

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.14751 of 2015 (O&M)
Date of Decision: 31.08.2015

M/s Balaji Bhatta Company

... Petitioner

Versus

Authority under the Minimum Wages
Act and others

... Respondents

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

Present: Mr. Aayush Gupta, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.

This petition filed under Article 226 and 227 of the Constitution of India is directed against the order passed by the Authority under the Minimum Wages Act, 1948 ('the Act') awarding a sum of Rs.1,06,154/- in favour of the respondent husband and wife, both brick-kiln workers and against the petitioner as were found due towards unpaid minimum wages for work done for the employer in a claim filed in a single application presented before the Authority under Section 20 read with 21 of the Act.

In the statements of the respondent workers recorded in the witness box they deposed that they had worked in M/s Balaji Bhatta Company from October 18, 2008 to June 2009 and during the period served with the brick-kiln, its owner, their employer, had paid them less than the

minimum rate of wages fixed by the competent authority. The outstanding amounts were quantified by them in the application under Section 20 of the Act for work performed for the employer. In the deposition they supported their version in the claim application which remained unshaken in the cross-examination. Accordingly, the workers had discharged the burden on them to prove short payment of minimum wages earned during employment. Then the onus shifted on the brick-kiln owner to refute the claim but it was unable to discharge the onus by producing documentary evidence to the contrary. The petitioner did not produce its best evidence to establish payments made to workers at the brick-kiln recorded in the wages register etc. and to show that the names of the respondents were not found mentioned therein. Instead, the petitioner produced Balkar Singh, brother of respondent-2, in the stand to depose against his brother and sister-in-law that they had not worked in the brick-kiln. It is not disputed that management witness Balkar Singh worked in the same brick-kiln. No other co-worker was produced by the management to support and substantiate its version in defence, which is by itself a suspicious circumstance which cannot be down played and relief denied on such a peculiar circumstance which does not deserve to be sufficient evidence in rebuttal of the claim of the husband and wife.

It appears rather unnatural for a brother to step into the witness box to make such a statement against the interest of his brother and sister-in-law unless he was compelled by the brick-kiln owner to speak against them for reasons that are not hard to imagine in the world where each man is to himself protecting his own livelihood and not putting it at risk which

might entail sudden loss of employment or fear of it if he were not to depose in favour of his employer facing litigation. I would say nothing more and would rather go by the findings of fact recorded by the authority after appreciating the evidence on record and holding that work was performed by the claimants and they were paid less than the minimum rate of wages for the period worked. The authority below has rightly placed no faith or reliance on the statement of Balkar Singh.

The inquiry in writ proceedings under Article 226 of the Constitution is very narrow in reviewing judicially the work of Tribunals, the parameters of which are indicated and explained by the Constitution Bench of the Supreme Court in **Syed Yakoob vs. K.S. Radhakrishnan**, AIR 1964 SC 477 besides a large number of judgments on the proposition which have been guiding courts down the ages.

The learned counsel for the petitioner has argued on point of maintainability of the application under Section 20 of the Act referring to the written statement filed before the Authority wherein an objection was taken that employment in a brick-kiln is not a scheduled employment under the Act and therefore the application would not lie before the forum.

In this regard, the Notification dated October 11, 2002 issued by the Haryana Government may be adverted to put paid to the contention which proposes to increase the minimum rates of wages in the brick-kiln industry in Haryana. The Notification reads:-

“No. 3/101/84-3Lab. -In exercise of the powers conferred by Clause (b) of Sub-section (1) of Section 5 of the Minimum Wages Act, 1948 (Central Act 11 of 1948) and all other powers enabling him in this behalf,

the Governor of Haryana hereby publishes its proposal of minimum rates of wages (all inclusive) in respect of employment in Brick-kilns in the State of Haryana as mentioned in the Schedule given below proposed to be revised with effect from 1st September, 2001, which were previously revised vide Haryana Government, Labour Department Notification No. 3 (101) 84-3 Lab. Dated 18th July,1995.”

After considering objections and representations of brick-kiln workers through the Haryana Pradesh Bhatta Mazdoor Union and Lal Jhanda Bhattha Mazdoor Union, Haryana and the union of brick-kiln owners, the proposal was accepted by the Governor of Haryana vide Notification dated June 10, 2003 and the minimum rate of minimum wages were fixed with effect from October 11, 2002 for the brick-kiln industry. Therefore, the objection as to maintainability raised by the petitioner is not tenable. In this regard reference may be had to the decision of the Division Bench of this Court in CWP No.10092 of 2003 titled **Sudhir Kumar Yadav And Ors. vs The State Of Haryana and Ors.** decided on December 11, 2007 where challenge to both the notifications was repelled.

However, I notice from the impugned order that the authority records that minimum rates of wages have been [further revised] notified by the Haryana Government vide letter No.10664-774 dated March 31, 2009 @ Rs. 81.32 paisa per day for this category of workers. The petitioner has not adverted to the said letter in the writ petition nor has annexed the copy of the same for the perusal of the court to examine its contents.

This being the factual position I would not interfere on the second contention as to maintainability of the application as interference on

facts is not warranted in exercise of extra ordinary writ jurisdiction. There is another reason why I would not interfere at all is that the impugned order passed by the Authority does substantial and social justice on the facts in protecting the interest of workers.

For the reasons recorded above, this Court finds no life in the petition which may warrant any further consideration of the matter and therefore commend that the petition deserves to be dismissed in limine.

Accordingly, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

31.08.2015
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