke on this point do not advance his argument any further. We must, however, refer to the observation of Stephen, J. in *Valiance v. Falle* (1884) 13 Q.B.D. 109 which we found to be of particular interest. The Court was concerned in that case with the interpretation of S. 172 of the Merchant Shipping Act, 1854, under which a discharged seaman was entitled to a certificate of discharge from his master, and any master who failed to give such a certificate was rendered liable to incur a penalty for the offence. It was held that an action would not lie for the refusal by the master to give a seaman the certificate of discharge, the only remedy for such refusal being the penalty provided by S. 172 of the Act. In the course of his judgment, Stephen, J., after remarking that various authorities on the subject were cited before the Bench, observed (p. 110) :

". . . The general rule to be deduced from them seems in substance to be that

the provisions and object of the particular enactment must be looked at in order to discover whether it was intended to confer a general right which might be the subject of an action, or to create a duty sanctioned only by a particular penalty, in which case the only remedy for breach of the duty would be by proceedings for the penalty."

In a later portion of the judgment, the learned Judge said (p. 112) :

"..... I do not wish to say anything against the general rules that have been laid down for the construction of statutes in relation to the question whether a penalty is intended to be the only remedy for breach of statutory duty, but I always think that after all the best way of finding out the meaning of a statute is to read it and see what it means."

With respect, we have followed this salutary advice, and have come to the conclusion that rights given by the Minimum Wages Act are not necessarily confined to the remedy provided by the Act.

25. In the result, we hold that the petitioners' application before the Authority under the Payment of Wages Act was maintainable. It is common ground that on that basis the petitioners are entitled to an amount of Rs. 587.47 nP. from respondent 2. Accordingly, the order of the authority is set aside and replaced by a direction that respondent 2 shall pay to the petitioners Rs. 587.47 nP., the amount payable to each of the petitioners being according to the schedule attached to the application filed before the authority. Respondent 2 shall pay the costs of the petitioners throughout. The advocates' fees in this Court are fixed at Rs. 150. Respondents 1 and 2 shall bear their own costs.