A **BENNETT COLEMAN & CO. (P) LTD.**

v.

PUNYA PRIYA DAS GUPTA

April 2, 1969

[J. M. SHELAT, V. BHARGAVA AND C. A. VAIDIALINGAM, JJ.]

B *Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, (45 of 1955), ss. 2(f), (rr) 5 and 17—Ex-employee, if entitled to maintain application for gratuity—Wages—Car allowance and benefit of free telephone and newspapers—If allowances includible in wages.*

Evidence Act (1 of 1872), s. 115—Scope of.

C In October 1963, the respondent was the special correspondent of the appellant company and was entitled to car allowance, free telephone and free newspapers in addition to his basic salary and dearness allowance. On October 8, he tendered his resignation which was accepted on October 21, with effect from the latter date. On October 23, he accepted employment with another Newspaper and thereafter claimed compensation for leave due to him. On November 11, the respondent received a letter from the appellant that the appellant company's rules did not permit any such D compensation where an employee had resigned, that in the absence of a proper notice by the respondent there was no termination of his employment and that therefore his acceptance of other employment was in contravention of his conditions of service. On November 21, therefore, the respondent went to the appellant's office, received the letter dated October 21 accepting his resignation, the statement of his account and a cheque for Rs. 2810.47 P. in full and final settlement of his claim. The statement of account showed that no compensation for leave due to him was paid and E further that in calculating the gratuity payable to him, the monetary value of free telephone, free newspapers and car allowance were not included as part of his wages. The respondent wrote immediately, on the same day, to the appellant setting out the circumstances in which he received the cheque and acceptance of his resignation. According to him he wanted to specify that the full and final settlement did not include compensation for one month's leave; and that the acceptance of his letter of resignation was withheld and given to him only after he accepted the cheque F for Rs. 2810.47 P. 'in full and final settlement of his claims'. On December 5, the appellant replied stating that the respondent's claim for leave compensation was not admissible under the company's rules and in view of the final settlement the matter may be closed. The respondent's claim was thereafter referred to the Labour Court. In his statement of claim, the respondent claimed, (a) gratuity on the basis that his monthly wages included the car allowance and Rs. 50, being the estimated value of the G benefit of a free telephone and newspapers and (b) one month's wages as compensation for the month's leave, in all Rs. 6000.34 P. He did not deduct the amount of Rs. 2810.47 P. as he had not encashed the cheque for that amount. The Labour Court decreed part of the respondent's claim.

In appeal to this Court, on the question : (1) Whether the respondent, not being in the appellant's employment at the time he filed his claim in the Labour Court, was not entitled to avail himself of the provisions of H the Working Journalists (Conditions of Service) and Miscellaneous Provision Act, 1955; (2) Whether the respondent, having signed the receipt in full settlement of his claim was estopped from making claims in respect of his leave for one month, the car allowance, and the estimated benefit of the free telephone and newspapers; and (3) Whether the monetary value of the free telephone and newspapers and the car allowance would be

included as part of his wages for calculating gratuity, A

HELD : (1) Since the definition of 'an employee' in the Industrial Disputes Act, 1947 and the C.P. & Berar Industrial Disputes Settlement Act (23 of 1947), were, in language, similar to the one used in Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, the decision in *Western India Automobile Association* v. *Industrial Tribunal*, [1949] F.C.R. 321 and *Central Provinces Transport Services Ltd.* v. *Raghunath*, [1956] S.C.R. 956, interpreting the word 'employee' in those B two Acts, would be authorities for the view that an ex-employee would also be a working journalist. There is no conflict of opinion between these two decisions and the decision in *Dharangadhara Chemical Works Ltd.* v. *State of Saurashtra*, [1957] S.C.R. 152 and *Workmen* v. *The Management of Dimakuchi Tea Estate*, [1958] S.C.R. 1156. Even assuming there is some conflict the definitions of a 'newspaper employee' and 'working journalist' being subject to a context to the contrary, the benefit of ss. 5 and 17 C of the Working Journalists Act is available to an ex-employee, though he has ceased to be in the employment of the particular newspaper establishment at the time of his application for gratuity. The only requirement is that the claim in dispute must be one which has arisen or accrued whilst the claimant was in the employment of the person against whom it is made. Therefore, the respondent was entitled to maintain his application. [189 E-F; 192 B-H]

Dharangadhara Chemical Works Ltd. v. *State of Saurashtra*, [1957] D S.C.R. 152 and *Workmen* v. *The Management of Dimakuchi Tea Estate*, [1958] S.C.R. 1156, explained.

(2) (a) Assuming the technical rule of estoppel set out in s. 115 of the Evidence Act is applicable to industrial adjudication, the rule could not be invoked against the claim for compensation for the leave period. The letter of the respondent dated 21st November and the appellant's reply E dated 5th December show that the respondent was always making the claim and never gave it up and that the company's case was also not that the respondent gave up the claim, but that the appellant company's rules did not permit such compensation. The appellant did not produce any such rules before the Labour Court and a belated reference to any such rule in this Court could not be permitted without opportunity to the respondent to controvert it. [193 D; 194 E]

(b) Under s. 115 of the Evidence Act, the representation which F estops a person making it from acting contrary to it is one on the belief of which the other person acts in a manner he would not have done but for it and on believing it to be true. But such a conclusion could not be drawn in face of the uncontradicted statements in the letter of the respondent dated 21st November that the management would not give him the letter of acceptance of his resignation unless he signed the receipt in full settlement of all his claims. When he received the letter dated November G 19, the respondent could not rest content without jeopardizing his interests on the mere oral intimation of acceptance of his resignation and so he went to the appellant's office to secure the written acceptance. He was then told that it would not be given unless he passed a receipt in full settlement of his claim and he signed the receipt under the stress of circumstances. [195 H-196 B]

(3) Under s. 2(rr) of the Act, 'wages' means all remuneration capable H of being expressed in terms of money payable to a workman in respect of his employment or work done in such employment and includes, *inter alia*, such allowance as the workmen is for the time being entitled to. The car allowance and benefit of free telephone and newspaper cannot be said

A to be remuneration payable in respect of employment or work done in such employment. Neither the car allowance nor the benefit of the telephone was given to the respondent in respect of his employment or work done in such employment as they were not restricted to the employment or the work done by him as special correspondent. He was entitled to them whether he used them or not in connection with his employment or his work as a special correspondent. They would however fall under the inclusive part of the definition as 'allowances'. Since they were allowed B to him to directly reduce the expenditure which would otherwise have gone into his family budget, they were items relevant in the fixation of fair wages and were properly regarded as part of the respondent's wages. Therefore, they should be taken into consideration for the calculation of gratuity payable to him. [196 H; 197 F-H]

Hindustan Antibiotics Ltd. v. *Workmen*, [1967] 1 S.C.R. 652 674-675, followed.

C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1702 of 1966.

Appeal by special leave from the Award dated February 28, 1966 of the Labour Court, Delhi in W.J. No. 2 of 1964.

D *G. B. Pai, O. C. Mathur* and *J. B. Dadachanji*, for the appellant.

M. K. Ramamurthi, Shyamala Pappu, J. Ramamurthi, M. Mohan, P. S. Khera, B. Thakur and *Vineet Kumar*, for the respondent.

E The Judgment of the Court was delivered by

Shelat, J. This appeal, by special leave, is directed against the award of the Labour Court, Delhi in a reference made to it under s. 17(2) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (referred to hereinafter as the Act.)

F The relevant facts leading to the said reference may first be stated.

By its letter dated January 16, 1953 the appellant-company appointed the respondent as a staff correspondent at Gauhati on a basic salary of Rs. 300 and dearness allowance at 40% thereof G in addition to a fixed conveyance allowance of Rs. 100 per month. Sometime thereafter the respondent was transferred to the company's branch office at Delhi where he worked as a special correspondent. By 1963 the remuneration payable to him came to Rs. 700 as basic pay, Rs. 497 as dearness allowance, Rs. 200 per month as car allowance in addition to a free telephone and free newspapers. On October 8, 1963, while he was on leave, H the respondent tendered his resignation. On October 14, 1963 P. K. Roy, the company's General Manager, informed the respondent that his letter of October 8, 1963 could not be considered

as one of resignation as under the company's rules he would have first to report on duty and then to give a notice. On October 21, 1963, however, the company accepted the resignation with effect from that date and thereupon the respondent joined the Indian Express on October 23, 1963. Meanwhile, one V. G. Karnik, on behalf of the company, informed the respondent by his letter dated November 19, 1963 that in the absence of a proper notice by him there could be no termination of employment and that "your reported acceptance of another employment in the circumstances is in contravention of the terms and conditions of service of this company". The respondent had, in the meantime, claimed compensation for leave due to him, to which claim the said letter of Karnik replied that the company's rules did not permit any such compensation where an employee had resigned. On November 21, 1963 the respondent wrote to the said Roy (Ex. W/4) that (1) after he had tendered his resignation there was a discussion between them when the matter of acceptance of his resignation was amicably settled and that it was thereafter that he joined the Indian Express, (2) the letter of Karnik that there was no termination of his employment was not correct, (3) after October 21, 1963 he had gone to the company's office to settle his accounts and collect the dues payable to him as also the letter of acceptance of his resignation but he was told that the accounts were not yet ready and he was not then paid even his salary and dearness allowance due upto October 20, 1963 although "I had asked for these amounts at least", (4) the letter accepting his resignation was held back until he was prepared to sign a document "purporting to waive all my rights to leave salary" which he had first refused to sign, (5) on receiving the said letter of Karnik he had thought necessary to get a written acceptance of resignation, that, as apprehended by him, that letter was handed over to him on that day only after he accepted a cheque for Rs. 2810.47 P. and had given receipt therefor "in full and final settlement of all my claims" and that he wanted to specify in that receipt that full and final settlement on his side did not include compensation for one month's leave due to him but the accountant did not allow him to do so. The statement of account which was given to the respondent on November 21, 1963 and on which he signed the said receipt stated that he had received the said cheque "in full and final settlement of all my claims against the company subject to the bonus for 1963 if declared and payable to me". The statement of account mentioned Rs. 901.34 P. only as remuneration for 20 days of October 1963 on the basis of his monthly remuneration being Rs. 1,397, comprised of Rs. 700 as basic salary, Rs. 497 as dearness allowance and Rs. 200 as car allowance. The statement of account thus shows that though he was on leave in

A October 1963, the company included the car allowance while calculating his wages due for these 20 days. But it also shows that no compensation for leave due to him was paid and further that in calculating the gratuity payable to him the monetary value of free telephone and free newspapers and the car allowance were not included as part of his wages. In reply to the respondent's B letter of November 21, 1963, the said Roy, by his letter of December 5, 1963, wrote that as the respondent had not taken away the company's letter of acceptance of resignation by the time Karnik addressed the said letter, Karnik was "right on facts" but, in view of the settlement of his affairs and the subsequent settlement of accounts, "it was better to forget the past and part C amicably". He also made it clear that the respondent's claim for leave compensation was not admissible under the company's rules.

The respondent thereafter applied to the Delhi Administration and the latter, as aforesaid, referred his claim to the Labour Court for adjudication. In his statement of claim before the Labour Court, the respondent claimed that the monthly wages payable to D him were Rs. 700 basic, Rs. 497 as dearness allowance, Rs. 200 conveyance allowance and Rs. 50 being the estimated value of the benefit of a free telephone and newspapers, aggregating Rs. 1,447 per month. He claimed gratuity computable on the basis of Rs. 1,447 as being his monthly wages, Rs. 1,447 as compensation for the month's leave, in all, Rs. 6,000.34 P. He did not E deduct from the said claim the said amount of Rs. 2,810.47 P. as he had not encashed the cheque given to him against the receipt dated November 21, 1963. The company in its written statement denied the claim relying on the said receipt and further denied that the car allowance and the monetary value for the free telephone and newspapers could be included in the wages payable to F the respondent either as due to him or for calculating gratuity. Before the Labour Court the company did not dispute the value of the benefit of the free telephone and newspapers estimated by the respondent, but it raised the question whether the said value and the car allowance formed part of the respondent's wages and whether the amount of gratuity payable to him could be ascer- G tained on the footing of their being part of his wages. The Labour Court held that there was no evidence that the car allowance was not payable to the respondent while he was on leave as was the case in respect of another working journalist, C. V. Vishwanath, whose claim also the Labour Court was trying along with that of the respondent. The Labour Court found this differ- H ence a significant one and held that the car allowance had to be taken as part of the wages. The Labour Court also held that the car allowance and the free telephone and newspapers were an allowance and an amenity respectively falling under the definition

of s. 2(rr) of the Industrial Disputes Act, 1947, both forming the component parts of monthly wages payable to the respondent. As regards the leave, the respondent was undoubtedly entitled to 30 days leave. But the company's plea was, firstly, that its rules did not permit compensation for such leave and secondly, that it was set off against the period of notice which the respondent was required to give. No rules, however, were produced to show that they contained any provision disallowing such compensation. As regards the notice period of one month, the Labour Court held that as the resignation dated October 8, 1963 was accepted with effect from October 21, 1963 there was compliance of 13 days only and therefore the management was not liable to pay for the balance of 17 days leave. The Labour Court rejected the company's plea that the receipt given by the respondent in full settlement of all his claims estopped him from making these claims on the ground that as these items were claimable under the Act there could be no estoppel against law. In the result, the Labour Court held that the respondent was entitled to claim car allowance at Rs. 200 per month, Rs. 50 per month for telephone and newspapers and compensation for 13 days leave, that the first two were parts of his wages, that his monthly remuneration was, therefore, Rs. 1,447 and gratuity equivalent to 5½ months wages would have to be calculated on the basis of Rs. 1,447 being his wages per month and directed the company to pay on the aforesaid calculations Rs. 2,002 over and above Rs. 2,810.47 P. for which the company had issued the said cheque.

The first contention raised by counsel for the company against the award was that the respondent, not being in the company's employment at the time he filed his claim in the Labour Court, was not a working journalist, and therefore, was not entitled to avail himself of the provisions of the Act. Section 2(c) provides that "unless the context otherwise requires" a newspaper employee "means any working journalist, and includes any other person employed to do any work in, or in relation to, any newspaper establishment". Clause (f) of that section defines a "working journalist" to mean a person whose principal avocation is that of a journalist and "who is employed as such in, or in relation to, any newspaper establishment". Clause (g) provides that all words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 shall have the meanings respectively assigned to them in that Act. Counsel strenuously relied on the words "who is employed" as a journalist in, or in relation to, any newspaper establishment in cl. (f) of s. 2, his contention being that it is only a newspaper employee who is presently employed in a newspaper establishment who can resort to the Act and not an ex-employee whose employment has come to an end

A as a result of acceptance of his resignation. A question, similar to that raised by counsel, also arose in *Western India Automobile Association* v. *Industrial Tribunal*(1). The contention there was that in the light of the definitions of 'industrial dispute' and 'an employee' as they stood in the Industrial Disputes Act, 1947 before the Amending Act 36 of 1956 was passed, a dispute as to re-
B instatement of a discharged or dismissed workman could not fall within the scope of an industrial dispute. The contention was rejected. The Court observed that the definition of 'industrial dispute' used the words "employment or non-employment", that whereas one was a positive, the other was a negative act of an employer, that such an act related to an existing employment or
C to an existing non-employment. After giving certain examples to illustrate the four stages when a dispute could arise, the Court at page 330 concluded thus :

> "The failure to employ or the refusal to employ are actions on the part of the employer which would be covered by the term "employment or non-employment".
D Reinstatement is connected with non-employment and is therefore within the words of the definition. It will be a curious result if the view is taken that though a person discharged during a dispute is within the meaning of the word "workman", yet if he raises a dispute about dismissal and reinstatement, it would be outside the words
E of the definition "in connection with employment or non-employment"."

A similar question was canvassed in *Central Provinces Transport Services Ltd.* vs. *Raghunath*(2) in connection with the C.P. & Berar Industrial Disputes Settlement Act, XXIII of 1947.
F Section 2(10) of that Act defined an 'employee' in terms identical with those in the Industrial Disputes Act as it stood before the amendment in 1956, *i.e.*, as meaning "any person employed by an employer to do any skilled or unskilled manual or clerical work for contract or hire or reward in any industry and includes an employee discharged on account of any dispute relating to a change—whether before or after the discharge". Section 2(12)
G defined an 'industrial dispute' to mean "any dispute or difference connected with an industrial matter arising between employer and employee or between employers or employees". It was not disputed that the question of reinstatement was an industrial dispute but the controversy was as to whether it was an industrial dispute as defined by s. 2(12) of that Act. The argument was that as the
H workman concerned was already dismissed and his employment had thereby come to an end, he could not be termed an employee

(1) [1949] F.C.R. 321. (2) [1956] S.C.R. 956.

as the intention of the legislature could not be to include in the definition of an employee even those who had ceased to be in service as otherwise there was no need for the further provision in s. 2(10) which included those who were discharged from service on account of the dispute. The Court dismissed this contention following the decision in *Western India Automobile Association*(1) and held that a dispute between an employer and an employee regarding the latter's dismissal and reinstatement would be an industrial dispute within s. 2(12) of that Act, that the inclusive clause in s. 2(10) was not an indication that dismissed employees would not fall within the meaning of 'employee' or that the question of their reinstatement would not be an industrial dispute and that that clause was inserted *ex abundanti cautela* to repel a possible contention that employees discharged under ss. 31 and 32 of the Act would not fall within the meaning of s. 2(10). Since the definitions of "ex employee" in these two Acts were in language similar to the one used in the present Act, these decisions would be authorities for the view that an ex-employee would for the purposes of the present controversy be a working journalist.

A B C D

It was, however, argued that though these two decisions considered a dismissed employee as a workman as defined by the Industrial Disputes Act and the C.P. & Berar Act, there are two decisions of this Court which express contrary views and that, therefore, there is a conflict of opinion which should be resolved by a larger bench. The two decisions relied on in this connection are: *Dharangadhara Chemical Works Ltd.* v. *State of Saurashtra*(2) and *Workmen* v. *The Management of Dimakuchi Tea Estate*(3). In *Dharangadhara Chemical* Works Ltd., the appellants were lessees holding a licence for manufacturing salt on the demised lands. The salt was manufactured by a class of professional labourers, known as *agarias*, from rain water that got mixed up with saline matter in the soil. The work was seasonal and commenced after the rains and continued till June when the *agarias* left for their villages. The demised lands were divided into plots which were allotted to the *agarias* with a sum of Rs. 400 for each plot to meet the initial expenses. Generally the same plot would be allotted to the same *agaria* every year, but if the plot was extensive in area it would be allotted to two *agarias* in partnership. After the manufacture of salt these *agarias* were paid at the rate of -/5/6 per maund. Accounts would be settled at the end of each season and the *agarias* would be paid the balance due to them. These *agarias* worked together with the members of

E F G H

(1) [1949] F.C.R. 321.
(2) [1957] S.C.R. 152.
(3) [1958] S.C.R. 1156.

A their families and were also free to engage extra labour on their own account, the appellant company having no concern therewith. No hours of work were prescribed, no muster rolls were maintained nor were working hours controlled by the appellant company. There were also no rules as regards leave or holidays and the *agarias* were free to go out of the factory after making arrange-
B ments for the manufacture of salt. On these facts the question was whether the *agarias* were workmen as defined by s. 2(s) or independent contractors. Bhagwati, J. speaking for the Court, after quoting s. 2(s) of the Industrial Disputes Act, as it stood prior to its amendment in 1956, said thus :

> "The essential condition of a person being a work-
C man within the terms of this definition is that he should be employed to do the work in that industry, that there should be, in other words, an employment of his by the employer and that there should be the relationship between the employer and him as between employer and employee or master and servant. Unless a person is
D thus employed there can be no question of his being a workman within the definition of the term as contained in the Act."

Relying in particular on the words "unless a person is thus employed", counsel argued that this decision was at variance with what was said in the *Central Provinces Transport Services Ltd.*(1)
E and was, besides, an authority for the proposition that as the definition of a workman then stood, an ex-employee would not be a workman within the meaning of the Act. We are of the view that this decision does not warrant such a contention or that there is any conflict between this decision and the two earlier decisions. The question before the Court was the distinction between
F an employee and an independent contractor and it was only while describing the characteristics of the two relationships that the learned Judge observed that unless there was a relationship of master and servant and the person concerned "is employed" he could not be regarded as "a workman" as defined by the Act. The Court was not concerned in that case with the question posited
G in the *Central Provinces Transport Services Ltd.*(1) whether an employee who has been discharged or dismissed and who claims a relief such as reinstatement is a workman or not. Not having to consider such a question and being only concerned with the distinction between an employee and an independent contractor, the observations made by the Court to delineate the features of the two relationships cannot be regarded either as laying down
H that an ex-employee is not a workman or as being in conflict with the two earlier decisions which are specific decisions on the defini-

(1) [1956] S.C.R. 956.

tion of "a workman" in the Act. In the case of *Workmen of Dimakuchi Tea Estate*(1), the dispute related to the dismissal of one Dr. K. P. Bannerjee. The management in the written statement pleaded that Dr. Bannerjee was not a workman as defined by s. 2(s) of the Industrial Disputes Act, that therefore his dismissal could not be an industrial dispute as defined in s. 2(k) and the Tribunal could have no jurisdiction to decide whether the management were justified or not in dismissing the Doctor. The Tribunal as also the Labour Appellate Tribunal held, presumably because Dr. Bannerjee was not in the words of s. 2(s) a person employed in any industry to do any skilled or unskilled manual or clerical work, that he was not a workman within the meaning of s. 2(s), that the question of his dismissal was not an industrial dispute, and that therefore, his case was beyond the Tribunal's jurisdiction. The workman thereupon applied for special leave under Art. 136 and though leave was granted, it was limited to the question whether a dispute in relation to a person who is not a workman was an industrial dispute as defined by s. 2(k) of the Industrial Disputes Act, 1947. In view of the special leave being so limited, the Court proceeded on the assumption that Dr. Bannerjee was not "a workman" under the definition of that word as it then stood. The problem was, whether even so, the dispute regarding his dismissal could still be an industrial dispute, the contention of the workmen being that it would be so as by the use of the expression 'of any person' in the third part of s. 2(k) a dispute relating to a person, though not a workman, would be an industrial dispute. In answering this problem the Court entered into an elaborate discussion of the several provisions and the scheme of the Act and came to the conclusion that though the clause defining 'industrial dispute' had used the expression "of any person", that expression must be given a restricted meaning, namely, that the dispute must be a real dispute between the parties thereto so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other and the person regarding whom the dispute was raised must be one in whose employment, non-employment, terms of employment or conditions of labour the parties to the dispute had a direct or substantial interest. In the absence of such an interest the dispute could not be said to be a real dispute between the parties. At page 1172 of the Report, the Court, however, has made certain observations which apparently appear to be in variance with the *Western India Automobile Association*(2) and in the *Central Provinces Transport Services Ltd.*(3). The observations relied on by counsel are as follows :

(1) [1958] S.C.R. 1156. (2) [1949] F.C.R. 321.
(3) [1956] S.C.R. 956.

A "It is clear enough that prior to 1956 when the definition of 'workman' in the Act was further widened to include a person dismissed, discharged or retrenched in connection with, or as a consequence of the dispute or whose dismissal, discharge or retrenchment led to the dispute, a workman who had been discharged earlier B and not during the dispute was not a workman within the meaning of the Act. If the expression "any person" in the third part of the definition clause were to be strictly equated with 'any workman', then there could be no industrial dispute, prior to 1956, with regard to a workman who had been discharged earlier than the dis- C pute. That seems to be the reason why the Legislature used the expression 'any person' in the third part of the definition clause so as to put it beyond any doubt that the non-employment of such a dismissed workman was also within the ambit of an industrial dispute."

These observations, however, were made to show that as the defi- D nition of the workman stood before the 1956 amendment there was a gap between a workman and an employee, that though all workmen would be employees, the *vice versa* would not be correct as the supervisory staff would not fall within the definition of workman and that that gap was reduced to a certain extent by the Amendment Act of 1956 and that it would not be always E correct to say that the workmen would have a direct and substantial interest in questions relating to all kinds of employees. At page 1173 S. K. Das J. observed :

"The expression 'any person' in the definition clause means, in our opinion, a person in whose employment, or non-employment, or terms of employment, F or conditions of labour the workmen as a class have a direct or substantial interest—with whom they have, under the scheme of the Act, a community of interest."

While dealing with the decisions in *Western India Automobile Association*(1) and *Central Provinces Transport Services Ltd.*(2), the learned Judge clearly stated at page 1176 that the problem in G those cases was whether an industrial dispute included within its ambit a dispute with regard to reinstatement of certain dismissed workmen, a problem quite different from the one before them and that the illustrations given by Mahajan J. (as he then was) in the *Western India Automobile Association*(1), "to elucidate a different problem", could not be taken as determinative of a pro- H blem which was not before the Court in that case. The problem in each of these decisions being different and in view particularly

(1) [1949] F.C.R. 321. (2) [1956] S.C.R. 956.

of the fact that the case proceeded on the assumption that Dr. Banerjee was not "a workman", it becomes difficult to agree that the observations relied on by counsel were meant to be or are in fact in variance with those in the two earlier decisions, or that therefore, there is any conflict of opinion on the question that a workman whose services are terminated would still be a workman as defined by s. 2(s) before it was amended in 1956.

But assuming that there is such a conflict as contended, we do not have to resolve that conflict for the purposes of the problem before us. The definition s. 2 of the present Act commences with the words "In this Act unless the context otherwise requires" and provides that the definitions of the various expressions will be those that are given there. Similar qualifying expressions are also to be found in the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the C.P. & Berar Industrial Disputes Settlement Act, 1947 and certain other statutes dealing with industrial questions. It is, therefore, clear that the definitions of "a newspaper employee" and "a working journalist" have to be construed in the light of and subject to the context requiring otherwise. Section 5 of the Act, which confers the right to gratuity, itself contemplates in cl. (d) of sub-s. 1 a case of payment of gratuity to the nominee or the family of a working journalist who dies while he is in the service of a newspaper establishment. Section 17(1) provides that where any amount is due under the Act to a newspaper employee from an employer, such an employee himself or a person authorised by him or, in case of his death, any member of his family can apply to the State Government or other specified authority for the recovery thereof. Similar provisions are also to be found in s. 33C(1) of the Industrial Disputes Act. Claims under that section include those for compensation in cases of retrenchment, transfer of an undertaking and closure under Ch. VA of that Act, all of which would necessarily be claims arising after termination of service and the claimant would obviously be one in all those cases who would not be presently employed in the establishment of the employer against whom such claims are made. Likewise, the claim for gratuity under s. 17 read with s. 5 of the Act would itself be one which accrues after the termination of employment. These provisions, therefore, clearly indicate that it is not only a newspaper employee presently employed in a particular newspaper establishment who can maintain an application for gratuity. The scheme of all these acts dealing with industrial questions is to permit an ex-employee to avail of the benefits of their provisions, the only requirement being that the claim in dispute must be one which has arisen or accrued whilst the claimant was in the employment of the person against whom it is made. There can, therefore, be no doubt that the definitions of a "newspaper em-

A ployee" and "working journalist" being subject to a context to the contrary, the benefit of ss. 5 and 17 is available to an ex-employee though he has ceased to be in the employment of that particular newspaper establishment at the time of his application for gratuity. The contention that the respondent was not entitled to maintain his application as he was not in the service of the B appellant company on the date of his claim before the Labour Court cannot be sustained.

The next contention was that the respondent, having signed the said receipt in full settlement of all his claims and having thereby induced the company to accept his resignation without insisting on a full month's notice, was estopped from making C claims in respect of his leave for one month, the car allowance and the free telephone and newspapers and for including them as part of his wages for calculating gratuity. Certain decisions of this Court seem, however, to have expressed doubt whether technical pleas such as acquiescence, estoppel and waiver suitably apply to industrial adjudication. But assuming that the rule of estoppel, D as incorporated in s. 115 of the Evidence Act, were to apply, the foundation of that rule is that it is inequitable and unjust to a person, that if another person by a representation induces him to act as he would not have otherwise acted, the person who made the representation should be allowed to deny the effect of his former statement to the loss and injury of the person who has acted E on it. [see *Sarat* v. *Gopal*(1)]. This rule is one of evidence only and does not create any substantive right or confer any cause of action on the other. It comes into operation if a statement as to the existence of a fact has been made with the intention that the other person to whom it is made should believe and act on it and that that another person does in fact act upon the faith of it. The F question whether the respondent is estopped from making his said claims may be looked at firstly, as regards his leave period, and secondly, as regards his claims for car allowance and free telephone and newspapers. As to the claim for leave due to him, the record of the case makes it clear that he had been making that claim from the very outset. Though the receipt given by him mentions that it was given in full settlement of all his claims, the respon- G dent on that very day in his letter Ex. W/4 to the said Roy protested that though he wanted to clarify in that receipt that it was in full settlement of his salary and dearness allowance for the 20 days of October 1963 and gratuity only, he was not allowed to make that reservation although he had already preferred his claim for compensation for one month's leave due to him. We must H note that though this letter went in as Ex. W/4 before the Labour Court, the company led no evidence to controvert the statements

(1) I.L.R. 19 I.A. 203.

made therein. The reason for not doing so seems to be that the respondent had made the claim before one Mitra, the accountant in the Delhi office, and that claim was a matter of dispute. This position emerges from Roy's reply dated December 5, 1963 to the respondents said letter of November 21, 1963 wherein the stand taken by Roy was that the respondent was not entitled to compensation for leave, not because he had given up that claim when he had signed the said receipt, but because the company's rules did not permit such compensation. It is, therefore, manifest that the respondent did not make any representation when he signed the said receipt that he had waived his claim for leave period or that the company did any act on any such representation which otherwise it would not have done. In spite of the letter Ex. W/4, the company failed to produce before the Labour Court its rules under which it was said that such a claim was not permissible. In its special leave petition in this Court, the company, however, cited a rule but we could take no notice of it as no application for producing the rules or proving them as additional evidence was made and it was hardly fair or just to take notice of it at such a late stage without an opportunity to the respondent to verify or controvert it. Roy's reply also indicates that the company's case, that the respondent's claim for compensation for leave was at the time of preparing his statement of account adjusted or set-off against its claim for the notice period, could not be correct. For, if that was so, Roy would have straightway said so in his said reply, or in any event the company would have led evidence of its accountant to that effect before the Labour Court. The rule of estoppel thus could not be invoked against the claim for compensation for leave period.

We next examine the question whether the respondent was precluded from making the rest of his claim. The burden of proving the ingredients of s. 115 of the Evidence Act lies on the party claiming estoppel. The representation which is the basis for the rule must be clear and unambiguous and not indefinite, upon which the party relying on it is said to have, in good faith and in belief of it, acted. The statement of account prepared at the time when the respondent gave the said receipt appears to indicate that the benefit of the free telephone and newspapers and the car allowance were not taken into account and gratuity due to the respondent was calculated on the amount of pay being comprised of basic wages and dearness allowance only. But the inference that the respondent had given up his aforesaid claims when he passed the said receipt appears to be rebutted by the following facts: (1) though the resignation was accepted on October 21, 1963 the letter of acceptance was not communicated to the respondent till November 21, 1963 when the company obtained from the res-

A pondent the said receipt; (2) in the meantime, the respondent received Karnik's said letter of November 19, 1963 to the effect that there was no termination of the respondent's service in the absence of a month's notice, and on receipt of which, according to the respondent, he considered it necessary to secure the letter of acceptance of his resignation from the company. If the termi-
B nation of his service depended on the giving of a month's notice, how was it that the company's Manager, D'Souza, had accepted the resignation and signed the letter of acceptance Ex. W/1 on October 21, 1963; (3) the company was aware, as Karnik's said letter shows, that on the basis that his resignation was accepted with effect from October 21, 1963 the respondent had joined the
C Indian Express on October 23, 1963. The respondent's case was that it was after he was told that his resignation had been accepted that he joined the Indian Express. But when he received Karnik's said letter he decided that he could not rest content without jeopardizing his interests on the mere oral intimation of acceptance of his resignation, and therefore, went to the company's office to secure a written acceptance when he was told that unless he passed
D a receipt in full settlement of his claims, the letter of acceptance would not be issued to him. There appear to be two good reasons why the respondent's case cannot be easily discarded. Firstly, since his resignation was accepted with effect from October 21, 1963 and even a letter to that effect was made ready and signed by the company's manager, it would ordinarily have been com-
E municated to him. If the company had any claim against him or if it wanted that his account should be settled before the letter was issued to him, surely an intimation to that effect would have been given to him. Secondly, though the respondent had put on record his version as to how the said receipt was obtained from him as early as November 21, 1963, *i.e.*, on the very day that the
F said receipt was secured from him, no refutation of any of the allegations in that letter is to be found in Roy's reply to it dated December 5, 1963 save that the respondent's claim for compensation for leave period was not admissible under the company's rules. It is significant that there was no denial in that reply that the receipt was obtained from the respondent in the manner
G alleged in the said letter dated November 21, 1963. Even at the later stages the company did not examine its accountant before the Labour Court to refute the said allegations. The statements of the respondent in that letter having thus remained unchallenged, the Labour Court could not reject them. In these circumstances it becomes doubtful whether he could be said to have been
H estopped from making the said claims on the ground only of the said receipt, if that receipt was obtained, as alleged by him, under the stress of circumstances. In this connection the fact that he kept the said cheque uncashed is not totally without relevance.

Under s. 115 of the Evidence Act the representation which estops a person making it from acting contrary to it is one on the belief of which the other person acts in a manner he would not have done but for it and on believing it to be true. Such a conclusion is difficult in face of the uncontradicted statements in the letter Ex. W/4 that the management would not give him the letter of acceptance of his resignation unless he signed the said receipt in full settlement of all his claims. The plea of estoppel made on behalf of the company, therefore, cannot be accepted.

The third contention was that the monetary value of the free telephone and newspapers and the car allowance could not be included as part of his wages for calculating gratuity. The value in terms of money of the benefit of free telephone and free newspapers, as estimated by the respondent, was not in question. But the argument was that this benefit as also the car allowance were given to the respondent by way of reimbursement for expenses which as a special correspondent he would otherwise have had to incur for the proper and efficient discharge of his duties. The two items, therefore, were neither an allowance nor an amenity. The facts, however, are that the telephone was installed by the company at the respondent's residence and stood in his and not in the company's name. All payments connected with it, including charges for calls, were made by the company. There was no restriction that he could use the telephone only for his official work or that he could not use it for personal calls. He was not called upon to keep an account of personal calls, the payment of which he would be called upon to make. Nor was any estimated amount for such personal calls either demanded or deducted from his wages. The newspapers were subscribed by the respondent but the bills for them were paid by the company. It was not the case of the company that the bills for them would be paid by it provided they were made use of by the respondent for his work as a special correspondent. As regards the car allowance, the car belonged to and stood registered in his name but the company paid him a monthly allowance of Rs. 200/-. There was no evidence whatsoever, not even a suggestion in the correspondence, that that amount was estimated as being equivalent to the expenses of conveyance which the respondent would incur in the discharge of his duties. No such indication is to be found in the company's evidence, nor was such a suggestion put to the respondent when he examined himself before the Labour Court.

Since wages has not been defined in the Act, its meaning is the same as assigned to it in the Industrial Disputes Act. Under s. 2(rr) of that Act, 'wages' means all remuneration capable of being expressed in terms of money, which would, if the terms of

A employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes (i) such allowances (including dearness allowance) as the workman is for the time being entitled to; (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or B of any concessional supply of food-grains or other articles; (iii) any travelling concession; but does not include any bonus and other items mentioned therein. Mr. Ramamurthi's argument was that the car allowance as also the benefit of the free telephone and newspapers would fall under the first part of the definition as they are remuneration capable of being expressed in terms of C money. The argument, however, cannot be accepted as neither of them can be said to be remuneration payable in respect of employment or work done in such employment. Neither the car allowance nor the benefit of the free telephone was given to the respondent in respect of his employment work done in such employment as the use of the car and the telephone was not restricted D to the employment, or the work of the respondent as the special correspondent. There was no evidence that the car allowance was fixed after taking into consideration the expenses which he would have ordinarily to incur in connection with his employment or the work done in such employment. Even if the respondent had not used the car for conveying himself to the office or to other places E connected with his employment and had used other alternative or cheaper means of conveyances or none at all, the car allowance would still have had to be paid. So too, the bills for the telephone and the newspapers whether he used them or not in connection with his employment or his work as the special correspondent. Therefore, we have to turn to the latter part of the definition and F see if the two items properly fall thereunder. So far as the car allowance is concerned, there was, as aforesaid, nothing to suggest that it was paid to reimburse him of the expenses of conveyance which he would have to incur for discharging his duties as the special correspondent, or that it was anything else than an allowance within the meaning of s. 2(rr) of that Act. It would, therefore, fall under the inclusive part (i) of the definition. Likewise, G the benefit of the telephone and newspapers was allowed to the respondent not merely for the use thereof in connection with his employment or duties connected with it. Both the car allowance and the benefit of the free telephone and newspapers appear to have been allowed to him to directly reduce the expenditure which would otherwise have gone into his family budget and were H therefore items relevant in fixation of fair wages. (see *Hindustan Antibiotics Ltd.* v. *Workmen*(1). That being the position, the two

(1) [1967] 1.S.C.R. 652 at 674, 675.

items could on the facts and circumstances of the present case be properly regarded as part of the respondent's wages and had to be taken into calculations of the gratuity payable to him.

These were the only points raised before us and since in our judgment none of them can be upheld the appeal must fail and has to be dismissed with costs.

Y.P. *Appeal dismissed.*