IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 4134 of 2006 (P)

PETITIONER(S):
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1. **K.S.NANDAKUMARI, NAVNEETH, VADAKKEVILA, KOLLAM 10.**

2. **MADHUSOODHAN THAMPI, NAVNEETH, VADAKKEVILA, KOLLAM 10.**

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENT(S):

THE ASSISTANT LABOUR OFFICER, GRADE II, PUNALUR.

BY SRI P.V. ELIAS, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO.4134/2006

APPENDIX

PETITIONERS' EXHIBITS:

P1: COPY OF THE APPLICATION FILED BY THE RESPONDENT DATED 16.08.1999

P2: COPY OF THE OBJECTIONS FILED BY THE PETITIONERS DATED 12.03.2001

P3: COPY OF THE REPLICATION FILED BY THE RESPONDENT DATED 11.09.2001

P4: COPY OF THE COURT OF THE COMMISSIONER OF WORKMEN'S COMPENSATION AND AUTHORITY UNDER THE MINIMUM WAGES ACT, 1948, KOLLAM IN M.W.A. NO.6/2000

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.4134 of 2006

Dated this the 29th day of July, 2015

JUDGMENT

The 1st petitioner is the licensee and the 2nd petitioner is the Manager of a cashew factory at Kollam, which is an establishment covered by the provisions of the Minimum Wages Act, 1948 (hereinafter referred to as 'the Act'). The Assistant Labour Officer, Punalur, the respondent herein, who is the competent authority under Section 2(c) of the Act conducted an inspection in the aforesaid establishment on 15.07.1999. On a finding that the employees in the establishment were not paid minimum wages for the period from 01.01.1999 to 14.01.1999, the 1st respondent filed Ext.P1 petition before the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Kollam, who is the authority under Section 20(2) of the Act to entertain claims made by the employees, regarding payment of minimum wages. Ext.P1 application filed in the prescribed format is dated 16.08.1999.

2. On receipt of notice in Ext.P1 application, the petitioners filed Ext.P2 objection contenting, inter alia, that the

claim in Ext.P1 application should have been made within a period of six months from the date on which the minimum wages or other amount become payable, i.e., within a period of six months from 01.01.1999 to 14.01.1999. Wages are being paid to the employees on every Saturday. Hence wages for the period from 04.01.1999 to 09.01.1999 became payable on 07.01.1999 and that for the period from 11.01.1999 to 14.01.1999 became payable on 16.01.1999. So the period of six months as embodied in the first Proviso of Section 20(2) of the Act has to be reckoned from 02.01.1999, 09.01.1999 and 16.01.1999 and the period of six months on 02.07.1999, 09.07.1999 and 16.07.1999. Therefore, Ext.P1 application filed on 16.08.1999 is barred by limitation and not maintainable under law. The petitioners would also contend that, there was labour unrest in the factory during the aforesaid period, as a result of which the workload of the respective employees could not be calculated.

3. On receipt of Ext.P2 written objection, the respondent submitted Ext.P3 statement in replication. Regarding the objection that Ext.P1 claim made on 16.08.1999 is barred by limitation, the respondent contended that, as per the first Proviso to Section 20(2) of the Act such an application has

to be presented within a period of the six months from the date on which the minimum wages or other amount become payable. Going by the second Proviso to Rule 20(2) any such 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 such application within such period. In Ext.P3 replication, the respondent has categorically stated that, Ext.P1 claim filed on 16.08.2000, under Section 20(2) of the Act, is consequent to an inspection conducted on 15.07.1999 in the factory and the follow up action taken thereon. Therefore, the respondent would contend that, when Ext.P1 application is based on an inspection conducted by him in discharge of his statutory duties, the same cannot turned down on the ground that it is not one filed within six months from the date on which the minimum wages or any other amount becomes payable. The respondent has also pointed out that, going by the second Proviso to Section 20(2), the authority can entertain an application even after the period of six months and as such, the contention that Ext.P1 application is barred by limitation cannot be entertained.

4. The Commissioner, after considering the rival contentions passed Ext.P4 order by which the contention raised

by the petitioners that Ext.P1 claim is barred by limitation was repelled. The Commissioner has also found that, the employees concerned were not paid the minimum wages for the period in question and as such, the petitioners herein are liable to pay a sum of Rs.31,004.67 towards minimum wages for the said period. By Ext.P4 order the petitioners herein were directed to pay to the employees or deposit before the respondent a sum of Rs.31,004.67 being arrears of wages payable to 150 employees as per the list, within thirty days from the date of receipt of the order, failing which steps will be initiated against the petitioners for realising the aforesaid amount, as contemplated under the provisions of the Act. It is aggrieved by Ext.P4 order passed by the Commissioner, the petitioners are before this Court in this writ petition seeking a writ of certiorari to quash Ext.P4.

5. I heard the arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

6. The sole issue that arises for consideration in this writ petition is as to the legality or otherwise of Ext.P4 order passed by the Commissioner.

7. The fact that, Ext.P1 application dated 16.08.1999

under Section 20(3) of the Act was made based on an inspection conducted by the respondent on 15.07.1999, in which it was found that the employees in the establishment were not paid minimum wages for the period from 01.01.1999 to 14.01.1999, is not in dispute. But the aforesaid fact was not specifically pleaded in Ext.P1 claim made by the respondent. When the petitioners filed Ext.P2 objection raising the question of limitation, the respondent submitted Ext.P3 replication, in which it has been categorically stated that, Ext.P1 claim petition is based on such an inspection conducted on 15.07.1999 and as such the claim is not barred by limitation.

8. Admittedly, it was in exercise of the powers under the Act, the respondent conducted inspection in the establishment and found that the employees were not paid minimum wages for the period from 01.01.1999 to 14.01.1999. The Minimum Wages Act is a welfare legislation which was enacted to provide for fixing minimum wages in certain employments. Going by sub-section (2) of Section 20 of the Act, where the employee has any claim of the nature referred to in sub-section (1) of Section 20, 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) of Section 20, may apply to such Authority for a direction under sub-section (3). The first Proviso to sub-section (2) of Section 20 makes it abundantly clear that, every application under sub section (2) of Section 20 shall be presented within six months from the date on which the minimum wages or other amounts become payable. In cases in which the application under sub section (2) of Section 20 is being made by the employee himself or any legal practitioner or any official of the registered trade union authorised in writing to act on his behalf, the aforesaid period of six months can be reckoned from the date on which the minimum wages or other amount become payable. But, in the case of a claim being made by the Inspector, who is the competent authority under the Act, after inspecting the registers and records maintained in the establishment under Section 18 of the Act, in exercise of his powers under Section 19 of the Act, such period of six months should be reckoned from the date on which non-payment of minimum wages was detected in the inspection conducted in the establishment. In such cases, for the limited purpose to entertain a claim made by the Inspector concerned under Section 20(3) of the Act, the date on which the inspection was conducted by the Inspector concerned should be taken as the date on which the minimum wages or other amount become payable. Otherwise, it would defeat the very object of the Act, which is a welfare legislation meant to ensure payment of minimum wages in certain employments.

9. In **Suja Issac v. Deputy Labour Commissioner (2014 (4) KLT 228)** it was held that, the powers under Section 20(3) of the Minimum Wages Act conferred on the authority under Section 20(1) of the Act is for the purpose of ensuring compliance by the employer with the various rates fixed under the Act and if any attempt to make the payment at rates lower than that prescribed under the Act, the employee has a right to invoke the aid of that authority appointed under Section 20(1) of the Act. It was held further that, the purpose of making this provision is to see that an employer did not contumaciously refuse to implement the provisions of the Minimum Wages Act, as non-payment of wages notified under the Act will result in forced labour prohibited under Art.23 of the Constitution of India. Paragraph 17 of the judgment reads thus:

> “**17.** Section 20(3)(i) of the Act enables the Authority in

the case of payment of wages less than the minimum rates of wages to direct compensation to be paid, as the Authority may think fit, not exceeding ten times the amount of such excess. A reading of this clause shows that there is a discretion in the Authority to award the compensation or not and if it decides to award compensation it is within its discretion to decide what amount it should award as compensation. This discretion has to be exercised judicially. The purpose of making this provision is to see that an employer did not contumaciously refuse to implement the provisions of the Minimum Wages Act, as non-payment of wages notified under the Act will result in forced labour prohibited under Article 23 of the Constitution of India."

10. In such circumstances, I find absolutely no reason to interfere with Ext.P4 order passed by the Commissioner. The reasoning of the Commissioner in Ext.P4 is neither perverse or patently illegal, warranting an interference of this Court under Article 226 of the Constitution of India.

11. It is pertinent to note that, neither the employees who are the beneficiaries of Ext.P4 order passed by the Commissioner nor any official of their registered Trade Union are made parties to the Writ Petition. Following the judgment of the Apex Court in **Prabodh Verma v. State of Uttar Pradesh**

(1984 (4) SCC 251) this Court held in Suja Issac's case (supra) that, the challenge made against the order passed by the authority under the Minimum Wages Act, by which certain amounts are ordered to be disbursed to the employees, cannot be entertained by this Court when none of those employees are made parties to the Writ Petition. On that ground as well, this Writ Petition is liable to be dismissed.

In the result, the Writ Petition fails and the same is dismissed. No order as to costs.

sd/-
ANIL K. NARENDRAN,
JUDGE

JV