

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

Civil Writ Petition No.17771 of 2015

Date of decision: 26.8.2015

Rakesh and another

... Petitioners

Versus

The Authority under the Minimum Wages Act and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Diwan S. Adlakha, Advocate,
for the petitioners.

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

RAJIV NARAIN RAINA, J. (Oral)

A serious question of jurisdiction and maintainability of an application has arisen in this case arising out of a order passed by the authority under the Minimum Wages Act, 1948 [in short, “the Act”] directing the petitioners to pay a sum of ₹ 1,04,800/- as wages to respondents No.2 to 5 who claim to be farm labour and who had worked on the agricultural lands of the petitioners. Claims under the Act are filed under Section 20 of the Act which reads : -

20. Claims.- (1) The appropriate Government may, by notification in the Official Gazette, appoint [any Commissioner for workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any] other officer with experience as a judge of a Civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out

of payment of less than the minimum rates of wages [or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the overtime rate under section 14,] to employees employed or paid in that area.

(2) [Where an employee has any claim of the nature referred to in sub-section (1)], 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), may apply to such Authority for a direction under sub-section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages [or other amount] became payable:

Provided further that any 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 the application within such period.

[(3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct-

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees;

and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal

of the application.

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered-

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or

(b) if the Authority is not a Magistrate, by any Magistrate, to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898)."

The claim before the authority under the Act was not a claim for making payment of minimum wages or any other claim falling in Section 20 but was for payment of wages for the work done by the 3 of the childrens of the farm labour couple and some amount for expenses towards milk. The authority under the Act has allowed the application on 3rd July, 2015 while it had no jurisdiction to decide the matter and, therefore, the order deserves to be set aside for want of jurisdiction. However, the claim in the application would fall within the jurisdiction of the Labour Court under Section 33-C(2) of the Industrial Disputes Act, 1947 which will be the

appropriate Forum to decide the claim. The claim ensued a pre-existing right if the money due is proved. The workers have been misguided to claim the amounts allegedly due in a wrong forum. However, allowing this petition would leave the workers in a lurch and may cause them untold suffering as they may not know what to do next. Even to issue notice on this petition would put poor people to a great expense and therefore, in exercise of power under Section 24 of the Code of Civil Procedure, 1908, this Court orders transfer of the file of application No.3 of AMW Act of 2013 instituted on 29th January, 2013 from the board of the authority under the Minimum Wages Act, 1948-Munish Kumar, HLS-cum-Assistant Labour Commissioner, Fatehabad to the board of the Presiding Officer, Labour Court, Hisar with a direction to the Labour Court to treat the application as an application under Section 33-C(2) of the Industrial Disputes Act and to adjudicate the claim after issuing notice to the respondent-workers. A copy of this order be sent to the authority that passed the impugned order and to the private respondents No.2 to 5 at the address mentioned in the application [P-3]. This order be also sent in Hindi translation to respondents No.2 to 5 with the help of Google Translate.

Resultantly, this petition is allowed in the terms and directions as aforesaid.

(RAJIV NARAIN RAINA)
JUDGE

August 26, 2015
Paritosh Kumar