

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 1073 OF 2001

Devandra Narayan Ramdeo Mishra
Ravindra Gate, Shastri Nagar,
Kalyan, Dist : Thane

.. Petitioner

Versus

1 Krishna Processors,
Ravindra Corporation
Compound, Tata Power House,
Pisivali, Kalyan.

Ashok Maheshwari,
C/o. Krishna Processors,
Ravindra Corporation
Compound, Tata Power House,
Pisivali, Kalyan.

.. Respondent

Mr.Rahul Oak, for the Petitioner.

Mr.Jayesh Desai i/b Mr.K.S.Bapat, for Respondent Nos.1 & 2.

***CORAM: N.M. JAMDAR, J.
Wednesday, 13 January 2016***

Oral Judgment :

By this petition the Petitioner challenges the order dated 29 February 2000 dismissing his Application under Section 33(C)(2) of the Industrial Disputes Act, 1947.

2. The Petitioner filed an application (IDA) No.181 of 1987 seeking difference of minimum wages from 1978 till the date of filing of the application in 1997, from the Respondents. He also claimed the overtime wages. According to the Petitioner, he was working with the Respondents who were engaged in dyeing and printing of fabrics. The Respondents appeared in the proceedings and filed their Say. They contested the claim of the Petitioner. According to the Respondents since they were not carrying out the activity of dyeing and printing, they were not covered under the Minimum Wages Act and also that the Petitioner is not entitled to overtime wages. The Labour Court by the impugned order dismissed the application on the ground that there was a delay in filing the application in as much as the claim is for the period between 1978 to 1997. Thereafter the present petition has been filed.

3. I have heard learned counsel for the parties.

4. Mr.Rahul Oak, the learned counsel for the Petitioner is justified in making a grievance that the Application could not have been dismissed in toto on the ground that the claim from the period of 1978 to 1997 is belated. The learned Judge himself has observed that there is no limitation for filing proceedings under Section 33(C)(2) of the Act. The proceedings will have to be instituted within a reasonable period. The Respondents in their reply had not taken the ground that the claim of the Petitioner was barred by laches and Labour court *suo motu* on the ground of

delay has non-suited the petition. It is not that the Labour Court could not have *suo motu* taken the ground, but since the question was of reasonable period the Labour Court could have restricted the period of claim. In the present case, considering the facts and circumstances Labour Court could have considered the claim for atleast preceding five years.

5. As regards the merits, Mr.Desai, the learned counsel for the Respondents submitted that since the Respondents are not carrying out the activity of dyeing and printing but only the activity of standering and calendering, it is not in the ambit of the Minimum Wages, Act. The Respondent Unit is admittedly a processing unit for processing cloth and fabrics. Printing and dyeing is one of the activities for processing of clothes and fabrics. Presumption would follow that the Minimum Wages Act which is a beneficial provision would apply to such unit. It will be a defence to show that they do not carry out this particular activity, which is a normal activity included in processing of cloth and fabrics, to step outside the umbrella of the Act. Nothing is shown except bare words of the Respondents that they are not governed by the provisions of the Act.

6. As regards the claim of overtime wages is concerned, Mr.Desai for the Respondents is right in contending that this claim was not made by the Petitioner. The Petitioner has failed to prove that the Petitioner sent any letters claiming overtime wages and a specific question was put to the witness of the Respondent which

he has denied. The overtime wages are not automatically payable and it has to be established on evidence that the claimant is entitled to the same. The Petitioner has failed to adduce any such evidence.

7. Considering the passage of time, I am not inclined to remand the proceedings to the Labour Court even though, the Labour Court has decided the issue only of delay and as the learned counsel for the parties have addressed the matter on merits as well. I have already held that the claim of the Petitioner could be restricted for a period of five years.

8. Considering the overall aspects of the matter, I am inclined to dispose of the petition by directing the Respondents to pay the difference of minimum wages to the Petitioner, for a period of five years preceding the institution of the Application. Order accordingly. The claim of the Petitioner for overtime wages, is rejected. **Rule is made absolute** in above terms. No order as to costs.

(N.M.Jamdar, J.)