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**(1990) 09 RAJ CK 0013**  
**In the Rajasthan High Court**  
**Case No : C.R.P. No. 277 and 301 of 1987**

Municipal Corporation and Others

APPELLANT

Vs

Khubilal and Others

RESPONDENT

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**Date of Decision :** 13-09-1990

**Acts Referred:**

Payment of Wages Act, 1936 — Section 15

**Citation :** (1991) 62 FLR 688 : (1994) 3 LLJ 663

**Hon'ble Judges :** N.K. Jain, J

**Bench :** Single Bench

**Advocate :** N.N. Mathur, for the Appellant; N.P. Gupta, for the Respondent

**Final Decision :** Allowed

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## Judgement

N.K. Jain, J.—By this Court, This order will dispose of two civil revisions numbered I. S.B. Civil Revision No. 277/87 M.C. Udaipur v. Khubilal and 2.S.B. Civil Revision No. 301/87 Khubilal v. Administrator, M.C. Udaipur as they arise from the same order passed by the District Judge, Udaipur dated 10.3.87, whereby the learned District Judge, upheld the order of the Authority under the Payment of Wages Act, Udaipur dated 30.9.1985, in Misc. Appeals No. 171/1985 and 175/85 respectively. The Authority under the Payment of Wages Act, 1936 (Act No. 4/1936) (hereinafter referred to as the Act) accepted the claim of Khubilal in part and declined to award compensation equal to 10 times of the amount of deducted wages.

2. Brief facts giving rise to these revision petitions are that Khubiial filed a claim u/s 15(2) of the Act and alleged that he was employed on daily wages as work charged employee w.e.f 1.10.73 by Municipal Council, Udaipur, and he continued to work as Mistry (civil) till his services were terminated by the order dated 24.9.1975. On rising an industrial dispute and on reference the Industrial Tribunal held that the order of termination was illegal and directed the Municipal Council to reinstate with full back wages treating him as a Veldar. He was not paid the wages of Mistry as per the B.S.R. Rules and wages could not be

deducted from 24.9.75 to 10.9.84, amounting to Rs. 64,951.37/- after deducting the amount of provident fund i.e. Rs. 6657.74 it comes to Rs. 58,293.63/-.

3. The claim was contested by the Municipal Council, Udaipur on the ground that Khubilal was never appointed as Mistry, therefore, he was only entitled to wages on casual labour as per daily wages at the relevant time. The payment of Rs. 16,479/- was made to him taking 9 Rs. per day thus prayed for rejection of his claim. The Authority under the Act held that worker applicant was entitled to the wages of Mistry, in accordance with B.S.R. from the date of termination to the date of reinstatement. The Authority thus calculated Rs. 56,526/- out of which Rs. 16,479/- was already paid and, therefore, after deducting the said amount an order of Rs. 40,047/- was made along with litigation charges of Rs. 1000/- the final order was made for Rs. 41,047/-. The appellant Municipal Council, preferred appeal against the said order to the Court of District Judge that the Authority has erred in deciding Khubilal as Mistry. Khubilal also preferred a cross-appeal against the award for not awarding compensation to the extent of 10 times of deducted wages on the ground of deductions. The Appellate Court dismissed both the appeals. Both the parties have challenged the order of the Appellate Court dated 10.3.1987 by filing revisions before this Court.

4. I have heard Shri N.P. Gupta, learned counsel for Khubilal and Shri N.N. Mathur, learned counsel appearing for Municipal Council, Udaipur.

5. Mr. Gupta, contended that Khubilal is entitled to compensation to the 10 times of the deduction made and it is not necessary to have any order specifically passed by the competent authority regarding payment of deduction.

6. Mr. Mathur, learned counsel appearing for Municipal Council, Udaipur contended that without order of appointment it cannot be deemed that he was appointed as Mistry and as the question of status is complicated one and it is beyond the scope of Section 15 of the Act and the Court has no jurisdiction to pass any order which is without jurisdiction.

7. I have perused the scheme of the Act. The Act was enacted to regulate the payment of wages to certain class of persons employed in the establishments mentioned in Section 1 sub-para 4 and 5 of the Act. The main purpose of the Act revealed by its provisions is the regularisation of the payment of wages in particular form without undue delay or illegitimate deductions. The object is to provide a speedy and effective remedy to the employees in respect of the claim. But this assumes that the payment of an ascertained sum had become due and the employer had delayed the payment. The definition of "wages" properly read shows that the amount must be an ascertained before it falls under the definition. Thus the Authority under the Act has no jurisdiction to determine the question of potential wages where employee claims higher wages. The Authority while examining the issue of compensation had the powers to grant 10 times compensation in case where the matter comes within the purview of deduction, otherwise the compensation in the matters of delay cannot be more than Rs. 25.

I have examined the issue in dispute and in my considered opinion the Authority under the Payment of Wages Act has the jurisdiction only to the extent of the matters of delay and deductions of wages which may arise in respect of any employed person. The Authority is only a quasi (judicial) authority having jurisdiction of summary trial, such Authority cannot be given powers to try the dispute question of settling the dispute of the status of an employed person. The case in hand is a case of back wages awarded by Industrial Disputes Act (sic Industrial Tribunal) and in such a case question of deduction of wages would not be arisen that too without ascertaining status. In my opinion, this could only be done in case of delay in payment of wages.

8. In the revision filed by Municipal Council, Udaipur question of Khubilal being a Mistry or a work charged employee is nothing but a matter of adjudication, whereby the decision of the status of an employed person warrants. This matter is a complicated question of law as also of a fact, which cannot be handed over to an authority enjoying the power of summary trial. The Authority under the Payment of Wages Act is a Court of Summary Jurisdiction having powers to deal with simple matter of delay in payment of wages or deduction of the wages. And in my view such wages comes within the purview of potential wages. Thus in my opinion the Authority seems to have acted in excess of the powers granted to him. It is not within the competence of the Authority to decide the status of an employed person specially when a dispute was raised by the Municipal Council, Udaipur before the Authority and still the Authority granted wages of employed person at the rate of the wages of the Mistry. The order of the Authority is without jurisdiction and the learned District Judge has also erred in upholding the order of the Authority on this count.

9. Reference may be made to a decision of this Court in Prem Chand v. Municipal Council 1987 (2) RLR 264. In this case it has been held that the best evidence could be the order of employment and the certificates cannot be substituted for the employment order. In the instant case the petitioner Khubilal has not produced appointment order.

10. In my opinion, it is a fit case for remanding back to the Authority to take a decision afresh. Since the matter would need calculation of the wages the deduction cannot be taken by this Court in the scope of revision. As such while directing the Authority to decide the case within three months on the basis of wages of work charged employee prevailing at relevant time.

11. So far as revision filed by Khubilal is concerned against the direction of the Authority for enhancement of the compensation, I am of the considered view that no appeal u/s 17 of the Act is maintainable against the direction of compensation alone. It is in respect of wages as also along with the compensation. Besides this, grant of compensation is a matter of discretion of the Authority. This matter cannot be interfered by the Appellate Court. As regard the direction given by the D.J. by not allowing the appeal in favour of Khubilal against the direction of the Authority is the subject matter of compensation is

upheld and consequently the revision filed by Khubilal is hereby rejected.

12. Both the revisions are disposed of as observed above.