

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.19477 OF 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India to declare the action of respondent No.3 in entertaining P.W.Nos.04/2014 to 273/2014 as illegal and arbitrary and to prohibit respondent No.3 to proceed with enquiry in said petitions by issuing Writ of Certiorari.

2) The case of the petitioner, in brief, is that the petitioner Company is registered under Companies Act, 1956, having three manufacturing and marketing units; plant No.1 is located in the District of Medak, State of Telangana and plant Nos.2 and 3 are located in Srikakulam District, State of Andhra Pradesh. The company is engaged in manufacturing and marketing activities of automobile spares and it is an automobile ancillary industry having export market.

3) The 5th respondent, being president, representing number of employees filed applications before the 3rd respondent for payment of minimum wages for the over time of 24 hours in a month and they are registered as P.W.4/2014 to P.W.273/2014. Before registration of those applications, the 3rd respondent issued notice on 31.07.2014 annexing list of 270 cases filed by 5th respondent herein by serving a single notice in all cases. It is specifically contended that the writ petition is filed questioning the action of 3rd respondent vide proceedings dated 16.06.2015 posting of P.W Nos.4 to 273 of 2014 for evidence is contrary to sub Section (6) of Section 1 of Payment of Wages Act, 1936 (for short 'the Act') inspite of specific plea raised by the petitioner herein in the counter dated 19.09.2014 and Interlocutory Application dated 11.11.2014 as illegal and arbitrary and beyond powers of respondent No.3.

4) The 5th respondent filed counter affidavit denying the averments in the petition and it is specifically contended that the 3rd respondent condoned the delay in filing the petitions on hearing both parties and that the remaining objection on the point of jurisdiction is a mixed question of fact and law which can only be decided after adducing evidence and moreover, on the date of filing claims the 3rd respondent is having pecuniary jurisdiction and therefore all the objections are not sustainable. He therefore prayed to dismiss the writ petition.

5) The specific objection raised by the counsel for petitioner is that the 3rd respondent has no jurisdiction in view of sub-Section (6) of Section 1 of the Act and that there is abnormal delay in filing the applications but respondent No.3 did not consider the various objections raised by the petitioner herein and the law declared by the Apex Court, other Courts and passed the impugned order under challenge and thus the order of the 3rd respondent is illegal and contrary to law and the power of the 3rd respondent is nothing but illegal exercise, since, he has no jurisdiction as the workers were receiving wage more than Rs.18,000/- per month and prayed for the aforesaid relief.

6) Learned counsel for petitioner further contended that when the workers are receiving wages of more than Rs.18,000/- per month, they are not entitled to claim minimum wages before the 3rd respondent and the 3rd respondent has no jurisdiction in view of Sub-section (6) of Section 1 of the Act and admittedly, the workmen filed P.W. Nos.4/2014 to 273/2014 before the 3rd respondent on this ground alone and that the petitions are not maintainable and despite the objection, the 3rd respondent took cognizance and proceeding to decide the matters on merits.

7) Learned counsel for the petitioner in support of his

contention placed reliance on the judgment of this Court in **Collector vs Durvasula Samba Murthy**^[1] and the judgment of the Apex Court in **Life Insurance Corporation of India vs Anwar Khan (since died) through LRs**^[2], **Tyre Retrading Shop Committee vs APSRTC and others**^[3].

8) Whereas, learned counsel for the respondents would contend that this Court as well as the Apex Court while exercising jurisdiction under Articles 226 and 136 of Constitution of India cannot decide the jurisdiction and the employer cannot be allowed to use them to break the resistance of workmen by approaching the Courts under Article 226 and 136 of Constitution of India and placed reliance on the judgment of Apex Court in **D.P.Maheswari vs Delhi Administration and others**^[4] and unreported judgment in **W.P. No.4308 of 2003 (Management of Samkrag Pistons & Rings rep. by its General Manager)**.

9) Considering rival contentions and perusing the material available on record, the sole point that arises for consideration is:

“Whether the workmen are receiving the wage of more than Rs.18,000/- per month, if so, whether the 3rd respondent is entitled to enquire into the petitions to pass any order directing payment of minimum wage for overtime? “

10) POINT: It is a specific contention of the writ petitioner that the 3rd respondent is not competent to take cognizance of the cases, to proceed and to enquire into the matter as all the workmen are drawing more than Rs.18,000/- per month and drawn the attention of this Court to Sub-section (6) of Section 1 of the Act, which deals with short title, extent, commencement and application; Sub-Section 6, which was introduced by Act No.41 of 2005, w.e.f., 09.11.2005 fixed the limit of salary to entertain the application under payment of Wages Act.

11) According to Sub-Section (6) of the Act, the Act applies to

wages payable to an employed person in respect of wage period if such wages for that wage period do not exceed six thousand five hundred rupees per month or such other higher sum which, on the basis of figures of the Consumer Expenditure Survey published by the National Sample Survey Organisation, the Central Government may, after every five years, by notification in the Official Gazette, specify.

12) Thus, it is clear from sub-Section (6) of the Act, if the employed person is receiving more than Rs.6,500/- per month, the provisions of the Act have no application. However, the limit was enhanced to Rs.18,000/- w.e.f., 11.09.2012 by notification in the Official Gazette. Therefore, as on the date of filing petition, the maximum limit for application of the provisions of Act is Rs.18,000/- per month but according to material produced before this Court, the employed persons are drawing more than Rs.18,000/- per month as per the gross wages drawn vide agreement/ settlement during the claim period.

13) The statement shows the wage drawn by each employed person from 01.04.2011 to 17.12.2012 and from 01.05.2013 to 31.05.2014, as per which none of the employed persons/ applicants before the 3rd respondent receiving less than Rs.18,000/- per month. If the statement filed along with writ petition as additional material paper is accepted, the 3rd respondent has no jurisdiction and the provisions of payment of Wages Act have no application to issue any direction.

14) The applications were filed by the employed persons without mentioning the wages they are receiving per month and the statements was not enclosed. However, during the course of hearing, learned counsel for the respondents disputed the wages mentioned in the statement annexed to the additional material. Thus, non-applicability of provisions of the Act in view of the maximum limit is a disputed question of fact when the statement filed by the petitioner as additional material was denied by the respondent. When the question

of fact is in dispute, this Court cannot exercise the power of judicial review under Article 226 of Constitution of India. However, the same question came up before the Apex Court in **APSRTC, National Mazdoor Union vs APSRTC**^[5] wherein the Apex Court held that the question of applicability of provisions of the Act is a mixed question of law and fact and it depends upon whether the employee who went on an illegal strike were drawing wages of more than Rs.1600/- per month or not? That question required evidence to be let in. Consequently, unless the point was argued for consideration of the High Court, no such contention could be raised for the first time before Apex Court. In view of the principle laid down in the above judgment, non-applicability of the provisions of the payment of Wages Act is a mixed question of fact and law and requires enquiry by adducing evidence before the competent authority and such mixed question of fact and law cannot be decided by this Court while exercising power of judicial review under Article 226 of Constitution of India.

15) Learned counsel for the petitioner relied on the judgment of the Apex Court reported in **Anwar Khan** (supra), where the Supreme Court held that the Act is only a mechanism for recovery of wages and because the Adhinyam has application to any employee, that does not automatically bring him under the umbrella of the 1936 Act. Section 18 of the Adhinyam only provides that once an employee under the Adhinyam is not paid, the procedure for recovery under the Act is to be adopted. Once Section 1 (6) of the Act applies, the nature of the job is irrelevant. Whether the Field Officers are workmen or not is really of no relevance in view of Section 1 (6) of the Act. In the present case, the original amount of Rs.1000 was fixed under Section 1 (6) as the upper limit for applicability of the Act. However, in Section 1 (6) with effect from 15.10.1982 it has been increased to Rs.1600. There is also no dispute that at the relevant point of time the applicant was getting more than the said amount. In such case, the provisions of the Act have no application. Similarly, in

Tyre Retrading Shop Committee (supra) this Court held that when workmen found earning salary of Rs.1600/- on average itself is sufficient to held that the provisions of the Act are not applicable in view of Sub-section (6) Section 1 and quashed the notice to impose penalty wage.

16) Similarly in **Durvasula Samba Murthy** (supra), this Court while exercising powers under Article 226 of constitution of India held that in exercising writ jurisdiction, this Court is primarily concerned with the task of keeping the lower tribunals within their demarcated bounds. Even on the basis of all the plaint allegations being taken to be correct the question of arriving at a finding regarding jurisdiction does not arise at all. The theory of jurisdictional fact has no application. However, in view of facts based on allegations made in the plaint, this Court held that the Court has no jurisdiction.

17) The consistent view expressed by the Apex Court in **Anwar Khan** (supra) and this Court in **Durvasula Samba Murthy** (supra) and **Tyre Retrading Shop Committee** (supra) is that if the person employed is receiving more than Rs.1600/- per month, which was enhanced to Rs.18,000/- as notified by the Central Government w.e.f., 11.09.2012, he is not entitled to invoke the jurisdiction of the 3rd respondent, since, the provisions of payment of Wages Act have no application but in view of the Supreme Court judgment in **National Mazdoor Union** (supra), the non-applicability of provisions of the Act is a mixed question of fact and law and in such case unless the parties are made to adduce the evidence to establish the wage being received by the applicant before the 3rd respondent, it is difficult to decide the non-applicability of the provisions of Payment of Wages Act, without recording any evidence when the statement of wage filed by the petitioners is disputed by the respondents. In the similar circumstances, the Supreme Court in **D.P.Maheshwari** (supra) held that the Tribunals entrusted with the task of adjudicating labour

disputes where delay may lead to misery and jeopardizes industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution, stop proceedings before a Tribunal, so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of the Supreme Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workman in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part adjudication is really necessary and whether it will not lead to other woeful consequences. In view of the principle laid down in the above judgment, the trial Court cannot direct the Tribunal to decide any issue as preliminary issue to avoid undue delay in deciding the real issue vital to the workmen.

18) In unreported judgment in W.P. No.4308 of 2003, the similar question came up before this Court with regard to determination of issue as to whether preliminary issue has to be taken primary whether the 2nd respondent therein was workman or not. This court held that preliminary issue cannot be decided.

19) If the principles laid down in **National Mazdoor Union** (supra), **D.P.Maheswari** (supra) are applied to the present facts of the case, the non-applicability of the provisions of the Payment of Wages Act cannot be decided unless evidence is let in by the workmen to the fact that their wage is less than Rs.18,000/- under Sub-Section (6) Section 1 w.e.f., 11.09.2012 and also by the respondent to rebut the same. This question cannot be decided by the Court in exercise of power of judicial review under Article 226 of Constitution of India.

Hence, I find that this Court cannot exercise power of judicial review in the present set of facts in view of the law declared by the Apex Court since non-applicability of the provisions of Payment of Wages Act is a mixed question of fact and law.

20) Therefore, I find no grounds to interfere and issue Writ of Certiorari prohibiting the 3rd respondent from proceeding with the enquiry in P.W. No.4/2014 to 273/2014. Accordingly, the point No.1 is answered.

21) In the result, the Writ Petition is dismissed. No order as to costs.

22) Miscellaneous petitions, if any, pending in the writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt.03-06-2016

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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- [\[1\]](#) LAWS (APH)-1979-3-37/APLJ-1979-1-348
 - [\[2\]](#) (2007) 11 SCC 25
 - [\[3\]](#) 1999 (5) ALD 619
 - [\[4\]](#) AIR 1984 SC 153
 - [\[5\]](#) 2000 (II) LLJ 1131 SC