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**(1960) 06 GUJ CK 0002**  
**In the Gujarat High Court**  
**Case No : Special Civil Appeal No. 126 of 1960**

Jay Gujarat Prakshan Ltd.

APPELLANT

Vs

Hariprasad Harigovindas Pandya and Another

RESPONDENT

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**Date of Decision :** 16-06-1960

**Acts Referred:**

Payment of Wages Act, 1936 — Section 1(4), 15

**Citation :** AIR 1960 Guj 10 : (1960) GLR 10

**Hon'ble Judges :** S.T. Deai, C.J; Miabhoy, J

**Bench :** Division Bench

**Advocate :** B.S. Kapadia, for the Appellant; A.H. Mehta, for the Respondent

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## Judgement

Desai, C.J.

(1) Petitioners Nos. 4 and 5 are directors of petitioner No. 1 company and partners in the firms of petitioners Nos. 2 and 3. They were concerned with the publication of the daily newspaper "Jan Tantra", which we are informed is now defunct. For convenience and brevity we shall refer to them collectively. Respondent No. 1 who is a journalist filed an application for the recovery of Rs. 2, 726/- from the petitioners u/s 15 of the Payment of Wages Act before respondent No. 2, who is the Authority under the Payment of Wages Act, to be referred to by us as the Authority.

The case of respondent No. 1 before the Authority was that he was employed as an Editor of the daily newspaper "Jan Tantra" from 1st June 1958 on a monthly salary of Rs. 175/- or the wages to be fixed by the Wages Board appointed by the Government of India, whichever was higher. It was also his case before the Authority that he was employed to do work in various other capacities, viz., that of the reporter, an advertisement canvasser, a translator and a proof-reader and that for the extra work, payment of the was to the him in addition to the salary. According to him, he worked in that manner upto February 1959, but for the period October 1958 to January 1959, his salary was not paid

to him.

After some differences between the parties, he severed his connections with the petitioners and the petitioners removed his name as editor and informed him that they had terminated his services. Before the Authority, he claimed Rs. 1,676/- as wages for the period 1-6-1958/0 by way of compensation and pay in lieu of notice. The petitioners, in their written statement filed before the Authority, contended that the application was not maintainable. They denied that the applicant (respondent No. 1 before us) was employed as an editor from 1-6-1958, or that his monthly salary was Rs. 175/-, as alleged.

Their contention was that they were starting a new venture and respondent No. 1 had offered his services on an honorary basis, and it was in that capacity that he was taken up on the editorial Board of their paper 'Jan Tantra'. They also contended that the question of remuneration, if any, to be paid to him was to be considered in future if circumstances permitted. According to them the agreement between the parties was that the respondent No. 1 was to receive Rs. 100 for the month of October 1958, and Rs. 125/- per month as honorarium from November 1958 and that honorarium so computed had been paid to him.

They denied that any extra work was done by him as alleged or that anything was to be paid to him for such work. Their principal contention was that respondent No. 1 was not a 'worker' and that the remuneration paid to him was not 'wages' at all the Authority had no jurisdiction to entertain the claim made against them. A preliminary issue was framed by the Authority, and the preliminary issue was, whether the application to the Authority under the Payment of Wages Act was maintainable.

(2) The Authority decided the preliminary issue against the petitioners, Referring to the contention that respondent No. 1 (applicant before him was an editor and not a 'worker' within the meaning of the relevant provisions of law he observed that it was true that the applicant was not a 'Worker' within the meaning of the relevant provisions of law the observed that it was true that the applicant was not a 'Worker' within the meaning of the relevant definition. He, however, took the view that the application was maintainable as the language of clause (4) of section 1 of the Payment of Wages Act covered all persons employed in any 'factory' whether workers or not. He also observed in his judgment that the question whether the applicant was employed in the factory or not was a question of fact to be decided only after the parties had led evidence on the point. His conclusion that it was competent to him to entertain the petition is challenged by the petitioners before this Court on this petition.

(3) It is contended before us by Mr. Kapadia, learned Advocate for the petitioners, that the Authority was in error in holding that the petition was maintainable before him as an Authority constituted under the Payment of Wages Act, on the ground that the applicant was a person employed in a 'factory'. In order to appreciate this contention, it is necessary to refer to certain provisions

of the Payment of Wages Act, 1936, and the Factories, Act, 1948, Section 1(4) of the Payment of Wages Act which relates to the application of that Act is as under:-

"It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration."

Section 2(1) of that Act states that "factory" means a factory as defined in clause (i) of section 2 of the Factories Act, 1934, and we have, therefore, to turn to the Factories Act, 1934, for the definition of the expression "factory".

(4) Section 2 of the Factories Act, 1948, defines "factory" as under:-

" "factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working or, were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of powers, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine, subject to the operation of the Mines Act, 1952 (XXXV of 1952), or a railway running shed."

(5) Section 2(1) of the Factories Act, 1948, defines "worker" as under:-

"worker" means a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery of premises used for manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process."

The argument stressed before us is that the Payment of Wages Act does not apply to an editor or a paper, because an editor of a paper cannot be regarded a person employed in any factory. It is also stressed that an editor of a paper cannot be regarded as a "worker" in a factory within the scope of the definitions of "worker" and "factory" in Sections 2(1) and 2(m) of the Factories Act, 1948.

(6) Abstracted from the facts of the case, the argument must seem attractive. But in effect it asks us to refits to recognize the realities of the interpretative process. The expression "worker" as defined in section 2(1) of the Factories Act is one of amplitude and we must not read in that definition words of limitation not must be acquiesce in a construction which would modify or qualify its width of application unless there is any sound and cogent reason for doing so. When one has regard to the definitions of "factory" and "worker" in section 2 of the Factories Act and the scheme and object of the legislation under consideration, it becomes abundantly clear that the expression "persons employed in any factory"

in section 1(4) of the Payment of Wages Act is not to be understood in any restricted and narrow sense, but in a wide and comprehensive sense.

A person may have to do skilled or unskilled work, clerical work and also intelligent, and responsible work as a person employed in any manufacturing process of work incidental to, or connected with the manufacturing process, of the subject of the manufacturing process. An editor of a paper may or may not have anything to do with any such matter relating or incidental to the manufacturing process; or on the other hand it may be part of his duty by virtue of his contract with his employer to attend also to such matters.

Therefore, whether he is a 'worker' or not must necessarily depend on the nature of his work and not on his designation simpliciter. An editor of a paper, whose duties are confined not merely to the work strictly of editing the paper, but embrace also the humbler duties of a reporter, an advertisement canvasser, a translator and the proof-reader, is, in our judgment, a person within the ambit of section 1(4) of the Payment Wages Act. The present contention of the petitioners must, therefore be negative.

(7) It is next urged by Mr. Kapadia that rival contracts were set up by the contesting parties and the Authority under the Payment of Wages Act had, therefore, no jurisdiction to determine the claim made by respondent No. 1. According to the petitioners, it is said, the respondent No. 1 was entitled only to honorarium of Rs. 100/- for the month of October 1958 and then monthly honorarium of Rs. 125/- whereas the case of respondent No. 1 before the Authority was that his salary was Rs. 175/- per month in addition to some payment for additional work. In support of his contention. Mr. Kapadia has relied on a decision of the High Court of Bombay in *Anthony Sabastin Almeda Vs. R.M. Taylor and Another*, . In that case, it was held that:

"The jurisdiction of the Authority under the Payment of Wages Act, 1936, is limited to decide what is contract in the sense of construing the contract in order to determine the liability of the employer to pay wages. But when the employer and the employee come before him and rely on different contracts, it is not within his jurisdiction to decide which of the two contracts holds the field, which of them is subsisting and under which of them the employer is liable to pay wages. It is only when there is no dispute as to the contract that subsists and regulates the rights and liabilities of the parties that the jurisdiction of the Authority arises to determine the quantum of wages."

It is true that there are observations of the learned Chief Justice in that case, which, at first blush, may seem to lend support to the argument of Mr. Kapadia. It is also true that for many years after the Payment of Wages Act, 1936, found place on the statute book, the view seems to have prevailed that the Act did not apply where the factotum of employment was disputed. The leading case on the subject is *A.R. Sarin Vs. B.C. Patil and Another*, where the scope and ambit of the jurisdiction of the Authority was considered in the light of the scheme and the

relevant provisions of the Act. That case is a landmark among the decisions of the Courts on the question of the jurisdiction of the Authority. The logical extension of the principles laid down in Sarin's case A.R. Sarin Vs. B.C. Patil and Another, is to be found in K.P. Mushran Vs. B.C. Patil and Another, . I had to consider this question of jurisdiction of the Authority under the Payment of Wages Act in C.S. Lal Vs. Shaikh Badshah and Others, and said:-

".....Again it is well established that it is open to the Authority under the Payment of Wages Act, in order to decide what sums are payable as wages, to determine whether a person has been employed or not, because the question of contract of employment can only arise if there was at the relevant time a subsisting contract of employment". This question of the scope and ambit of the Authority under the Payment of Wages Act was considered in a Full Bench decision of the Bombay High Court in Viswanath Tukaram Vs. General Manager, Central Railway and Others, to which I was a party. We reaffirmed in that case that it was open to the Authority under the Payment of Wages Act in order to decide that sums are payable as wages, to determine whether a person had been employed or not. The view we took in that, case was that it was within the ambit of his jurisdiction to decide whether there was relationship of a master and servant between the employer and an employee, or, to use different language, whether there was a subsisting contract of employment between the employer and the employee. In that view of the matter, the present contention of the petitioners must be negated.

(8) It is lastly urged by Mr. Kapadia that the effect of section 17 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions, Act, 1955, is that in case of working journalist, the Authority under the Payment of Wages Act would have no authority to determine any dispute about any wages due to him by his employer. That section is as under:-

"Where any money is due to a newspaper employee from an employer under any of the provisions of this Act, whether by way of compensation, gratuity or wages, the newspaper employee may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government or such authority as the State Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue." We are unable to read anything in this section which can even remotely suggest that the jurisdiction of the Authority under the Payment of Wages Act has, in any manner, been affected by it. Moreover, the argument ignores the words "without prejudice to any other mode of recovery" in the section. There is no substance in this contention and it must be negative.

(9) These are the three contentions urged before us by Mr. Kapadia. They all fail and the petition must stand dismissed. Rule will be discharged with costs.

(10) Rule discharged.