PAYMENT OF WAGES ACT, 1936
Act No. IV of 1936
[23rd April, 1956]
An Act to regulate the payment of wages to certain classes of persons employed in Industry

Preamble.--Whereas it is expedient to regulate the payment of wages to certain classes of persons employed in industry;

It is hereby enacted as follows:--

1. Short title, commencement and application..--(1) This Act may be called the Payment of Wages Act, 1936.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date as the Federal Government may by notification in the Official Gazette, appoint.

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

(5) The Provincial Government may after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of the Act or any of them to the payment of wages to any class of persons employed in any. industrial establishment or any class or group of industrial establishments.

(6) Nothing in this Act shall apply to wages payable in respect of a wage-period which over such wage-period, average more than three thousand rupees a month.

[Notes.---The preamble very briefly sets forth the object which an enactment seeks to accomplish. The preamble is a part of the statute and is in the nature of a recital of the facts operative on the mind of the law-giver in proceeding to enact and furnish the key to its under-standing. (A.I.R. 1948 Cal, 296). But the preamble cannot either restrict or extend the enacting part where the language and the object and scope of the Act are not open to doubt. Nothing can justify a departure from the plain meaning of the language of the Act. It is only when the words are fairly open to more than one sense that the question arises as to what was the true intention of the legislature. The Court must endeavour only in case of ambiguity of language to apply the language to what was intended and not to extend it to what was not intended. Apart from this particular and limited use of the intention of the formers of the Act, even their declared intention is irrelevant for construing the Act.

As a general rule, the intention of the legislature is to be ascertained from the language it has preferred in the Act. The Court's function is not to surmise what the legislature meant but to ascertain what it has said it meant. Also the Court must not create or imagine an ambiguity in the aid of the preamble. One important rule of construction is the rule of literal construction. If there is nothing to modify, alter or qualify the language of the statute, it must be construed in the ordinary and natural meaning of the word and sentence. When the meaning attached to the language is plain and unambiguous, there is no occasion for the Courts to volunteer other interpretations. If this is done, the Court turns away from its correct status of an administrator of law to that of law-giver. To add, amend or supply any deficiency in the statute even though apparent one and whether covered intentionally or by error is no concern of law courts.

The scope for the interpretation of the provisions of a statute arises only when the language of the law in ambiguous, absurd, repugnant or inconsistent with the rest of the law and also sufficiently flexible to admit of more than one interpretations. Then those provisions may be construed which, if less correct grammatically, are more in harmony with the intention of the legislature. (Maxwell on Interpretation of Statutes, 7th Ed. p, 17.)

The Act applies to all matters referred to therein except that it does not affect any special law or any specific form of procedure prescribed under any law for the time being in force. When there is conflict between this Act and a special law, the latter prevails over the general. (A. I. R. 1941, Cal. 49-60.) In the absence of a certain provision in allied Act, however, on any particular matter, the provisions of this Act will apply. It must, however be applied with reference to circumstances peculiar to those matters.

The Act came into force on the 28 March 1937. It does not apply to the wages amounting to Rs. 1500 or more.

The Act applies to the wages of persons employed in any factory or by a railway administration or by a contractor to a railway administration. The Act can be extended by the Provincial Government to any class of persons or establishments after giving three months' notice. For definition of 'factory' and 'railway administration, see notes under Section 2.]

2. Definitions.--In this Act, unless there is anything repugnant in the subject or context:-

(i) "factory" means a factory as defined in clause (j) of section 2 of the Factories Act, 1934 (XXV of 1934);

(ii) "Industrial establishment" means any--

(a) tramway or motor omnibus service;
(b.) dock, wharf or jetty;
(c) inland steam-vessel;
(d) mine, quarry or oil-field;
(e) plantation;
(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(g) establishment of a contractor who, directly or indirectly, employs persons [* * * * *] to do any skilled or unskilled, manual or clerical labour for hire or reward in connection with the execution of a contract to which, he is a party, and includes the premises in which, or the site at which, any process connected with such execution is carried on.

Explanation.--Contractor includes a sub-contractor, headmen or agent.]

(iii) "plantation" means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea, and on which twenty-five or more parsons are employed for that purpose;

(iv) "prescribed" means prescribed by rules made under this Act;

(v) "railway administration" has the meaning assigned to it in clause (6) of section 3 of the Railways Act, 1890 (IX of 11190); and

(vi) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled,. be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed or otherwise, to a person employed in respect of his employment or of work done in such employment and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include.--

(a) the value of any house accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the *** Provincial Government;
(b) any contribution paid by the employer to any pension fund or provident fund;
(c) any travelling allowance or the value of travelling concession;
(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
(e) any gratuity payable on discharge.

[Notes.-Cl. (i)--Factory.--The definition of ‘factory’ as given in the Factories Act, 1934 is as below:-

"Factory" means any premises, including the precincts thereof, whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing processes is being carried on or is ordinarily carried on with or without the aid of power, but does not include a mine subject to the operation of the Mines Act, 1923 (IV of 1923)".

While the ordinary: use of the expression 'premises' used in the above definition will include all the buildings of the factory together with the compound on which they stand, the purpose for which the persons are employed on the permises is not material. A factory includes machine rooms. sheds, godowns and yards if within the premises or precincts and mechanical power is used in aid of any manufacturing process, (A.I.R. 1937. Mad. 345). It should be noted that clerks and other persons employed in the office situated within the precincts of the factory would be persons employed in the factory and therefore within the purview of this Act even if the office is situated in a separate room in the same compound. The words used in section 1 (4) are "persons employed" and the legislature has been careful not to use words like workers, workmen, employees, etc. which occur in other Acts. The narrow definition of these expressions given in other Acts is of no avail in the present context. The Act applies to all persons employed whether they may be officers or otherwise and whether they do clerical, manual or other kind of work provided their wages average less than one thousand rupees per month.

Cl. (v) Railway Administration.--This expression has been defined as under in clause (6) of section 3 of the Railways Act, 1890:-
"Railway Administration" or "Administration" in case of a railway administered by the Government or a State means the Manager of the Railway and includes the Government or the State, and, in case of a railway administered by a railway company, means the railway company.

Cl. (vi)--Wages.--The term "wages" as defined in this section means wages actually earned and not potential wages. It means remuneration payable on the fulfillment of the contract.
Field allowance included in basic gross salary according to service certificate cannot be excluded from term "wages". [(NIRC): Mohammad Bashir vs. Managing Director, Sui Northern Gas Pipelines Ltd: 1976 LLC 713=1976 PLC 505.]

"Wages" include conveyance allowance and duty allowance being not dependent on performance of special duty. Travelling allowance is distinct from conveyance allowance. [H.C. (Kar.): Mir Laik Ali and others vs. Mahboob Khan; 1962 LLC 630=1962 PLC 925.]

"Wages" does not necessarily mean "earned wages" Dismissal of employee from service held illegal by Court. Employee, in circumstances of case, entitled to full wages for entire period of suspension. (H.C. (Kar.): North Western Railway vs. Sher Mohammad: 1967 LLC 372=PLD 1966 (W.P.) Kar. 483=1967 PLC 101.]

The term ‘wages’ denotes "the compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him." It conveys that a servant/hired person is entitled to wages for doing work or business for his master. In other words, it clearly denotes that in order to claim wages, a servant/hired person is answerable his master for work or business to the latter. [H.C. (Pesh.) 1980 LLC 153=1980 PLC 568 (i)=PLJ 1980 Pesh. 94. Adamjee Paper and Board Mills, Nowshera vs. Sher Muhammed Khan 2 others.]

Where terms of employment, express or implied, do not provide for any notice pay at the time of discharge of employees and their services are dispensed with on a closure of the business, notice pay, held, not wages as defined. [H.C. (Kar.) Varghese & others vs. Carnel Coir Works; 1965 LLC 213=1964 II LLJ 368.]

Wages payable under the contract of employment must be ascertained by the authority under section 15.--The definition of "wages" makes it clear that the authority must decide as to what remuneration was payable under the contract of employment. To say that authority has no jurisdiction to entertain an application if the wages stated by the employee are denied by the employer, will defeat the Act itself and make it absolutely ineffective. The authority is certainly competent to construe the terms of the contract of employment in order to determine what wages are to be paid. [Shaukat Ali & other vs. Pakistan, L.L.C. 1959-60, Kar. (H.C.) 73].

A wrongfully dismissed employee on reinstatement is entitled to wages because terms of contract are fulfilled.--A railway employee was dismissed on 30th June 1963 which was held illegal on 9th June 1955 by a Civil Court. The employee was then reinstated but the wages during this period of unemployment were refused to him. The case (Divisional Superintendent, N.W.R., Lahore vs. Muhammad Sharif, L.L.C. 1959-60, H.C. 36) went up to the High Court of West Pakistan in revision which held: "An employee would be entitled to wages if the terms of the contract of employment are fulfilled. If the employee was terms of the contract of employment are fulfilled. If the employee was willing to perform his part of the contract, but was not allowed to do so by the employer, it cannot be said that the employee had not fulfilled the terms of his contract and was, therefore, not entitled to any wages for the period during which he was not allowed to work". It was further held that a suspended employee can also claim wages during the period of suspension, because in such case, the contract of

employment was not suspended and the employee was prevented from earning the wages which he would have earned had he been allowed to work.

Notice Pay.--A question arises whether the employee entitled to notice pay can recover the same under the Payment of Wages Act. The question for determination is whether such an employee can apply under the Act for recovery o the sum payable on account of want of proper notice according to the express or implied terms and conditions of employment. He can do so because according to the definition, wages consist not only of the sums of money earned by a workman but also of a sum payable by reason of the termination of the employment. So when the payment of this sum is delayed, the workman has a right to claim it under section 15 of the Act.

Value of house accommodation.--It seems that house allowance would be a part of wages but the value of house accommodation provided would not form a part of wages. For what is exempted from the definition of wages is the value of house accommodation and the value of house accommodation is different from house allowance. House allowance is a sum allowed in addition to wages. The value is the worth of accommodation or the price of utility.

Contribution to Pension or Provident Fund.--The contribution of an employer to a pension or provident fund is not included in 'wages' but the contribution of an employee to the provident fund would be 'wages'. For before the deduction of the contribution payable to the pension or provident fund by the employee it is part of the remuneration earned by him at the end of wage period and is therefore 'wages' and it would not lose the character of wages when it is transferred to the fund and an employee would be entitled to recover the same on the termination of services.]

3. Responsibility for payment of wages.--Every employer including a contractor shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act.

Provided that, in the case of persons employed (otherwise than by a contractor)--

(a) in factories, if a person has been named as the manager of the factory under clause (e) of sub-section (1) of section 9 of the Factories Act, 1934 (XXV of 1934),
(b) in industrial establishments, if there is a person responsible to the employer for the supervision and control of the industrial establishment.
(c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned,

the person so named, the person so responsible to the employer or the person so nominated, as the case may be, shall be responsible for such, payment.

[Notes.--This section lays down that when a manager is appointed in a factory, industrial establishment or railway, he is responsible for payment of wages and section 19 enacts when the authority under section 15 is unable to recover from such a manager or person responsible under section 3 any amount directed to be paid, then such amount shall be recovered from the employer. Bombay High Court held that under section 15 proceedings are to be instituted against only one person whether he is a manager or the employer but not against both. If the owner of the factory appoints a manager he alone should be made party to an application under section 15 (3) for a claim for delayed wages. The liability of the owner arises only when it is subsequently found that the whole or part of the amount cannot be recovered from the manager. (A. I. R. 1940, Bum. 87).
If the persons are employed by a contractor, the contractor is responsible for the payment of wages.]

4. Fixation of wage periods.---(1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

[Notes.--It is the duty of the person responsible for Payment of wages under section 3 to fix the wage period. No wage period is to exceed one month].

5. Time of payment of wages.--(i) The wages of every person employed upon or in--

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

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.

(3) The Provincial Government may, by general or special order exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) from the operation of this section in respect of the wages of any such person or class of such persons.

(4) All payments of wages shall be made on a working day.

[Notes.--This section relates to time of payment of wages which are to be paid within seven days after the last day of the wage period except in establishments employing 1000 or more persons which are permitted to pay within ten days. All payments of wages are to be made on a working day. The penalty for a breach of the provisions of this section is provided under section 20(1) of the Act namely, a fine upto five hundred rupees.]

6. Wages to be paid in current coin or currency notes.--All wages shall be paid in current coin or currency notes or in both.

[Notes.--Wages must be paid in current coin or currency notes or in both. It is clear from this section that payment by cheque is not permitted.]

7. Deductions which may be made from wages.--(l) Notwithstanding the provisions of sub-section (2) of section 47 of the Railways Act, 1890 (IX of 1890), the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation.--Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:--

(a) fines;
(b) deductions for absence from duty;
(c) deductions for damages to or loss of goods expressly entrusted to the employed person for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
(d) deductions for house-accommodation supplied by the employer;
(e) deductions for such amenities and services supplied by the employer as the **** Provincial Government may, by general or special order authorise;
Explanation.--The word 'services' in this sub-clause does not include the supply of tools and raw materials required for the purposes of employment.
(f) deductions for recovery of advances or for adjustment of overpayments of wages;
(g) deductions of income-tax Payable by the employed person;
(h) deductions required to be made by order of a Court or other authority competent to make such order;
(i) deductions for subscriptions to, and for re-payment of advances from. any provident fund to which the Provident Funds Act, 1925 (XIX of 1925). applies or any recognised provident fund as defined in Clause (37) of section 2 of the Income-Tax Ordinance, 1979 (XXXI of 1979)., or any provident fund approved in this behalf by the Provincial Government during the continuance of such approval;*****
(j) deductions for payments to co-operative societies approved by the Provincial Government or to a scheme of insurance maintained by the Pakistan Post Office; and
(k) " deductions, made with the written authorisation of the employed person, in furtherance of any war Savings scheme, approved by the Provincial Government, for the purchase of securities of the Government of Pakistan or the Government of the United Kingdom.

[Notes.--This section provides that only specified deductions from the wages of an employed person can be made. Deductions for damage-or loss can be made only in respect of (a) goods entrusted to an employed person for custody; or (b) money for which he is required to render account. The deductions in respect of damage or loss occurring in the course of manufacturing process, e.g. in respect of spoiled cloth are not permissible under this section.

Deductions from salary of an employee for purposes of house-accommodation provided by the employer is permissible only under clause (d), sub-section (2), s. 7. Reliance on clause (h) is misplaced for purposes of enhanced deductions. Case cannot be taken out from the pale of clause (d) if an employees occupation of house accommodation is declared by the employer as unauthorised, [1975 LLC 4 (S.C. Pak.)= PLJ 1974 SC. 208: Divisional Superintendent, P. W. R., Karachi vs. Abdul Haq.]

Railway authorities, held, not entitled to deduct half salary of employee refusing to vacate Railway quarters by way of penalty for unauthorised occupation. Deduction cannot be more than that provided in Ss. 7(2) (d) & 11. [1976 LLC 491 (H.C. Kar.)= 1975 PLC 310: Vice, chairman, P. W. Railway vs. Qutubuddin.]

Explanation to sub-section (1).--The explanation to sub-section (1) is meant to provide against the device that may be resorted to by employers to circumvent the provisions of this section by nominally giving the full wages without any deductions and then making the employee pay to the employer a sum equal to the amount of intended unauthorised deduction. The explanation says that the payment of any sum by the employee to the employer shall be deemed to be deduction from wages.

Re-employment at lower pay whether a deduction?-If an employer terminates the services of an employee and offers to re-employ on a lower rate of pay, there is nothing in the Payment of Wages Act against it and no question of deduction under the Act arises. But where in a case of reduction of wages there is no suggestion that fresh contract of service was intended to be enforced on the employee or a fresh contract, of service was offerred to him, the reduction amounts to a deduction. (Mir Mohammad Haji Umar vs. Divisional Superintendent, N. W. R., A. I. R., 1941, S. 191.)

In the above cited case an engine driver Mir Mohammad who used to draw a salary of Rs. 68/- p.m. upto September was reduced for three months, one incremental step from Rs. 68/- p.m. for unsatisfactory working and delinquencies committed before September. It was held that it was an unauthorised deduction under the Payment of Wages Act.

Reversion, whether a fine.--If an officiating employee is reverted to his permanent post carrying lower pay, it is no deduction or a fine. The fact that a person is officiating in a senior post is to be looked at only as a privilege granted as a temporary measure. When that period of temporary employment is terminated he would naturally revert to his substantive job. It was held by the Punjab High Court that it is purely for the employer to determine when and for what period an employee will be asked to serve as a temporary hand in a job carrying higher pay than that of his substantive appointment. The employee has no legal claim to be retained in a job higher than his substantive appointment. (Works Manager, Carriage and Wagon Shops, Moghalpura vs. K. G. Hashmat, A. I. R. 1946. L. 316). In Kishan Chand vs. Divisional Superintendent, Lahore Division, North Western Railway (A. I. R. 1948, L 202), it was held that cases of unjustifiable reversion cannot be decided by the authority appointed under the Act. The High Court held that the contention that Kishan Chand had been unjustly reverted against the terms on which he had been promoted were matters outside the scope of the enquiry under the Act. An application for revision was rejected.

Unearned bonus, non payment of the whole--whether a deduction?--In one case the mill had a scheme of paying bonus to its employees directly related to their attendance. It was stipulated that those who do not attend on certain days would forfeit bonus either in part or in full. Workers claimed full bonus at the end of the wage period irrespective of the number of days on which they attended the mill. It was held that wages mean those which are actually earned and not potential wages. Section 7 plainly refers to wages earned. It says: "wages of an employed person shall be paid to him without deductions of any kind." This cannot mean that wages which may be earned but had not been earned shall be paid without deduction. The expression "wages" must mean wages earned. There is nothing in the Act to prevent bonus being

paid if not earned. Bonus does not become payable to the employees who do not earn it under the terms of the bonus scheme and an employer is not bound to pay for work which has not been clone and employee is not entitled to receive pay which he has not earned. (Arvind Mills Limited vs. K. R. Gadgill, A. I. R. 1941, Bom. 26).]

8. Fines.--(l) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the Provincial Government or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to half an anna in the rupee of the wages payable to him in respect of that wage-period.

(5) No fine shall be imposed on an employed person who is under the age of fifteen years.

(6) No fine imposed on an employed person shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed.
(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation.--When the persons employed upon of in any railway, factory or industrial establishment, are part only of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are provided by the prescribed authority.

[Notes.--Fines can be imposed on an employed person in respect of acts and omissions which are specified with the previous approval of the appropriate Government by notice exhibited in the factory. No fine can be imposed for an act or omission which is not contained in the notice and any such fine would be an unauthorised deduction. Secondly, before a fine can be imposed, an opportunity of showing cause against the fine should be given to the employed person and the procedure prescribed for the imposition of fine must be followed. Thirdly, the total amount of fine in one wage period must not exceed an amount equal to half anna in the rupee of wages payable to him in respect of the wage period. The fine imposed must be recovered in one lump sum. It cannot be recovered in installments nor can it be recovered after sixty days from the day on which the act or omission in question was committed. All fines are to be applied only for such purposes beneficial to the staff as may be approved by the prescribed authority.]

9. Deductions for absence from duty.--(l) Deductions may be made under clause (b) of sub-section (2) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage period, during which by the terms of his employment, he was required to work:

Provided that, subject to any rules made in this behalf by the Provincial Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Explanation.--For the purposes of this section, an employed person shall be deemed to be absent from the place where he is required to work, if, although present in such place, he refuses, in pursuance of a stay-in-strike or any other cause which is not reasonable in the circumstances, to carryout his work.]

[Notes.--Deductions for absence from duty. Deductions from wages on account of absence of an employed person should be proportionate to the period of absence from work. If a man is absent for one day out of 8, he can only lose 1/8 of his wages and the employer cannot make a greater deduction because of the inconvenience occasioned to him by such absence (Arvind Mills Ltd. vs. K. R. Gadgil, A.I.R. 1941, Bom. 26). Also as per sub-section 2 of this section, if the duration of his wage period is one month, the total number of working days being 25, and the employed person is absent from duty for four days, the maximum deduction allowed is 4/25th of the wages for the month. This is so because the amount of deduction is to be proportionate tothe period for which a person is required to work which is 25 days in the present case. This section lays down the maximum amount of deduction. It may be less if the employer so wills.

Deduction for strike. As an exception to what is said in the above paragraph, the employer is entitled to make deduction upto 8 days of wages where ten or more employed persons acting under concert absent themselves without due notice and without reasonable cause. It may be noted that the legislature has not used the word 'strike' though this proviso relates to strike so called. The reason seems to be that the word 'strike' is used in different senses and has no accepted connotation.

Forfeiture of wager in lieu of notice not permissible. In view of the provisions of section 7 and 9 it appears that a clause in the contract of employment requiring fifteen days notice before leaving service and stipulating that wages would be forfeited in the absence of notice would be void. Under section 7 wages are to be paid without un-authorised deductions and the present section does not authorise deduction by way of forfeiture except in cases covered by the proviso to sub-section 2 (absence of ten or more persons acting in concert). The employer however retains his right to sue for failure to give notice but he is not entitled to forfeit the wages earned. (13 Bom. L. R. 19).]

10. Deductions for damage or loss.- (1) A deduction under clause (c) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person and shall not he made until the employed person has

been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may by prescribed for the making of such deduction.

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

[Notes.--Deductions under this head in respect of damage or loss occurring in the course of a manufacturing process, for example in respect of spoilt cloth, are not permissible, because such goods are not entrusted to his custody. Deductions can only be made for damage or loss to goods entrusted to the custody of the employed person or for loss of money which he is required to account for, due to the neglect or default of the employed person. It appears that no deduction can be made for loss of damage to tools and instruments supplied to an employed person for purposes of his employment, because these cannot be said to be entrusted for custody. The legislature intended to affect employees like store-keepers, etc. to whom goods are entrusted for custody.]

11. Deductions for services rendered.--A deduction under clause (d) or clause (e) of sub-section (2) of section 7 shall not be made from the wages of an employed person unless the house-accommodation, amenity or service has been accepted by him as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the house-accommodation, amenity or service supplied and, in the case of a deduction under the said clause (e), shall be subject to such conditions. as ***** the Provincial Government may impose.

[Notes.--Deductions are limited to the value of the service rendered and the services must have been accepted by the employee.]

12. Deductions for recovery of advances.--Deductions under clause (f) of sub-section (2) of section 7 shall be subject to the following conditions, namely--
(a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage period, but no recovery shall be made of such advances given for travelling-expenses;
(b) recovery of advances of wages not already earned shall be subject to any rules made by the Provincial Government regulating the extent to which such advances may be given and the installments by which they may be recovered.

13. Deductions for payments to co-operative societies and insurance schemes.--Deductions under clause (j) and clause (k) of sub-section (2) of section 7 shall be subject to such conditions as the Provincial Government may impose.

14. Inspectors.--(l) An Inspector of Factories appointed under sub-section (1) of section 10 of the Factories Act, 1934, (XXV of 1934), shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) The Provincial Government may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

(3) The [2][Provincial Government] may, by notification in the Official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial establishments in respect of which they shall exercise their functions.

(4) An Inspector may, at all reasonable hours, enter on any premises, and make such examination of any register or document relating to the calculation or payment of wages and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act.

(5) Every Inspector shall be deemed to be a public servant within the meaning of the Pakistan Penal Code (XLV of 1860).

15. Claims out of deductions from wages or delay in payment of .wages and penalty for malicious or vexatious claims.--(l) The Provincial Government may, by notification in the official Gazette appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or non-payment of dues relating to provident fund or gratuity payable under any law or delay in the payment of wages, of persons employed or paid in that area.

(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 or of any dues relating to provident fund or gratuity payable under any law 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 of any heirs of an employed person who has died or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for direction under sub-section (3):

Provided that every such application shall be presented within three years 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 three years when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and employer or other person 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 or, if the applicant is one of the heirs of an employed person the payment to such applicant, 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 ten rupees in the latter:

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) bond fide error or bona fide dispute as to the amount payable to the employed person, or
(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 responsible diligence, to make prompt payment, or
(c) the failure of the employed person to apply for or accept payment.

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application.

(5) Any amount directed to be paid under this section maybe recovered--

(a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and
(b) if the authority is not a Magistrate, by the authority as an arrear of land-revenue, or, in the prescribed manner, by the authority by distress and sale of the moveable property belonging to the person by whom the amount is to be paid, or by attachment and sale of the immoveable property belonging to such person.]

[Notes.--This section provides for hearing of claims on account of delay in payment of wages or deductions from wages by specially constituted Authority. This Authority has been empowered to order the payment of sums wrongfully with-held plus compensation upto ten times of that sum in case of deduction and not exceeding rupees ten in cases of delay.

The Authority under section 15 must decide as to what remuneration is payable under the contract of employment. The definition of "wages" given in the Act makes it clear that the Authority must decide as to what remuneration was payable under the contract of employment. To any that the Authority has no jurisdiction to entertain an application if the wages stated by the employee are denied by the employer will defeat the Act itself and make it absolutely ineffective. The Authority is competent to construe the terms of the contract of employment in order to determine what wages are to be paid. If the employer denies or disputes the fact that servant was employed by him, it will also be for the Authority to decided that question

The jurisdiction of the Authority is really to determine the terms of the contract in so far as they relate to the payment of wages and in so far as he has to decide the liability of the employer to pay wages under the terms of the contract. [Shaukat Ali & others vs. Pakistan: LLC 1959-60, Kar. (H. C.) 73.]

"Sufficient cause". It is difficult and undesirable to attempt a precise definition of the words "sufficient cause" in the second proviso to sub-section (2)of section 15. To do so would be to crystallize into a rigid definition that judicial power and discretion which the legislature has for the best of all reasons left undetermined and unfettered. What constitutes "sufficient cause" cannot be laid down by hard and fast rules. It must be determined by reference to all the circumstances of each particular case.

Proceedings against the employer or the manager. Sub-section 3 of section 15 clearly contemplates that the proceedings in the first instance should be against either the employer or against the manager but not against both. Direction should in the first instance be made against the manager if he is found to have made the illegal deductions and the payment should be sought to be recovered from him, and it is only where it cannot be recovered that it should be recovered from the employer. This follows from a perusal of the provisions of sections 3 and 19 of the Act. But it does not follow that the application also in the first instance rather primarily should be made against the manager and if it is not so made, the application should be held to be untenable so as to give no jurisdiction to the Authority to act upon it.

Suspension of railway employee subsequent to arrest would not be sufficient to deprive employee of full pay unless suspension found justified after inquiry. Employee not served with charge-sheet nor arrested in an offence involving moral turpitude. Discharge ordered by Court under S. 253. Criminal PC. 1898. Arrears of pay allowed by Authority under Ss. 15/16, Payment of Wage Act. Held, no interference warranted under Art. 199, Constitution of Pakistan (1973) and order of Authority upheld. [H.C. (Kar.) PLJ 1981 Kar. 392. Divisional Superintendent Pakistan Railway vs. Sind Labour Court No. IV Hyderabad & 9 others.]

Claim for wages for the period of suspension. In establishments where the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 is applicable, Standing Order 15 (5) thereof permits suspension for a period not exceeding four days at a time on half pay for certain acts and omissions specified therein. Besides, where an employer not covered by the Ordinance has under bye-laws power to suspend his employee and the employee is suspended in exercise of the valid power, he is not entitled to pay during the period of his suspension. The employee can neither insist on working nor claim his may during the period of suspension. The employer has no power to suspend an employee without wages unless it is specifically so provided in the contract of employment, unless suspension is covered by the Industrial and Commercial Employment (Standing Orders) Ordinance 1968, or expressly provided in the bye-laws of the establishment or in the contract of employment. Deduction in pay by an employer during suspension of the employee would be unauthorised deduction. In the absence of a rule permitting the employer to suspend the employee for some reason or other. it is not within the power of the employer to suspend the employee and refuse to pay him wages therefor. The absence of such power either means that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. The absence of a term in the contract prohibiting the employer from suspending the employee would not enable him to suspend the employee. It is the presence of a term in the contract, or any provision either in the statute or rule or standing order entitling the employer to suspend the employee, that would be the basis of suspension. [H. C. (Mad.) Dorai Kannu (P.) vs. Hotel Savoy, Madras: 1966 LLC 317=1966 I LLJ 701.]

Wages for suspension. An employee would be entitled to wages if the terms of the contract of employment are fulfilled. If the employee was willing to perform his part of the contract, but was not allowed to do so by the employer it cannot be said that the employee had not fulfilled the terms of his contract or that he was not entitled to any wages for the period during which he was not allowed to work. The position of a suspended employee is almost similar to that of an employee who has been wrongfully dismissed or discharged. If an employee, during the period of his suspension, can claim wages, there is no reason why an employee who has been wrongfully dismissed, should not be able to claim wages for the period during which he was not allowed to perform his duties. [H. C. (Lah.): The Divisional Superintendent, N.W.R., Lahore vs. Muhammad Sharif: 1960 LLC 36=PLD 1959 (W. P.) Lah. 518- 1960 PLC 214.]

The Authority has no jurisdiction to decide disputed questions of fundamental facts when the employer and employee come before him (the Payment of Wages Authority) and rely on different contracts. It is not within his jurisdiction to decide which of two contracts hold the field, which of them is subsisting and under which of them employer is liable to pay wages. It is only when there is no dispute as to the contract that subsists and regulates the rights and liabilities of the parties that the jurisdiction of the Authority arises to determine the quantum of wages." [H. C. (Bom.): Aboobakar Dawood and others vs. Potdar (V.B.) and another: 1963 LLC 469=1969 I LLJ 398:]

The employer contended that the applicant was not retrenched but was retired on reaching the age of superannuation as per the terms of contract of service. The applicant also contending that the employer had no right to retire him. The authority in such circumstances, held, could not decide such disputed questions of fundamental facts, [H C. (Mys.): Codialabail Press vs. Monappa (K.): 1963 LLC 552==1963 I LLJ 638).

Authority cannot adjudicate question of termination or illegal discharge from service. Can pass order only about deducted or delayed wages. [(Authority under Payment of Wages Act): Muhammad Ikram vs. S. Muhammad Din & Sons Ltd., Lahore: 1970 LLC 111=1970 PLC 15]

Wages after termination of service. The claim for wages for the period subsequent to the termination of service of the workman, held, could not be entertained and decided by the Payment of Wages Authority on an application under S. 15 of the Act. The Payment of Wages Authority in such application, held, cannot decide the question as to whether the dismissal or termination or removal from service of the applicant was valid and justified. [H. C. (Raj.): Lakhpatrai vs. Om Prakash and another: 1966 LLC 261 = 1965 II LLJ 398.]

Incidental matters. The jurisdiction of the authority under section 15 of Payment of Wages Act, 1936 is limited by the provisions of that section. In dealing with claims arising under the section, the authority inevitably would have to consider questions incidental to the claims. In determining the scope of these incidental matters the limited jurisdiction is not unduly extended. Care must also be taken to see that the scope of these incidental questions is not unduly limited so as to affect or impair the limited jurisdiction conferred on the authority. It would however, be inexpedient to lay down any hard and fast or general role which would afford a determining test to demarcate the field of incidental matters which can be legitimately considered by the authority and those which cannot be so considered. If a contract of employment is admitted and there is a dispute about the construction of its terms, that would fall within section 15 of the Act. Similarly, the question as to whether a particular employee is governed by the terms of an award or whether he falls within the terms of an agreement would be a question which is so intimately and integrally connected with the problem of wages that it would be unreasonable to exclude such a question from the jurisdiction of the authority under section 15 of the Act. [S.C. (Ind.): Shri Ambica Mills Co. Ltd. vs. S.B. Bhatt and another: 1961 LLC 355=1961 I LLJ 1 = 1961 PLC 1459.]

Withholding of servant allowance. Employees Claiming in their application before the Payment of Wages Authority for directions in regard to alleged deductions from their wages on ground that the benefit of servant allowance payable to them was withheld. The authority finding that by virtue of such withdrawal of the benefit the total emoluments of the applicants were not adversely affected. Such finding also confirmed by the High Court in the petition preferred by the aggrieved employees. Correctness of such finding, in the circumstances, held, could not be challenged in appeal. [S.C. (Ind.): Dinaram Chutiya and others vs. Kakajan Tea Estate by Divisional Manager: 1963 LLC 432--1963 I LLJ 267.]

Lawyers are neither employees nor work for wages but are representatives or advisers of persons engaging them and engaged on fees. Payment of Wages Act, 1936 having application to wages and employees and such attributes being not applicable to lawyers, Authority under Payment of Wages Act, 1936, held, possessed no jurisdiction to entertain application for payment of retainership fees or fees for cases handled by a lawyer. [H. C. (Lah.) 1981 PLC 498/PLJ 1981 Lah. 460; Simma Fabrics Ltd., Gujranwala vs. Authority under the Payment of Wages Act and 3 others.]

Authority, has jurisdiction to decide what was the employee's remuneration. The definition of "wages" given in the Act itself makes it clear that the authority must decide as to what was the remuneration which would. if the terms of the contract of employment, express or implied were fulfilled, be payable. To say that the authority has absolutely no jurisdiction to entertain an application under the Payment of Wages Act, if the wages stated by the employee are denied by the employer, will defeat the Act itself and make it absolutely ineffective. [H. C. (Lah.): Shaukat Ali and others vs. North Western Railway Lahore: 1960 LLC Pt. II, 73=PLD 1960 (W. P.) Lah. 144=1960 PLC 59.]

Authority to determine only what the wages actually are. The Authority appointed under the Act can only order the refund of the amount deducted or the payment of the delayed wages. It has no power to enter into an elaborate enquiry with the objective of determining as to what the wages ought to be, but it must obviously ascertain what the wages actually are.

Condonation of delay. Time spent in negotiations between employer and workmen with regard to wage dispute, held, sufficient cause for extending time and authority exercised discretion according to law m entertaining such delayed application. [H. C. (W. Pak.): Motabar and 14 others vs. S. M. Rehman & Co., Quetta and another: 1971 LLC 384=1971 PLC 321.]

For two months the concerned worker through the union corresponding with the employer for the arrears of his salary as per the award. Application under S. 15 of the Payment of Wages Act preferred by the worker on the employer refusing to pay the arrears. The order of the authority condoning the delay in preferring the application, in the circumstances, held, could not be interfered with in a writ petition. [H. C. (Cal.): Judhistir Kodel vs. Authority under Payment of Wages Act and others: 1964 LLC 152=1963 II LLJ 473].

The Authority refusing to decide the question of limitation as a preliminary issue before deciding the merits of the application. A writ of mandamus, in circumstances, issued to the Authority, directing it to decide the question as a preliminary issue. [H. C. (Bom.): Haji Latif Gani, Nagpur vs. Abdul Rashid Sheikh Mohammad Khan: 1964 LLC 34=1963 II LLJ 257].

Employee applying for payment after getting a decree from Civil Court that the discharge was illegal when period had already long expired. Sufficient ground for entertaining application. High Court refused to interfere in revision with entertaining authority's direction. [H. C. (Lah): The Divisional Superintendent, N.W.R, Lahore vs. Muhammad Sharif: 1960 LLC Pt. II, 36= PLD 1959 (W. P.) Lah. 518= 1960 PLC 214.]

Authority allowing emoluments to legal adviser of limited company as wages. Order of authority held to be of no legal effect as such emoluments could not be deemed as "wages", and legal advisers are nobodys' employees working for wages. Held. Authority under the Payment of Wages Act had no jurisdiction to entertain an application for payment of retainership fee or for the fees for legal cases handled Constitutional jurisdiction exercised on principle of equity and liability for emoluments of respondent ascertained. [H. C. (Lah.) PLJ 1981 Lah. 460: Sima Fabrics Ltd. vs. Authority under Payment of Wages Act, Gujranwala & 3 others.]

Termination without notice. Where the employees absent themselves from work because they have gone on strike with the specific object of enforcing the acceptance of their demands, they cannot be deemed to have abandoned their employment. Further, the management could not, by imposing a new term of employment, unilaterally convert the absence from duty of striking employees into abandonment of their employment. The management could not have the benefit of disciplinary action without holding any enquiry by purporting to treat the strikers' absence as abandonment of employment. Hence the action of the management in removing the names of the concerned workmen from the muster-rolls amounted to termination of their employment without notice. [S. C. (Ind.): Express Newspapers (Private) Ltd. vs.

Michael Mark and others: 1962 LLC 898=1962 PLC 1513=1962 II LLJ 220.]

Where refusal to make payment is attributable to the terms of the contract between the employer and the employee the person appointed under section 15 of the Payment of Wages Act, 1936 would have jurisdiction to deal with the matter. The Civil Courts in such cases would have no jurisdiction. [H. C. (Kar.): Mir Laiq Ali and others vs. Syed Muhammad Jafri: 1960 LLC 102---PLD 1959 (W. P.) Kar. 704= 1960 PLC 192.]

Claim for additional allowance.--Respondent claiming additional allowance as Member of Management Committee. Such membership not part of his job as employee of Company. Duty of Member is to benefit workers and his performance, cannot be termed to be employment of company and as such he is not entitled to any additional allowance as of right. [H.C. (Pesh.) 1980 L.L.C. 153--1980 P.L.C. 568(1) =P.L.J. 1980 Pesh. 94. Adamjee Paper and Board Mills, Nowshera vs. Sher Mohammad Khan and 2 others].

Ex-parte proceedings.--Authority, must hear and determine contents of application even proceeding ex-parte. Employer having filed reply statement remaining absent on date of hearing and ex-parte proceedings ordered. Authority without giving any reason allowing application into to despite some claims not entertainable mentioned therein. Order of Authority in circumstances, held, not sustainable. Application for setting aside ex-parte order submitted before passing final order. Authority, in circumstances, held, could have allowed participation to employer in subsequent proceedings. Appellate authority also without considering merits dismissing appeal merely on ground of non-appearance of employer. Appellate order, in circumstances, set aside and matter remanded to Authority by High Court on writ petition. [H. C. (Kar.) 1980 L. L. C. 177 = 1980 P. L. C. 467. Karachi Rolling Mills Ltd. vs. Authority Under the Payment of Wages Act, West Division, Karachi and 2 others.]
No right of appeal when Labour Court and, Authority act correctly.- Labour Court and Authority, after following proper procedure and hearing both parties, exercising their respective jurisdictions competently and correctly as conferred by Act. No illegality found to have been committed. Jurisdiction under Art. 199 of the Constitution cannot be allowed to be exercised to further right of appeal when no such right permissible under special laws. (H.C. (Kar.) 1980 L.L.C. 275=1979 P.L.C. 440. National Tyre & Rubber Co. vs. Sind Labour Court No. III, Karachi and 2 others.]

Order of the Authority is not final and is not a bar to an application under S. 34 of I.R.O. by a Collective Bargaining Agent. It was contended that the dispute regarding payment of wages had already been adjudicated by the Authority under the Payment of Wages Act, and therefore, proceedings under section 34 of the Industrial Relations Ordinance, 1969 were not maintainable, more so as the order of the Authority under the Payment of Wages Act had acquired finality. This contention is also misconceived as on a plain reading of section 34 neither is any limitation provided nor does it exclude application of the provisions in such cases for which another remedy under a different statute may have been availed of. First of all the earlier application before the Authority under the Payment of Wages Act had been made by Inspector of Government and not by the workmen or their elected Bargaining Agent. Secondly, the Industrial Relations Ordinance has conferred a right on a Collective Bargaining Agent to make an application to the Labour Court. Thirdly, the Authority under the Payment of Wages Act had among others declined to grant relief on a misconceived ground that for the purpose of designating an establishment as a "factory" within the meaning of Payment of Wages Act the same should have employed at least 50 workmen. There is no reason which may bar remedy by way of application under section 34 of the Industrial Relations Ordinance. [H. C. (Kar.) 1980 L. L. C. 225=1980 P. L. C. 316. Iqbal Ahmed vs. Second Labour Court & another.]

Where right to sue is already lost due to limitation.--Claimant lost right accrued due to lapse of six months though law in force provided three years time for preferring claim on the date of application. General principle that law of limitation being procedural should be deemed to be retrospective would not apply where sight to sue was already lost before enforcement of new statute of limitation. [H. C. (Lah.) 1980 L. L. C. 508 = P.L.J. 1980 Lah. 296. Warcha Salt Mines, Sargodha vs. Presiding Officer, Labour Court No. 3 Lyallpur and 5 others].

The term "District Court" has not been defined in the Act and hence it is to be given its ordinary cannotation as indicated in General Clauses Act, 1897 and Civil Procedure Code, 1908. District Court according to Civil Procedure Code is a Court subordinate to High Court. An appellate order made by District Court under Payment of Wages Act, held, amenable to revisional jurisdiction of High Court. Finality attaching to the order of Authority under S. 15 means that order of authority can be challenged only by way of appeal to District Court and not otherwise. No limitation is however placed in respect of appellate order made by District Court as ordinarily constituted in which capacity such District Court is subordinate to High Court and hence revisional jurisdiction of the High Court can be invoked under section 115 of Civil Procedure Code, 1908. Also, held, that since the appellant had himself agreed to be bound by award made earlier in favour of workmen, he was estopped from repudiating his liability at a late stage later under section 115 of Evidence Act, 1872. [PLD 1981 SC. 282 =PLJ 1981 S.C 664: S. M. Rahman & Co. vs. Motabar & others].

16. Single application in respect of claims from an unpaid group.--(1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5.
(2) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group and in such case the maximum compensation that may be awarded under sub-section (3) of section 15 shall be ten rupees per head.
(3) The Authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this section, and the provisions of that sub-section shall apply accordingly.

17. Appeal.--(l) An appeal against a direction made under sub-section (3) or sub-section (4) of section 15 may be preferred within thirty days of the date on which the direction was made *** before the Labour court constituted under the Industrial Relations Ordinance, 1969 (XXIII of 1969) within whose jurisdiction the cause of action to which the appeal relates arose.
(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees: [****]

Provided that no appeal under this clause shall lie unless the memorandum of appeal is accompanied by a certificate of the authority to the effect that the appellant has deposited with the authority the amount payable under the direction appealed against, or
(b) by an employed person or, if he has died, by any of his heirs, if the total amount of wages claimed to have been withheld from the employed person or from the unpaid group to which he belonged exceeds fifty rupees, or
(c) by any person directed to pay a penalty under sub-section (4) of section 15;
(1.A) All appeals pending before any District Court under this section immediately before the commencement of the Labour Laws (Amendment) Act, 1974, shall on such commencement, stand transferred to, and be disposed of by, the Labour Court within whose

jurisdiction the cause of action to which the appeal relates arose.]
(2) Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section (4) of section 15 shall be final.

[Notes.--Appeal by the employer. If the amount directed to be paid under section 15 exceeds Rs. 300 theta is a right of appeal given to the employer. The pecuniary limit of the total amount awarded in a single application is the guiding factor. Order refusing to make direction is appealable. Refusal to make direction by a competent authority under s. 15 also amounts to a direction, that is, direction includes a refusal to make a direction. Appeal lies against an order whereby claim of employee has been rejected in toto. Authority can issue direction to pay wages, deducted or delayed, with or without compensation The power to refuse to issue directions is implicit in the power to issue such directions. It is, therefore, open to an Authority to refuse to execise the power given to it and this refusal to issue a direction amounts to a direction not to pay.

The word "direction" used in sub-section (1)of section 17 of the Payment of Wages Act, 1936 is comprehensive enough to include the rejection of the claim of an employee in toto and an appeal under section 17 (1) (b) of the Act lies against an order whereby the claim of the employee has been rejected in tote. [H. C. (Lah.); Abdul Rashid and others vs. S. Abdur Rahim; 1960 LLC Pt. II, 46=PLD (W.P.) Lah. 806=1960 PLC 219.]

Labour Court acting as appellate authority is not bound by rules of procedure prescribed by Industrial Relations Ordinance but by procedure provided by Payment of Wages (Procedure) Rules, 1937. Appeal before Labour Court does not constitute a base or proceedings under Industrial Relations Ordinance. Labour Appellate Tribunal in exercise of powers under S. 38 of the Ordinance cannot revise decision of Labour Court acting as Appellate Authority under the Payment of Wages Act. [H.C, (Lah.) 1981 PLC 307 =PLJ 1981 Lah 355. Pakistan through Chairman, Pakistan Railway Board, Lahore vs. Maqsood Ali & 82 others.]

Limitation. Respondent filing appeal under S. 17 (1) before Labour Court after 49 days of Commissioner, Workmen’s Compensation's Order. Section 17(1), provides period of 30 days for filing such an appeal. Respondent failing to apply for condonation of delay and appellate Court not adverting to this aspect of case at all. Appellate Court not competent to entertain appeal beyond period of limitation, impugned order, held, illegal. [H.C. (Lah); 1981 PLC 559; S. Abid Hussain vs. Financial Adviser & Chief Accounts Officer, Pakistan Railways and another.]

Failure to file appeal against interim orders does not preclude appeal against whole case including all interim orders made in a case. [H. C: (Lah.): Divisional Superintendent, P.W.R.. Lahore vs. Muhammad Naseerud-din: 1973 LLC 1--1972 PLC 403 (Lahore.)].

Condition of deposit must be fulfilled on appeal. Appeal under S. 17 (1) (a) or the Act is adequate remedy not-withstanding condition of deposit of amount payable under direction of Authority appealed against. Petition invoking jurisdiction of High Court under Art. 199 filed without availing of such remedy is not maintainable. [H. C. (Kar.); PLD 1981 Kar. 534=PLJ 1981 Kar. 394; Ghafoor Textile Mills Ltd., Karachi vs. Fazal Imam and another.]

Words "if the total sum directed to be paid by way of wages and compensation", Word "and", disjunctive in sense of "or". Total sum ordered to be paid may be composed of wages alone, compensation alone, or wages and compensation. (H.C. (W.P.): Muhammad Hussain vs. The Additional District Judge; 1966 LLC 465=PLD 1966 (W.P.) Lah. 128=1966 PLC 214.]

Exceeds "three hundred rupees". There is nothing in section 17 to suggest that before the order can be appealable, both wages and compensation should be ordered to be paid. All that is necessary is that the total sum ordered to be paid should exceed Rs. 300. It may he composed of wages alone or of compensation alone or of wages and compensation both.

Revision. Section 17 provides for an appeal against the direction of the Authority under S. 15. It was amended on 1974 to provide that instead of the District Court an appeal will lie to the Labour Court. Before the amendment the District Court being a Court subordinate to the High Court was subject to the revisional jurisdiction of the High Court under section 115 of the Civil Procedure Code 1908 in cases where no appeal lay to the High Court. The Labour Court is not subordinate to the High Court and as such the High Court has no revisional jurisdiction over the orders of Labour Court under section 115 of the Civil Procedure Code, 1908. Incidentally another question arises: whether the Labour Appellate Tribunal under section 38 (3 a) of the Industrial Relations Ordinance, 1969 has revisional jurisdiction over appellate orders of the Labour Court passed under section 17. This was answered in the negative by Rustam S. Sidhwa, J. in these words: "The Labour Court acting as the Appellate Authority under Section 17 of the Payment of Wages Act, 1936, clearly acts by virtue of powers conferred under section 17 of the Act and not under any power conferred by any provision of the Ordinance. In acting as the appellate authority, the Labour Court is not bound by the rules of procedure provided by the Industrial Relations Ordinance, 1969 but by that provided by the Payment of Wages (Procedure) Rules, 1937. In these circumstances, it cannot be said that the appeal before the Labour Court constitutes a case or proceedings under the Industrial Relations Ordinance. 1969, so as to bring the case within the revisional jurisdiction of the Labour Appellate Tribunal. The words "case or proceedings under this Ordinance" appearing in sub-section (3-a) of section 38 of the Ordinance, are specially intended to cover only those cases, the remedy whereof is provided by the Ordinance or where the remedy is not so provided. special law empowers the Labour Court to hear and adjudicate the dispute or decide the appeal and the Labour Court has to apply its own procedure. The maxim expressio unius est exclusio alterius fully applies to the instant case. The words "under this Ordinance" have been specifically added to make sure that the finality which by otherwise is applicable to original or appellate decisions given by labour tribunals or Courts acting under other special acts dealing with labour matters, is not disturbed." [H. C. (Lah.) 1981 PLC 307=PLJ 1981 Lah. 355: Pakistan through Chairman Railway Board, Lahore vs. Maqsood Ali & 82 others] Contrary view was taken by the Karachi High Court in National Cement Industries Ltd. vs. Sind Labour Appellate Tribunal and others (1981 PLC 561)wherein it was held that adjudication and determination by Labour Court of any matter under a special law, transferred to it under statutory provision, constitutes proceedings under the Industrial Relations Ordinance, 1969 and hence amenable to revisional jurisdiction of the Labour Appellate Tribunal. Therefore order passed by Labour Court under S 17 of Payment of Wages Act, 1936 is subject to revision by the Labour Appellate Tribunal under section 38 (3a) of Industrial Relations Ordinance, 1969.

In view of these conflicting judgments by two High Courts the final interpretation of the law is left to the Supreme Court, if and when this matters comes before it for a decision. The author is in agreement with .the view expressed by the Lahore High Court that the Labour Appellate Tribunal has no revisional jurisdiction over the decision of Labour Court acting as Appellate Authority under the Payment of Wages Act The most important point to consider is that under S. 38 (3-a) the revisional jurisdiction of the Labour Appellate Tribunal is limited to a "case or proceedings under this Ordinance in which a Labour Court within its jurisdiction has passed an order." The powers derived by Labour Court acting as Appellate Authority flow from S. 17 of the Payment of Wages Act and rules of procedure freamed thereunder and not from the Ordinance or its rules. Therefore decision on appeal before the Labour Court under S. 17 of the Payment of Wages Act does not constitute under S. 38 (3-a) of the Ordinance a "case or proceedings under this Ordinance" and as such is not amenable

to the revisional jurisdiction of the Labour Appellate Tribunal under that section.

In the context of old law before the 1974 amendment the Supreme Court of Pakistan had held that finality attaching to order of Authority under S. 15 means that order of Authority can be challenged only by way of appeal to District. Court and not otherwise. No limitation however is placed in respect of appellate order made by District Court as ordinarily constituted in which capacity such District Court is subordinate to High Court. Appellate Order made by District Court under S. 17. held, amenable to revisional jurisdiction of High Court. [S. C. (Pak.) PLD 1981 SC 282=PLJ 1981 SC 664: S. M. Rahman & Co. vs. Motabar & others.] In view of the amendment in law this decision of the Supreme Court of Pakistan is no longer applicable.

As regards the revisional jurisdiction of the High Court over the orders of the Authority under section 15, there has been a difference of opinion amongst the different High Courts in the Indo-Pakistan sub-continent and there in no finally accepted interpretation. The High Courts of Lahore & Karachi held that the Authority is a Court subordinate to High Court for the purpose of High Court's revisional jurisdiction under section 115 of the Civil Procedure Code, 1908. [H.C. (Lah.): Abdur Rashid and others vs. S. Abdul Rahim: 1960 LLC Pt. II; 46=1960 PLC 219=PLD 1959 (W.P.) Lah. 806). Also (H.C. (Kar.): North Western Railway vs. Sher Mohammad: 1967 LLC 372=1967 PLC 101=PLD 1966 (W.P.) Kar. 483.] However in PLD 1981 SC 282 the Supreme Court of Pakistan observed that finality attaching to the order of Authority under S. 15 means that the order of Authority can be challenged only by way of appeal to the District Court and not otherwise. This matter was not at issue between the parties and hence as such the Supreme Court has not given any definite finding on this issue, but the use of the words "only" and "not otherwise" leads to the conclusion that the view of the Supreme Court is that no revision under S. 115 of Civil Procedure Code lies to High Court from the orders of the Authority because it is not a Court subordinate to the High Court.

18. Powers of authorities appointed under section 15.--Every authority appointed under sub-section (1) of section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).

[Notes.--The authority under sub-section (1) of section 15 (for hearing and deciding claim arising out of deductions or delay in wages) is not a full fledged Civil Court under the Code of Civil Procedure but is so only for the purpose of taking evidence, enforcing the attendance of witnesses and compelling the production of documents in accordance with the relevant provisions of Code. It is also a Civil Court for the purposes of section 195 (concerning procedure for prosecution for contempt of lawful authority of civil servants) and chapter XXXV (concerning procedure regarding proceedings in case of certain offences affecting the administration of justice) of the Code of Criminal Procedure, 1898.].

19. Power to recover from employer in certain cases.--When the authority referred to in section 17 is unable to recover from any person (other than employer) responsible under section 3 for the payment of wages any amount directed by such authority under section 15 or section 17 to be paid by such person, the authority shall recover the amount from the employer of the employed person concerned.

[Notes.--The liability of the employer under this section arises only if it is Found that the whole or part of the amount cannot be recovered from manager or other person responsible for the payment of wages. The legislature contemplated that before fixing the employer with any liability it must be first found that the whole or part of the amount awarded under sub-section (3) of section 15 cannot be recovered from the manager or the other person responsible for the paymaster wages. Where it is not clear that the money cannot be recovered from the manager, an order cannot be passed against the employee before that is ascertained. (A.I.R. 1940, Bom. 87.) Where an order is passed against an employer under this section, he has no right of appeal against such an order. He is thus saddled with a liability without any right of appeal. [A. I. R. 1940, Bom. 741). It may look harsh, but that is the law as it stands.]

20. Penalty for offences under the Act.--(1) Whoever being responsible for the payment of wages Is an employed person contravenes any of the provisions of any of the following sections, namely, section 5 and section 7 to 13, both inclusive, shall be punishable with fine which may extend to five hundred rupees.

(2) Whoever contravenes the provisions of section 4, section 6 or section 25 shall be punishable with fine which may extend to two hundred rupees.

21. Procedure in trial of offences.--(1) No court shall take cognizance of a complaint against any person for an offence under sub-section (1) of section 20 unless an application in respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the authority empowered under the latter section or the appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of complaint against any person for an offence under sub-section (l) of section 20, the authority empowered under section 15 or the appellate Court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or Court that his default was due to-

(a) A bona fide error or bona fide dispute as to the amount payable to the employed person, or
(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
(c) the failure of the employed person to apply for or accept payment.

(3) No Court shall take cognizance of contravention of section 4 or of section 6 or of a contravention of any rule made under section 26 except on a complaint made by or with the sanction of an Inspector under this Act.

(4) In imposing any fine for an offence under sub-section (1) of section 20 the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 15.

[Notes.--Sections 20 and 21 provide for prosecutions on account of infringements of the provisions of this Act but such prosecutions cannot be instituted unless a claim under section 15 has been granted wholly or in part and the Authority empowered under that section or the appellate Court granting such claim sanctions the making of the complaint. Sub-section (2) of section 21 lays down the circumstances in which the sanction should not be granted.]

22. Bar of suits.--No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed--

(a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the Authority appointed under that section or of an appeal under section 17; or

(b) has formed the subject of a direction under section 15 in favour of the plaintiff; or

(c) has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff; or

(d) could have been recovered by an application under section 15.

[Notes.--A Civil Court is not empowered under Section 22 of the Act read with section 15 to try a suit in which plaintiff claims a sum of money alleged to be due in lieu of notice after dismissal from employment, which claim is entirely denied under section 15 of the Act. It is to be tried by the Authority Under section 15. However the Lahore High Court held that a bona-fide dispute as to the amount payable cannot be tried by the Authority under section 15 because as per proviso to sub-section (3) thereof, direction cannot be made when the delay is due to bona-fide dispute as to the amount payable to the employed person. (Simpalax Manufacturing Company Limited vs. Allaudin, A.I.R. 1945, Lah. 195.) The author begs to differ with this interpretation because the proviso to sub-section (3) of section 15 only says that no direction for compensation is to be made in case of bona-fide dispute. It does not say that no direction for payment of delayed or deducted wages is to be made in case of bona-fide dispute. This interpretation finds support from a judgment of the Nagpur High Court which held that in case of a bona fide dispute the sums claimed by the applicant can be recovered by an application to the Authority. The Court ruled that section 22 (b) of the Act excludes jurisdiction of Civil Courts to entertain a claim which could have been recovered by an applicant under section 15. This exclusion is absolute and does not depend on the choice of the claimant. The jurisdiction of the Civil Court is not revived by his omission to make an application under the Act within the time allowed by law. Jurisdiction cannot be conferred even by consent of parties. (Bhagwat Rai vs. Union of India, A.I.R 1953, Nag. 136.)

Civil Courts have no jurisdiction to entertain cases of refusal to make payment because such cases are covered by section 15--It is not every refusal to make payment that gives jurisdiction to Civil Court. Where payment of wages has been refused on the ground which is extraneous to the terms of the contract it is refusal to make payment of wages and not delay in payment of wages. Where refusal to make payment is attributable to the terms of the contract between the parties, the authority appointed under section 15 would have jurisdiction to deal with the matter and the Civil Courts in such cases would have no jurisdiction. (Mir Laiq Ali vs. Syed Muhammad Jafri, L.L.C. 1959, H.C. (Kar.) 102.)

Where refusal to make payment is attributable to the terms of the contract between the employer and the employee the person appointed under section 15 of the Payment of Wages Act, 1936 would have jurisdiction to deal with the matter. The Civil Courts in such cases would have no jurisdiction. [H. C. (Kar.) Mir Laiq Ali and others vs. Syed Muhammad Jafri: 1960 LLC 102=PLD 1959 (W. P.) Kar. 704=1960 PLC 192.]
Intrinsic or basic or inherent want of jurisdiction could not be cured by acquiescence. The wording or S. 22 of the Payment of Wages Act makes it an absolute want of jurisdiction. Hence the employer petitioner in the instant case was permitted to raise the plea based on S. 22 of the Payment of Wages Act as a bar to the respondent's suit in the Civil Court at the revision stage even though the said plea was not raised in the Courts below. [H.C. (Mad.): Jiwajirao Sugar Company Ltd, Daloda vs. Benarji (JM): 1963 LLC 541=1963 PLC 77=1963 I LLJ 611.].

Section 22 only prevents a suit for wages. It does not exclude any other proceeding directed by law to enforce payments. The authority contemplated by section 13 of the Payment of Wages Act is not the one which can affect the jurisdiction of the Industrial Court set up under the Industrial Disputes Ordinance. The jurisdiction of the Industrial Court under that Ordinance is not excluded by the provisions of the Payment of Wages Act.]

23. Contracting out.--Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

25. Display by notice of abstracts of the Act.--The person responsible for the payment of wages to persons employed in a factory shall cause to be displayed in such factory a notice containing such abstracts of this Act and of the rules made thereunder in English and in the language of the majority of the persons employed in the factory, as may be prescribed.

26. Rule-making power.--(I) The Provincial Government may make rules to regulate the procedure to be followed by the authorities and Courts referred to in sections 15 and 17.
(2) The Provincial Government may, ****** by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.
(3) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may--
(a) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act and prescribe the forms thereof;
(b) require the display in a conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;
(c) provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them;
(d) prescribe the manner of giving notice of the days on which wages will be paid;
(e) prescribe the authority competent to approve under sub-section (l) of section 8 acts and omissions in respect of which fines may be imposed;
(f) prescribe the procedure for the imposition of lines under section 8 and for the making of the deductions referred to in section 10;
(g) prescribe the conditions subject to which deductions may be made under the proviso to sub-section (2) of section 9;
(h) prescribe the authority competent to approve the purposes on which the proceeds of lines shall be expended;
(i) prescribe the extent to which advances may be made and the installments by which they may be recovered with reference to clause (b) of section 12;
(j) regulate the scales of costs which may be allowed in proceedings under this Act;
(k) prescribe the amount of court-fees payable in respect of any proceedings under this Act, and
(l) prescribe the abstracts to be contained in the notices required by section 25.

(4) In making any rule under this section the Provincial Government may provide that a contravention of the rule shall be punishable with fine which may extend to two hundred rupees.

(5) All rules made under this Section shall be subject to the condition of previous publication and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897), shall not be less than three months from the date on which e draft of the proposed rules was published.