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KRISHAN PRASAD GUPTA

v.

CONTROLLER, PRINTING AND STATIONERY

OCTOBER 18, 1995

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[KULDIP SINGH AND S. SAGHIR AHMAD, JJ.]

*Administrative Tribunals Act, 1985—Ss. 14, 19, 28, 29, 29A, Payment of Wages Act, 1936—Ss. 2 (vi), 15, 17; Industrial Disputes Act—Ss. 2 (r), 33C(1) & (2).*

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*Jurisdiction of Tribunal—Transfer of pending case under payment of Wages Act—No jurisdiction to entertain—Jurisdiction of authority to entertain/decide claim cases under Payment of Wages Act is special and protected and not affected by constitution of Tribunal—Appeals are continuation of original proceedings. Payment of Wages Act and Industrial Disputes Act are ‘Corresponding Law’.*

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*Interpretation of Statutes—Ouster of jurisdiction—Most suitable rule to be applied—Rule of construction of giving ordinary meanings to various expressions used in the Legislation—To construe the various sections of the enactment as a whole, each provision throwing light on the rest.*

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Appellant an employee of the respondent, filed case u/s 15 of payment of Wages Act, alleging that the respondent had over a period of time deducted monies illegally and unauthorisedly totaling Rs. 48,274.50p. An *ex-parte* order was passed since the respondent failed to appear. Later, the respondent filed an application for setting aside the said *ex-parte* order. This was rejected whereupon an appeal u/s 17 (1), of Payment of Wages Act was filed before the District Judge. During the pendency of the Appeal the Tribunal was constituted and the pending appeal was transferred to the Tribunal which dismissed the appeal. In the meantime, the appellant's application was allowed by order dated 20-7-88 for payment of Rs.43,092.50p against which the respondent filed an appeal u/s 17 of payment of Wages Act before the District Judge and it stood Transferred to the Tribunal and was allowed by the Tribunal.

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In this appeal it was contended that the appeal pending before the District Judge u/s 17 of the payment of Wages Act could not be legally

transferred to the Tribunal u/s 29 of the Administrative Tribunals Act and the Tribunal had no jurisdiction to entertain the case. The respondents submitted that since clause (b) of S.2 has been deleted by Act No. 19 of 1986, and the Administrative Tribunals Act has been made applicable to all persons working in factories/industrial establishments, and jurisdiction of all Courts is now vested in the Tribunal, Appeal u/s 17 of the Payment of Wages Act will also be before the Tribunal

Allowing the appeal, this Court

HELD : 1.1 Since on the original cause of action, a claim u/s 15 of the payment of Wages Act could not have been made to the Tribunal, the appeal would not stand transferred to nor can appeal contemplated u/s 17 of the payment of Wages Act be filed before it. The Appellate Authority is part of the justice delivery system constituted u/s 17 of the payment of Wages Act. Its jurisdiction will not be affected by the establishment of Administrative Tribunals particularly as appeal has always been treated to be a continuation of the original proceedings. Consequently, the two tier judicial system, original as well as appellate, constituted under the 'corresponding law' like the payment of Wages Act, are not affected by the Constitution of the Tribunals and the system shall continue to function as before, with the result that if any case is decided u/s 15 of the payment of Wages Act, it will not be obligatory to file an appeal before the Tribunal as required U/S 29A of the Act but the appeal shall lie u/s 17 of the payment of Wages Act before the District Judge. The pending appeals also therefore, not stand transferred to the Tribunal u/s 29 of the Act. The matter involved here relates to the exercise of special jurisdiction by the District Judge under the payment of Wages Act which is protected jurisdiction. [457-C-F]

1.2. Though the Tribunal has been constituted as a substitute for the High Court under Article 323A, the Labour Courts and Industrial Tribunals etc, over which the High Court exercises jurisdiction continue to function with the incongruous result that though the High Court cannot quash their judgments, it must continue to supervise their functioning. [458-D]

2.1. Since the matter involved in this case relates to the ouster of jurisdiction of all regular Courts, including the High Court, a rule of interpretation which is most appropriately applicable to the circumstances and the only Rule which can be most suitably applied is the rule of construction of giving ordinary meaning to the various expressions used

**A** in the legislation and to construe various sections of the enactment as a whole, each provision throwing light if need be, on the rest. [445-H, 446-A]

*Tahsildar Singh v. State of U.P.*, AIR (1959) SC 1012; *Madan Lal Fakir Chand Dudhediya v. Changdeo Sugar Mills Ltd.*, AIR (1962) SC 1543 and *Jennings v. Kelly*, (1939) 4 ALL ER, 464 (HL), referred to.

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2.2. S.14 of the Administrative Tribunal Act, begins with the words 'save as otherwise expressly provided in this Act' which constitutes an extremely significant expression as they purport to constitute a 'saving clause'. This expression has also been used in the opening part of S.14 (3).  
**C** What is intended to be saved is indicated in S 28 which, incidentally, also purports to exclude the jurisdiction of almost all the Courts in service matters. Ss. 14 & 28 have, therefore, to be read together to find out the real intent of the legislature as to the extent of jurisdiction retained or excluded. [458-B]

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2.3. While S.19 operates 'subject to other provisions of the Act, the field of operation of S. 14 is limited by the use of the words 'save as otherwise expressly provided in this Act'. These words control and regulate the whole of the section not only in respect of 'jurisdiction' but also the matters specified therein. This constitutes the original jurisdiction of the  
**E** Tribunal. [447-B]

**E**

2.4. The Appellate jurisdiction of the Tribunal is indicated in Ss. 29 and 29A of the Act. The Appellate jurisdiction of the Tribunal is extremely limited and was conferred on the Tribunal so that the judgment, if any passed by a munsif or civil or subordinated judge in a civil suit relating to a service matter (decided before the establishment of the Tribunal) may be challenged before the Tribunal notwithstanding that the judgment passed in that suit is not covered by the word 'order' defined in the explanation appended to S 14 (i). Except the appeals, which are transferred to the Tribunal or the appeals which may be filed before the Tribunal in the above circumstances, no other appeal would lie before the Tribunal. [447-C, E]

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2.5. The 'saving clause' or the 'saving phrase' (not in the sense of 'repeals and savings) divides 'jurisdiction' into two closes, viz, 'jurisdiction' which is transferred to and vested in the Tribunal and 'jurisdiction' which is not so transferred and is, on the contrary, saved. When 'jurisdiction' thus  
**H** became exercisable by the Tribunal, it was provided by S. 28 that no court

shall exercise the jurisdiction, powers and authority on and from which such jurisdiction, powers and authority becomes exercisable by a Tribunal. It is, therefore, apparent that inspite of S. 14 of the Act, the jurisdiction of the Industrial Tribunal, Labour Courts or other Authorities, under Industrial Disputes Act or Authority created under any other corresponding law remains unaffected. [447-G, 448-B]

3. The jurisdiction which is transferred to and vested in the Tribunal is the jurisdiction of all the Courts except the Supreme Court which is expressly excluded. The vires of the Act has already been upheld. [446-G]

*S.P. Sampath Kumar v. Union of India & Ors.*, AIR (1987) SC 386, relied on.

4. Claim for wages can be entertained not only under the payment of Wages Act but also u/s 33 C (2) of the Industrial Disputes Act. Thus the character and function of the Labour Court under the Industrial Disputes Act as also the Authority under the Payment of Wages Act are similar in purpose and both are designed to produce the same result particularly as some of the provisions under both the Act prescribe the same thing to be done. [455-E]

*Town Municipal Council, Athani v. Labour Court*, (1969) 2 Labour Law Journal 651, referred to.

4.2. The Industrial Disputes Act and the Payment of Wages Act are therefore 'corresponding law' qua each other particularly as both are part of the same social legislative canopy made by Parliament for immediate amelioration of workmen's plight resulting from non-payment, or delayed payment or, for that matter, short payment of wages. [455-G]

*Winter v. Ministry of Transport*, 1972 (NZLR) 539, referred to.

4.3. The 'Authority', constituted u/s 15 and the Appellate Authority u/s 17 of the Payment of Wages Act, fall within the exception indicated in S 28 of the Administrative Tribunals Act and this Act, viz, is positively covered by the connotation 'corresponding law' used in that section. Consequently, the jurisdiction of the authority to entertain and decide claim cases u/s 15 of the Payment of Wages Act is not affected by the establishment of the Administrative Tribunals. [456-C-D]

A 5. While deleting clause (b) from S. 2 so as to make the Act applicable to workmen etc, the Parliament by the same Amending Act, viz, Act No 19 of 1986, introduced clauses (a) & (b) so as to preserve the jurisdiction of the Supreme Court, the Labour Court, Industrial Tribunals and the Authorities under the Payment of Wages Act which is 'corresponding law' within the meaning of clause (b) of S 28. [456-B]

B 6. The judgment and order dated 4-7-94 by the Administrative Tribunal Chandigarh, is set aside and it is directed that the Appeal papers be transmitted forthwith to the District Judge, Chandigarh, for disposal on merits. [458-E]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No.1980 of 1995.

From the Judgment and Order dated 4.7.94 of the Central Administrative Tribunal Chandigarh in T.A. No. 26/CH/89.

D Amar Vivek and Prem Malhotra for the Appellant.

K. Madhava Reddy, Ms. Kamini Jaiswal and Ms. Priya Saxena for the Respondent

E The Judgment of the Court was delivered by

F S.SAGHIR AHMAD, J. Fate of this appeal hinges on the answer which we ultimately give to the short question "whether the appeals pending in the Court of the District Judge under section 17 of the payment of Wages Act, were liable to be transferred to the Administrative Tribunals under section 29 of the Administrative Tribunals Act, 1985 for disposal on merits or the jurisdiction of the Authority under section 15 and that of the District Judge under section 17 of the payment of Wages Act to hear and decide Claim Cases and Appeals, respectively remain undisturbed."

G The appellant was an employee of the respondent. On November 23, 1987 he filed an application under section 15 of the payment of Wages Act for recovery of an amount of Rs.48,274.50 p. on the allegations, *inter-alia*, that the respondent had illegally withheld and had also made unauthorised deductions from his wages progressively over a considerable period of time. This application was registered as Case No.407 of 1987 notice whereof was issued to the respondent, who after putting in appearance, absented on a number of dates and ultimately the Authority passed an order that the case

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would proceed *ex-parte* against him. The respondent filed an application for setting aside that order but the application was rejected by order dated June 23, 1988 against which the respondent filed an appeal under section 17 (1) of the Payment of Wages Act on July 15, 1988 before the District Judge during the pendency of which the Tribunal was constituted and consequently, in view of the provisions contained in section 29 of the Act, the appeal was transferred to the Tribunal and the Tribunal, by its order dated August 31, 1990, rejected the appeal.

In the meantime, appellant's main application under section 15 of the payment of Wages Act was allowed by order dated July 20, 1988 for a sum of Rs. 43,092.50 p. against which the respondent filed an appeal under section 17 (1) of the payment of Wages Act in the Court of the District Judge, Chandigarh, which was also transferred to the Tribunal and the Tribunal by its judgment and order dated July 4, 1994 allowed the appeal and set aside the order dated 20th July, 1988, passed by the Authority under the payment of Wages Act. It is this order which is challenged before us on the grounds, *inter alia*, that the appeal pending in the Court of the District Judge under section 17 of the payment of Wages Act could not have been legally transferred to the Tribunal under section 29 of the Act and the Tribunal, therefore, had no jurisdiction to dispose it of on merits.

Administrative Tribunals have been constituted under the Act made by the Parliament under Article 323 A of the Constitution for providing an exclusive machinery for the adjudication or trial of disputes and complaints with respect to recruitments, as also conditions of service of persons appointed to public services and posts, so as to cut down the time spent by public servants in litigation in ordinary courts and to provide them relief at the hands of persons hearing and deciding service litigation exclusively.

The vires of the Act has already been upheld by this Court in *S.P. Sampath v. Union of India & Ors.*, AIR 1987 SC 386 with the finding that with effect from the date on which the Tribunals were constituted, the jurisdiction of the High Court in entertaining the Writ Petitions in service matters came to an end. Whether the above view is correct or not and whether the abrogation of the High Courts' jurisdiction in entertaining writs in service matters under Act. 226 of the Constitution amounts to a destruction of the basic character of the Constitution are questions which have since been referred to the Constitution Bench whose answer is still awaited.

In *S.P. Sampath's* case (*supra*), it was held that Tribunal was a

- A substitute for the High Court. In order to confer exclusive jurisdiction in service matters on the Tribunal, it has been provided in section 14 of the Act that the Tribunal shall exercise, on and from the appointed day (1.11.85) all the jurisdiction, powers and authority exercisable immediately before that day by all Courts except the Supreme Court in respect of cases pertaining to recruitment and matters concerning recruitment to All India Services as also disputes relating to "service matters", (defined in section 3(q)).

- C Sections 19 to 21 of the Act, read together, indicate that the jurisdiction of the Tribunal can be invoked by a "person aggrieved" by making an application against an "order" made by the Government or a local or other authority etc. subject to the condition that all other remedies, if available, under the service rules have been availed of by him and that too within the period of limitation indicated in section 21 in which the starting point of limitation as also the period which would commence from that point have been specified.

- D Section 14 which confers, or, we may be permitted to say, transfers jurisdiction of all the regular Courts including High Courts all over the country to the Tribunal in respect of "service matters", provides, in its relevant part, as under :-

- E *"14. Jurisdiction, powers and authority of the Central Administrative Tribunal-(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the supreme Court) in relation to -*

- F (a) recruitment, and matters concerning recruitment, to any all India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian ;

- G (b) all service matters concerning -

- (i) a member of any All-India Service ; or

- H (ii) a person [not being a member of an All India Service

or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union ; or A

(iii) a civilian [not being a member of an All India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence, B

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any state or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government ; C

(c) ....."

Section 29 provides for the transfer of all pending cases to the Tribunal while section 29 A provides for the filing of appeals in such cases as were decided either before or after the establishment of Tribunals on 1.11.85 before the Tribunal instead of the regular appellate forum. D

Sections 29 and 29A are reproduced below:

"29. *Transfer of pending cases*-(1) Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act', being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal : E

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court. F

(2) . Every suit or other proceeding pending before a Court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation [or society], being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal : G

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A            Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

B            (3) Where immediately before the date of establishment of a Joint Administrative Tribunal any one or more of the States for which it is established, has or have a State Tribunal or State Tribunals, all cases pending before such State Tribunal or State Tribunals immediately before the said date together with the records thereof shall stand transferred on that date to such Joint Administrative Tribunal.

C            (4) Where any suit, appeal or other proceeding stands transferred from any Court or other authority to a Tribunal under sub-section (1) or sub-section (2),-

D                       (a) the Court or other authority shall, as soon as may be after such transfer, forward the records of such suit, appeal or other proceeding to the Tribunal ; and

E                       (b) the Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of an application under section 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

F            (5) Where any case stands transferred to a Joint Administrative Tribunal under sub-section (3), the Joint Administrative Tribunal may proceed to deal with such case from the stage which was reached before it stood so transferred.

G            (6) Every case pending before a Tribunal immediately before the commencement of the Administrative Tribunals (Amendment) Act, 1987, being a case the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of any Court, shall together with the records thereof, stand transferred on such commencement to such Court.

H            (7) Where any case stands transferred to a Court under sub-section (6), that Court may proceed to deal with such case from the

stage which was reached before it stood so transferred." A

"29-A. Provision for filing of certain appeals - Where any decree or order has been made or passed by any Court (other than a High Court) in any suit or proceeding before the establishment of a Tribunal, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, and no appeal has been preferred against such decree or order before such establishment and the time for preferring such appeal under any law for the time being in force had not expired before such establishment, such appeal shall lie-

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(a) to the Central Administrative Tribunal, within ninety days from the date on which the Administrative Tribunals (Amendment) Bill, 1986 receives the assent of the President, or within ninety days from the date of receipt of the copy of such decree or Order, whichever is later, or C

(b) to any other Tribunal, within ninety days from its establishment or within ninety days from the date of receipt of the copy of such decree or order, whichever is later." D

It is then provided by section 33 that the Act shall have overriding effect. E

Transfer of jurisdiction of regular Courts to another Court or Tribunal has never been liked by litigants and lawyers as noticed by Viscount Simonds in *Smith v. East Elloe R.D.C.*, 1956 A.C. 736 who observed that:- F

"Any one bred in the tradition of the law, is likely to regard with little sympathy legislative provisions for ousting the jurisdiction of the Court, whether in order that the subject may be deprived altogether of remedy or in order that his grievance may be remitted to some other Tribunal." G

Since the matter involved in this case relates to the ouster of jurisdiction of all regular Courts, including the High Court, we shall adopt a rule of interpretation which is most appropriately applicable to the circumstances of the present case and the only Rule which can be most suitably applied is the rule of construction of giving ordinary meaning to H

A the various expressions used in the Legislation and to construe various sections of the enactment as a whole, each provision, [in the words of Lord Wright in *Jennings v. Kelly*, [1939] 4 All ER 464(HL) throwing light, if need be, on the rest. This rule has since been accepted by this Court in *Tahsildar Singh v. State of U.P.*, AIR 1959 SC 1012 in which Subba Rao, J. (as he then was) speaking for the Court said:-

B "The cardinal rule of construction of the provisions of a section with a proviso is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole each portion throwing light if need be on the rest.

C The true principle undoubtedly is that the sound interpretation and meaning of the statute, on a view of the enacting clause saving clause, and proviso, taken and construed together, is to prevail."

In *Madan Lal Fakir Chand Dudhediya v. Changdeo Sugar Mills Ltd.*, AIR (1962) SC 1543 Gajendragadkar, J. (as he then was) observed :-

D "The first rule of construction which is elementary, is that the words used in the section must be given their plain grammatical meaning. Since we are dealing with two sub-sections of S.76, it is necessary that the said two sub-sections must be construed as a whole "each portion throwing light, if need be, on the rest. "

E Reverting back to section 14, we may immediately notice the striking feature that this section begins with the words "Save as otherwise expressly provided in this Act" which constitute an extremely significant expression as they purport to constitute a "Saving Clause". This expression has also been used in the opening part of sub-section (3) of section 14.

F What is intended to be saved is indicated in section 28 which, incidentally, also purports to exclude the jurisdiction of almost all the Courts in service matters. Section 14 and section 28 have, therefore, to be read together to find out the real intent of the legislature as to the extent of jurisdiction retained or excluded.

G The jurisdiction which is transferred to and vested in the Tribunal is the jurisdiction of all the Courts except the Supreme Court which is expressly excluded.

H The "matters" in respect of which this "jurisdiction" is to be exercised are also indicated in this section. That is why it is provided in section 19

that any person aggrieved by an "order" (defined in the Explanation appended to sub-section (1) of that section) pertaining to any "matter" within the "jurisdiction" of the Tribunal may approach the Tribunal for the redressal of his grievance. While section 19 operates "subject to other provisions of the Act", the field of operation of section 14 is limited by the use of the words "save as otherwise expressly provided in this Act". These words control and regulate whole of the section not only in respect of "jurisdiction" but also the "Matters" specified therein. This constitutes the original jurisdiction of the Tribunal.

The appellate jurisdiction of the Tribunal is indicated in section 29 and 29A of the Act. While all appeals pending in various Courts, except those pending in the High Court on the date from which Tribunal became functional stand transferred to the Tribunal by the force of the Act, the appeals in all cases which were decided prior to the establishment of Tribunals, are required to be filed before the Tribunal, if they had not already been filed provided the cause of action on which the case was based is cognizable by the Tribunal.

The appellate jurisdiction of the Tribunal is extremely limited and was conferred on the Tribunal so that the judgment, if any passed, for example, by a Munsif or Civil or Subordinate Judge in a Civil Suit relating to a service matter (decided before the establishment of the Tribunal) may be challenged before the Tribunal notwithstanding that the judgment passed in that suit is not covered by the word "order" defined in the explanation appended to sub-section (i) of Section 14. Except the appeals, which are transferred to the Tribunal or the appeals which may be filed before the Tribunal in the above circumstances, no other appeal would lie before the Tribunal.

The "Saving Clause" or the "Saving Phrase" (not in the sense of "Repeals and Saving") divides "jurisdiction" into two classes, namely, "jurisdiction" which is transferred to and vested in the Tribunal and "jurisdiction" which is not so transferred and is, on the contrary, saved. When the jurisdiction thus became exercisable by the Tribunal, it was provided by section 28 that on Court shall exercise the jurisdiction, powers and authority on and from the date from which such jurisdiction, powers and authority becomes exercisable by a Tribunal. It however, excepts:-

(a) the Supreme Court; or

- A (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force.

B It is therefore apparent that in spite of section 14 of the Act the jurisdiction of the Industrial Tribunal, Labour Courts or other Authorities under the Industrial Disputes Acts or Authority created under any other Corresponding Law remains unaffected. The original, or for that matter, the Appellate Authority under the payment of Wages Act is neither an Industrial Tribunal nor a Labour Court nor are they "Authorities" under the Industrial Disputes Act, 1947 but if the payment of Wage Act is ultimately found to be a "Corresponding Law", the jurisdiction of the Authorities under the Payment of Wages Act would also be saved.

Let us take up this exercise.

D Payment of Wages Act, 1936 is an Act to regulate the payment of wages to certain classes of person employed in an industry. The Act was amended from time to time and was ultimately amended in 1982 by Act 38 of 1982 with the following objects and reasons :-

E "The payment of Wages Act, 1936 regulates the payment of wages to certain classes of persons employed in industry. It was enacted to ensure that the wages payable to employees covered by the Act are disbursed by the employers within the prescribed time limit and that no deductions other than those authorised by law are made by the employers. The Act applies proprio vigore to the payment of wages to persons employed in any factory or to persons employed in a railway by a railway administration either directly or through a sub-contractor. Further, the State Government are empowered to extend the provisions of the Act to cover persons employed in any industrial establishment or any class or group of Industrial establishments as defined in the Act. The wage limit for the applicability of the Act is Rs. 1,000 per mensem. It is proposed to amend the Act with a view to extending its protection to a larger number of persons and making the provisions of the Act more effective and beneficial. "

H While the Act, to begin with , was applicable to industrial establishments so as to ensure payment of wages to workmen or persons

employed in an industry at regular intervals without any unauthorised deduction, the amendments introduced by Act 38 of 1982 widened the scope of the original Act as many "other establishments" could be brought within its purview on a Gazette notification issued either by the Central Government or the State Government.

Section 2 contains definitions of various terms, namely, "Employed person", "Employer", "Factory", "Industrial or other establishments", "Railway Administration" and "Wages" etc. Almost all these terms are also defined in the Industrial Disputes Act. In order to understand whether payment of Wages Act is part of the legislative scheme governing Industrial Law, we would, by way of illustration concentrate on "Wages" and its recovery from the employer through judicial process. The definition of "Wages" in section 2 (vi) is an exhaustive definition which is in very wide terms. Its relevant portion is quoted below :-

"2 (vi). "Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes -

(a) any remuneration payable under any award or settlement between the parties or order of a Court ;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

A but does not include -

(1) .....

(2) .....

B (3) .....

(4) .....

(5) .....

C (6) .....

Under the Industrial Disputes Act, 1947, the term "Wages" has been defined in section 2 (rr) as under :-

D "2(rr). "Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes-

E (i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

F (iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both ;

but does not include-

G (a).....

(b).....

(c).....

H If the "Wages" are not paid within the prescribed time limit or

deductions, other than those authorised by law, are made by the employers the employee can recover it under the payment of Wages Act for which an elaborate machinery has been provided in section 15 relevant portion of which is quoted below :-

*"15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims :-*

(1) The State Government may, by notification in the official Gazette, appoint [a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or] any Commissioner for Workmen's Compensation or other officer with experience as a Judge of Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages [of persons employed or paid in that area], including all matters incidental to such claims :

Provided that where the State Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

(2) 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 authorised 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 :

A            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.

B            (3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer of other persons responsible for the payment of wages under section 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] :

E            Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to -

(a) a *bone fide* error or *bona fide* dispute as to the amount payable to the employed person or

F            (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

G            (c) the failure of the employed person to apply for or accept payment.

(4) .....

(4-A).....

H            (4-B).....

(5) .....

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Before proceeding further , we may point out that there have been many local amendments made almost by all the States in the Act but for purposes of the question under our consideration, will refer to the text of the Central Act which is the parent Act.

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A perusal of section 15 (1) would indicate that the State Government has to constitute an " Authority" by appointing either the presiding Officer of a Labour Court or Industrial Tribunal or any Commissioner for workmen's Compensation or a Judge of a Civil Court or Stipendiary Magistrate to hear and decide all claims arising out of deductions from the wages or delay in payment of wages including all matters incidental thereto. If an employee does not get his wages in time and its payment is delayed or deductions are made form the wages unauthorisedly, he may either personally or through a legal practitioner or any official of a registered Trade Union or any Inspector appointed under the Act, may, apply to the "Authority" constituted under the Act and the latter namely, the "Authority", after hearing the employer or any other person responsible for payment of wages, may direct the refund of the amount deducted or payment of delayed wages , as the case may be, together with compensation as indicated in sub- section (3) of section 15 without prejudice to the penalty to which the employer or the other person may be liable under the Act. The amount so awarded is recoverable as fine imposed by a Magistrate as indicated in sub-section (5) of section 15.

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Under section 33 C of the Industrial Disputes Act, there is an altogether different machinery provided for recovery of wages etc. It provides as under :-

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"33C. *Recovery of money due from an employer* - (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter V A or Chapter V B], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

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A Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer :

B Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

C (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months].

D [Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do he may, for reasons to be recorded in writing extend such period by such further period as he may think fit.]

E (3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

F (4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

G (5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any

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number of such workmen." A

Under sub-Section (i) of section 33 C the amount for the recovery of which proceedings may be initiated by a workman, may also consist of the amount due under a settlement or an award. This may be compared with the definition of "Wages" as contained in section 2 (vi) of the payment of Wages Act, which also includes " remuneration payable under any Award or Settlement" . It is obvious that if any part of this amount is withheld or its payment is unreasonably delayed, the employee can recover it under the payment of Wages Act. B

In *Town Municipal Council, Athani v. Labour Court*, [1969 (2) Labour Law Journal 651], this Court while affirming the decision of the Mysore High Court, since reported in 1968 (1) Labour Law Journal 779, laid down that questions relating to payment of minimum wages to the employee at the agreed rate or any amount for overtime work or for work on off-days can be considered and decided not only under the payment of Wages Act but also under section 33 C(2) of the Industrial Disputes Act 1947, and that jurisdiction of the Labour Court under section 33 C(2) is not barred on account of the provisions contained in the payment of Wages Act. C D

This decision has been cited only as an effort to indicate that claim for wages can be entertained not only under the payment of Wages Act but also under section 33C (2) of the Industrial Disputes Act. E

Thus, the character and function of the Labour Court under the Industrial Disputes Act as also the Authority under the payment of Wages Act are similar in purpose and both are designed to produce the same result particularly as some of the provisions under both the Act prescribe the same thing to be done. F

The Industrial Disputes Act, 1947 and the payment of Wages Act, 1936 are, therefore, "Corresponding Law" qua each other particularly as both are part of the same social legislative canopy made by the Parliament for immediate amelioration of workmen's plight resulting from non-payment, or delayed payment or, for that matter, short payment of their wages. G

The word "corresponding" is defined in Shorter Oxford Dictionary as "answering to in character and function; similar to". This meaning has been adopted in *Winter v. Ministry of Transport*, [1972 NZLR 539] in which it has been observed as under :- H

A "We read "corresponding " in S.20A as including a new section  
dealing with the same subject matter as the old one , in a manner  
or with a result not so far different from the old as to strain the  
accepted meaning of the word "corresponding" as given in the  
Shorter Oxford English Dictionary - "answering to in character and  
function; similar to". The new [section] answers to the old one ...  
B in character and function ; it is similar in purpose, prescribes the  
same thing to be done, and is designed to produce the same result.  
We hold it to be a "corresponding section". [See Words & Phrases  
3rd Edition Vol.1]

C Our conclusion, therefore, is irresistible that the "Authority" con-  
stituted under section 15 and the Appellate Authority under section 17 of  
the payment of Wages Act, fall within the exception indicated in section  
28 of the Administrative Tribunal Act and this Act, namely, payment of  
Wages Act, is positively covered by the connotation "corresponding Law"  
used in that section. Consequently, the jurisdiction of the Authority to  
D entertain and decide claim cases under section 15 of the payment of Wages  
Act is not affected by the establishment of the Administrative Tribunals.

Learned counsel for the respondent then contended that since clause  
(b) of section 2 has been deleted by Act No. 19 of 1986 and the Act has  
been made applicable to all person employed in Industrial establishments  
E and factories to whom the Act, as originally enacted did not apply, and  
since the jurisdiction of all court has come to be vested in the Tribunal, an  
appeal under section 17 of the payment of Wages Act cannot be legally  
filed before a "Court" nor can pending appeals be heard by the "Court"  
and, therefore, the Tribunal was justified in the instant case to dispose of  
F the appeal on merits after receiving it on transfer under section 29 from  
the Court of the District Judge. This contention, too, has no substance.

While deleting clause (b) from section 2 so as to make the Act  
applicable to workmen etc., the Parliament by the same Amending Act  
namely, Act No 19 of 1986, introduced clauses (a) and (b) in section 28 so  
G as to preserve the jurisdiction of the Supreme Court, the Labour Courts,  
Industrial Tribunals and, as we have already found, the Authorities under  
the payment of Wages Act which we have further found to be "Correspond-  
ing Law" within the meaning of clause (b) of section 28.

H It appears strange that although Act has been applied to persons  
working in factories etc., the jurisdiction to try their cases has not been

given to the Tribunal. This is, indeed, an incongruity. But then incongruity is the habit of legislative drafting. A

In this connection, we may, refer again to section 29 and 29A as under both the sections, the emphasis is on "cause of action". Under section 29, an appeal shall stand transferred to, and under section 29A, an appeal can be filed before, the Tribunal if the cause of action on which "suit or proceedings" were initiated would have been cognisable by the Tribunal. Since on the original cause of action, a claim under section 15 of the Payment of Wages Act could not have been made to the Tribunal, the appeal would not stand transferred to nor can appeal contemplated under section 17 of the Payment of Wages Act be filed before it. The Appellate Authority is part of the Justice Delivery System constituted under section 17 of the payment of Wages Act. Its jurisdiction will not be affected by the establishment of Administrative Tribunals particularly as appeal has always been treated to be a continuation of the original proceedings. Consequently, the two tier judicial system, original as well as appellate, constituted under the "Corresponding Law", like the payment of Wages Act, are not affected by the constitution of the Tribunals and the system shall continue to function as before, with the result that if any case is decided under section 15 of the Payment of Wages Act, it will not be obligatory to file an appeal before the Tribunal as required by section 29A of the Act but the appeal shall lie under section 17 of the Payment of Wages Act before the District Judge. The pending appeals shall also, therefore, not stand transferred to the Tribunal under section 29 of the Act. If it were a mere matter under general or common law and an appeal arising from a suit in a service matter decided by the Trial Court and pending in the Court of the District Judge under Section 96 C.P.C. would have been the subject of controversy whether it would be transferred to the Tribunal or not, our answer would have been an instant "yes" but the matter involved before us is different as it relates to the exercise of special jurisdiction by the District Judge under payment of Wages Act, which is a protected jurisdiction. B C D E F

Any other view will be destructive not only of the "Saving clause" in the opening part of section 14 but also of the exceptions carved out in section 28 together with the "cause of action" theory contained in sections 29 and 29A of the Act. G

Learned counsel for the respondent has placed reliance on a Full H

- A Bench decision of the Chandigarh Central Administrative Tribunal in *Union of India v. Sarup Chand Singla*, [1989 (1) All India Services Law Journal 491 (CAT)] in which it has been held that since the District Judge is a Court within the meaning of section 14 (1) as also section 28 of the Act, it is left with no jurisdiction to hear and decide the appeals pending before it on and from the date on which the Tribunals were established as
- B jurisdiction, power and authority of all Courts stood transferred to the Tribunal. This decision, in our opinion, is erroneous and does not lay down the correct law. The Full Bench did not consider the impact of the words "Save as otherwise provided in the Act" used in section 14 nor did it consider the significance of the words "Corresponding Law" occurring in
- C section 28 of the act.

We wind up this discussion with the last words that though the Tribunal has been constituted as a substitute for the High Court under Article 323 A, the Labour Courts and Industrial Tribunals etc. over which the High Court exercises supervisory jurisdiction continue to function with

D the incongruous result that though the High Court cannot quash their judgments, it must continue to supervise their functioning. Let us await the decision of the Constitution Bench.

For the reasons set out above, we allow the appeal and set aside the judgment and order dated 04.07.94 passed by the Administrative Tribunal, Chandigarh and direct that the appeal papers shall be transmitted

E forthwith to the District Judge, Chandigarh for disposal on merits.

I.M.A.

Appeal allowed.