

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.30389 of 2008 and 8902 of 2009
+
M.P.Nos.1 of 2008 + 1 of 2010
in
W.P.No.30389 of 2008
and M.P.No.1 of 2009 in W.P.No.8902 of 2009

Pradeep Stainless India Pvt.Ltd.,
rep.by its Managing Director,
C-3, MEPZ,
Tambaram,
Chennai 600 045.

... Petitioner in both WPs

.Vs.

1. The Deputy Commissioner of Labour-II,
Authority Constituted under
the Minimum Wages Act,
D.M.S. Compound,
Teynampet, Chennai 600 006.
2. The General Secretary,
Chennai Yetrumathi Valaga
Uzhiyargal Matrum Pothu Thozhilalar Sangam,
No.11, M.E.S Road,
Kadapari, Tambaram,
Chennai 600 045.

... Respondents in both WPs

Prayer in W.P.No.30389 of 2008 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records of first respondent pertaining to M.W.I.A.No.6/2008 in the Minimum Wages case preferred by the 2nd respondent and quash the impugned order dated 22.09.2008 passed by the first respondent.

Prayer in W.P.No.8902 of 2009 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records pertaining to M.W.I.A.No.14/2008 in the Minimum Wages case preferred by the 2nd respondent and quash the impugned order dated 09.04.2009 passed the first respondent thereunder.

In both W.Ps :-

For Petitioner : Mr.Vijaynarayan
Senior Counsel for
Mr.K.V.Shanmuganathan

For Respondent-1 : Mr.R.Rajeswaran
Special Government Pleader

For Respondent-2 : Mr.N.G.R.Prasad,
Senior Counsel for
M/s.Row and Reddy.

COMMON ORDER

As the challenge made in both the Writ Petitions is to the orders passed by the Deputy Commissioner of Labour-II, the Authority, constituted under the Minimum Wages Act, (hereinafter, referred to as 'the Act') in M.W.I.A.No.6 of 2008 and M.W.I.A.No.14 of 2008, dated 22.09.2008 and 09.04.2009 respectively, in and by which, the Authority has condoned the delay of 14 months in one case, and 19 months in other case, in filing the Applications, claiming for minimum wages by the Union, these Writ Petition were heard together and disposed of by this Common Order.

2. The petitioner, M/s.Pradeep Stainless India Private Limited, is the Management, first respondent/Deputy Commissioner of Labour, is the Authority constituted under the Minimum Wages Act, as stated above, and the second respondent is the Union, and they shall be referred as such, throughout this judgment and order.

3. The facts, which are necessary for the disposal of these Writ Petitions are as follows:-

i) The petitioner, which is at present, a Private Limited Company, is said to have been a Partnership Firm initially, established in the year, 2001. In 2004, it has been incorporated under the provisions of Indian Companies Act. The workmen, who are concerned in these Writ Petitions, are 99 in numbers, and they filed Minimum Wages Claim Applications, through their Union before the Authority for payment of minimum wages for the period from 2001 to 2007. These two Claim Applications came to be filed before the Authority on 07.04.2008 and 22.08.2008 respectively, and since the Applications were filed beyond the period of limitation, prescribed under Section 20 (2) of the Act, Interlocutory Applications for condonation of delay in filing the Claim Applications were taken out by the

Union, as mentioned above. The said Interlocutory Applications were presented by the Union on behalf of its 99 workmen. In the said Applications, apart from stating various other things, the workmen stated that, only after they have joined the Union, they came to know that they were paid less wages, than what was notified by the Government in the notification, and when they made a request to the Management to pay the same, they have not been granted the minimum wages, and therefore, the matter was placed before the Authority to take up their case for adjudication by condoning the delay.

ii) The Management, who was impleaded as respondent therein, filed counter affidavits, contending that the Applications for condonation of delay ought to be dismissed, as there is no valid reasons for condoning the delay. Even as per the averments made by the Union, it is stated that the Union came into existence on 18.01.2007, and the Applications were filed before the Authority, after a delay of 14 months in one case and 19 months in other case. Further, it is stated that the Union has not given any reasons, which are either convincing, nor acceptable, to condone the delay, which remained unexplained. The respondent/Management placed reliance on the decisions of this Court in re (Saveetha Dental College and Hospitals Vs. Deputy Commissioner of Labour) reported in (2008) 2 Labour Law Notes 552, and in re (Tamil Nadu Merchantile Bank Ltd. Vs. Appellate Authority under the Shops Act reported in (1990) 1 L.L.N 457, in support of its contentions. Further, it is stated that ignorantia juris non excusat, and therefore, the Applications seeking to condone the delay should be dismissed.

iii) The Authority, after considering the entire factual matrix, took note of the decisions of the Hon'ble Supreme Court in i) (Collector Land Acquisition Anantnag and another Vs. Mrs.Katiji and others) reported in (1987) 2 S.C.C. 107, ii) (N.Balakrishnan Vs. M.Krishnamurthy) JT (1998) 6 S.C. 242 and iii) (State of Bihar and others Vs. Kameshwar Prasad Singh and another) JT (2000) 5 S.C. 389, and by applying the ratio decidendi, held that when the workmen have come forward claiming minimum wages, the Authority can examine the matter by condoning the delay. Challenging the said orders, the Management is before this Court by way of filing these Writ Petitions.

4. The learned Senior Counsel appearing for the petitioner/Management, after elaborately referring to the factual details, submitted that the decision of this Court in Saveetha Dental College and Hospitals case (referred supra) squarely covers the issue, as it was an identical case, wherein, the Court accepted the contention of the Management, and restricted the claim for minimum wages upto a period of six months, since the delay was inordinate and there was no

convincing reasons to condone the same. It is further submitted that, in the said case, identical reasons, as in the instant cases, were pleaded by the workmen. It is further submitted that the Hon'ble Supreme Court in re (Sarpanch Lonand Grampanchayat Vs. Ramgiri Gosavi) reported in A.I.R. (1968) S.C. 222 held that, under second proviso to Section 20 (2) of the Act, the Authority has a discretion to condone the delay in presenting the application, provided, sufficient cause for the entire delay is shown to his satisfaction, and this discretion, as like other judicial discretion, must be exercised with vigilance and circumspection, according to justice, commonsense, and sound judgement. It is further submitted that the said decision was also followed by the learned Single Judge of this Court in re (Rambal Ltd., Vs. The Deputy Commissioner of Labour II Cum Authority) reported in (2015) 2 C.T.C. 630. It is, therefore, submitted that the impugned orders passed by the Authority are liable to be set aside.

5. Per contra, the learned Senior Counsel appearing for second respondent-Union submitted that, in terms of Section 12 (1) of the Act, there is a duty, cast upon the Management to pay every employee, minimum rate of wages fixed by the Government in the notification, and non payment of the same, will entitle the workman to claim for minimum wages by filing Claim Application under Section 20 of the Act. It is further submitted that the Management should be aware of the minimum wages fixed by the Government in the notification issued from time to time, and there can be no defence raised by the Management for non payment of the minimum wages. Further, it is submitted that, in terms of second proviso to Section 20 (2), the Authority is empowered to take the application for adjudication after a period of six months from the date on which, wages became payable, on condition that sufficient cause has been shown for not making the application within the time prescribed under the Act.

6. It is further submitted by the learned Senior Counsel that the decision rendered by this Court in Saveetha Dental College and Hospitals case (referred supra) is distinguishable on facts, and except that decision, all other decisions on the point held that the delay has to be condoned. In the light of the above facts, the Management is bound to pay the minimum wages, as per the notification issued by the Government. It is further submitted that the decision in Saveetha Dental College and Hospitals case (referred supra) was referred to, by the Hon'ble Justice S.Nagamuthu, in Writ Petition No.24640 of 2006, dated 23.07.2008, in the case of (The Management M.N.M.Jain Engineering College Vs. The Dy. Commissioner of Labour and another) wherein, the challenge made by the Management to the order condoning the delay, was rejected. Further, reference has been made to the decision of the Hon'ble Judge K.Chandru, J., in the case of (The Management of Ace Concrete Vs. The Dy.

Commissioner of Labour and another) in W.P.No.33738 of 2007, dated 25.10.2007, wherein, it is held that, apart from the claim for minimum wages under Section 20 of the Minimum Wages Act, the workman can also lay a claim before the Forum under Section 33 C (2) of the Industrial Disputes Act, 1947, and if such claim is made, then, there is no limitation, prescribed. Thus, the learned Judge, after pointing out this aspect, held that liberal approach has to be adopted in such cases.

7. The learned Senior Counsel also referred to the decision of this Court in the case of (Management of Bailey Hydro Power Pvt. Ltd., Vs. The Deputy Commissioner of Labour and another) in W.P.Nos.16970 and 16971 of 2008, dated 10.12.2008, and submitted that in the said case, this Court took into consideration the intra Court decision referred by the learned Senior Counsel for the petitioner in the case relating to Tamil Nadu Merchantile Bank Ltd. (referred supra) yet, rejected the case of the Management by taking into consideration the decisions of the Hon'ble Supreme Court in (N.Balakrishnan Vs. M.Krishnamurthy) and (State of Bihar and others Vs. Kameshwar Prasad) referred supra, and the decision of the Hon'ble Division Bench of this Court in re (Arun Alexander Lakshman Vs A.P.Vedavalli) reported in (2007) 4 C.T.C. 449. On the above submissions, the learned Senior Counsel seeks to sustain the impugned orders passed by the Authority.

8. Heard Mr.Vijaynarayan, the learned Senior Counsel appearing for Mr.K.V.Shanmuganathan, the learned counsel for the petitioner-Management, Mr.N.G.R.Prasad, the learned Senior Counsel for M/s.Row and Reddy, the learned counsel for the second respondent-Union, and perused the materials placed on record.

9. Now, the question, which falls for consideration in the present cases is,

"Whether this Court has to interfere with the discretion exercised by the first respondent/Authority in condoning the delay, in filing the applications for minimum wages ? "

10. Minimum Wages Act, 1948 was enacted to prevent exploitation of the workmen, and for that purpose, its aim is fixation of minimum wages, which the employer must pay, though the Act does not make a classification for that purpose of application of its provisions, rather, it leaves it to the State Government to seek and classify persons/objects/transactions/localities and things for special treatment, and set out the policy for its guidance in the exercise of its authority in the matter of selection: (Kathi Raning Rawat Vs. State of Saurashtra A.I.R. (1952) S.C.123).

11. Thus, admittedly, the Minimum Wages Act, is a labour welfare legislation, and Section 12 of the Act deals with Payment of minimum rate of wages, and under sub-section 1 of Section 12, where, in respect of any scheduled employment, a notification under Section 5 is in force, the employer shall pay to every employee, engaged in the scheduled employment under him, wages at a rate, not less than the minimum rate of wages fixed by such notification for that class of employees in that employment, without any deductions, except, as may be authorized within such time, and subject to such conditions, as may be prescribed. The language adopted in sub-section 1 of Section 12, clearly mandates that the employer is statutorily bound to pay wages at a rate of minimum, unless, the rate of wages is fixed in the notification issued by the Government is modified. Therefore, there can be no escape by the Management from the said mandatory obligation, and say that they need not pay minimum wages, when there is a notification in force.

12. Therefore, first statutory duty cast upon the Management is to pay the minimum wages, as notified. Therefore, viewed in this angle, should the workmen be penalized, when they have come forward with the complaint that the minimum wages have not been paid to them. Precisely, for this reason, Section 20 has been introduced in the statute, which deals with claims. As per first proviso to Section 20 (2), every application, claiming minimum wages, shall be presented within six months from the date on which, the minimum wages, or other amount, became payable. Second proviso to Section 20 (2) confers power on the Authority to entertain such application beyond the prescribed period, if he is satisfied that sufficient cause has been shown. The crucial expression in the first proviso to Section 20 (2) is, " became payable". Thus, the statutory period of limitation, shall be from the date on which minimum wages, or other amount, became payable.

13. As stated above, the Management is statutorily bound to pay the minimum wages to the workmen. Therefore, when a notification is issued under the Act, there is an automatic statutory responsibility cast on the Management to disburse such wages to its workmen, and failure to do so, would be in violation of the Act. The specific case of the workmen is that, they were not aware of the position as regards the actual wages payable, and were enlightened, only after they joined the Union. In the said context, it cannot be stated that the workmen are ignorantia juris (ignorance of law) but, they are ignorant of what is their actual entitlement. The Management, which is a Steel Industry, should be presumed to be aware as to the minimum wages payable to its workmen, and this being a statutory presumption, there can be no escape from it.

14. In such circumstances, it cannot be stated that the workmen were totally ignorant of their rights, rather, it can be stated that the workmen were aware of their rights that they are entitled to wages for the work done by them, but, they were only ignorant with regard to the quantum of wages fixed by the Government for a particular nature of employment. Viewed in this angle, definitely, this Court will have to adopt a liberal approach as to how this matter has to be viewed.

15. This Court, in the decision rendered in Saveetha Dental College and Hospitals case (referred supra) on somewhat similar lines, did not endeavour to consider the issues as to whether the discretion exercised by the Authority was just and fair, and whether the reasons assigned by the workmen were false, and on what basis, the reasons were not convincing. Therefore, this Court is of the view that the said decision is factually distinguishable. The decision in the case of Tamil Nadu Merchantile Bank Ltd. (referred supra) arose under the provisions of the Shops Act and the yardstick to be applied is distinct and different than in considering the application under the Minimum Wages Act.

16. So far as the decision of the Hon'ble Supreme Court in Sarpanch Lonand Grampanchayat's case (referred supra), the Hon'ble Supreme Court, after pointing out that the discretion to be exercised under Section 20 (2) is same like other judicial discretions, which are exercised with vigilance and circumspection according to justice, common sense and sound judgement, pointed out that words "sufficient cause", should receive a liberal construction so as to advance substantial justice, when no negligence, nor inaction, nor want of bonafides, is imputable to the applicant. It was further pointed out in the same decision that, power of superintendence over the Tribunals vested with the High Court under Article 227 of the Constitution, is no greater than the power Article 226, and it is limited to say that the Tribunal functions within the limits of its authority. The High Court will not review the discretion of the Authority judicially exercised, but, it may interfere, if the exercise of discretion is capricious, or perverse, or ultra vires. The High Court may refuse to interfere under Article 226, unless there is no grave miscarriage of justice, and the Court cannot interfere merely because it might take a different view of the facts and exercise the discretion differently. On facts, in the said case, the Hon'ble Supreme Court found that the employees were not guilty of any inaction, or negligent in presenting the application and the Authority did not arbitrarily or capriciously condoned the delay. The delay in the said case, was 7 years and 9 months, and in another case, six years and 10 months. Thus, with these

observation, the Appeal filed by the Management were dismissed by the Hon'ble Supreme Court.

17. In my view, the decision of the Hon'ble Supreme Court in Sarpanch Lonand Grampanchayat case (referred supra) would support the stand taken by the Union. It is never the case of the Management that there was deliberate inaction on the part of the workmen, nor, it was Management's case that the plea of workmen lacked bona fide, or there was negligence on the part of the workmen. In such circumstances, this Court has to be consider as to whether the exercise of discretion by the Authority was either perverse, or unreasonable, so as to arrive at a conclusion. Perusal of the impugned orders passed by the Authority would make it evidently clear that the exercise of discretion was reasonable, as he considered the facts of the case, taken note of the legal position, and also the factual position, in particular that the plea is for payment of minimum wages. It appears that the Management did not take a definite stand in the counters that they have complied with the notification issued by the Government. Therefore, in such circumstance, the exercise of discretion by the Authority cannot be faulted. The Hon'ble Justice K.Chandru in W.P.No.33738 of 2007, dated 25.10.2007, referred above, pointed out that, had the workman approached the Forum under Section 33 C (2) of I.D. Act, then, the plea of limitation does not arise. Therefore, this is one more reason to adopt a lenient approach in such matters.

18. In fact, I had an occasion to consider some what a similar case in (Venture Power System India Pvt. Ltd., Vs. The Deputy Commissioner of Labour and another) in Writ Petition No. 30777 of 2015, dated 01.02.2016. In the said case, I pointed out that, it is settled legal position that law of Limitation is founded on public policy, and not meant to destroy the rights of the parties, but to see that the party does not resort to any dilatory tactics, and deliberately approach the forum belatedly, nor, if the party is deliberately negligent, or for certain mala fide reason, approached the Court/Forum, belatedly. None of these parameters have been specifically pointed out by the Management in the instant cases. Further, in the decision of this Court in Rambal Ltd. case (referred supra), it is accepted by the learned counsels on either side that the matter is pending before the Hon'ble Division Bench. Above all, the discretion to be exercised by the Forum/Court/Authority, while considering the application filed under the Minimum Wages Act for condoning the delay, should be on facts placed before it. The various decisions on the point lay down the underlying principle, and would serve as a guiding factor while considering the application filed under the Minimum Wages Act for condoning the delay. Therefore, it is necessary that each case has to be tested on its own facts, and if the Court is satisfied that the

Lower Authority had exercised discretion in a proper manner, then, the Writ Court, would not substitute its action, and act as second Appellate Authority over the discretion exercised by the Lower Authority.

19. For all the above reasons, this Court is not inclined to interfere with the impugned orders passed by the Authority. Accordingly, the Writ Petitions fail, and they are dismissed. The first respondent/Authority is directed to number the Applications, and take the same on file, and permit the Management to file their counter statement, and the workmen to file reply to the counter statement, if necessitated, and thereafter, proceed to adjudicate the matter on merits and in accordance with law, and dispose of the cases within a period of three months from the date of receipt of a copy of this order.

20. In the result, both the Writ Petitions are dismissed, as stated above. No costs. Consequently, connected all the Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Labour-II,
Authority Constituted under
The Minimum Wages Act,
D.M.S. Compound,
Teynampet,
Chennai 600 006.

2. The General Secretary,
Chennai Yetrumathi Valaga
Uzhiyargal Matrum Pothu Thozhilalar Sangam,
No.11, M.E.S Road,
Kadapari, Tambaram,
Chennai 600 045.

3. The Section Officer,
VR Section,
High Court, Madras.

[01/06/2016]

+2cc's to Mr.K.V. Shanmuganathan, Advocate, S.R.No.14396
+1cc to M/s.V.Stalin, Advocate, S.R.No.14357

Writ Petition Nos.30389 of 2008
and 8902 of 2009

VD(CO)
CA(21.03.2016)



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