

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.1721 of 2016

ORDER:

Heard the learned counsel for the petitioner, learned Government Pleader for Labour, appearing for 1st respondent, learned Government Pleader for Industries and Commerce, appearing for 2nd respondent and Sri V.Sudhakar Reddy, learned counsel for 3rd respondent.

2. This Writ Petition is filed to quash the order dt.16.12.2015 in M.W.No.63 of 2014 of 2nd respondent.

3. The 3rd respondent was working as a salesman at Srikakulam Depot of the petitioner-Society. Alleging that he was paid less than the minimum wage by the petitioner for the period 01.10.2010 to 31.12.2013, he filed M.W.No.63 of 2014 before the 2nd respondent.

4. The petitioner filed a counter-affidavit raising four contentions :

(a) That the petitioner is based in Kurnool District while the 3rd respondent had filed a claim petition before the 2nd respondent in Srikakulam and therefore the 2nd respondent has no jurisdiction to entertain the claim petition;

(b) That there was an agreement between the petitioner and the Union fixing the wages and that the wage fixed under the said

agreement is only payable to the 3rd respondent and not the minimum wages fixed by the Government from time to time under the Minimum Wages Act, 1948.

(c) That it had suffered losses and therefore it is not liable to pay the minimum wage fixed under the Minimum Wages Act, 1948 by the Government; and

(d) That the Depot Allowance of Rs.700/- was paid to the 3rd respondent by petitioner which should be deducted from the Minimum Rates and Wages.

5. The 2nd respondent, in the impugned order dt.16-12-2015 in M.W.No.63 of 2014, rejected the four contentions. He held that 3rd respondent was transferred to Srikakulam and was working in the Sales Society Depot of the petitioner at Srikakulam. Therefore he has jurisdiction to decide the claim petition. He further held that the agreement arrived at between the petitioner and the employees would amount to contracting out of the provisions of the Minimum Wages Act, 1948 (for brevity 'the Act, 1948) and under Section 25 of the Act, 1948 such agreement would be null and void. He also rejected the contention that the petitioner is suffering from financial distress quoting the decision of the Supreme Court in **Commissioner of Income Tax, Ahmedabad Vs. Karamchand Premchand Ltd., Ahmedabad**¹ where the Supreme Court held that minimum wages must be paid irrespective of extent of profits and financial condition

¹ AIR 1960 S.C. 1175

of the Establishment. He lastly held that the depot allowance of Rs.700/- paid to 3rd respondent by the petitioner cannot be deducted from minimum rate of wage and it cannot be considered for calculation of wages.

6. Challenging the same, this Writ Petition has been filed.

7. Learned counsel for the petitioner reiterated the same contentions advanced before the 2nd respondent.

8. Since 3rd respondent was employed at the Sales Society Depot of the petitioner at Srikakulam, I agree with the finding of the 2nd respondent that he had jurisdiction to decide the claim petition filed by the petitioner. I also agree with the finding of 2nd respondent that the agreement entered into by the petitioner with the workmen which fixed wages at lesser rate than the minimum wage would be contrary to Section 25 of the Act, 1948 and the petitioner cannot place any reliance on the same. Even assuming for the sake of argument that the petitioner is incurring losses, it continues to have the statutory obligation to pay minimum wages, it cannot avoid this responsibility taking the plea that its financial condition is not good. Also the depot allowance of Rs.700/- is admittedly allowance being paid to the petitioner. Therefore, it would be in addition to the wages and it cannot be considered as part of wages and it cannot be included in the minimum wage.

9. Learned counsel for the petitioner further contended that 3rd respondent had filed M.W.No.77 of 2011 and when that claim petition was pending, he could have also included the claim for the present period but he did not do so.

10. Learned counsel for 3rd respondent however contended that the period for which claim was made in M.W.No.77 of 2011 is for the period prior to 13-09-2010 and therefore the plea raised by the petitioner has no basis.

11. The petitioner has not filed the claim petition in M.W.No.77 of 2011 even before 2nd respondent or before this Court. Therefore, this contention of the petitioner cannot be countenanced.

12. Lastly a contention was raised that the Society was not made a party before 2nd respondent, but its President was made party and therefore, the Society cannot be held bound by the order passed by 2nd respondent. No such plea was raised before 2nd respondent and it was the Society which contested the claim of 3rd respondent by examining witnesses who were its employees. Therefore, it cannot be now turn around and contend that its President alone was the party before 2nd respondent and not the Society. If the petitioner had raised such a plea before 2nd respondent, 3rd respondent would have added the Society specifically and/or amended the cause title appropriately. But without taking recourse to that procedure when the claim petition

was pending before 2nd respondent, the petitioner cannot be allowed to raise such a plea for the first time in this Court.

13. I therefore do not find any merit in the Writ Petition and is accordingly dismissed. Consequently, W.V.M.P.No.4439 of 2016 is allowed. No costs.

14. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-12-2016
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