

(2008) 12 AP CK 0062

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15269 of 1996

Union of India (UOI) and Others

APPELLANT

Vs

Additional District Judge and Others

RESPONDENT

Date of Decision : 24-12-2008

Acts Referred:

Andhra Pradesh Minimum Wages Rules, 1960 — Rule 28
Civil Procedure Code, 1908 (CPC) — Section 11, 79, 80
Constitution of India, 1950 — Article 226, 300, 300(1)
Limitation Act, 1963 — Section 5
Minimum Wages Act, 1948 — Section 15, 2, 22F(1)
Payment of Wages (Procedure) Rules, 1937 — Rule 8, 8(2), 8(3)
Payment of Wages Act, 1936 — Section 1(6), 10, 11, 12, 13
Railways Act, 1989 — Section 2(20), 2(32)

Citation : (2008) 5 ALT 260

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : T. Ramakrishna Rao, Central Government and T.S. Venkata Ramana, for the Appellant; G.P. for Labour for Respondents 1 and 2 and K. Raghuveer Reddy, for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.—This batch of Writ Petitions is filed by the Union of India, represented by the Divisional Railway Manager (Commercial), South Central Railway, Vijayawada and other functionaries of South Central Railway, wherein orders dated 26-10-1995 in A.S. No. 61 of 1986 on the file of the Additional District Judge, West Godavari, Eluru and the various consequential orders passed by the Authority under the Payment of Wages Act, 1936 & Deputy Commissioner of Labour, Eluru, (for short "the Authority") in favour of the respondents for payment of withheld wages are assailed.

Background facts:

2. In order to adjudicate the various issues raised in these cases, it is necessary to refer to the facts in detail.

3. The Railway Porters working in Eluru Railway Station approached the Authority with two different applications - one for the withheld wages for the period from January, 1983 to August, 1984 and the other for the similar claim for the period from September, 1984 to August, 1985. The said two applications were rejected by the Authority by order dated 31-7-1986 on the ground that the said claims were beyond the jurisdiction of the said authority as they pertained to claims for potential wages. He, however, took note of the contention of the counsel for the Railways that the Railway Board's instructions for payment of wages on hourly basis are being implemented. While taking note of the said representation, the Authority noted that the workers did not appear to have been satisfied with the calculation of daily hours of work and also made a mention of the suggestion made by both the parties that they would agree for fixing the daily wages of work of the licenced porters at Eluru and Tadepalligudem Railway Stations by the State Labour Officer, Eluru. The said order was carried in two appeals filed by the porters before the District Judge, West Godavari, Eluru, which was taken on file as A.S. Nos. 60 and 61 of 1986. A.S. No. 60 of 1986 related to claim for wages from September, 1984 to August 1985 and A.S. No. 61 of 1986 pertained to the claim for wages from January, 1983 to August, 1984. The said two appeals were allowed by the District Court by its common order dated 3-8-1997 wherein the Court held that the Railway Porters were employed by the Railways and that the Payment of Wages Act, 1936 (for short "the 1936 Act") did not make a distinction between the persons regularly employed and the persons casually employed. The District Court, thus, negated the contention of the Railways that the Act has no application to the claims made by the porters. Questioning the said order, the petitioners filed Writ Petition No. 15785 of 1987. This Court allowed the said Writ Petition and remanded the cases to the learned District Judge to consider the following issues:

1. Whether the respondents in the writ petition (railway porters at Eluru Railway Station) are employed persons within the meaning of Section 15(2) of the Payment of Wages Act?
2. If so, whether they are entitled to maintain an application u/s 15(1) of the Act claiming wages on hourly basis as per Railway Board's Order No. 69-TGII/1010/29/SC/R-39 dated 8-6-1981?
3. What is the quantum of the amount the respondents are entitled?
4. After remand, A.S. Nos. 60 and 61 of 1986 were disposed of by two different orders by the learned Additional District Judge, West Godavari, Eluru, after considering the oral and documentary evidence adduced by both the parties. A.S. No. 60 of 1986 was decided on merits by holding all the three issues against the porters. But, A.S. No. 61 of 1986 was remanded to the Authority with the direction to it to decide the application filed by the porters for condonation of delay in making their claim for wages, and, after deciding the same, to dispose of the porters' claim on merits by giving opportunity to both the sides in support of their respective contentions. While the porters have not challenged the order

of the District Court in A.S. No. 60 of 1986, the petitioners herein have not immediately questioned the order in A.S. No. 61 of 1986. After remand, notices were issued by the Authority to the petitioners and they have not contested the application for condonation of delay. Accordingly, the petitioners were set ex parte on 02.03.1996 and order was passed on 16.03.1996 in PWMP No. 27 of 1985 condoning the delay of one year nine months in making the claim for the differential wages for the period from January, 1983 to August, 1984. Similarly, notices were received by the petitioners for hearing of the claim petition. While petitioner Nos. 4 and 5 were set ex parte on 02.04.1996, petitioner Nos. 1 and 3 i.e., The Divisional Railway Manager (Commercial) and the General Manager did not appear on 15.04.1996 though the representative of the Divisional Railway Manager appeared on 02.04.1996 and sought for an adjournment. Hence, they were set ex parte on 15-4-1996. Thereafter, the main case for differential wages renumbered as PW.4 of 1996 was disposed of by the Authority by order dated 11.05.1996 by allowing claim for Rs. 2,33,962 = 84 ps being the withheld wages for the aforementioned period along with Rs. 11,69,814 = 20 ps representing five times the wages as compensation. Even these orders were not questioned by the petitioners. Instead, the petitioners filed I.A. No. 1 of 1996 to set aside the ex parte orders, which was dismissed by the Authority on 30.07.1996. A few days before the said order was passed, the petitioners filed W.P. No. 15269 of 1996 questioning order dated 26.10.1995 in A.S. No. 61 of 1986. None of the abovementioned orders passed by the Authority after the remand of the case were even referred to in the affidavit filed in support of the writ petition nor copies thereof were filed by the petitioners along with the writ petition. However, after hearing of the cases was commenced before this Court, the petitioners filed W.P.M.P. No. 34217 of 2008 seeking leave of this Court to amend the affidavit in the writ petition by adding paragraphs 1 to 11 of the additional affidavit as paragraphs 9 to 19 of the original affidavit and also to amend the memorandum of writ petition by adding the words "in case P.W. No. 4 of 1996 dated 11.05.1996" after the words "and the consequential orders passed by the Deputy Commissioner of Labour, Eluru". Quite curiously, even in this amended application, the petitioners have not questioned order dated 30.07.1996 passed in I.A. No. 1 of 1996 by the Authority, whereby it refused to set aside ex parte order dated 11.05.1996 passed in P.W. No. 4 of 1996 pertaining to the claim of the respondents for withheld wages.

5. It may be mentioned at this juncture that a similar order was passed by the Authority in PW. No. 5 of 1996, which related to the claim for wages for the period from November, 1993 to November, 1995, wherein also despite receipt of notices by the petitioners they failed to contest the claim, on merits. The Authority passed both orders in P.W.4 and P.W.5 of 1996 on the same day. The petitioners filed W.P. No. 20450 of 1996 questioning the order in P.W.5 of 1996. All other Writ Petitions are filed by the petitioners questioning separate orders passed by the Authority from time to time in respect of the claims made by the porters of different Railway Stations coming under the jurisdiction of petitioner

No. 1 for different periods. W.P. Nos. 18710 of 1997; 21322 & 23199 of 1999; 4202 & 26435 of 2000; 4220 & 11485 of 2002; 13501, 13594 & 15134 of 2005 were filed by the petitioners questioning the orders of the Authority passed on the claim petitions filed by the porters of Eluru Railway Station for differential wages from 1995 to 2001. Writ Petition Nos. 26214 of 2000 and 11903 of 2002 were filed against the orders of the Authority allowing the claim petitions filed by the porters of Tadepalligudem Railway Station. Writ Petition Nos. 26193 of 2000; 17748 of 2001; 11702 & 12019 of 2002 were filed against the orders of the Authority on the claim petitions filed by the Bheemavaram Railway Porters. Writ Petition No. 12813 of 2002 was filed against the order of the Authority on the claim petition of Railway Porters of Nidadavolu Railway Station.

6. For convenience, the station wise details of the claims and the respective writ petitions filed against the orders of the appellate and original authorities are shown in the following table.

Sl.	Writ Petition	Station to which the Case Belonged	No.	Claim period	No. licenced porters
1.	15269 of 1996	Eluru	AS. No. 61	1/83 to 8/84	of 1986 (PW.4/96)
2.	26193 of 2000	Bhimavaram town	4/98	11/93 to 1/98	5 years delay in filing
3.	17748 of 2001	Bhimavaram	5/98	11/93 to 3/98	
4.	11702 of 2002	Bhimavaram	2/99	2/98 to 1/99	
5.	12019 of 2002	Bhimavaram town	3/99	2/98 to 12/98	
6.	20450 of 1996	Eluru	5/96	11/93 to 11/95	
7.	18710 of 1997	Eluru	46/96	12/95 to 5/96	
8.	21322 of 1999	Eluru	2/98	6/97 to 1/98	
9.	23199 of 1999	Eluru	3/98	2/98 to 7/98	
10.	4202 of 2000	Eluru	2/99	8/98 to 3/99	
11.	26435 of 2000	Eluru	3/99	4/99 to 9/99	
12.	4220 of 2002	Eluru	5/2000	10/99 to 6/2000	
13.	11485 of 2002	Eluru	1/2001	7/2000 to 6/01	
14.	13501 of 2005	Eluru	1/04	4/02 to 10/03	
15.	13594 of 2005	Eluru	2/03	7/01 to 3/02	
16.	15134 of 2005	Eluru	4/03	7/00 to 6/01	
17.	12813 of 2002	Nidadavole	5/99	3/98 to 12/98	
18.	26214 of 2000	Tadepalligudem	3/98	2/94 to 11/97	3 years delay in filing
19.	11903 of 2002	Tadepalligudem	4/99	12/97 to 2/99	2 years delay in filing

Contentions:

7. Sri T. Ramakrishna Rao, learned Counsel assisted by Sri T.S. Venkataramana for the petitioners advanced the following-contentions.

1. Order dated 26.10.1995 passed by the Additional District Judge in A.S. No. 61 of 1986 is illegal, inasmuch as in the face of his own findings rendered in his order dated 26.10.1995 in A.S. No. 60 of 1986 pertaining to the claim for wages from September, 1984 to August, 1985, there was no need to remand the case for consideration of application for condonation of delay in filing the claim petitions by the respondents for the period from January, 1983 to August, 1984, as the findings in A.S. No. 60 of 1986 constitute res judicata.

2. The failure of the respondents to question A.S. No. 60 of 1986 constitutes acquiescence and waiver on the part of the respondents.

3. The respondents failed to implead Union of India as party to the proceedings

before the Authority and, hence, the claims were liable to be rejected in limini as held by the Supreme Court in *Shri Ranjeet Mal Vs. General Manager, Northern Railway, Baroda House, New Delhi and Another*, *Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others*, and this Court in *Lt. Rajender Singh Punia Vs. Chief of Naval Staff and Another*,

4. The authority has no jurisdiction to entertain the applications for differential wages as the respondents are not employed by the railways as held by the Supreme Court in Civil Appeal Nos. 9381 of 1995, 752 and 753 of 1997 and W.P (civil) No. 480 of 1990.

5. The authority committed a serious error in rejecting the applications filed by the petitioners to set aside ex parte orders in PW. Nos. 4 and 5 of 1996 on the ground of lack of power for such condonation, while condoning the delay of three, five and two years in filing the claim applications by the respondents in PW. Nos. 3 and 4 of 1998 and 4 of 1999 respectively.

6. As the claims for differential wages exceeded Rs. 1,600/- per month in respect of each of the respondents, the authority is denuded of the jurisdiction, if any, and, therefore, it ought not to have entertained the claim petitions.

7. The claims made by the respondents were for potential wages which stand excluded from the jurisdiction of the Authority under the provisions of the Act.

8. The orders passed by the Authority are not based on adequate evidence to arrive at the differential wages and that no proper evidence was adduced by the respondents to show that they worked for eight hours in a day and

9. Even if any part of the claims made by the respondents was payable, the petitioners are not liable to pay compensation in view of existence of bona fide dispute on the entitlement of the respondents to receive the differential wages.

8. Sri K. Raghuveer Reddy, learned Counsel for the respondents opposed the above contentions. He submitted that the order in A.S. No. 60 of 1986 does not constitute res judicata as the claim petitions covered by A.S. Nos. 60 and 61 of 1986 were different and were therefore based on different causes of action. Alternatively, he contended that as the petitioners entered into an agreement on 14.11.1988 with the authorized representative of the respondents and paid wages in accordance with such agreement for the period from November, 1984 to October, 1988, the respondents did not pursue A.S. No. 60 of 1986 and assail the order passed therein by the appellate Court and therefore the findings rendered in such a case do not operate as res judicata. That the petitioners acquiesced in questioning the legality and the validity of order in A.S. No. 61 of 1986 inasmuch as without immediately challenging the same, they tried to participate in the proceedings before the Authority by filing the application for setting aside the ex parte order. He further contended that the petitioners are employed by the railways and, therefore, the Authority is vested with the jurisdiction to entertain and adjudicate the claims for the withheld wages. He

relied on the judgment of a learned Single Judge of this Court in Divisional Railway Manager, South Central Railway, Vijayawada and Anr. v. The Labour Enforcement Officer (Central), Prakash Nagar, Rajahmundry and Ors. W.P. No. 20846 of 1993 and batch dated 13-10-1997. He further submitted that u/s 3(c) of the Act, the railways are made responsible for payment of wages to the persons employed by it and the person nominated by the railways for payment of wages and other officers concerned were made parties and that, therefore, the claim petitions did not suffer from legal defect. The learned Counsel also contended that the concept of potential wages has no application to the claims preferred by the respondents as the wages were agreed to be paid with reference to circular dated 08.06.1971 of the Railway Board, Ministry of Railways, Government of India and that the respondents adduced cogent evidence and convinced the Authority that differential wages as claimed by them were due and payable.

9. With regard to the maximum ceiling of Rs. 1,600/-, the learned Counsel contended that the ceiling of Rs. 1,600/- prescribed in Section 1(6) of the Act has no application in view of the notification in S.O. No. 2831 dated 16.10.1960 issued by the Government of India in exercise of the powers conferred by it under Sub-section 1 of Section 22-F of the Minimum Wages Act, 1948 (for short, "the 1948 Act"), wherein it is envisaged that the words "this Act" occurring in Section 15(2) of the 1936 Act shall be construed as reference to the 1948 Act or the Rules made thereunder. Alternatively, the learned Counsel contended that even if such a ceiling applies, the respondents are prepared to forego the wages in excess of Rs. 1,600/- per month wherever such excess wages exist.

10. The respective submissions of the learned Counsel for the parties are discussed hereunder:

The plea of res judicata:

This plea of the petitioners is rested on order dated 26.10.1995 passed in A.S. No. 60 of 1986. As noted hereinabove, the said case related to payment of differential wages for the period from September, 1984 to August, 1985. The said case was filed by the respondents against the order of the Authority rejecting their claim for differential wages on the premise that the Authority has no jurisdiction to entertain and allow payment of withheld wages. The appellate Court framed the following points:

1. Whether the appellants are the employees within the meaning of Section 15(2) of the Payment of Wages Act?
2. Whether the appellants are entitled wages the application u/s 15(1) of the Act, claiming the wages on hourly basis is maintainable as per the Railway Boards Order No. 69/TGII/1010/29/SC/R-39, dated 08.06.1971?
3. Whether the order passed by the Deputy Commissioner of Labour is sustainable?

4. Whether the appellants are entitled to claim Rs. 1,69,101 = 90 ps. The pending of 10 times to be paid amount?

11. The appellate Court recorded the oral evidence and received the documentary evidence adduced by both the parties. Purporting to analyze the evidence before it and the provisions of Section 15(2) of the 1936 Act, the appellate Court held:

The appellants will not come under the purview of Section 15(2) of the Act. The appellants are not the regular employees of the Railway Authority and there is no evidence adduced by the appellants to show that they can be treated as regular employees. On the other hand they have not led any evidence. They themselves are not examined to substantiate their claim.

(Emphasis added)

12. Accordingly, the appellate Court held point No. 1 against the respondents. Point No. 2 was also held against the respondents, but a careful reading of the order does not disclose any discernible reason given to hold the said point against the respondents. Point Nos. 3 and 4 were also held against the respondents in view of the findings given by it on point Nos. 1 and 2.

13. While the learned Counsel for the petitioners strenuously contended that this order operates as res judicata on the question whether the respondents were employed by the railways, the learned Counsel for the respondents advanced three contentions in resisting the same. Firstly, he submitted that the finding that the respondents are not employed by the railways was rendered by the appellate Court while dealing with the claim for payment of withheld wages for the period different from the period for which the respondents' claims were adjudicated by the Authority. Therefore, according to the learned Counsel, the doctrine of res judicata has no application. Secondly, he submitted that in view of payments made by the petitioners for the periods covered by the said order, there was no necessity of questioning the said order and thirdly, the petitioners waived their right to question order in A.S. No. 61 of 1986, in pursuance of which the Authority reconsidered the petitioners' claims and granted relief, as they have submitted themselves to the jurisdiction of the Authority following the said order passed in A.S. No. 61 of 1986 by the appellate Court.

14. In order to resolve this contentious issue, it is necessary to understand the true scope and purport of the doctrine of res judicata. The rule of res judicata is based on two principles; (1) The maxim nemo debet bis vexari pro una eadem causa, meaning, no one ought to be twice vexed for one and the same cause, and (2) Public policy that there ought to be an end to the same litigation. Section 11 CPC is only a statutory recognition, but not the foundation of this principle State of Karnataka and Another Vs. All India Manufacturers Organization and Others,). In Ishwar Dutt Vs. Land Acquisition Collector and Another, the Supreme Court held that the doctrine of res judicata is a species of estoppel and it has got two limbs, namely; cause of action estoppel and issue estoppel. The

Supreme Court held that in case of cause of action estoppel, the underlying principle upon which estoppel is based namely public policy and justice have greater force than the case involving subject matter estoppel. In Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Another, , the Supreme Court held that if an issue, which had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is a continuous cause of action, the parties may not be bound by the determination made earlier if in the meantime, law has changed or has been interpreted differently by a higher forum.

15. In Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, , the Supreme Court held:

4. The rule of res judicata applies if "the matter directly and substantially in issue" in a suit or proceeding was directly and substantially in issue in the previous suit between the same parties and had been heard and finally decided by a competent Court. The Civil Judge, Junior Division, Borivli, decided the application between the parties to the present proceeding for determination of standard rent in respect of the same piece of land let for construction of buildings for residential or business purposes. The High Court has held that a decision of a competent Court may operate as res judicata in respect of not only an issue of fact, but mixed issues of law and fact, and even abstract questions of law. It was also assumed by the High Court that a decision relating to the jurisdiction of the Court to entertain or not to entertain a proceeding is binding and conclusive between those parties in respect of the same question in a later proceeding.

5. But the doctrine of res judicata belongs to the domain of procedure, it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties: the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent Court is finally determined between the parties and cannot be re-opened between them in another proceeding. The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the

determination of the transaction which is the source of the right is *res judicata*. A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as *res judicata* in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

(Emphasis added)

16. The Supreme Court discussed various cases in which the earlier judgments of different Courts dealt with the issue whether a question of law operates as *res judicata*. After a detailed analysis, the Supreme Court in para 10 held:

A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as *res judicata*. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as *res judicata* between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise.

(Emphasis added)

17. As discussed above, the substantive ground on which A.S. No. 60 of 1986 filed by the respondents was dismissed and their claims rejected by the appellate Court was on the interpretation of Section 15(2) of the 1936 Act by holding that the respondents not being employed by the railways are not entitled to maintain the claim petitions before the Authority under the provisions of the 1936 Act. This finding being based on interpretation of statute which for the reasons that will be given *infra* is *ex facie* erroneous, I am of the view that the judgment in A.S. No. 60 of 1986 does not operate as *res judicata*. In the present cases admittedly each case is based on a different causes of action, as the claims relate to different periods. Therefore, the cause of action estoppel does not apply to these cases. Similarly, following the law declared by the Supreme Court in Mathura Prasad Bajoo; Jaiswal (*supra*) the issue estoppel also does not arise as what was decided earlier by the appellate Court was a pure question of law relating to the jurisdiction of the Authority to adjudicate the claim petitions for payment of withheld wages filed by the porters. The erroneous interpretation of statutory provisions based on which A.S. No. 60 of 1986 was adjudicated makes the subsequent cases fall outside the realm of issue estoppel and consequently, the doctrine of *res judicata*.

18. In this view of the matter, it is unnecessary for this Court to delve into the

conduct of the petitioners as to whether they have waived their right to raise the issue of res judicata as they have submitted themselves to the jurisdiction of the Authority and also on the propriety of the appellate Court to remand A.S. No. 60 (sic. 61) of 1986 while adjudicating A.S. No. 61 (sic. 60) of 1986 on merits.

The waiver and acquiescence of the rights. If any, to claim differential wages by subsequent claim petitions

19. It is contended that by allowing the judgment in A.S. No. 60 of 1986 to become final without questioning the same, the respondents have acquiesced in and waived their right to claim wages. However, it is mention worthy that the respondents pleaded that the reason for their not questioning the judgment in A.S. No. 60 of 1986 was the understanding reached by them with the railway authorities in the meeting held on 14.11.1988, wherein it was agreed for fixation of 280 man hours for Eluru railway station for handling parcels by licenced porters. The respondents also relied on the relevant copies of acquittance register evincing payment of differential wages for the period from November, 1984 to October, 1988, which covers the entire period for which withheld wages were claimed in A.S. No. 60 of 1986 except for two months. The minutes of the meeting and the acquittance register were filed by the respondents and marked as Exs.A-4 and A-5 respectively in P.W. No. 5 of 1996. In their evidence, the Chief Parcel Supervisor, Eluru railway station and the Assistant Commercial Manager, South Central Railway, Vijayawada, examined as R.Ws.1 and 2, stated in unequivocal terms that under Ex.A-4, 280 man hours were agreed and the same was implemented "till such time, it worked out depending on the parcel handling work". They further stated that as there was reduction in parcel handling subsequently, the man hours were reduced. It is therefore the plea of the respondents that as they were paid the amounts claimed in A.S. No. 60 of 1986, there was no necessity for them to question the said judgment and hence, the doctrine of acquiescence and waiver cannot be pressed into service in this case. Far from raising a specific plea against Exs.A-4 and A-5 under which the respondents claimed to have received the amounts on the basis of the understanding reached between the railway management and the porters of Eluru, the petitioners' own witnesses supported the respondents' case.

20. The learned Counsel for the respondents relied upon order dated 23.09.1988 passed by this Court in W.P. Nos. 8933 and 8648 of 1985, wherein it was observed:

Some of the porters filed Writ Petition No. 10718 of 1983. This Court disposed of the said writ petition on November 5, 1984, directing the petitioners therein to make a representation to the railway authorities and the authorities were directed to pass appropriate orders within three months therefrom. The Railway Administration has implemented that direction after conducting work study. The arrears have also been paid in that regard and further work study is being conducted. If any payment is found to be made to the porters will be made after conducting work study.

21. The above discussed material thus clinchingly establishes that the claims raised by the respondents, which were the subject matter of A.S. No. 60 of 1986, were satisfied rendering it unnecessary for them to question the judgment in A.S. No. 60 of 1986. It is no doubt true, as pointed out by the learned Counsel for the petitioners, this factum of satisfaction of the respondents' claims was evidently not brought to the notice of the appellate Court and the order passed by it suggests as if it was passed after contest. Learned Counsel for the respondents, submitted that due to the inadvertent lapse, the fact of settlement was not brought to the notice of the appellate Court.

22. The fact, however, remains that the unimpeachable material discussed above clearly established that the respondents were paid the wages in pursuance of the understanding reached between the parties. Though the learned Counsel for the petitioners strenuously contended that the officer, who was party to such understanding, has no lawful authority, such a contention has no relevance for the purpose of considering whether the respondents have consciously waived their right by not questioning the judgment in A.S. No. 60 of 1986. As the respondents' claims were satisfied for the period covered by A.S. No. 60 of 1986, it was wholly immaterial whether the Authority, who entered into understanding with them and paid wages, was competent or not. In this factual matrix, the judgment in Dr. Karan Singh Vs. State of Jammu and Kashmir and Another, , cited by the learned Counsel for the petitioners in support of his contention of waiver and acquiescence, has no application.

Whether non-joinder of Union of India renders proceedings initiated by and orders passed in favour of the respondents invalid

23. Section 2(20) of the Railways Act, 1989 defined Government railway as a railway owned by the Central Government. u/s 2(32), Railway Administration in respect of a Government railway is defined as the General Manager of a zonal railway. Section 3 empowers the Central Government to constitute railways into as many zonal railways as it may deem fit for the purpose of the efficient administration of the Government railways. It is the common case that South Central Railway with headquarters at Secunderabad is one such zone and the Divisional Railway Manager (Commercial) heads the Vijayawada Railway Division under whose jurisdiction the administration of Eluru railway station falls. In the claim petitions, the respondents stated that the Divisional Railway Manager (Commercial), Vijayawada, the Senior Divisional Accounts Officer, Vijayawada and the Station Superintendent, Eluru railway stations are responsible for payment of wages u/s 3 of the 1936 Act. In the cases where the respondents filed written statements, objection was taken on the maintainability of the petition by stating, "The petition is not maintainable as framed. If at all the applicants are entitled to any relief, it must be against the Union of India, which owns the railways. The applicants cannot have any relief against the individual officials of the railway department." It is further stated, "The allegation of para 2 of the petition that the opposite parties are responsible for payment of wages u/s

3 of the Act is untenable as what the applicants received from the railway is not any wage, but only charge for the particular work done. They are being paid when they attend to the parcel handling work."

24. On the basis of the above reproduced pleadings, the learned Counsel for the petitioners strongly contended that the petitioners raised objection as to the nonjoinder of Union of India at the earliest possible time and also specifically denied that the parties impleaded as respondents are responsible for payment of wages. But, a careful analysis of the pleadings extracted above, reveals that denial of the responsibility of the impleaded respondents was not in relation to the plea that they are responsible for payment of wages, but the denial was with regard to the nature of payment i.e., whether such payment constitutes "wages" within the provision of Section 3 of the 1936 Act. This is clearly evident from the words "as what the applicants received from the railway is not any wage, but only charge for the particular work done" after the words "the allegation of para 2 of the petition that the opposite parties are responsible for payment of wages u/s 3 of the Act is untenable." This denial is made in tune with the stand of the petitioners that neither the respondents - porters are employed by the railway administration nor what they received was wages within the definition of Section 2(vi) of the said Act. It is not the case of the petitioners that the railway administration has not nominated any person as responsible for payment of wages to the persons employed by it or even if nominated, an officer other than any of the three impleaded parties to the claim petitions is responsible for payment of such wages. In the absence of any such plea and from the fact that the respondents - porters were paid money for the work extracted by one or the other officers impleaded in the claim petitions, it is reasonable to presume that the impleaded respondents to the claim petitions among whom respondent No. 1 was the head of the Vijayawada Division are responsible for payment of wages. The question then is whether it was incumbent upon the respondents to implead Union of India as a party before the Authority?

25. The requirement of making Union of India a party stems from the provisions of Article 300 of the Constitution of India and Section 79 of the Code of Civil Procedure, 1908 (for short, "CPC"). Article 300(1) contemplates that the Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State. This provision, however, further envisages that such suing or being sued in relation to their respective affairs of the Union of India and the Government of a State may be subject to any provisions, which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by the Constitution, in relation to their respective affairs in the like cases as the Dominion of India and the corresponding provinces or the corresponding Indian States might have sued or been sued if the Constitution had not been enacted.

26. Section 79 CPC prescribed that in a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be in

the case of a suit by or against a Central Government, the Union of India and in the case of a suit by or against the State Government, the State. u/s 80, no suit shall be instituted against the Government without a notice envisaged therein being issued and if such a suit is against the Central Government relating to railway, notice shall be issued to the General Manager of that railway.

27. The proceedings before the Authority are not governed by CPC except to the limited extent of conferment of power on it for the purpose of taking evidence and enforcing the attendance of the witnesses and compelling the production of documents. Therefore, Sections 79 and 80 per se do not apply to the said proceedings. It is no doubt true that Article 300, as referred to above, mandated that every suit or proceeding shall be initiated in the name of Union of India in respect of the claims made against the Government of India. While interpreting this Article, the Supreme Court in *Chief Conservator of Forests (supra)* held in para 13 as under:

The question that needs to be addressed is, whether the Chief Conservator of Forests as the appellant-petitioner in the writ petition/appeal is a mere mis-description for the State of Andhra Pradesh or whether it is a case of non-joinder of the State of Andhra Pradesh - a necessary party. In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 CPC viz., in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the Government set-up, from the lowest to the highest, is not recognized as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or tribunal. We make it clear that this principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or on behalf of a State/Union of India but by the statutory authority as such.

(Emphasis added)

28. In the instant cases, the claims are filed under the provisions of the 1936 Act. u/s 3 of the said Act, the responsibility for payment of wages is fastened upon railways if the employer is railway administration and on the person if nominated in this behalf for the local area concerned. Thus, following the dicta contained in the abovementioned judgment of the Supreme Court, the impleaded respondents, who represented the railway administration for the local area concerned, are competent either to initiate proceedings or to be impleaded as respondents in the proceedings initiated against them. Though they represent the railway administration, they are statutorily responsible to discharge their obligation of payment of wages under the 1936 Act and consequently they are

the statutory authorities, unlike other administrative authorities, who merely represent the Union or the State without independent legal existence while representing their respective Governments, in Chief Conservator of Forests (supra), on which reliance is placed by the learned Counsel for the petitioners, the decree of a civil suit was questioned by the Chief Conservator of Forests by the name of his office, without showing himself as representing the State of Andhra Pradesh. He did not file the said writ petition as a statutory authority under a statutory enactment. The Supreme Court, therefore, held that the said authority not being a juristic person could not maintain the writ petition.

29. As mentioned above, in the instant cases, the claim made by the respondents - porters arise under a special enactment and the impleaded respondents are statutorily responsible for payment of wages. Hence, the said judgment, indeed, supports the case of the respondents instead of helping the petitioners. The judgment in *The State of Kerala Vs. The General Manager, Southern Railway, Madras*, relied on by the learned Counsel for the petitioners is of no help to them because that was a case where a money suit was filed by the State of Kerala against the General Manager, Southern Railway, without impleading the Union of India. In view of the mandatory Provisions of Sections 79 and 80 CPC, the Supreme Court held that non-joinder of Union or India was fatal to the suit. This judgment is of no relevance to the present cases, as the provisions of CPC do not govern the proceedings before the Authority. Equally, the judgment of the learned Single Judge of this Court in *Lt. Rajender Singh Punia* (supra) has no application to the present cases because that was a case where the Central Government dismissed the petitioner therein and the dismissal order was communicated by the Chief of Naval staff. The learned Judge held that apart from the fact that the Central Government, which passed the order impugned in the writ petition, was a necessary party, its non-joinder was fatal because any order passed in the writ petition is directly enforceable against the Central Government. For the same reasons as are assigned supra, this judgment also cannot be applied against the respondents.

30. Here it is useful to refer to Section 15(3) of the 1936 Act, which, to the extent relevant, reads:

When any application under Sub-section (2) is entertained, the authority shall hear the applicant and the employer or other persons responsible for the payment of wages u/s 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and [not exceeding twenty-five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think

fit, not exceeding twenty-five rupees].

(Emphasis added)

31. The scheme of the 1936 Act reflected in the above reproduced provisions envisaged hearing of employer or the persons responsible for payment of wages. Therefore, in view of this provision contained in this pre-constitution Act which remained unamended even after the advent of the Constitution of India, non-impleadment of Union of India, which in broader legal sense is the employer does not invalidate the proceedings initiated before the Authority as the persons responsible for payment of wages on behalf of the employer are impleaded.

32. Apart from the above reasons, there are two other strong reasons, which impel me to repel the petitioners' contention. The first reason is that though the respondents have not impleaded Union of India in the proceedings before the Authority, Union of India itself got impleaded in all these writ petitions and it is shown as petitioner No. 1 represented by the Divisional Railway Manager (Commercial), South Central Railway, Vijayawada. The defect, if any, with which the claim petitions suffered on account of the non-joinder of Union of India is fully cured with Union of India itself filing the writ petitions along with other senior officers. Further the fact that Union of India is represented by the Divisional Railway Manager (Commercial), South Central Railway, Vijayawada, who was opposite party No. 1 before the Authority, itself shows that he is the official representative of the Union of India. Thus, not only that the Union of India's representative was a party before the Authority, but also, it has fully participated in the present proceedings, which are for all practical purposes the continuation of the proceedings initiated before the Authority and contested the cases with required vigor. I, therefore, do not see any prejudice whatsoever having been caused to the interest of Union of India for not formally impleading it as a party before the Authority. Another reason is that the 1936 Act is a piece of welfare Legislation. It is a special enactment, which is intended to protect the interests of the blue color workmen who survive on doing manual labour. The Courts should always endeavor to see that the provisions of such a Legislation are enforced and the proceedings initiated before the competent authorities for such enforcement are not frustrated on mere technicalities. Whenever objections such as non-joinder of parties are raised as in the instant cases, it is necessary for the Courts to adopt a liberal and pragmatic approach rather than a rigid and dogmatic approach, which may frustrate the object with which the Legislation is made. On a holistic consideration of the issue, hold that non-joinder of Union of India before the Authority does not render the orders passed by it illegal or invalid.

Whether the respondents were not employed by the railways and the authority had no jurisdiction to pass the impugned orders

33. The 1936 Act is made to regulate the payment of wages to certain classes of employed persons, as evident from its long title. When this Act was made, it was

applied to persons employed by the factory or industrial establishments and railway administration. By the amending Act of 38 of 1999, the Act was extended to the various categories of other establishments as well.

34. Section 3 of the 1936 Act imposes responsibility on the employer for payment to the persons employed by him of all wages required to be paid under the Act. u/s 4, every person responsible for payment of wages u/s 3 shall fix periods, referred to as wage-period in respect of which such wages shall be payable. Section 5 prescribes time for payment of wages and u/s 6, wages shall be paid in current coin or currency notes or in both and also after obtaining written authorization of the employed person either by cheque or by crediting the wages in the bank account. Sections 7 to 13 authorize the employer to deduct from wages, amounts due from the employed person on different counts as indicated therein. Section 15(1) authorizes the State Government to appoint the authority by notification in the official Gazette to hear and decide for any specified area all claims arising out of deductions from the wages or delay in all payment of wages of persons employed or paid in that area, including all matters incidental to such claims.

35. Section 15(2), which is the bone of contention of the petitioners, reads as under:

Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under Sub-section (1), may apply to such authority for a direction under Sub-section (3):

Provided that every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

36. It is the case of the petitioners that the respondents were not employed by them, but were only entrusted with the work of handling parcels by loading and unloading from and into the trains on payment of amounts on hourly basis as per the wages fixed by the local authority.

37. The precise definition of "employed person" is not found in the Act though Section 2(i) defined the said expression as including the legal representative of the deceased employed person. In the absence of such a precise definition, it is necessary to understand its meaning by external aids such as the cognate Acts and Dictionary. Section 2(i) of the 1948 Act defines "employee" to mean any

person, who is employed for hire or reward to do work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purpose of trade or business of that other person where the process is to be carried out either in the home or the outworker or in some other premises not being the premises under the control and management of the other person and also includes an employee declared to be an employee by the appropriate Government, but does not include any member of the armed forces of the Union.

38. The meanings of the words "employ", "employed" and employer given in the Oxford Dictionary, Thesaurus and Word Power Guide of the first Indian Edition, 2007 are as under:

"Employ" - (1) give work to (someone) and pay them for it, (2) make use of and (3) keep occupied

"Employee" - A person employed for wages or salary.

"Employer" - A person or organization that employ people.

39. In the Thesaurus part of the dictionary, the words "employ", "employee" and "employed" are described as under:

"Employ" - (1) She employed a Chauffeur HIRE, engage, recruit, take on, secure the services of, sign up, sign, put on the payroll, enroll, appoint; retain; indenture, apprentice. (2) Sam was employed in carving a stone figure OCCUPY, engage, involve, keep busy, tie up; absorb, engross, immerse. (3) the team employed subtle psychological tactics USE, utilize, make use of, avail oneself of; apply, exercise, practise, put into practice, exert, bring into play, bring to bear; draw on, resort to, turn to, have recourse to.

"Employee" - WORKER, member of staff; blue-collar worker, white-collar worker, workman, labourer, (hired) hand; wage-earner, breadwinner, (employees) personnel, staff, workforce; informal liveware.

"Employed" - WORKING, in work, in employment, holding down a job; earning, waged, breadwinning.

40. The dictionary meaning of the word "employee" as also its definition contained in the 1948 Act are wide enough to comprehend all kinds of workers, who include hired labourers and wage earners. The employee by entrustment of work thus becomes person employed. No distinction is drawn between a permanent employee or a temporary employee and such a distinction has absolutely no relevance whatsoever in the context of liability of the employer to pay wages to a person, who is employed for carrying out the work entrusted to him.

41. The stand of the respondents was already referred to in the earlier part of

this judgment, which discloses the fact that the respondents are entrusted with the work of handling of parcels by the railway administration. This admission is enough for the respondents to fall within the expression "employed persons" and for the railway administration to be called "employer" under the provisions of the 1936 Act. In fact, as discussed above, the appellate Court in A.S. No. 61 of 1986 concluded that the claims of the respondents do not fall within the provisions of the 1936 Act on a fundamentally erroneous premise that it is only the regular employees, who satisfy the description of the "persons employed" under the provisions of the Act. For the limited purpose of considering the status of the respondents, the nature of employment whether permanent or purely temporary is wholly irrelevant and it will suffice if the respondents are entrusted with work by the railway administration, to fall within the provisions of the 1936 Act. A fortiori, any amount payable to the respondents for undertaking such a work falls within the definition "wages" in Section 2(vi) of the 1936 Act. That, the railway porters are treated as persons employed in the context of paying their remuneration is evident from circular No. 69-TG11/1010/29/SC/R-39, dated 08.06.1971 issued by the Railway Board, Ministry of Railways, Government of India, which is marked as Ex.A-2 in P.W. No. 5 of 2000, wherein it is stated as under:

The board have carefully considered the recommendations and have not accepted the same. However, it has been decided that the rates payable to the licence porters when they are employed on handling parcels, etc., should be fixed on per hour basis (which should be based on the minimum rate payable to the local unskilled worker per day as fixed by local authority) without linking it to the weight or number of parcel handled. The same rates will be applicable to them when engaged at the time of accidents. It should be ensured that no railway work is taken from a licence porter without payment.

42. Further more, the respondents' plea is fully supported by judgment of this Court in Divisional Railway Manager (supra) filed by no other than the Divisional Railway Manager (Commercial), South Central Railway, Vijayawada, who is opposite party No. 1 in all the claim petitions filed by the respondents before the Authority and also the officer, who is shown to be representing the Union of India, petitioner No. 1, in all these writ petitions. In the said writ petitions, the licenced porters, who were employed in the parcel offices of the railway, claimed minimum wages under the 1948 Act. The railway administration, which filed the writ petitions, took the stand that railway parcel offices, which are distinct and different from railway goods sheds are not covered by the notifications issued under the 1948 Act and that they are not regular employees of the railway, but are only self-employed labour whose main occupation is to carry the luggage of the passengers at the time of alighting from and boarding into the train.

43. The learned Judge held that for the purpose of enforcement of the provisions of the 1948 Act, it is immaterial whether the porters, who were engaged to handle the parcel work were regular employees of the railways or not and that in

the same way as the persons, who are engaged in the railway goods sheds, the railway porters at the railway stations are also entitled to the payment of minimum wages. This judgment will be discussed further at a later stage while dealing with the petitioners' plea on merits. For the present purpose, it will suffice to note that this judgment fully supports the view taken by me that the petitioners fall within the description of "employed person" under the provisions of the 1936 Act and the Authority had jurisdiction to entertain the claim petitions and pass orders thereon. Opposite party No. 1, in the claim petitions, who represent petitioner No. 1 in these writ petitions, being petitioner No. 1 in the writ petitions in which the said judgment is rendered, the same is binding on him.

44. The learned Counsel for the petitioners placed heavy reliance on three different orders of the Supreme Court. The first order was passed in Civil Appeal Nos. 9378, 9379 and 9381 of 1995. The said civil appeals arose out of orders passed by the Central Administrative Tribunal, Calcutta Bench, in applications filed by the licenced porters of MURI railway station of South Eastern Railway for their regularization as railway employees. By the said orders, the Central Administrative Tribunal held that the porters were being utilized on the strength of the agreement as per the terms of the licences issued to them as porters could not be treated on par with independent casual labourers engaged by the railway administration and that they could not claim absorption by regularization in the railway service. The Tribunal, however, held that as they have rendered service for long years, it would amount to injustice if they were denied remuneration/wages at the rate, which is admissible to casual labour having temporary status. Feeling aggrieved by the said orders, the Union of India filed the civil appeals, which are allowed by the Supreme Court by holding that the railway porters are not the railway employees and that they were handling the parcels on the basis of an agreement in terms of the licences issued to them by the railway administration and therefore they cannot be treated on par with casual labourers employed on temporary basis by the railway administration. The Supreme Court has taken note of the fact that while the casual labourers employed on temporary basis cannot engage themselves in other employment and that their earnings are limited to the wages/remuneration received from the railway administration, the respondents in the civil appeals being licenced porters are free to take additional earning by carrying the luggage of passengers at the railway station. This order was followed in civil appeal Nos. 752 and 753 of 1997. In my considered view, these two orders do not in any manner advance the case of the petitioners to establish that the respondents are not persons employed under the provisions of the 1936 Act. The issue, which arose in the present cases, was never raised in the cases decided by the Supreme Court. The only question, which arose in the said cases, was whether the railway porters, who were entrusted with the work of handling parcels by the railway administration shall be treated on par with the casual labourers employed by the railway administration on temporary basis or not for the purpose of regularization of their services. I therefore fail to understand how these orders have any bearing

on the issue raised in these cases. Similarly, order dated 06.05.1991 in WP (Civil) No. 480 of 1990 is of no avail to the petitioners as the said writ petition filed by Southern Area Railway Stations Licenced Porters Union is dismissed with one line order "The writ petition is dismissed." The said order contains neither the facts of the said writ petition nor the relief claimed therein nor the reasons for dismissing the writ petition. Reliance placed on these three orders by the learned Counsel for the petitioners is therefore wholly misplaced and the contention that orders of the Authority are contrary to the law laid down by the Supreme Court is rejected as wholly meritless.

45. For the abovementioned reasons I hold that the Authority was well within its jurisdiction to entertain and adjudicate the claims.

Whether rejection of the petitioners' applications for setting aside the ex-parte orders in P.W. Nos. 4 and 5 of 1996 is sustainable

46. The facts in brief leading to passing of ex parte orders were noted hereinabove. Hence, they need not be repeated. The petitioners filed applications to set aside the ex parte orders. It is not in dispute that such applications were filed beyond one month of the passing of the said orders and they were dismissed on the ground that the applications were not filed within the prescribed period of limitation. The power of the Authority to set aside ex parte orders is governed by Rule 8 of the Payment of Wages (Procedure) Rules, 1937, which for convenience is reproduced below:

8. Appearance of Parties: (1) If the application is entertained, the Authority shall call upon the employer by a notice in Form-E to appear before him on specified date together with all relevant documents and witnesses, if any, and shall inform the applicant of the date so specified.

(2) If the employer or his representative fails to appear on the specified date, the Authority may proceed to hear and determine the application ex parte.

(3) If the applicant fails to appear on the specified date, the Authority may dismiss the application:

Provided that an order passed under Sub-rule (2) or Sub-rule (3) may be set aside and the application re-heard on good cause being shown within one month of the date of the said order, notice being served on the opposite party of the date fixed for re-hearing.

47. As could be seen from the proviso to Rule 8, the Authority is empowered to set aside ex parte order on good cause being shown if the application for setting aside the ex parte order is filed within one month from the date of the order. The applications were dismissed by the Authority on two grounds. The first ground is that the petitioners have not shown good cause and that the applications were filed beyond one month of the date of the order. The Authority, relied on a judgment of the Supreme Court to hold that as the provisions of the Limitation Act, 1963 are not specifically made applicable to it, it has no power to condone

the delay.

48. In my opinion, rejection of the petitioners' applications for condonation of delay is based on sound reasoning and proper and correct understanding of the legal position. I am entirely in agreement with the finding of the Authority that no plausible explanation is given by the petitioners for not participating in the proceedings. As rightly pointed out by the Authority, it has not been conferred with the power to condone the delay. As the Authority is not a civil Court, Section 5 of the Limitation Act does not automatically apply without the Act making any provision for such application.

49. The learned Standing counsel is critical against the approach of the Authority in condoning the delay in the respondents filing PW. Nos. 3 of 1998, 4 of 1998 and 4 of 1999 and refusing to condone the delay in filing the applications for setting aside the ex parte orders by the petitioners. This conduct, contends the learned Standing counsel, reveals that the Authority applied different yardsticks. I find no justification in this criticism, because under second proviso to Section 15(2) of the 1936 Act, the Authority is conferred with the specific power to admit the applications filed for differential wages beyond the stipulated period of 12 months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

50. A perusal of the orders passed by the Authority condoning the delay shows that he relied on the oral evidence adduced on behalf of the claimants for explaining reasons for the delay in making the applications. Since specific power is conferred on the respondents to condone the delay by the abovementioned provision of the 1936 Act, he condoned the delay by exercising his sound discretion supported by proper reasons. Therefore, the scope of the power of the Authority in disposing of the respective applications of the petitioners and respondents is conditioned by the provisions of the Act and the Authority has passed orders in accordance with the relevant provisions while dealing with these two sets of applications. Hence, I find no substance in the contention of the learned Counsel for the petitioners that the Authority applied different standards. On a careful analysis of the nature of the applications qua the power of the Authority under the 1936 Act, I am satisfied that the orders passed by the Authority on both the sets of the applications of the respective parties do not suffer from any illegality.

Whether the jurisdiction of the Authority is ousted as the claims exceeded Rs. 1,600/- per month in respect of each of the respondents

51. At the hearing, it is admitted that barring two or three claim petitions, in all other petitions, the claims made by the respondents exceeded Rs. 1,600/- per month. u/s 1(6) of the 1936 Act, the Act will not apply to wages payable in respect of a wage period, if such average wages are Rs. 1,600/- per month or more. Though, the learned Counsel for the respondents placed reliance on the notification issued by the Government of India in S.O. No. 2831 dated

16.10.1960, I have not felt convinced to accept this contention. By the said notification, the words "this Act" in Section 15(2) is directed to be construed as reference to the 1948 Act or the Rules made thereunder. The said notification was issued for the purpose of conferring jurisdiction on the Authority to entertain the claims arising out of deductions from or delay in payment of wages under the provisions of the 1948 Act. Admittedly, the respondents have not filed their applications under the provisions of the 1948 Act and this notification has no relevance to the applications filed by the respondents for payment of deducted wages under the 1948 Act. At any rate, even if the words "this Act" are construed as the provisions of the 1948 Act, Section 1(6) of the Act, which places ceiling on the jurisdiction of the Authority still applies.

52. However, I am inclined to accept the alternative submission of the learned Counsel for the respondents that the orders passed by the Authority directing payment of differential wages shall be confined to the maximum limit stipulated in Section 1(6). I have chosen to accept this submission in order to obviate the necessity of the respondents to embark upon a fresh litigation having spent more than two decades in fighting this litigation. Since, up to the "claims below Rs. 1,600/- the Authority is conferred with the jurisdiction to entertain and adjudicate the claims, I feel that interests of justice would be met if the claims made by the respondents are treated to have been limited to the maximum ceiling that has been prescribed u/s 1(6) of the 1936 Act and the liability of the petitioners is accordingly limited to the said ceiling.

Whether the order of the Authority is liable to be interfered with on the grounds of absence of evidence supporting the claims and the claims being for potential wages

53. As noted above, orders passed in P.W. Nos. 4 and 5 are ex parte in nature. The Authority recorded the evidence of one of the workmen given as AW.1 and considered Exs. P1 to P3. In other cases, evidence was adduced on both sides, as the petitioners seriously contested the applications. The case of the respondents is that they are licenced porters and under the conditions of the licences they shall work under the overall supervision of Assistant Station Master/ Station Master/Station Superintendent and carry out instructions given either by him or by the Platform Inspector. It is their further case that under condition No. 1 of the licences, they are charged with the responsibility of (i) handling passengers luggage and (ii) parcels and luggage in the custody of the railway at rates of remuneration as may be fixed by the administration. The petitioners admit existence of these conditions in the licence. It is also the common case of the parties that the Railway Board, Government of India, Ministry of Railways, while rejecting the recommendation of the study group of Railway Licenced Porters and Commission Vendors that when a licenced porter is engaged for railway work, he may be paid a minimum daily rate worked out on the basis of the monthly wage (basic pay + dearness allowances) admissible to class IV railway employees, the Board, however, decided that the rates payable to the

licenced porters when they are employed on handling parcels etc., should be fixed on per hour basis (which should be based on the minimum rate payable to the local unskilled worker per day as fixed by local authority) without linking it to the weight or number of parcels handled.

54. In the written statements filed by the petitioners, a portion of this letter has been reproduced and it is pleaded that payments are being made in accordance with the said letter.

55. The Chief Parcel Supervisor, Eluru railway station, examined as R.W.1 in P.W. No. 5 of 2000, referred to this circular (year of the letter is mentioned as 1997 obviously by mistake for 1971). In his chief-examination, he admitted that the said circular is being given effect to on the basis of the wages fixed by the Collector. In his cross-examination, the said witness stated that the local authority referred in Ex.A-2 -Circular was the District Collector. He also admitted that as per Ex.A-4, the Railway Porters Union approached the management in pursuance of orders passed in WP. No. 19718 of 1983 and arrived at an understanding for taking 280 man hours per day for handling parcels by the licenced porters at Eluru railway station and that arrears of Rs. 4,84,613 = 95ps., were paid to the porters of Eluru railway station in pursuance of Ex.A4. He also admitted that Ex.A5 is the acquittance sheet for such payment. He further stated in his evidence as under:

There are more than 30 trains involving parcel operations during 24 hours. Trains will come at different times. The porters and the parcel staff must be alert round the clock to handle the parcels at different trains. The parcel handling work is of regular nature. The nature of work at Vijayawada, Rajahmundry and Eluru parcel offices is the same.

It is true as per Ex.A-6, the railway board had entrusted handling of parcels to the railway licenced porters at 22 stations, which include Eluru railway station.

56. The Assistant Commercial Manager, South Central Railway, Vijayawada, examined as R.W.2, in the said case stated that the licenced porters, who are required to attend the parcel handling work are paid remuneration depending on the number of minutes/hours they worked on hourly basis in terms of the circular issued by the railway board (Ex.A-2). He further stated as under:

Since 1980, we have been implementing the railway board's orders regarding payment system to licenced porters without any change. We have no right to change the system mentioned in the railway board orders. 280 man hours as agreed in Ex.A-4 was implemented till such time, it worked out depending on the parcel handling work. As there is reduction in parcel handling subsequently, man hours have been reduced.

57. He referred to Ex.A-5 (acquittance register) and admitted that the said register contains the number of days and hours for which each porter attended parcel handling work and for which remuneration was paid. The witness also

admitted the correctness of Exs.A-7 and A-8, the bunches of extracts from muster rolls for licenced porters maintained at Eluru railway station during several months of 1981, 1982, 1983, 1984, 1985, 1986 and 1993 as correct. He stated that he cannot specify from which date and to what extent the parcel work is reduced and admitted that the parcel handling work is regular in nature.

58. From the evidence available on record, as discussed above, it is quite clear that all the railway stations in respect of which claims have been made and orders passed by the Authority are included in the 22 railway stations in which the handling of parcels have been entrusted to the licenced porters. It has also come on record that in pursuance of the railway board circular (Ex.A-2), the porters are paid on hourly basis the wages fixed by the District Collector of West Godavari District. The only question, which was in dispute, was whether the porters have worked for more than 4 hours or not. It is admitted, as pointed out by the Authority, that the railway porters are covered by the provisions of the 1948 Act and the 1936 Act as per the Railway Board's notification No. 409-TC/LA, dated 10.03.1949 and u/s 15 of the 1948 Act read with Rule 28 of 1960 Rules made thereunder when an employee worked for more than 4 hours in a day, he is entitled for full day's wages. It is admitted by RWs.1 and 2 that in pursuance of Ex.A-4, understanding, the respondents were paid full day's wages by calculating 280 man hours for the period from November, 1984 to October, 1988 in respect of the railway porters of Eluru railway station. The case of the respondents is that as there was reduction in the work load subsequently, they stopped paying full day's wages and they were being paid for the actual number of hours worked. Significantly, R.W.2 in his evidence stated that he was unable to state, to what extent the work got reduced. Unless they are able to demonstrate that the work got reduced to below 4 hours, the petitioners are not entitled to calculate wages at less than a day's wage. The Authority having considered the material on record, concluded that the respondents are entitled to receive full day's wages as there was enough evidence to show that they have worked for more than 4 hours in a day in accordance with Section 15 read with Rule 28 of the A.P. Minimum Wages Act and Rules respectively. Therefore, I am unable to accept the contention of the learned Standing counsel for the petitioners that the orders passed by the Authority are not based on evidence. It has to be stated at this stage that the learned Standing counsel has not made any specific submissions with reference to the contents of various orders passed by the Authority, but advanced a general contention that the orders are not based on proper evidence. In view of the discussion undertaken above, this contention is without any basis. While examining the orders passed by the administrative and quasi judicial authorities, this Court is only concerned with the decision making process and not with the merits of the decision. In *Tata Cellular Vs. Union of India*, the Supreme Court held:

The scope of judicial review under Article 226 of the Constitution, it is trite, is confined to examining the decision making process and not the merits of the decision. The Court has to examine whether the decision taken by the authorities

suffers from any illegality, irrationality or procedural impropriety. In examining whether a decision is irrational or not, the Courts are applying Wednesbury's principle viz., whether the conclusion arrived at by the authority is such that no reasonable person would ever reach such a conclusion.

59. When once the order is based on some material, the sufficiency or otherwise of such material does not fall within the realm of judicial review of this Court under Article 226 of the Constitution of India. In *Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased) through LRs. and Others*, , the Supreme Court explained the scope of High Courts' jurisdiction under Article 226 of the Constitution of India, after exhaustive consideration of its earlier judgments in *AIR 1975 1297 (SC)* , *State of Maharashtra v. Milind* (2001) 1 SCC 4, *State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others*, , *Om Prakash and Others Vs. Sunhari Devi (Smt) and Others*, , *Ranjeet Singh Vs. Ravi Prakash*, , *Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others*, and *Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram*, , and held:

The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law.

60. From the reasons contained in the orders passed by the Authority and the evidence placed before it, I am fully satisfied that the orders for payment of differential wages are based on relevant material and such orders are not liable to be interfered with by this Court in exercise of its supervisory jurisdiction under Article 226 of the Constitution of India. The contention of the learned Standing Counsel that the wages awarded by the Authority are in the nature of potential wages, can be mentioned only to be rejected. The material discussed above clearly belies this contention as the claims are covered by the Railway Board circular (Ex.A-2), the notifications being issued by the District Collector, West Godavari District, from time to time and for the actual hours for which the respondents are found to have worked.

61. In this connection, some of the orders passed by this Court are worth mentioning. In *B. Ramulu and Ors. v. Union of India*, rep., by GM, South Eastern Railway, Calcutta Order in W.P. No. 13364 of 1994 of this Court some of the licenced porters of Kothavalasa railway station under Waltair Division in Visakhapatnam District filed the said writ petition questioning reduction of working hours from eight hours a day to less than four hours. This Court, while holding that there was relationship of employer and employee between the railway administration and the porters, further held that the railways cannot unilaterally reduce the working hours for payment of minimum wages without notice and opportunity of hearing to the porters. Accordingly, this Court quashed

the proceedings reducing the working hours. The said order was confirmed in W.A. No. 1243 of 1996 by a Division Bench of this Court while leaving open the question regarding the nature of relationship between the railways and porters. The Supreme Court confirmed the said order by dismissing the SLP with the following order:

The respondents are entitled to be paid according to the Minimum Wages Act on per day basis even though they may not be regular employees of the petitioners. The SLP is dismissed.

62. W.P. No. 14908 of 1986 was filed by the South Central Railway against the Labour Enforcement Officer (Central) Government of India, Ministry of Labour for a writ to declare that the licenced porters engaged by the petitioner therein in railway parcel office are not employees within the meaning of Minimum Wages Act and accordingly to further declare that the said Act and the Rules thereunder have no application to the licenced porters. The said writ petition was dismissed by a Division Bench of this Court following the order of the Supreme Court in SLP. No. 2963 of 1997, dated 26.03.1999 referred to above, whereunder the Division Bench held that though the licenced porters are not regular employees, they are entitled for minimum wages under the Minimum Wages Act, 1948.

63. In Divisional Railway Manager (supra) this Court rejected a similar plea of the railways that the porters of Guduru railway station were not entitled to wages as claimed by them as they were being engaged at short intervals and that thereafter they are free to attend to their work of carrying luggage of passengers. This Court relying on its earlier orders in B. Ramulu (supra) and the Division Bench judgment as confirmed in SLP. No. 2963 of 1997 held:

The learned Counsel for the petitioners next contended that the services of the licenced porters are utilized by the railway for short intervals at the time of arrival of trains for the purpose of loading and unloading of goods into the break-vans and, thereafter, they are free to attend to their other work of carrying the luggage of passengers. This is countered by the learned Counsel for the respondents by stating that the services of the porters is utilized by the railway on rotation basis for more than 8 hours per day and when the working hours are sought to be reduced to 4 hours per day, the porters filed W.P. No. 13364 of 1994 in this Court seeking a direction that their full-time employment cannot be converted into a part-time job for 4 hours a day only. The said writ petition was allowed by a learned Single Judge of this Court by judgment dated 30.07.1996 and the same was confirmed by the Division Bench in WA. No. 1243 of 1996. The SLP SLP. No. 2963 of 1997 filed against the said judgment was dismissed by the Supreme Court on 26.03.1997 holding that the porters are entitled to be paid according to the Minimum Wages Act on per day basis even though they may not be regular employees of the railway. In view of this pronouncement of the Apex Court, I am afraid the question raised is no longer open to debate. It may also be mentioned the pending disposal of W.P. No. 13364 of 1994, an interim direction was granted by this Court in W.P.M.P. No. 16321 of 1994 directing the South

Eastern Railway, Visakhapatnam to pay the minimum wages under the Minimum Wages Act to the petitioners therein pending disposal of the writ petition. As the said interim direction was not implemented, Contempt Case No. 752 of 1995 was filed. The said contempt case was disposed of on 22.03.1996 holding that the petitioners therein were entitled to the minimum wages as fixed by the Government and directing the railway administration to pay the arrears within six weeks and to continue to pay the minimum wages in future as per the Government notification. It is stated by the learned Counsel for the respondents that the said order has been complied with. It is also stated that all the other railways except the South Central Railway have implemented the minimum wages for licenced porters working in the parcel offices.

64. The orders referred to above further support the conclusion arrived at by the Authority that the respondents are entitled to payment of withheld wages and the orders under challenge, far from being contrary to the orders of the Supreme Court referred to by the petitioners' counsel, are, in fact, in consonance with the various orders passed by this Court and the Supreme Court.

Whether the petitioners are liable to pay compensation

65. u/s 15(3), the Authority is empowered to direct refund to the employed persons of the amount deducted towards wages along with compensation not exceeding 10 times the amount so deducted. The learned Standing counsel for the petitioners submitted that as there was genuine dispute, the Authority was not justified in awarding 5 times the wages as compensation.

66. Having regard to the facts and circumstances of the cases, I am of the view that justice would be balanced if the orders of the Authority to the extent of payment of compensation are set aside. Accordingly, all the orders passed by the Authority questioned in this batch of writ petitions are modified to the above extent.

67. In the result, the writ petitions are partly allowed and the orders of the Authority are modified in the following terms.

1. The direction to pay the wages to the respondents contained in the impugned orders of the Authority shall be limited to the ceiling contained in Section 1(6) of the 1936 Act. The parties are given liberty to file their respective memos of calculation before the Authority working out the wages payable applying the said ceiling. On such filing, the Authority shall pass an order fixing the liability of the petitioners within 3 months, and

2. The petitioners are not liable to pay compensation.

68. As a sequel to disposal of all the writ petitions, WPMP. Nos. 18720 of 1996 and WVMP. No. 131 of 1997 in WP. No. 15269 of 1996, WPMP. No. 25240 of 1996 and WVMP. No. 197 of 1997 in WP. No. 20450 of 1996, WPMP. No. 22687 of 1997 in WP. No. 18710 of 1997, WPMP. No. 26742 of 1999 in WP. No. 21322 of 1999, WPMP. No. 29115 of 1999 in WP. No. 23199 of 1999, WPMP. No. 5558 of 2000 in

WP. No. 4202 of 2000, WPMP. No. 33345 of 2000 in WP. No. 26193 of 2000, WPMP. Nos. 33366 of 2000 and 20671 of 2001 and WVMP. No. 697 of 2001 in WP. No. 26214 of 2000, WPMP. No. 33623 of 2000 in WP. No. 26435 of 2000, WPMP. No. 22236 of 2001 and WVMP. No. 3283 of 2001 in WP. No. 17748 of 2001, WPMP. No. 5239 of 2002 in WP. No. 4220 of 2002, WPMP. No. 14147 of 2002 in WP. No. 11485 of 2002, WPMP. No. 14429 of 2002 in WP. No. 11702 of 2002, WPMP. No. 14688 of 2002 in WP. No. 11903 of 2002, WPMP. No. 14842 of 2002 in WP. No. 12019 of 2002, WPMP. No. 15915 of 2002 in WP. No. 12813 of 2002, WPMP. No. 17135 of 2005 in WP. No. 13501 of 2005, WPMP. No. 17242 of 2005 in W.P. No. 13594 of 2005, WPMP. No. 19233 of 2005 in WP. No. 15134 of 2005 are disposed of as infructuous.