

GAHC010168492019



Judgment reserved on : **25th February, 2022.**

Judgment delivered on : **8th March, 2022.**

IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

1. WRIT APPEAL No.199 OF 2019

M/s Century Mercantile Private Limited, T.R. Phookan Road, Fancy Bazar, Guwahati-781001, District- Kamrup (M), Assam, represented by one of its Directors, Sri Prakash Kabra, Son of Late Ram Karan Kabra.

.....Appellants/Writ Petitioner

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Department of Labour & Employment, Dispur, Guwahati- 781006.

2. The Assistant Labour Commissioner – cum-Authority, Ulubari, Guwahati-781007.

3. Sri N.C. Das,
Labour Inspector,
Ulubari, Guwahati- 781007.

4. Sri Dinesh Mahato,
General Secretary, Fancy Bazar Mazdoor
Union, PO: Guwahati- 781001, District-
Kamrup (M), Assam.

.....Respondents

2. WRIT APPEAL No.203 OF 2019

Sri Basant Kumar Dugar (Jain),
Son of Sri Champalal Dugar (Jain),
Proprietor of M/s Dev Trading Company,
M.G. Road, Fancy Bazar, Guwahati-781001,
District- Kamrup (M), Assam.

.....Appellants/Writ Petitioner

-Versus-

1. The State of Assam, represented by the
Commissioner & Secretary to the
Department of Labour & Employment,
Dispur, Guwahati- 781006

2. The Assistant Labour Commissioner –
cum-Authority, Ulubari, Guwahati-781007.

3. Sri N.C. Das,
Labour Inspector, Ulubari,
Guwahati- 781007.

4. Sri Dinesh Mahato,
General Secretary, Fancy Bazar Mazdoor
Union, PO: Guwahati- 781001, District-
Kamrup (M), Assam

.....Respondents

3. WRIT APPEAL No.204 OF 2019

Sri Bhushan Kumar Jain,
Son of Late Jhumarmal Jain,
Proprietor of M/s Gang and Sons,
T.R. Phookan Road, Fancy Bazar, Guwahati-
781001, District-Kamrup (M), Assam.

.....Appellants/Writ Petitioner

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Department of Labour & Employment, Dispur, Guwahati- 781006.
2. The Assistant Labour Commissioner – cum-Authority, Ulubari, Guwahati-781007.
3. Sri N.C. Das,
Labour Inspector, Ulubari,
Guwahati- 781007.
4. Sri Dinesh Mahato,
General Secretary, Fancy Bazar Mazdoor Union, PO: Guwahati- 781001, District- Kamrup (M), Assam

.....Respondents

For Writ Appellants : Mr. O.P. Bhati, Advocate.

For Respondent Nos.1 & 2 : Mr. D.K. Sarmah, Additional Senior Government Advocate, Assam.

Mr. S. Chakraborty, Amicus Curiae.

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE MR. SUDHANSHU DHULIA
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

JUDGMENT & ORDER

(Sudhanshu Dhulia, CJ)

Heard Mr. O.P. Bhati, learned counsel for the appellants. Also heard Mr. D.K. Sarmah, learned Additional Senior Government Advocate, Assam as well as Mr. S. Chakraborty, learned Amicus Curiae.

2. Although these writ appeals have arisen out of a common order passed by the learned Single Judge dated 20.06.2019¹ and since the matter is common, these writ appeals are being disposed of by a single order here as well, but in fact we would be referring to writ appeal No. 199/2019.

3. The writ appellant/petitioner in Writ Appeal No.199/2019 before this Court is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 and has been carrying on the business of wholesale food grains. Appellant Nos.2 and 3 are again the proprietors of firms engaged in the same business. During the course of their business, the writ appellants/petitioners had to undertake the exercise of loading and unloading of food grains in transport vehicles and for which purposes the company engages the services of labourers from the market.

4. The Government of Assam, in exercise of its powers under Section 3(1)(a) of the Minimum Wages Act, 1948, vide its Notification dated 25.02.2011 has passed an order fixing the minimum wages of different categories of workers employed in the employment of loading and unloading in the State of Assam. The appellants were not paying wages to the workers (engaged in loading and unloading of food grains), as per the above Notification. The respondent No.3 in the writ petitions, who is the Labour Inspector, after inspection, moved applications before the authority under the provisions of the Payment of Wages Act, 1936 under the powers given to an

¹ WP(C) 2486/2016, WP(C) 2570/2016, WP(C) 2808/2016, WP(C) 3423/2016 and WP(C) 4049/2016

Inspector under Section 15 read with Section 16 of the Payment of Wages Act. On receipt of the applications by the Inspector, cases were registered as LPW Case No.9/2012; LPW Case No.10/2012 and LPW Case No.12/2012 by the Labour Commissioner. Although the Labour Inspector was present before the authority, yet inspite of notice, the owner/employer, i.e. M/s Century Mercantile Private Limited, the writ appellant/petitioner in Writ Appeal No.199/2019 before this Court, remained absent. The matter thereafter proceeded *ex-parte*. After examining all the witnesses, the Assistant Labour Commissioner came to the conclusion that the workers, who were engaged in the establishment of loading and unloading of goods, are entitled to get an amount of Rs.3,57,187/- in addition to other amounts.

5. This order was put to challenge before the learned Single Judge in writ petitions by the present appellants.

6. The learned Single Judge, however, has dismissed the writ petitions. The learned Single Judge came to the finding that an application was filed by the Labour Inspector before the concerned authority and the Labour Inspector had issued notice to the writ appellants/ petitioners but no objections were filed before the Labour Inspector and the writ appellant/petitioners remained absent throughout the proceedings before the concerned authority under the provisions of the Payment of Wages Act, 1936 and consequently the cases against the writ appellants/petitioners were heard and decided *ex-parte* against them. Since all the evidence show that the petitioners were

giving the workers less than the minimum wages, their contention was not accepted. The Court thereafter considered that since there is a provision of appeal under Section 17 of the Payment of Wages Act, 1936 and this remedy is available to the writ appellants/petitioners, the writ appellants/ petitioners can avail this remedy by filing an appeal. The writ petitions were dismissed by common judgment & order dated 20.06.2019. This judgment & order of the learned Single Judge is now under challenge before us in the writ appeals.

7. The main contention of the learned counsel for the writ appellants/petitioners Mr. O.P. Bhati before us is that the primary contention raised by the writ appellants/petitioners before the learned Single Judge regarding the very jurisdiction of the authority under the Payment of Wages Act, 1936, has not been decided. The learned counsel would submit that the concerned workers/labourers were not under "employment" of the writ appellants/petitioners and hence they cannot claim wages under the provisions of the Payment of Wages Act. These are only Casual Workers engaged from the market, they cannot be said to be in "employment" of the petitioners. The learned counsel would admit that the remedy open to them is a remedy to move a claim under the provisions of the Minimum Wages Act, 1948 before the concerned authority but the authority under the Payment of Wages Act had absolutely no jurisdiction to entertain an application.

8. Mr. D.K. Sarmah, learned Additional Senior Government Advocate, Assam has placed before this Court a

Notification of the Government of Assam dated 30.11.2017, which is in the name of the Governor and it says that this order has been passed both in exercise of powers under Section 15 of the Payment of Wages Act, 1936 as well as under of Section 20(1) of the Minimum Wages Act, 1948 and the Governor is pleased to appoint the following officers, *inter alia*, the Assistant Labour Commissioner of Guwahati (before whom the matters were adjudicated in the present case) as the authority for Kamrup (Metro). In other words, the Assistant Labour Commissioner, Guwahati is an authority to decide the claim of the workers both under provisions of the Minimum Wages Act as well as Payment of Wages Act.

9. Now, let us examine as to who can be appointed as an authority to decide the claim under the provisions of the Payment of Wages Act as the petitioners have raised the question of the very jurisdiction of the authority. Under Section 15(1) of the Payment of Wages Act, 1948, a person who is already working as a Commissioner for Workmen's Compensation Act or a Regional Commissioner or an Assistant Commissioner can be appointed as an authority. The relevant provision read as under:-

“15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.—[(1) The appropriate Government may, by notification in the Official Gazette, appoint—

(a) any Commissioner for Workmen's Compensation;
or

(b) any officer of the Central Government exercising functions as,—

(i) Regional Labour Commissioner; or

(ii) Assistant Labour Commissioner with at least two years' experience; or

(c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or

(d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or

(e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate,

as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims:

Provided that where the appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act."

(Emphasis provided)

10. At this juncture, we may also note that in the year 2009, vide an amendment made in the Workmen's Compensation Act, 1923, by which the Act has been renamed as Employee's Compensation Act. The Notification under which these appointments have been made and the notice which has already been referred above, *inter alia*, states that the Assistant Labour Commissioner, Guwahati, who is the authority for Kamrup (Metro), is already working as a Commissioner under the Employee's Compensation Act, 1923, (previously known as Workmen's Compensation Act). In other words, both under Section 15(1) of the Payment of Wages Act, 1948 as well as Section 20(1) of the Minimum Wages Act, 1948, the Commissioner under the Workmen's Compensation Act has

been appointed as an authority both under Payment of Wages Act as well as under the Minimum Wages Act. The Notification itself clearly states that the present Assistant Labour Commissioner, Guwahati [Kamrup (Metro)] is already working as a Commissioner under the Workmen's Compensation Act (now known as Employee's Compensation Act). In other words, there is no lack of jurisdiction on the authority, which is presently functioning as an authority to decide the claims both under the Minimum Wages Act as well as under the Payment of Wages Act.

11. Be that as it may. Another relevant fact for our consideration is as to how the matter is initiated before the concerned authorities, both under the Minimum Wages Act as well as the Payment of Wages Act. A claim can be raised, *inter alia*, under Sub-Section (2) of Section 15 of the Payment of Wages Act as well as under Sub-Section (2) of Section 20 of the Minimum Wages Act by the Inspector, who is a key functionary both under the Payment of Wages Act as well as under the Minimum Wages Act. He has to ensure that the workers are paid their wages in full and final and timely. In the present case, such a claim has been raised by the concerned Labour Inspector, who is an Inspector under the Payment of Wages Act.

12. The workers for whose behalf the claim was being raised are covered under the provisions of the Payment of Wages Act as well as under the Minimum Wages Act. The Payment of Wages Act is applicable to persons employed in "an

industrial or other establishment specified in sub-clauses (a) to (g) of Clause (ii) of Section 2". Under sub-clause (a) of Clause (ii) of Section 2 comes "tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward". Broadly the workers, who are before this Court, are in this category as they were engaged in loading and unloading food grains in transport vehicles.

The fact that the workers are covered under the Minimum Wages Act is not in dispute.

13. A Division Bench of the Bombay High Court had an occasion to decide a similar issue. The dispute *inter alia* before the Bombay High Court was whether the jurisdiction of the Authority under the Minimum Wages Act to direct the employer to pay the unpaid balance of minimum wages is exclusive so as to oust the jurisdiction of the Authority under the Payment of Wages Act to grant the same or similar relief. The Court observed that the remedies under both the Acts are inexpensive and speedy remedies for the workers. These remedies have a broad similarity. But a worker who is covered under the Minimum Wages Act is not confined to raise his claim only under Section 15 of the Act. This claim can equally be raised under Section 20 of the Payment of Wages Act. This is because Section 24² of the Minimum Wages Act specifically bars

² 24. **Bar of suits.** No Court shall entertain any suit for the recovery of wages in so far as the sum so claimed—

(a) forms the subject of an application under section 20 which has been presented by or on behalf of the plaintiff; or

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

(c) has been adjudged in any proceeding under that section not to be due to the plaintiff; or

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

jurisdiction of Civil Courts, but there is no bar of jurisdiction under the Payment of Wages Act. In paragraph 19 of the judgment it was stated as under:

“19. Certain provisions of the Minimum Wages Act show that the Legislature was aware, when the Act was passed, that some of the workers covered by the Minimum Wages Act may also be covered by the Payment of Wages Act. Section 12 read with section 30(2)(d) of the Act provides for rules regarding deductions that may be properly made by an employer from the wages of the employee. Sub-section (2) of section 12 provides that nothing contained in section 12 shall affect the provisions of the Payment of Wages Act. Again, section 14 authorizes the fixing of overtime rates of wages and sub-section (2) of that section provides that "nothing in this Act shall prejudice the operation of the provisions of section 59 of the Factories Act." The provisions contained in section 12(2) and section 14(2) were unnecessary if some workers were not likely to be covered both by the Minimum Wages Act and the Payment of Wages Act. Even so, while providing in section 24 that no Court shall entertain any suit for the recovery of wages in certain cases, no similar bar was prescribed in respect of the jurisdiction of the Authority under the Payment of Wages Act to entertain applications in accordance with the provisions of that Act.”

14. It was then stated as under:

“.....In the case before us, once the employee has performed his part of the contract, the minimum wages due to him are, in our opinion, a debt due from the employer. This is all the more so because, in the case of workers whose contractual wage is less than the minimum wage, the term in the contract relating to wages is null and void by virtue of section 25 of the Minimum Wages Act, and must be deemed not to exist. It cannot, under the circumstances, be held that the right of the worker to receive the minimum wages is only a right to the remedy provided by section 20 of the Act, and is not capable of being dissociated from the remedy.”

15. The Division Bench, therefore, held that under the circumstances, the petitioners' application before the Authority under the Payment of Wages Act was maintainable.

16. In the case before us, we need not even have to go into all these aspects as the same officer has been designated as an Authority to decide the claims of the workers under the Payment of Wages Act as well as under the Minimum Wages Act. Therefore, in any case, the matter should have gone to the same Authority whether a claim is raised under the Payment of Wages Act or under the Minimum Wages Act, and to that extent the case of the writ petitioners/appellants that the Authority has no jurisdiction in the matter is actually misconceived. We may also note that the mechanism and process of deciding a claim is also similar in both the Acts and, therefore, in our considered opinion, the point of jurisdiction raised by the appellants is wholly misconceived.

17. Learned counsel for the appellants Mr. Bhati has heavily relied upon a judgment of the Apex Court in the case of ***Kanwar Singh Saini -Vs- High Court of Delhi*** reported in **(2012) 4 SCC 307**. Relying upon the aforesaid judgment learned counsel for the appellants would argue that when a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the performance of the rights has to be enforced in that specified manner alone.

The facts of the above case were that a decree had been passed by a Civil Court and there being hindrance in its execution, the trial Court referred the matter to the High Court under Section 10³ of the Contempt of Courts Act, 1971. It was

³ 10. **Power of High Court to punish contempts of subordinate courts.**—Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure

under these circumstances, when the matter reached the Apex Court, the Apex Court observed that the correct remedy was provided under the CPC itself and an application could have been filed under Order XXI Rule 32 CPC. It was in that context it was said that when a statute gives a right and provides a forum of adjudication of rights, remedy has to be sought only under the provisions of that Act and the performance of the rights has to be enforced in that specified manner. However, such is not the case before this Court. The facts of the present case are entirely different from the ones in the case which has been relied upon by the learned counsel for the appellants. We must also record the Payment of Wages Act as well as the Minimum Wages Act are both for the workers, who are in an unequal bargaining position while dealing with their employer. Both, the Payment of Wages Act as well as Minimum Wages Act are welfare legislations, which further the Directive Principles of State Policy. It is for this reason that this matter has to be examined from a much broader perspective and not from a narrow technical perspective, with which the learned counsel for the writ petitioners/appellants persuades us to do.

18. For the reasons stated above, we find absolutely no merit in this appeal. The appeal is hereby dismissed.

The amount of Rs.3,51,187.00, which has been directed by the authority to be deposited under the Payment of

and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

Wages Act if deposited by the appellants with the Registry of this Court, shall be forthwith released to the concerned authority to be distributed to the concerned workers and, in their absence, to their legal heirs under the Payment of Wages Act. The amount which has not been deposited so far shall be recovered from the writ petitioners/appellants along with 9% interest to be calculated from the date on which the order was passed by the Assistant Labour Commissioner. The authority shall be at liberty to invoke every means for the recovery prescribed under the Minimum Wages Act, or the Payment of Wages Act, including the one given under Section 17A of the Payment of Wages Act, to recover the amount which is yet to be deposited by the appellants.

Registrar General is directed to forthwith communicate this order to the concerned authority under the Payment of Wages Act for implementation of this order.

JUDGE

CHIEF JUSTICE

Comparing Assistant