

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 09th February, 2015
Date of Decision: 04th March, 2015

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+ W.P.(C) 1526/2012

M/S. S. CHAUDHARY SECURITY AND
FIRE PROTECTION SERVICE (REGD.) Petitioner
Through: Mr. Tarkeshwar Nath, Advocate.

versus

GOVT. OF NCT OF DELHIRespondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. The petitioner seeks setting aside and quashing of order No.DLC(CD)/SE/2011/4429 dated 16.12.2011 issued by Labour Commissioner, Government of NCT of Delhi, Labour Department, Delhi by filing the present petition under Article 226 of the Constitution of India.

2. The short point for consideration in the present petition is the validity of the aforementioned order dated 16.12.2011, which according to the petitioner is violative of Section 6 of Payment of Wages Act, 1936 (hereinafter referred to as 'PW Act').

3. At the outset it would be pertinent to mention that none appeared on behalf of respondent on 16.10.2014 and 30.01.2015, two dates

preceding 09.02.2015 and hence, on 09.02.2015 the matter was reserved for judgment with liberty accorded to the respondent to file written submissions within one week of that date which they chose not to.

4. Learned counsel for the petitioner urged that the said notification/order dated 16.12.2011 contravenes provisions of Section 6 of the PW Act as it restricts the mode of payment of wages to the employees only through cheque or ECS whereas as per Section 6 of PW Act, the employees have a wider scope of getting the payment through cash or coin as prevalent. As per the said section the payment through cheque is permissible only after the consent of the workman in writing. The impugned order would not allow the employer to pay employee wages in cash. The employees who belong to far off areas and migrate to Delhi for their livelihood do not have permanent address or identity proof in order to get a bank account opened and in the absence of bank account they will be left with no option but to die of starvation in case the management is not allowed to pay them their wages in cash.

5. It was also contended by learned counsel for the petitioner that the impugned order is hit by Article 14, 16, 19 and 21 of the Constitution of India. The PW Act and the Minimum Wages Act, 1948 (hereinafter referred to as, 'MW Act') have specific provisions of penalty, which take care of the non-compliance of any of the provisions of these two enactments. The impugned order cannot override the provisions of the MW Act which is a special enactment

dealing with the topic of payment of minimum wages to the employees.

6. It was lastly contended by learned counsel for the petitioner that the employers are put to great inconvenience in view of the requirement as mentioned in the impugned order which requires the employers to facilitate opening of zero balance accounts of their employees. It would burden the employer with an additional responsibility which is not a requirement under the statute especially when the employees may be joining the employer on temporary, casual or ad-hoc basis.

7. I have given my thoughtful consideration to the submissions made by learned counsel for the petitioner and have also perused the material on record.

8. Before examining the pleas taken by learned counsel for the petitioner, it is necessary to consider the relevant provisions of Section 6 of the PW Act, which reads as under: -

“6. Wages to be paid in current coin or currency notes.- All wages shall be paid in current coin or currency notes or in both:

[Provided that the employer may, after obtaining the written authorization of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account]”

9. A perusal of the impugned notification/order dated 16.12.2011 shows that it was issued to ensure that all the employees are paid at

least the minimum wage notified by the government. The said notification was issued to redress the grievances of the employees relating to non-payment of minimum wages and complaints from the registered Trade Unions on the same subject and also to insulate the employers from such complaints. Clearly the very object of the said notification is to prevent the exploitation of the employees by the employers in cases where not even a basic minimum wage is paid to the employees. Payment through cheque or ECS modes ensures that a record of the payment is kept in a digital, electronic or paper mode which in most cases is either not done or becomes impractical in case the payment is made in cash. Instances of the employees being paid less and forced to acknowledge the payment of the entire amount are quite common. To avoid this, if the respondent has come up with a method which ensures that proper records are maintained and in the process, exploitation of employees by the employer is prevented, no fault can be found in such a process so designed.

10. The impugned notification/ order also goes in consonance with recent advancement in banking and financial fields which allow the records of payment being kept through electronic modes. Such methods of record keeping were not so advanced when the PW Act was enacted.

11. At this juncture, it is relevant to mention here that by the Act 29 of 1976 the current proviso was added to Section 6 of PW Act as it stood then. The said proviso provides that the employer may after

obtaining the written authorization from an employee pay him wages either by cheque or by crediting the wages in his bank account.

12. A perusal of the impugned notification/order shows that it allows the employers to make payment through cheque or ECS 'after obtaining authorization from the employees as per Section 6 of the Payment of Wages Act, 1936'. The relevant portion of the impugned notification reads as under: -

“5. All the employers are accordingly directed to make payment of wages to their employees by cheque or crediting the wages in the employees account through ECS after obtaining authorization from the employees as per Section 6 of the Payment of Wages Act, 1936. For this purpose, the employers are also directed to facilitate opening of a zero balance bank account of their employees.”

13. It is observed from the reading of the aforesaid that the said notification was issued after considering the provisions of Section 6 of the PW Act. The language used in the operative part of the said notification is drafted in terms of the proviso to Section 6 of the PW Act. The only difference between the two being that the proviso uses the word 'may' – empowering the employer to make the payment through cheque or depositing the same in the bank account of the employee only after his authorization in writing. On the other hand, the impugned notification uses the words, 'directed to make payment'. However, the impugned notification has made such a payment subject to the condition that the employer obtains an authorization from the employees as per Section 6 of the PW Act.

14. Although the operative part of the said order/notification begins with the mandatory terms, 'directed to make payment' however, they have to be read in the context that the employer must put his best endeavors to inform the employees that they are free to opt for an ECS or cheque mode of payment or they may continue to receive their payments in cash. Clearly, the employer cannot decide the mode in which the employees shall receive their wages. Even in the said notification the decision as to the mode of payment of wages solely rests with the employees which is observed from the fact that the directive words therein are followed by terms, 'after obtaining authorization from the employees as per Section 6 of the Payment of Wages Act, 1936'.

15. Both, PW Act and the impugned notification/ order are directed towards the benefit of the employees. In such a case, the employer has no right to object. In fact, both under the impugned order and Section 6 of the PW Act, the right to object lies with the person employed and that too in cases where the employer does not obtain the requisite authorization from the employees. The employees are free not to authorize the employers both under the PW Act and the impugned notification/ order.

16. If the employee agrees to avail the benefits provided under the said notification and opt for either an ECS or cheque mode of payment, a mere administrative inconvenience or additional responsibility of an employer in getting a bank account opened is not a valid enough ground to avoid the purpose which the said notification seeks to

achieve. Otherwise also, to keep the industrial sector abreast with the modern advancement in financial/banking and technology sector looked in the light of the fact that the said notification is aimed towards the purpose of ensuring that exploitation is minimized, this Court is of the opinion that even if there are any difficulties as pointed out by learned counsel for the petitioner, they may be borne to ensure that larger goal behind the impugned notification/ order is achieved.

17. The reliance placed by the learned counsel for the petitioner on '**National Federation of Telecom v. Bharat Sanchar Nigam Limited and Anr.**'(2007) 2 LLJ 877 Cal is misconceived. The judgment in the said case was given in the context where as per the notification impugned therein, if any employee chose to receive his wages in cash then his wages were subjected to a deduction of a proportionate tax namely, '*the banking cash transaction tax*'. In this context the court held that the respondent management could not compel the employees to receive their wages in cheque.

18. In the light of aforesaid discussion, the impugned order dated 16.12.2011 issued by the learned Labour Commissioner, Government of NCT of Delhi, Labour Department, Delhi is valid and harmonious to the scheme of the PW Act especially Section 6 thereof. Consequently, the present petition is devoid of any merit. The same deserves to be dismissed and is hereby dismissed.

(VED PRAKASH VAISH)
JUDGE

MARCH 04, 2015/hs