

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.19586 of 2011

ORDER:

This writ petition is filed questioning the order dated 03.05.2011 passed by the 2nd respondent in I.A.No.5 of 2010 in M.W.Case No.53 of 2008, wherein the objections raised by the petitioner in the said I.A. were disallowed.

The case of the petitioner is that the 1st respondent issued G.O.Ms.No.33 dated 27.08.2002 in modification of G.O.Ms.No.40 dated 23.05.2001 stipulating that before initiating any steps for non-payment of minimum wages, the concerned authority has to inspect the records of the employer by obtaining approval or permission from the competent authority, i.e., the Joint Commissioner of Labour. Conducting of the inspection and obtaining approval from the competent authority are pre-requisite essentials as per the procedure laid down under G.O.Ms.No.33 dated 23.05.2001. Since the 3rd respondent without fulfilling conditions in G.O.Ms.No.33 dated 23.05.2011, filed an application and the same is registered as M.W.Case No.53 of 2008, the petitioner filed I.A.No.5 of 2010 to decide the maintainability of M.W.Case as a preliminary issue. But the 2nd respondent, without considering the objections of the petitioner in I.A.No.5 of 2010, dismissed the said application. Against the same, the present writ petition is filed.

Counter is filed by the 2nd respondent contending that the I.A. was filed with two objections, i.e., (a) that inspection of records was not done before filing of the case, (b) the prior approval of the competent authority was not taken as per the instructions contained in G.O.Ms.No.33. The findings were clear on both the issues. When no registers were produced on demand, the signatures of the workers were obtained and then the signature of the Manager was also obtained. This clearly establishes the fact that the said workers were present and were being paid the amount as stated by them. On the second

objection, it was pointed out that the Inspectors were instructed by the Assistant Commissioner of Labour, Karimnagar, who is the next higher authority. The said order itself was given based on a complaint from Cinema Karmika Sangham, Karimnagar who had represented that Minimum Wages were not being paid by the respondents' establishment. While it is true that squads can be formed by the Joint Commissioner of Labour, Warangal as per G.O.Ms.No.33, it is incumbent upon the employer to pay the statutory minimum wages to the workers. Therefore, when there is a complaint of non-compliance of the statute, then it is the duty of the Officers to take steps to detect the irregularity and take remedial measures. In the light of the above, the I.A. was dismissed and the main case was posted for hearing.

Heard learned counsel for the petitioner and learned Assistant Government Pleader for Labour.

The 2nd respondent disallowed the objections in the impugned order. In the counter, it is clearly stated that when no registers were produced on demand, the signatures of the workers as well as the Manager were obtained. This clearly shows that the inspection was done. It is also stated in the counter that the Assistant Commissioner of Labour, Karimnagar, who is the next higher authority, instructed the Inspectors. In view of the same, *prima facie*, it cannot be said that the procedure is not followed as envisaged under G.O.Ms.No.33 dated 23.05.2001. More so, the main case is pending and this aspect can be gone into the main case after leading evidence, instead of deciding the same at the threshold and the 2nd respondent can consider the objections filed by the petitioner in the main case after filing counter and after leading evidence. In view of the same, I do not find any merit in this writ petition.

Accordingly, this writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

12.06.2015

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