

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

**CWP No.7870 of 2012 (O&M)
Date of decision: 13.03.2015**

Chunni Lal and others

... Petitioners

Vs.

The Deputy Commissioner, Sirsa and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Satbir Gill, Advocate
for the petitioners.

Mr. Gagandeep S.Wasu, Addl.A.G, Haryana.

Mr. Ajay Kamboj, Advocate
for respondents No.3 to 6.

AMIT RAWAL J.

The petitioners have approached this Court by invoking extra ordinary jurisdiction under Article 226 of the Constitution of India, for issuance of a writ in the nature of certiorari quashing the impugned order dated 17.10.2011 (Annexure P-5) passed by Authority under the provisions of Minimum Wages Act, 1948 (for short 'the Act'), whereby, the claim of the petitioners for grant of minimum wages under the Act amounting to ₹ 97,200/- approximately has been declined on the ground that their claim application bearing

No.11 dated 6.2.2011 was hopelessly time barred being filed after a lapse of 18 months, whereas, limitation to file the claim application as per proviso of Sub Section 2 of Section 20 of the Act, is six months.

The petitioners have claimed minimum wages on the premise that they had worked as agricultural labourers in the fields of respondents No.3 to 6 from 1.5.2008 to 31.10.2008 but the private respondents, ibid, denied the petitioners minimum wages and conciliation proceedings commenced from 15.7.2009 to 22.7.2009 failed to yield any fruitful result which necessitated the petitioners to file claim petition on 16.02.2011, before the prescribed authority.

The plea of respondents No.3 to 6 on the ground that there was no provisions for the authority to condone delay as the claim petition filed by the petitioners was not accompanied by an application seeking condonation of delay.

I have heard learned counsel for the parties and appraised the paper book and as well as Section 20 of the Act. For the sake of brevity, the same is reproduced herein below:-

“Section 20 in The Minimum Wages Act, 1948

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)."

From the perusal of Section 20 of the Act, it is evident that the competent authority has jurisdiction to condone the delay when the applicant satisfies authority, he had sufficient cause for not making the application within a period of six months. It was also incumbent upon the authority to give opportunity to the applicant and the employer being heard. In the instant case, competent authority

had not given any opportunity to the applicants to project their case with regard to sufficient cause of not making an application within a period prescribed under Sub Section 2 of Section 20 of the Act and proceeded to decide the matter summarily.

Mr. Satbir Gill, learned counsel appearing on behalf of the petitioners, during the course of arguments has handed over a copy of the order dated 7.12.2011 passed by the authority under the Minimum Wages Act, Circle Sirsa, where, the claim of the applicants therein, which was beyond the limitation was condoned. Relevant para of the said order is extracted herein below:-

“The applicants have claimed the less wages for the period from 1.5.2003 to 30.04.2004 and they have presented their claim 2.6.2006. The cause of action arise in favour of the applicants arose out on 30.4.2004 and as per the provisions of the Minimum Wages Act, application for difference wages must be filed within six months, however the limitation can be condoned on showing sufficient reasons. The claim of the applicants is filed out of delay of about two years. The Minimum Wages Act is welfare legislation and keeping this view, the claim of the applicants cannot be thrown out merely on the technical grounds of delay. Therefore, I condone the delay in filing the application and hold that the claim is maintainable.”

In the instant case, the authority ought to have given an

opportunity to the petitioners to explain the reasons for not filing the application for minimum wages under the Act.

Had the authority given an opportunity, applicants would have had an occasion to explain the reasons of not filing the petition and even after having the opportunity, in case, the applicants failed to explain the delay, the authority was within its right to dismiss the petition being barred by law of limitation.

In view of what has been observed above, order dated 17.10.2011 is set aside and the matter is remanded back to the authority and competent authority is directed to give an opportunity to the petitioners to explain by way of affidavit or application giving sufficient cause of not filing the petition within prescribed period of limitation. The authority shall decide the application by giving an opportunity to both the parties i.e. applicants or employer. In case, the applicants are able to give reasonable explanation not to filing the petition in time, the authority shall condone the delay and decide the claim of the petitioners on merits.

Accordingly, the writ petition is allowed.

There shall be no order as to costs.

(AMIT RAWAL)
JUDGE

March 13, 2015
savita