

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Writ Petition (Civil) 4429 of 2007**

Date of Decision: 3rd October, 2008

B.GOSH & CO. Petitioner
Through: Mr. S.P. Juneja, Adv.

versus

PRAMOD RAI & ORS. Respondents
Through: Mr. Rama Shankar, Adv.

% **CORAM:**
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

No

J U D G M E N T

SIDDHARTH MRIDUL, J. (Oral)

1. The short question that arises for consideration in the present writ petition is with respect to the interpretation of proviso to sub Section 2 of Section 20 of the Minimum Wages Act, 1948. Before proceeding further it would be necessary to extract the relevant provision of the said Act as below:-

Section 20 - Claims

(1) The appropriate Government may, by notification in the Official Gazette, appoint [any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour

8

Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages[or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub- section (1) of section 13 or of wages at the overtime rate under section 14,] to employees employed or paid in that area.

(2)[Where an employee has any claim of the nature referred to in sub- section (1)], the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub- section (1), may apply to such Authority for a direction under sub- section (3) :

Provided that every such application shall be presented within six months from the date on which the minimum wages[or other amount] became payable:

Provided further that any application may be admitted after the said period of six months 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 the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct--

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees.

and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.]

(4) If the Authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer y the person presenting the application.

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

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or

(b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under sub- section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 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 Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

2. It is an admitted case of the parties that the respondents herein filed a claim before the Authority under the said Act on 23.10.2006. The said

10

Authority thereafter proceeded ex parte since the management-petitioner herein failed to appear after filing their written statement. The said Authority proceeded to direct the petitioner herein to pay minimum wages to the respondents-workmen from 01.03.2005 to 31.08.2005.

3. Counsel for the petitioner made the following submissions:-

Counsel submitted that, in terms of the proviso of sub Section 2 of Section 20 of the Act every application for payment of minimum wages shall be presented within six months from the date on which the minimum wages become payable. Counsel, therefore, submits that for the claim instituted on 23.10.2006 the respondents-workmen could not have sought recovery of minimum wages, directed to be paid vide the impugned order, that became due and payable if at all within six months from 01.08.2004 to 31.08.2005. In other words, counsel for the petitioner submits that on 23.10.2006, the respondents-workmen were at liberty, in accordance with law, only to seek payment of minimum wages for the period of six months, immediately prior to the institution of the claim so filed on 23.10.2006.

4. Counsel for the petitioner further submitted that although the second proviso to sub Section 2 of Section 20 provided that an application for payment of the minimum wages could be considered belatedly, by the Competent Authority, such an application for condoning the delay in

11

preferring the claim could be considered, if and only if, the claimant thereto was able to satisfy the said Authority that there was sufficient cause for not making the application within the prescribed period. Counsel for the petitioner submits that in the present case there was admittedly no such application filed by the respondents, within the meaning of the second proviso to sub Section 2 of Section 20, so as to entitle the respondents-workmen to any claim for the minimum wages of any period prior to the period of six months, immediately preceding the date of institution of the claim namely 23.10.2006.

5. Counsel for the respondent on the other hand, submitted with reference to the written statement filed on behalf of the petitioner herein that, the petitioners had categorically admitted therein that they were ready and bound to make payments admissible to the respondents-workmen after scrutiny of their respective accounts and that, therefore, the petitioners could not now wash their hands of the liability to pay the arrears of minimum wages due and payable as directed by the impugned order. It was further urged on behalf of the respondents that it was inherent in the impugned order that any delay in preferring the claim had been condoned by inference, since the power to condone delay was vested by law in the said Authority.

6. In the present case, it is seen that the claim was instituted on behalf of the respondents-workmen on 23.10.2006. The claim was for arrears of minimum wages for the period 01.08.2004 to 31.08.2005. It appears that

9

the respondent did not file an application for condonation of delay, in preferring the claim, as provided in the second proviso to sub Section 2 of Section 20. However, the petitioner herein, filed a written statement thereto, stating categorically that they were willing to make payments as were admissible after scrutiny of the respective accounts. The petitioner herein failed to appear thereafter and was proceeded ex parte. The said Authority, vide the impugned order dated 04.04.2007, granted minimum wages to the respondent from 01.03.2004 to 31.08.2005. It is also seen that the said Authority was entitled in law to grant such claims as fell within a period of six months from the date on which the minimum wages became payable. Further under the provisions of the said second proviso, the said Authority could grant minimum wages for the period prior to six months also, if there was an application in that regard before it, on behalf of the applicant. In other words the said Authority was invested with the power and discretion to grant minimum wages even for a period prior to six months from the date of institution of the application under the provisions of the second proviso to sub section 2 of Section 20 of the Act. Furthermore, it is also noticed that there was a categorical admission on the part of the petitioner herein that, they were liable and would make the payments as admissible in law to the respondents.

7. Therefore, in the facts and circumstances of the case and in the interest of justice, I am of the opinion that, this is a fit case to be remitted back to the Authority under the Minimum Wages Act, 1948 for adjudication

13

in accordance with law. In the circumstances, the writ petition is allowed to the extent that the impugned order dated 04.04.2007 is set aside. The matter is remanded back to the Competent Authority under the Minimum Wages Act for disposal in accordance with law. The said Authority will hear the parties based on the pleadings and material filed in respect to the application, before proceeding to finally decide all the issues raised in respect to the said application once again, on the merits, including but not limited to, the question of the maintainability of the claim for the period prior to the period of six months preceding the date of institution of the application by the respondents herein. The amount deposited by the petitioner with the Registrar of this Court in terms of the order of this Court dated 21.08.2007 shall be transmitted to the said Authority under the Minimum Wages Act, 1948. The parties are directed to appear before the said Authority under the Minimum Wages Act on 10.11.2008 at 2 P.M for further proceedings in accordance with law.

8. With the aforementioned, observations and directions, the writ petition is disposed of, leaving the parties to bear their own costs.

OCTOBER 03, 2008
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SIDDHARTH MRIDUL, J

- CM 6834/12 for direction.

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32

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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 4429/2007

B.GOSH & CO.

..... Petitioner

Through: Mr. Mahendra Singh, Advocate.

versus

PRAMOD RAI & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE P.K. BHASIN

ORDER

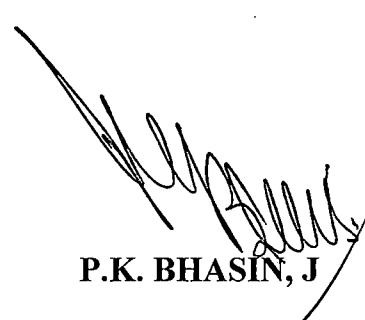
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25.05.2012

CM No. 6834/2012

In view of the facts stated in this application the same is allowed. The Registrar General is directed to get the FDR in question encashed and its proceeds be released in favour of the applicant-petitioner within six weeks from today.

The applicant-petitioner shall hand over the original FDR to the Registrar General for necessary action.


P.K. BHASIN, J

MAY 25, 2012

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