

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.14551 of 2012

Date of Decision: 18.09.2015

Management Vaish Technical Institute, Rohtak & anr. ... Petitioners

Versus

State of Haryana & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Mukesh Mittal, Advocate,
for the petitioners.

Mr. Surinder Gandhi, Advocate,
for respondent No.4.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The jurisdictional facts for invoking the jurisdiction of the authority under the Minimum Wages Act, 1948 (hereinafter referred to as 'the Act') stand satisfied in this case and I would be loathe to interfere.

The petitioner-Institute is a technical institution which runs a hostel providing services to the students for which workers of different hues are engaged to cook, wash, sweep and wait upon students so that they can pursue their academic careers and not worry about the bare necessities of life. The respondent-workman was a helper. The petitioner-institution receives grant-in-aid but the hostel facility is self-financed, which means the expenses are borne by the student community to keep it fed.

Educational institutions such as universities and technical colleges fall in the broad spectrum of 'industry' by applying the triple test in **Bangalore Water Supply vs. R. Rajappa & ors.**, AIR 1978 SC 548

to mean a systematic activity organized on by co-operation between the employer and its employees for the production or distribution of goods and services to satisfy human wants and wishes qualifies as industry.

It is argued by the learned counsel that hostels run in educational institutions do not qualify as an industry and minimum wages law cannot be applied to workers employed in the hostel or mess facilities since the subordinate staff play a minor or insignificant role in the process of imparting education. Permitting the insignificant role of the subordinate staff to lend the colour of industry is unreasonable. The main activity is teaching which is beyond the pale of industry and the incidental activities are not severable. This was the position in **University of Delhi v. Ram Nath**, AIR 1963 SC 1873 but that law no longer holds the field since the decision has been overruled in **Rajjapa** by affirming the decision in **Corporation of the City of Nagpur v. Its Employees**, 1960 SCR (2) 942: AIR 1960 SC 675 which inter alia held the Education Department of the Nagpur Corporation to be industry. Thus the ruling in **Rajjapa** revived the pre 1962 law by overruling the post 1962 decisions of the Supreme Court. Krishna Iyer, J. remarked in **Rajjapa** that 'education is not merely industry but the mother of industries'.

Nevertheless, the authority under the Act in the impugned order noticed the Haryana Government Labour Department notification No. 3/42/83-3 Lab.(1) to (47) dated 1.3.2002. The notification inserted entry 43 in the Schedule 2 of the MW Act which covers private coaching classes, schools including nursery schools and technical institutions as scheduled employments. Doubtlessly, the petitioner-institution is covered

by the MW Act and is statutorily liable to pay minimum wages to the workers in the hostel run by the management even though the source of income to run the hostel mess facility is derived from student fee. The petitioner becomes statutorily and vicariously liable under the statute and cannot contract out of the law and disclaim its liability towards the workman and other workers running mess facilities and shying from paying them the minimum rate of wages fixed from time to time by the mechanism provided by the MW Act. For these reasons, I would not disturb the findings recorded by the Authority under the MW Act and would affirm the same.

The other argument of the learned counsel for the petitioner is that the application was presented under Section 20(2) of the Act, which prescribes the period of 6 months to prefer such applications counted from the date on which the minimum wages became payable and therefore, the said application was not maintainable as it was barred by time. First proviso to sub-section 2 of Section 20 of the Act provides that every application shall be presented within 6 months from the date on which the minimum wages become payable. However, the second proviso of the same sub-section confers jurisdiction on the authority to admit an application after the period of 6 months when the applicant satisfies the authority that he/she had sufficient cause for not making the application within the period. In this way, the first proviso is restrictive while the second proviso relaxes the rule but does not prescribe an outer limit for presentation of applications. Therefore, I would not agree with the contention of learned counsel that the application is barred by time so

long as the authority has considered the issue and has entertained the application on being satisfied on the reasons shown which had led to the delay.

The last question for consideration is as to what relief is to be granted to the workman on account of under payment of minimum wages fixed by the Deputy Commissioner of the District where the institution falls activated by entry 43 of the Schedule. The authority has found a debt of Rs.81, 497.33 paise in favour of the workman and against the petitioner. This amount is however disputed by the petitioner-Institution when they say that the amount can be no more than Rs.67,583/-. The authority has believed the calculation of the workman as the correct one. However, in case, there is a factual error in the calculation then either of the parties would be at liberty to apply to the authority under the Act to rectify the order if it is demonstrably incorrect by the calculator.

In these circumstances, this Court does not find any palpable legal infirmity or an error apparent on the face of the record or in the impugned order passed by the authority which is held to be legal and valid and does not call for any interference. The amount of Rs. 81,497.33/- deposited with the authority will be disbursed to the workman including the balance amount within two months from the date of receiving a certified copy of this order.

No merit. Dismissed.

(RAJIV NARAIN RAINA)
JUDGE

18.09.2015
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