



**IN THE GAUHATI HIGH COURT**  
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

**PRINCIPAL SEAT AT GUWAHATI**

**WP(C) No. 6698/2023 & 1094/2018**

**1. WP(C) No. 6698/2023**

M/s Green Field Tea Warehouse,  
House No.78, Opposite Shankardev Kalakshetra Panjabari,  
Guwahati-781037, Assam,  
Represented by its Proprietor  
Md. Monirul Hassan.

.....Petitioner.

-Versus-

1. The State of Assam,  
represented by the Secretary to the  
Government of Assam,  
Labour & Employment Department, Dispur,  
Guwahati-781006.
2. Ms. Rehena Begum,  
W/o Syed Shahjahan Ali, Advocate,  
R/o Machkhowa, T.R. Phukan Road,  
Masjid Gali, PO & PS-Bharalumukh,  
Guwahati-09, Dist.-Kamrup(M), Assam.

.....Respondents.

For the Petitioner: Mr. Y.S. Mannan,  
Ms. N. Dekaraja.

.....Advocates.

For the Respondents: Mr. S.R. Baruah, GA, Assam,  
Mr. H.R. Khan (R-2).

.....Advocates.



## **2. WP(C) No. 1094/2018**

Md. Monirul Hasan,  
S/o Late Maziruddin Ahmed,  
A partner of M/s Green Field Tea Warehouse,  
Resident of No.31(N), Juripar, Bye Lane No.3,  
Panjabari, Guwahati-781037, Dist.-Kamrup(M),  
Assam.

.....*Petitioner.*

-Versus-

1. The State of Assam,  
represented by the Secretary to the Government of Assam,  
Labour & Employment Department, Dispur, Guwahati-6.
2. The Assistant Labour Commissioner-cum-Authority  
under the Payment of Wages Act, Kamrup, Ulubari,  
Guwahati-07, Assam.
3. Ms. Rehena Begum,  
W/o Md. Shahjahan Ali,  
C/o Hanif Khan, Six Mile, Dharandha Road,  
House No.122, Guwahati-34.

.....*Respondents.*

For the Petitioner: Mr. Y.S. Mannan,  
Ms. N. Dekaraja.

.....Advocates.

For the Respondents: Mr. S.R. Baruah, GA, Assam,  
Mr. H.R. Khan (R-3).

.....Advocates.

**BEFORE  
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

Date of Hearing & Judgment : **23<sup>rd</sup> July, 2024**



## **JUDGMENT AND ORDER**

Heard Mr. Y.S. Mannan, learned counsel for the petitioner in both the writ petitions. Also heard Mr. H.R. Khan, learned counsel appearing for the respondent No.2 in WP(C) No.6698/2023 and for the respondent No.3 in WP(C) No.1094/2018 and Mr. S.R. Baruah, learned Government Advocate, appearing for the State respondent in both the writ petitions.

2. At the outset it may be stated that the petitioner in WP(C) No.1094/2018 is the proprietor of the petitioner firm in WP(C) No.6698/2023. Further, the respondent No.2 in WP(C) No.6698/2023 is the same person as respondent No.3 in WP(C) No.1094/2018. Both the writ petitions are being disposed of by this judgment and order, as the subject matter in issue in both the writ petitions are connected to each other. The writ petitioner is the employer, while the respondent No.2 in WP(C) No.6698/2023 as well as the respondent No.3 in WP(C) No.1094/2018, is the employee

3. The brief facts of the case is that the employee (workman) was verbally employed to maintain the accounts of the employer w.e.f. 14.11.1996. The employer used to pay Rs.1,000/- per month as wages for the period from November 1996 to December 1999. Thereafter, the employee's wages was increased and till the time of her dismissal, her wages had increased to Rs.4,000/- per month. The employee was dismissed from service on 20.05.2010.

4. The employee submitted a complaint before the Office of the Assistant Labour Commissioner with regard to her claim for being entitled for payment of salary/wages of a Grade-I employee and the same was



registered in the Office of the Assistant Labour Commissioner on 29.10.2010 as LPW No.5/2010. During the proceedings of LPW No.5/2010, the employee made a submission that as the employee had been dismissed from service and as there was scope to entertain the claim of the employee for higher pay/salary under the Payment of Wages Act, 1936, the employee may be allowed to make an appropriate claim before the appropriate forum under the Industrial Disputes Act, 1947. The same was allowed by the Office of the Assistant Labour Commissioner, by disposing of the LPW No.5/2010 vide order dated 08.06.2011.

5. The employee thereafter raised an industrial dispute with regard to her dismissal from service and as the conciliation proceedings failed, a reference was made to the learned Labour Court for resolution of the dispute under Section 10 of the Industrial Disputes Act, 1947, wherein the case of the employee was registered as Reference Case No.2/2012.

6. During the proceedings of Reference Case No.2/2012, the following issues were framed by the learned Labour Court:-

- (i) Whether the employer was justified in dismissing or discharging the employee?
- (ii) If not, whether the employee was entitled to be reinstated with full back wages and benefits or any other relief as may be deemed fit and proper?

The employee did not raise the issue relating to payment of higher salary/wages during the conciliation proceedings and at the time of reference of the case to the learned Labour Court under the Industrial Dispute Act, 1947.



7. The case of the employee before the learned Labour Court was that her dismissal from service should be set aside and that she should be reinstated with full back wages/benefits. The employee also made a prayer, after the Labour Court proceedings had started, that as the employee (workman) had joined her service as Grade-I employee, the employee should be given her full back wages as per the pay given to a Grade-I employee.

8. The learned Labour Court, vide its Award dated 30.03.2013, held that the employer was not justified in dismissing/discharging the employee from her service and that the employee was to be reinstated in her service with full back wages. With regard to the prayer of the employee that she should be given her pay as a Grade-I employee, the learned Labour Court, Guwahati, in para 18 of the Award, held that the claim of the employee that she had been given a lesser amount than what she was entitled, was a matter to be considered by a separate forum under a separate section of law and hence, the claim of the employee for grant of back wages as given to Grade-I employees was rejected.

9. Being aggrieved with the Award dated 30.03.2013 passed by the Labour Court, Guwahati, to the effect that the employee should approach a separate forum under a separate section of law for grant of back wages as entitled to a Grade-I employee, the employee approached this Court, by filing a writ petition, being WP(C) No.6968/2013. The prayer of the employee before this Court was that the Award dated 30.03.2013 passed by the learned Labour Court in Reference Case No.2/2012 should be modified in accordance with the provisions of Section 17A of the Industrial Disputes Act, 1947, by directing the employer to reinstate the petitioner with full back wages by giving her a higher pay scale, as per her entitlement.



10. WP(C) No.6968/2013 was dismissed by this Court, vide order dated 21.07.2015, by holding that if the petitioner/employee had any further grievance as noticed in the Award dated 30.03.2013, it would be open to the employee to raise such grievance before the appropriate forum in accordance with law.

11. Prior to dismissal of WP(C) No.6968/2013 by this Court, the employer had written letters dated 19.08.2013 and 25.08.2014 to the employee, asking her to join her post of "receiving and delivery clerk" in pursuance to the Award passed by the Labour Court, Guwahati or else the said post would be filled up by a new incumbent.

12. Subsequent to the order dated 21.07.2015 passed in WP(C) No.6968/2013, the employee submitted a claim petition before the Assistant Labour Commissioner, Ulubari, for giving her wages as given to Grade-I employees and the said claim petition was registered as LPW No.16/2015. The said LPW No.16/2015 is still pending till date before the Assistant Labour Commissioner, Guwahati, who is also the authority to decide issues relating to payment of wages under the provisions of the Payment of Wages Act, 1936. Subsequent to the above events, the employer issued the letter/notice dated 18.08.2023 to the employee, with reference to the letters dated 19.08.2013 and 25.08.2014, in connection with the Award dated 30.03.2013 passed in Reference Case No.2/2012, whereby the petitioner had been asked to rejoin her post. The employer stated in the notice/letter dated 18.08.2023 that the Award dated 30.03.2013 passed by the Labour Court in Reference Case No.2/2012 had spent its force and had become unenforceable.

13. In reply to the employer's letter dated 18.08.2023, the employee



wrote a letter dated 29.08.2023 to the employer stating that she had received the letter dated 19.08.2013, though not the letter dated 25.08.2014. The employee further stated that the employer was wanting to deprive the employee from getting her legitimate claim and that, as and when the employee was provided the legitimate pay scale of a Grade-I employee, the employee would be ready to comply with the Award passed in the Reference Case No.2/2012.

14. The contents of the letter dated 29.08.2023 submitted by the employee to the employer is reproduced herein below as follows:-

"To  
Monirul Hasan,  
Proprietor,  
Green Field Tea Warehouse,  
Guwahati-781037.

Sub:- Reply to your letter dated 18-08-2023 in connection with Labour Court award dated 20-03-2013 passed in Reference case No.02/2013.

Ref:- Your Letter dated 18<sup>th</sup> August 2023.

Sir,

I am in receipt of the letter issued by you vide letter under reference above, at the very outset I have to say that the said letter is in itself a shock to me not only because it was issued to me when the subject matter involved in it is subjudice before the Hon'ble Gauhati High Court but also due to the reason that the letter contains some concocted facts and circumstances. To be precise, you have mentioned in the above referred letter that two letters were issued to me on 19-08-2013 and on 25-08-2014 in compliance with the award passed in Reference Case No.02/2012 and thereby requested me to rejoin in the post which I held before my termination. In regards to these two letters, I admitted receiving the first letter i.e. 19-08-2013 and accordingly I had responded to it by my reply dtd. 02-09-2013 which itself is self explanatory but I vehemently denied receiving the second letter dtd. 25-08-2014 and therefore the question of any response from my end doesn't arise at all.

That, I was anticipating a positive response from your end to my reply dtd. 02-09-2013 but unfortunately on receipt of the above referred letter it



appears to me that now you would somehow want to deprive me from my legitimate claims which I am entitled to receive from the management of your esteemed office.

Having said so, I still hope and trust that you would be kind enough to give an opportunity to me providing legitimate pay scale of Sr. Grade-I employee and I am ready to comply with the same and henceforth.

And for which act of your kindness I shall remain ever grateful to you."

15. The petitioner's counsel submits that the facts of the case show that while the employer/writ petitioner had accepted the Award passed by the learned Labour Court in Reference Case No.2/2012 and was ready to reinstate the employee with full back wages, i.e. @ Rs.4,000/- per month, which is the fixed pay she was receiving at the time of her dismissal from service, the employee failed to rejoin her post. He submits that the employee did not rejoin her post, only on the ground that she had not been given her back wages as per her entitlement, which was in the pay scale of Sr. Grade-I employee. However, the said prayer of the employee had not only been rejected by the learned Labour Court but also by this Court in WP(C) No.6968/2013, wherein liberty had been given to the employee to approach the appropriate forum in accordance with law. He submits that the employee could not have approached the Assistant Labour Commissioner with regard to her claim for the pay scale of Sr. Grade-I employee under Section 15 of the Payment of Wages Act, 1936 for enforcement of Section 3(1)(b) and Section 5(1)(b) of the Payment of Wages Act, 1936. He submits that the Assistant Labour Commissioner does not have the authority to decide the issue raised by the employee regarding her entitlement to the pay scale of a Sr. Grade-I employee, in view of the fact that there is nothing to show in the records that the employee had been appointed or worked as a Sr. Grade-I employee. Further, the employee had earlier approached the



office of the Assistant Labour Commissioner on 29.10.2010 vide LPW No.5/2010, which was disposed of vide order dated 08.06.2011, wherein the office of the Assistant Labour Commissioner had allowed the submission of the employee to adjudicate the issue of higher wages before the appropriate forum under the Industrial Disputes Act, 1947. However, the employee did not raise the issue of her not being given the salary/wages of a Grade-I employee at the time of raising the industrial dispute under the Industrial Disputes Act, the conciliation proceedings or at the time of reference of the employee's case before the learned Labour Court in Reference Case No.2/2012. The employee raised the issue of she being entitled to the salary/wages of a Grade-I employee only during the pendency of the proceedings in Reference Case No.2/2012 before the learned Labour Court. He accordingly submits that until and unless an adjudication of the said issue has been raised by the employee in terms of the Industrial Disputes Act, 1947, the said issue could not be raised now, by filing the subsequent LPW No.16/2015, as she did not rejoin her post.

16. The learned counsel for the petitioner also submits that in terms of Section 19(6) of the Industrial Disputes Act, 1947, the employee not having rejoined her post in terms of the Award dated 30.03.2013 passed in Reference Case No.2/2012 and even after a lapse of 2 months from the date of receiving the letter/notice dated 18.08.2023 issued by the employer, the Award cannot bind the parties any longer and the same must be said to have spent its force, as it became unenforceable.

17. Mr. H.R. Khan, learned counsel for the employee, on the other hand, submits that the employee has submitted an application for grant of higher pay scale than what has been provided in the Award dated 30.03.2013 passed in Reference Case No.2/2012 before the Assistant Labour



Commissioner along with a condonation of delay application. The condonation of delay application has been allowed by the office of the Assistant Labour Commissioner and the issues raised by the employee is to be considered in LPW No.16/2015. He submits that until a decision is taken by the Assistant Labour Commissioner in LPW No.16/2015 and as the records of LPW No.16/2015 are not before this Court, the writ petitions should not be disposed of. Further, all the issues raised in these writ petitions should be referred to the office of the Assistant Labour Commissioner for adjudication.

18. I have heard the learned counsels for the parties.

19. As can be seen from the facts enumerated in the foregoing paragraphs, the employee had been terminated from service on 20.05.2010. The conciliation proceedings regarding the dismissal of the employee had failed. The matter was referred to the learned Labour Court, wherein Reference Case No.2/2012 was registered. The learned Labour Court in the Award dated 30.03.2013, disposing of the Reference Case No.2/2012, came to a finding that the employee was designated as a clerk and she was directed to perform as a clerk. Further, she was paid wages @ Rs.4,000/- per month at the time of dismissal from her service as a workman. The learned Labour Court had thereafter directed reinstatement of the employee with full back wages and as stated earlier, her claim for payment of higher wages, as entitled to a Grade-I employee, was not acceded to by the learned Labour Court. The employee also did not raise any industrial dispute under the Industrial Disputes Act, 1947 regarding her entitlement to higher wages during the conciliation proceedings or at the start of Reference Case No.2/2012. The challenge made to the Award passed in Reference Case No.2/2012 vide WP(C) No.6968/2013 was rejected by this Court.



20. As the employee failed to rejoin her post, the employer sent two letters dated 19.08.2013 and 25.08.2014 to the employee, informing her that if she did not rejoin her post as per the Award, then the employer would be compelled to fill up her post by another person. However, as the employee did not rejoin her post, letter/notice dated 18.08.2023 was issued to the employee.

21. The employee did not rejoin her post even after a lapse of 2 months, from the date of receiving the letter/notice dated 18.08.2023. The contents of the letter dated 18.08.2023 issued by the employer to the employee is reproduced herein below as follows:-

"To  
Rehena Begum,  
W/o Sahjahan Ali, C/o Hanif Khan,  
House No.122, Dharandha Road, Six Mile, Guwahati-781022.

Subject: Award dated 30.03.2013 passed by the Labour Court in Ref. Case No.2/2012.

This is in reference to the letter dated 25.08.2014 in connection with the Award dated 30.03.2013 passed by the Labour Court in Ref. Case No.2/2012, whereby the Labour Court had passed the Award for your reinstatement in service with full back wages.

Accordingly, as per the Award, two letters were sent to you dated 19.08.2013 and 25.08.2014, requesting you to re-join your post from which you had been terminated. However, you never turned up to re-join the said post as per the Award and several years have lapsed since then.

Therefore, you are no longer eligible to enforce the Award dated 30.03.2013 passed by the Labour Court in Ref. Case No.2/2012 and the Award has spent its force. This is for your information only."

22. Sections 17, 17A and 19 of the Industrial Disputes Act, 1947 reads as follows:-



**"17. Publication of reports and awards.—**(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of section 17A, the award published under sub-section (1) shall be final and shall not be called in question by any Court in any manner whatsoever.

**17A. Commencement of the award.—**(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17:

Provided that—

(a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal,

that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award under section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been



made by the Central Government.

(3) Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).

(4) Subject to the provisions of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (3), as the case may be.]

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**19. Period of operation of settlements and awards.**—(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months 9[from the date on which the memorandum of settlement is signed by the parties to the dispute], and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

[(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year [from the date on which the award becomes enforceable under section 17A]:

Provided that the appropriate Government may reduce the said period



and fix such period as it thinks fit:

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it [to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal] for decision whether the period of operation should not, by reason of such change, be shortened and the decision of [Labour Court or the Tribunal, as the case may be] on such reference shall, be final.

(5) Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

[(7) No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.]”

23. The letter/notice dated 18.08.2023 has categorically referred to the fact that despite two letters being sent to the employee, the employee had failed to rejoin her post as per the award dated 30.03.2013 passed in



Reference Case No.2/2012 and that the employee was no longer eligible to enforce the award as the same had spent its force. The letters dated 19.08.2013, 25.08.2014 and 18.08.2023, in the opinion of this Court amounts to notice being given under Section 19(6) of the Industrial Disputes Act, 1947. As the employee has failed to rejoin her post till date, the Award has become unenforceable.

24. In the case of **Bank of India v. Presiding Officer & Ors.**<sup>1</sup>, the Supreme Court has reiterated another decision of the Supreme Court in the case of **South Indian Bank Ltd. v. A.R. Chacko**<sup>2</sup>, wherein it has been held that when the period of operation of an award has expired under Section 19(6) of the Industrial Disputes Act, 1947, the award does not cease to be effective, until a period of 2 months have elapsed from the date on which notice is given by any party bound by the award to the other party intimating its intention to terminate the award. The Supreme Court in **A.R. Chacko** (supra) has held as follows:-

"This makes it clear that after the period of operation of an award has expired, the award does not cease to be effective. For it continues to be binding thereafter on the parties until notice has been given by one of the parties of the intention to terminate it and two months have elapsed from the date of such notice. The effect of s.4 of the Industrial Disputes (Banking Companies) Decision Act is that the award ceased to be in force after March 31, 1959. That however has nothing to do with the question as to the period for which it will remain binding on the parties thereafter. The provision in s.19(6) as regards the period for which the award shall continue to be binding on the parties is not in any way affected by s.4 of the Industrial Dispute (Banking Companies) Decision Act, 1955."

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1 2001 (8) SCALE 104

2 AIR 1964 SC 1522



25. In the case of **Karnani Properties Ltd. v. State of West Bengal & Ors.**<sup>3</sup>, the Supreme Court has held that a letter given by way of an intimation stating the intention of the employer to terminate the award would amount to fulfilling the requirement under Section 19(6) as well as under Section 19(2) of the Industrial Disputes Act, 1947. In the present case, the award was passed in the year 2013 and the letter stating that the award became unenforceable was intimated vide letter dated 18.08.2023 and as stated earlier, it is the view of this Court that the award became unenforceable after the lapse of 2 months after receipt of the letter/notice dated 18.08.2023 by the employee. The fact that the employee had received the letter dated 18.08.2023 is proved by her reply dated 29.08.2023 and the fact that she had not joined her post even till today, in terms of the award dated 30.03.2013 passed in Reference Case No.2/2012. Further, the employee had been informed by the employer that if she did not join her post, her post would be filled up by somebody else, as per the letters dated 19.08.2013 and 25.08.2014.

26. In respect of the question whether the employee is entitled to the payment of higher pay scale than Rs.4,000/- per month, there is nothing to show that the employee is entitled to higher pay. This is in view of the fact that the learned Labour Court had clearly come to a finding that the employee was receiving Rs.4,000/- per month at the time of dismissal from her service and the said finding has also not been disturbed by this Court in WP(C) No.6968/2013. Further, as the learned Labour Court had come to a finding that it was not the appropriate authority to decide the issue as to whether the employee is entitled to a higher pay scale, the said question cannot be decided by the office of the Assistant Labour Commissioner,

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<sup>3</sup> (1990) 4 SCC 472



without there being any industrial dispute raised by the employee (workman) on that issue, in terms of the Industrial Disputes Act, 1947.

27. The above being said, let us see if the Assistant Labour Commissioner can decide the prayer of the employee, which is to the effect that the employee is entitled to a higher salary/pay under the Payment of Wages Act, 1936, hereafter referred to as "the 1936 Act". The finding of the learned Labour Court in Reference Case No.2/2012 is that the employee was receiving Rs.4,000/- per month at the time of dismissal from service. Section 3(1)(b) and Section 5(1)(b) of the Payment of Wages Act, 1936 states as follows:-

**“3. Responsibility for payment of wages.—**(1) Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed,—

(a) in factories, if a person has been named as the manager of the factory under clause (f) of

sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948);

(b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;

**5. Time of payment of wages.—**(1) The wages of every person employed upon or in—

(a) any railway, factory or 1[industrial or other establishment] upon or in which less than one thousand persons are employed, shall be paid before expiry of the seventh day,

(b) any other railway, factory or 1[industrial or other establishment], shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable:

[Provided that in the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the seventh day from the day of such completion.]”



28. A perusal of the above provisions of the Payment of Wages Act, 1936 clearly shows that the same does not relate to determination of whether a person is entitled to higher wages or not. The same only reflects the responsibility of an employer for payment of wages and the time for payment of wages and nothing beyond the above. As such, it is not understood as to how the office of the Assistant Labour Commissioner would be able to now decide the issue raised by the employee under the 1936 Act. Further, in the case of **A.V.D. Costa, Divisional Engineer, G.I.P. Railway v. B.C. Patel & Anr.**<sup>4</sup>, the Supreme Court has held that the authority under the 1936 Act has no jurisdiction to determine the question of potential wages.

29. In the present case, there is no document showing the employee to be a Grade-I employee or having been given wages beyond Rs.4,000/- per month at the time of her dismissal from service. The finding of the learned Labour Court is to the effect that the employee was working as a clerk and was being paid Rs.4,000/- per month. The finding and decision of the learned Labour Court has not been interfered with by this Court. No new industrial dispute has been raised by the employee under the Industrial Disputes Act, as she has not rejoined her post. As such, this Court is of the view that the Assistant Labour Commissioner cannot decide the issue as to whether the employee should be given the salary/wages higher than Rs.4,000/- per month as per the 1936 Act in LPW No.16/2015, keeping in view that the claim of the employee amounts to making a claim for potential wages.

30. In view of the reasons stated above, this Court finds that the writ petitioner/employer has made out a case for interfering with the case

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<sup>4</sup> AIR 1955 SC 412



pending before the Office of the Assistant Labour Commissioner i.e. LPW No.16/2015, besides making out a case that the award dated 30.03.2013 passed in Reference Case No.2/2012 has become unenforceable in terms of Sections 19(3) and 19(6) of the Industrial Disputes Act, 1947. Accordingly, this Court holds that the award dated 30.03.2013 passed in Reference Case No.2/2012 has become unenforceable as it has spent its force. Also the proceedings before the learned Assistant Labour Commissioner in LPW No.16/2015 being not maintainable, the same is set aside.

31. The writ petitions are accordingly disposed of.

**Sd/- Michael Zothankhuma**  
**JUDGE**

**Comparing Assistant**