

HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.1945 of 2003

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ORDER:

This writ petition is filed challenging order of second respondent dated 03.01.2003 in P.W.No.08 of 2002.

2. Brief facts leading to this writ petition are as follows:

First respondent herein moved the Assistant Commissioner of Labour (for short "lower authority"), Ananthapur, invoking the provisions of Payment of Wages Act, 1936 (for short "the Act"), complaining that petitioner herein has not paid the settled resignation amount, which is Rs.35,977/- as per Rules. The lower authority conducted enquiry and as no counter is filed on behalf of petitioner herein, decided matter on ex parte basis and directed petitioner herein to pay a sum of Rs.35,977/-, which is due to first respondent herein together with penalty of equal sum, thus directed to pay a total sum of Rs.71,954/-. Aggrieved by the said order, petitioner preferred present writ petition contending that lower authority under the Act, has no power to impose such penalty and as per Section 15 of the Act, it can impose only a sum of Rs.25/- as penalty as per law existing as on the date of order, therefore order of the lower authority is illegal and without power.

3. Heard both sides.

4. Advocate for writ petitioner submitted as per Section 15 (3) of the Act, if there is a delay in payment of deducted wages the authority has power to order compensation not exceeding ten times of deducted amount but in the case of delay in payment the authority can order compensation not exceeding Rs.25/-, therefore ordering compensation by way of penalty of Rs.35,977/- is not legal.

5. Advocate for first respondent submitted that lower authority has rightly imposed penalty and that there is no illegality in the order of lower authority and

that writ is liable to be dismissed.

6. Now it may be useful to refer to Section 15 of the Act, which deals with :

Section 15 of the Payment of Wages Act, 1936 :-

*15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.—*⁶¹ [

(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.]

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other 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 ⁶² [twelve months] from the date on which the deduction from the

wages was made or from the date on which the payment of the wages was due to be made, as the case may be: Provided further that any application may be admitted after the said period of ⁶² [twelve months] when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

⁶³ [(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees: Provided that a claim under this Act shall be disposed of as far as practicable within a period of three months from the date of registration of the claim by the authority: Provided further that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just manner: Provided also that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or

(c) the failure of the employed person to apply for or accept payment.

7. On a plain reading of Clause (3) of Section 15 of the Act, it is clear that only in the case of delay in payment of deducted wages, the authority has power to order compensation not exceeding ten times the amount deducted but in case of delay in payment of amount due to the employee the compensation or penalty is only Rs.25/- as on 2003 and the lower authority without looking

into this provision, imposed penalty applicable to the belated payment of deducted wages. But here, it is not case of deducted wages and it is only belated payment of resignation benefits. Admittedly, first respondent has received the settled amount of Rs.35,977/- which is settled benefits on resignation and as the lower authority has no power to impose penalty of equal amount in respect of delayed payment, the order of lower authority has to be set aside to that extent in imposing penalty.

8 . For these reasons, this Writ Petition is disposed of holding that Authority wrongly imposed penalty of equal amount and that part of order is set aside. No costs. Miscellaneous petitions, if any pending, in this writ petition shall also stand closed.

S. RAVI KUMAR, J

Date: 01-12-2015.

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