

GAHC010133662023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3537/2023

AJJAY KHEMKA AND ANR
S/O- SRI SYAMLAL KHEMKA, R/O- 101 PRIME APARTMENT, CHRISTIAN
BASTI, G.S. ROAD, GUWAHATI-781005, DIST. KAMRUP(M), ASSAM

2: ANANYA KHEMKA
S/O- SHRI AJJAY KHEMKA
R/O- 101
PRIME APARTMENT
AMRAWATI PATH
G.S. ROAD
CHRISTIAN BASTI
GUWAHATI-781005
DIST. KAMRUP(M)
ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
LABOUR AND EMPLOYMENT DEPARTMENT, DISPUR, GUWAHATI-781006.

2:THE ASSISTANT LABOUR COMMISSIONER
CUM THE AUTHORITY UNDER THE PAYMENT OF WAGES ACT
1936
GUWAHATI
DIST. KAMRUP(M)
ASSAM
PIN- 781007.

3:THE LABOUR INSPECTOR CUM INSPECTOR UNDER PLANTATION
LABOUR ACT
1951
GUWAHATI
DIST. KAMRUP(M)

ASSAM
PIN- 781007.

4:THE ASSAM CHAH MAZDOOR SANGHA
KAMRUP BRANCH
K.C. SEN ROAD
PALTANBAZAR
GUWAHATI-781008
DIST. KAMRUP(M)
ASSAM
REPRESENTED BY ITS SECRETARY PRESIDENT

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 19/06/2023

Heard Mr. B. Dutta, learned senior counsel assisted by Mr. S. Deka, learned counsel for the writ petitioners. Also heard Mr. T.C. Chutia, learned Additional Senior Government Advocate, Assam, appearing for the respondent nos. 1, 2 & 3.

The petitioners herein, are the partners of a firm which is the owner of a Tea Estate, commonly known as Amchong Tea Estate, situated at Digaru under Kamrup (M) district, Assam. Assailing the order dated 31/05/2021 (Annexure-13) passed by the Assistant Labour Commissioner-cum-authority under the Payment of Wages Act, Guwahati, in connection with LPW Case No. 06/2020 as well as the subsequent proceeding initiated before the Judicial Magistrate, 1st Class, Kamrup(M), in the form of CR Case No. 2593/2021, for enforcing the said order, the instant writ petition has been filed.

Mr. Dutta, learned senior counsel for the writ petitioner has argued that as per the provisions of a bilateral agreement signed on 25/01/2021, the Management of the Tea Estate, is regularly paying a sum of Rs. 7/- to the workers in lieu of ration. Moreover, after the decision of the Hon'ble Supreme Court in the case of ***Manganese Ore (India) Ltd. Vs. Chandilal Saha and others*** reported in ***(1991) Supp(2) SCC 465***, law is settled that the ration cannot be included as part of the wages.

Notwithstanding the same, the learned Assistant Labour Commissioner has issued the direction for recovery of additional amount payable on account of ration from the Management by ignoring the terms and conditions of the bilateral agreement dated 25/01/2021.

Mr. Dutta has further argued that since ration cannot be treated as part of wages, the learned Assistant Labour Commissioner did not have the jurisdiction to pass the impugned order dated 31/05/2021. Hence, this writ petition.

Mr. T.C. Chutia, learned Additional Senior Government Advocate, Assam, on the other hand, has argued that the Management of the Tea Estate had not cooperated in the proceeding prompting the learned Assistant Labour Commissioner to issue the impugned order.

After hearing the submissions of both the parties and on going through the materials placed on record, I am of the view that since the issue raised by the petitioners pertains to the issue of jurisdiction of the Assistant Labour Commissioner, which if accepted, would go to the root of the matter, the learned Assistant Labour Commissioner ought to have considered the said aspect of the matter before issuing any directive. But the said exercise has not been done in this case.

As such, this writ petition is being disposed of with a direction upon the respondent no. 2 to review the order dated 31/05/2021, if a proper application is filed by the petitioners with such a prayer, within four weeks from today, by annexing a certified copy of this order.

If the review petition is preferred within the time frame as provided in this order, the same be considered in the light of the observations made herein above and a fresh order be passed therein.

Until such time, the aforesaid exercise is completed, further proceeding in CR Case No. 2593/2021 shall remain suspended.

With the above observation, the writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant