

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.Nos.10414 of 2015 & 8466 of 2016

COMMON ORDER:

Since parties to these Writ Petitions are one and the same and the petitioners in both these matters are challenging the same order dt.22-11-2014 passed by the Authority appointed under Minimum Wages Act, 1948 (for brevity 'the Act') and Deputy Commissioner of Labour, Kurnool in M.W.No.5 of 2013, these two Writ Petitions are being disposed of by this common order.

2. The petitioner in W.P.No.8466 of 2016 is an employee of Yemmiganur Weavers Cooperative (Production and Sales) Society. The 2nd respondent in this Writ Petition is the President of the said society and the 3rd respondent is the Secretary thereof.

3. He joined the services of the said Society on 18-12-1974 and retired therefrom on 31-07-2010. It is not in dispute that he was promoted on 28-03-1997 as Marketing Manager but by proceedings dt.12-09-1998, he was demoted as Salesman on the ground that he was responsible for missing of three teakwood pieces. Thereafter, he was again posted as Manager at Anantapur Sales Depot by proceedings dt.29-05-2003 and subsequently, he was transferred as Manager of Gonegondla Production Branch by order dt.04-06-2004. Sometime later, he was brought back to Yemmiganur and made in-charge of Yarn Godown and handed over certain additional tasks.

In the proceedings retiring the petitioner, it was mentioned that the petitioner had a designation of “General Checking”.

4. Petitioner therefore contended that his services were always utilized as a Manager only, salary was also paid accordingly and that at the time of his retirement, he was given nomenclature of ‘General Checking’.

5. It is not in dispute that the Government of Andhra Pradesh issued G.O.Ms.No.56 Labour Employment, Training and Factories Department (Lab-II) dt.22-06-2007 revising the minimum wages payable to the different grades of employees working in various establishments. The said G.O. was made applicable to additional categories like Quality Controller, Manager/Supervisor, Head Attender, Accountant etc. in handloom weaving establishments by Gazette Notification dt.04-07-2007.

6. Petitioner contended that as per the said G.O., his minimum basic wage payable per month in the category of Manager/Secretary/Supervisor was Rs.4048/- along with variable D.A (VDA) and would come to Rs.4441-12, but he was paid only Rs.3179/- per month. He contended that after his retirement, he made application on 27-07-2010 to 1st respondent in W.P.No.8466 of 2016 i.e, the Authority constituted under the Act for a direction to respondent Nos.2 and 3 to pay the difference of minimum wages payable to him as per the said G.O.

7. He also filed a petition M.W.M.P.No.1 of 2009 to condone the delay in filing the claim petition and filed a calculation sheet for the claim period 01-10-2007 to 31-07-2010 claiming Rs.47,468-88 and sought a direction to the respondent Nos.2 and 3 to pay to him damages and costs along with the claim amount as per Section 20 (3) (i) of the Act, 1948.

8. The delay in filing the claim petition was condoned on 05-03-2013 by the 1st respondent in W.P.No.8466 of 2016 and thereafter, the main claim petition was numbered as M.W.No.5 of 2013.

9. The respondent Nos.2 and 3 contested the case and opposed grant of any relief to the petitioner. They mainly contending that petitioner was not eligible for wages of Manager, that he was demoted prior to the Government Order as he was retired as 'General Checking' only. They contended that the petitioner worked in the Society as a Clerk since the date of his joining in the Society but he has claimed wages in the category of Manager/Secretary/Supervisor though he would come only in the category of accountants/clerks/typist/cashier/delivery man/packer/store keeper/salesman. They also contended that claims under the AP Shops and Establishments Act, 1988 should have been made within one year from the date on which such payments were due (as per Section 51 (1) of that Act) and the petitioner had filed the claim petition after delay of three years.

10. Before 1st respondent, the petitioner examined himself and marked Exs.A-1 to A-10. The respondents examined R.W.1 and did not mark any document.

11. By order dt.22-11-2014, 1st respondent came to the conclusion that the evidence on record showed that the petitioner was discharging duty as Manager during the period of claim from 01-10-2007 to 31-07-2010 and the punishment imposed on the petitioner in 1997-98 is of no relevance while deciding the nature of work which the petitioner was performing between 2007-2010. It held that the wages fixed in G.O.Ms.No.56 dt.22-06-2007 are statutory minimum rates of wage and no wage less than the rate of wage fixed in the G.O. is permissible to be paid. It held that the actual wage that was paid to the petitioner is less than the statutory basic wages of Rs.4048/- per month and he was paid only the basic wage of Rs.3098/-. It referred to the Service Register marked as Ex.A-1 by the petitioner and noted that an entry made therein showed that petitioner was posted as Manager, Sales Depot-I vide proceedings No.YWCS/EST/03/1529 (Ex.A-9), that the immediate next entry in the Service Register shows that the petitioner was Manager of Anantapur Depot and was transferred and posted as Manager to Gonegandla Production Branch vide proceeding in No.YWCS/EST/04/2036 dt.26-05-2004 (Ex.A-10). It held that the entries in Exs.A-1 along with A-9 and A-10 describe the designation of the petitioner as Manager and no evidence is let in by the

respondents to show that the posts designated as a Manager, Anantapur Sales Depot-I and the Manager, Gonegandla Depot are not equal to Manager level and were lower in grade so as to disentitle him to the claim of basic wage of the Manager post which is fixed by G.O.Ms.No.56. It held that the said G.O. continued to be applicable for the entire period of claim from 01-10-2007 to 31-07-2010 and he was entitled to the said statutory basic wage of Rs.4048/- per month together with VDA applicable from time to time. It held that the petitioner was entitled to the difference between the minimum wage payable and the actual wage paid amounting to Rs.47,468/- and directed the respondents to deposit the said amount by way of a demand draft drawn on any Nationalized Bank in favour of 1st respondent within 30 days from the date of receipt of the order failing which the petitioner would be entitled to interest at 9% per annum.

12. The petitioner filed W.P.No.8466 of 2016 on the ground that he is entitled to compensation and costs as per sub Section (3) of Section 20 of the Act also, but the 1st respondent did not grant such relief to him and contended that he is entitled to compensation to the extent of ten times the differential amount claimed or at least equal to the amount claimed.

13. The respondent Nos.2 and 3 in W.P.No.8460 of 2016 filed W.P.No.10414 of 2015 questioning the order dt.22-11-2014 in M.W.No.5 of 2013 of the 1st respondent.

14. Heard Sri Surender Desai, learned counsel for the petitioner in W.P.No.8466 of 2016/2nd respondent in W.P.No.10414 of 2015 and Smt.N.Niyatha, learned counsel for the respondent Nos.2 and 3 in W.P.No.8466 of 2016/petitioner in W.P.No.10414 of 2015.

15. For the sake of convenience, the parties would be referred to hereinafter as per their array in W.P.No.8466 of 2-16.

16. I have already noted the contentions of the petitioner in W.P.No.8466 of 2016.

17. The respondent Nos.2 and 3, who are petitioners in W.P.No.10414 of 2015, have contended that the petitioner was never a Manager during the period he had made a claim for basic wage as Manager as per G.O.Ms.No.56 dt.22-06-2007 and he would only fall in the grade of accountant/clerk/typist/cashier/delivery man/packer/store keeper/salesman since he retired as a General Checking Clerk on 31-07-2010. Reference is also made to the punishment imposed on the petitioner on 12-09-1998 where he was demoted from the post of Manager to the post of salesman and it is stated that he was never promoted again as Manager and therefore, he cannot claim the minimum wage payable for the post of Manager as per G.O.Ms.No.56. A new plea is also raised for the first time that the petitioner is not an employee of respondent Nos.2 and 3 but Yemmiganur Weavers Cooperative (Production and Sales) Society Limited.

18. As regards the latter plea is concerned, no plea to that effect was raised before 1st respondent by respondent Nos.2 and 3 and in fact the respondent Nos.2 and 3 considered themselves as representing the society and stated in the counter affidavit *“it is submitted that the applicant by name P.C.Chakrappa worked in the opposite party’s society as a clerk since the date of his joining in the Society, but he has claimed wages on the category of Manager/Secretary/Supervisor”*.

19. Having regard to this pleading in the counter affidavit filed by respondent Nos.2 and 3, and in the absence of the pleading by respondent Nos.2 and 3 that the Society should have been made a party, this objection of the respondent Nos.2 and 3 cannot be accepted.

20. It is not in dispute that as per G.O.Ms.No.56 dt.04-07-2007, the basic wage fixed by the Government under the provisions of the Act for the post of Manager/Secretary/Supervisor is Rs.4058/- and for post such as accountant/clerk/typist/cashier/delivery man/packer/store keeper/salesman, the basic minimum wage is Rs.3098/-

21. The claim of the petitioner is that for the period 01-10-2007 to 31-07-2010, he should be paid minimum wage @ Rs.4048+VDA equivalent to Rs.4441-12, but he was paid @ Rs.3179/- only. The punishment allegedly imposed on the petitioner

in the year 1998 demoting him from the post of Manager to the post of salesman has no bearing in the matter and one has to see what was the nature of the works given to the petitioner during the period 01-10-2007 to 31-07-2010.

22. In this regard, the Service Register, marked as Ex.A-1, was filed by the petitioner, which showed that he was transferred and posted as Manager to Anantapur Sales Depot by proceedings No.YWCS/EST/03/1529 dt.29-05-2003 and he was transferred as Manager of Gonegondla Production branch by an order dt.04-06-2004. Later he was again transferred and posted as in-charge of Gonegondla in Yemmiganur.

23. Having posted the petitioner as Manager at Anantapur Depot-I dt.29-05-2003 and later having transferred him as Manager of Gonegondla Production Branch on 26-05-2004, it is not open to the respondent Nos.2 and 3 to take the plea that he was not discharging the duties of Manager during the relevant period of 01-10-2007 to 31-07-2010.

24. Though learned counsel for the petitioner contended that the orders posting the petitioner at Ananthapur and Gonegondla mentioned him as a Manager but he was in fact not discharging any managerial functions, no explanation is forthcoming from the respondent Nos.2 and 3 why the respondent Nos.2 and 3 had designated him as a 'Manager' if he was not discharging managerial

functions. Therefore, I am of the opinion that insofar as 1st respondent held that the petitioner was working as a Manager and he was entitled to basic wage as per G.O.Ms.No.56 and not Rs.3098 being paid to him is concerned, it cannot be said to suffer from any error of jurisdiction warranting interference.

25. Therefore, W.P.No.10414 of 2015 is dismissed.

26. Coming to the claim of compensation and costs made by the petitioner in W.P.No.8466 of 2016, it is not in dispute that though the petitioner retired on 31-07-2010, he made the claim under the provisions of the Act before 1st respondent in the year 2013. He sought condonation of delay in filing the application vide M.W.M.P.No.1 of 2010 which was allowed on 05-03-2013. Merely because the petitioner was awarded Rs.47,468/- being the difference in wage between the actual wage paid to him and the wage payable as per the G.O.Ms.56 with the VDA, automatically the petitioner cannot claim compensation and costs particularly when he has approached 1st respondent with delay of at least 2 ½ years.

27. Therefore, I am of the opinion that 1st respondent rightly exercised its discretion in denying compensation and costs to the petitioner while granting interest @ 9% per annum to the petitioner.

28. Therefore, I do not find any merit in W.P.No.8466 of 2016 either and the same is also dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 22.11.2016
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