

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 21745 OF 1997

ORDER:

The order dated 19.07.1997 passed by the Authority under Minimum Wages Act, 1948 & Assistant Commissioner of Labour, Hyderabad-III in Case No. MW/28/96, directing the petitioner management to pay Rs.3,18,842-40 Ps. (Rs.1,59,421-20 ps. towards the actual over-time allowance payable to the employees and Rs.1,59,421-20 ps. towards one time compensation) to the employees within 30 days from the date of receipt of that order, is challenged before this Court.

The sum and substance of the pleadings put-forth by the petitioner management is that for the purpose of calculation of overtime allowance payable under Section 14 of the Minimum Wages Act, 1948 (for short, 'the Act'), House Rent Allowance component shall not be includable and that the order passed by the Authority is in violation of the principles of natural justice.

On the Application filed by the Assistant Labour Officer, Circle-X, Hyderabad, taking into consideration the wages paid to the workers of the petitioner herein, the Authority came to the conclusion that though VDA was included for the purpose of calculating the wages and the wages that are being paid are in conformity with the wages payable under the provisions of the Act, the petitioner had failed to pay the overtime allowance on House Rent Allowance. Though notices were served on the petitioner, the matter was adjourned from time to time and at one stage, the petitioner was also set *ex parte* and even thereafter, number of

times, the matter was adjourned and finally, based on the material before it, the Authority calculated a sum of Rs.1,59,421.20 ps. as payable towards overtime allowance for the period from 17.10.1993 to 31.08.1995. The Authority also found that there was no reasonable justification for the petitioner to calculate the overtime allowance on the wage, without including the House Rent Allowance component which is admittedly being paid.

Heard learned counsel for the petitioner, learned Standing Counsel for the 2nd respondent and learned counsel for the impleaded 3rd respondent.

The controversy lies in a narrow compass. It is not in dispute that the petitioner has complied with the provisions of the Minimum Wages Act, 1948, including payment of the minimum wages, as mandated in law. The only issue that is to be decided is whether House Rent Allowance is to be included for the purpose of calculating the overtime allowance payable under Section 14 of the Act and whether there is any justifiable reason for the petitioner in not paying the same at the relevant point of time.

The correspondence exchanged between the petitioner and the Competent Authority, particularly letters dated 24.06.1996 and 10.10.1996 addressed by the Assistant Labour Officer to the petitioner discloses that the petitioner was informed initially that for the purpose of calculation of overtime allowance, the component of VDA alone would suffice. Thereafter, there appears to have been yet another communication to the petitioner that House Rent Allowance is to be included for the purpose of computation. This aspect of the matter is clear from the letter

dated 04.11.1996 addressed by the petitioner to the Assistant Labour Officer seeking clarification as to whether for the purpose of payment of overtime allowance, House Rent Allowance is to be includable. This clarification though sought was not given by the respondent authorities. Thereafter, the proceedings came to be initiated and the record discloses that *ex parte* orders have been passed. A perusal of the record and the order passed by the Competent Authority leaves no manner of doubt that ample opportunity was given to the petitioner. However, from time to time, the petitioner had chosen not to avail the same, in spite of repeated adjournments being granted, as is evident from the dates mentioned in the very impugned order. In that view of the matter, the petitioner cannot complain that the impugned order suffers from violation of the principles of natural justice.

Pending disposal of the Writ Petition, the petitioner had deposited 50% of the amount i.e. the principle amount of Rs.1,59,421-20 Ps. before the Authority and the same was also withdrawn by the 3rd respondent. The petitioner, in principle, submits that subsequent to the order impugned, from time to time, House Rent Allowance is also taken as a component for the purpose of calculating overtime allowance, which aspect of the matter is confirmed by the learned counsel for the respondents. It is also further submitted by the learned counsel for the petitioner that they would not like to press the question whether House Rent Allowance is includable at the relevant point of time for the purpose of calculation of overtime allowance, for, they had already

deposited the said money and the 3rd respondent had already withdrawn that amount and distributed among the workers.

In that view of the matter, the only issue that requires to be considered by this Court is with respect to the compensation amount that has been awarded by the authority under the Minimum Wages Act, in terms of Section 14(2). As stated supra, so far as the petitioner is concerned, they have *bona fide*ly sought clarification from the authorities as to whether, for the purpose of calculation of overtime allowance, House Rent Allowance is to be included, particularly in view of the fact that it has already been paying overtime allowance on VDA also. The record does not disclose any clarification having been given by the authorities. Hence, it cannot be said that there are no *bona fides* on the part of the petitioner in not including the House Rent Allowance component for the purpose of calculation of overtime allowance payable under Section 14. Under Section 20(3), though power is vested in the Authority to award compensation equivalent to the amount that is payable as may be determined by it, a discretion is given to the Authority. In this context, Section 20(3) (i) may be noted:

“ **Section 20(3)(i):** When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer, or give an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which an employer may be liable under this Act direct—

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such

compensation as the authority may think fit, not exceeding ten times the amount of such excess.”

The language employed in the above provision is ‘*may*’. In that view of the matter, in the case on hand, when the petitioner sought clarification from the authority, the same having not been given by the Authority, so far as imposing equal amount, which was found not paid, as compensation, is not justified. Therefore, the order dated 19.07.1997 is set aside to the extent of directing the petitioner management to pay the additional amount of Rs.1,59,421/- as compensation.

Accordingly, the Writ Petition is disposed of. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

10th July 2017

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CHALLA KODANDA RAM, J

