THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT APPEAL NOs.572, 582, 583 OF 2012 AND 767 OF 2011

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

In all these matters, the appellant is the Singareni Collieries Limited. They are aggrieved by the common order passed by the learned Single Judge declaring the action of the second respondent, in issuing proceedings dated 27.08.2008 for final deduction of wages under Section 9(2) of the Payment of Wages Act, 1936 ("the Act" for brevity) at two days wages for each workmen who participated in the strike on 20.08.2008, as arbitrary and illegal.

In the order under appeal the learned Single Judge, after referring to Section 1(6) of the Act, Section 1(5) of the Act and the notifications issued thereunder, observed that the Act protects workmen whose emoluments are less than Rs.6,500/- per month; Section 9(2) provides for the amount of deduction that may be made for absence from duty in proportion to the wage period; the proviso to Section 9(2) of the Act enables the employer to make a penal deduction where ten or more employees go on unjustified strike; Section 9(2) does not prohibit any deduction from wages for absence from duty due to strike whether legal or illegal, whereas the proviso provides for deduction of penal wages where employees absent themselves due to illegal strike; all the petitioners were receiving more than Rs.6,500/- per month as wages; the employer, therefore, lacked jurisdiction to exercise the power conferred under Section 9(2) of the Act; clause 9.1 of the Certified Standing Orders requires wages to be paid in accordance with the provisions of the Act, as amended from time to time; there is no agreement between the employees and the employer with regards application of the Act in respect of persons who were drawing wages of more than Rs.6,500/- per month; and as the Act is applicable only to employees who were drawing less than Rs.6,500/- per month as wages, the impugned orders were liable to be set aside.

Learned Advocate General, appearing on behalf of the appellant-Corporation, would draw our attention to the proceedings of the Government of India in S.R.O.No.1340 dated 29.07.1952 and S.O.No. 2345/PWA/Mines/Sec.8(4) dated 14.10.1959 to contend that the provisions of the Payment of Wages Act, 1936 have been extended to employees working in mines, to which the Mines Act, 1952 applies; consequently the respondent-workmen who were all employees of Singareni Collieries Limited, and who are governed by the provisions of the Mines Act, 1952, are also governed by the provisions of the Payment of Wages Act; the mere fact that their monthly wages exceed Rs.6,500/- is of no consequence; reliance placed by them on the judgment of the learned Single Judge in **Tyre Retreading Shop Committee v. APSRTC and Others**[1] is misplaced as a Division Bench of this Court, in **Divisional Secretary, APSRTC National Mazdoor Union, Sangareddy v. APSRTC**[2], has taken a different view; and, as there is no dispute that the respondent-workmen went on strike, interference by this Court may well result in their being emboldened to resort to such illegal strikes in future.

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[1] **1999(5) ALD 619**
[2] **1997(6) ALD 530 (DB)**

The question whether the respondent-workmen are governed by the provisions of the Payment of Wages Act assumes relevance in deciding whether or not the appellant could have exercised power, under the Act, to impose penal deduction of wages on them. The proviso to Section 9(2) of the Act confers power on the employer to deduct penal wages in the existing wages payable for eight days. Section 9 of the Act relates to deductions for absence from duty, and clause (1) thereunder stipulates that deductions may be made under Section 7(2)(b) of the Act only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work; Section 9(2) of the Act stipulates that the amount of such deduction shall, in no case, bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made, a larger proportion than the period for which he was absent bears to the total period, within such wage period, during which, by the terms of his employment, he was required to work. The proviso, however, stipulates that, subject to any rules made in this behalf, if ten or more employed persons, acting in concert, absent themselves without due notice and without reasonable cause, such deduction, from any such person, may include such amount not exceeding his wages for eight days as may, by any such terms, be due to the employer in lieu of due notice. Under the explanation thereto, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work. Exercise of power, in the present case, is in terms of the proviso to Section 9(2) of the Act, and such power could have been exercised only if the respondent-workmen were governed by the provisions of the Act.

Section 1(6) of the Act makes the Act applicable to wages payable to an employed person in respect of a wages period, if such wages for that wage period do not exceed Rs.6,500/- 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.

It is not in dispute that, during the period when the respondent-workmen went on strike, the monthly wages stipulated under the provisions of the Act was Rs.6,500/-. It is also not in dispute that all the respondent-workmen were drawing monthly wages far higher than the stipulated wages of Rs.6,500/- per month. It is evident, therefore, that, in view of Section 1(6) of the Act, the provisions of the Act could not have been applied to the respondent-workmen and the appellant, therefore, lacked jurisdiction to take action against them either under Section 9(2) of the Act or its proviso.

The submission of the learned Advocate General, however, is that the Central Government has been conferred the power, under Section 1(5) of the Act, to extend the provisions of the Act to other classes of persons also; and, in view of the aforesaid notifications issued by the Central Government, the provisions of the Act applies to all workmen employed in mines, and who are governed by the provisions of the Mines Act, 1952, irrespective of the monthly wages drawn by them.

Section 1(5) of the Act enables the appropriate Government, after giving three months' notice of its intention of so doing and by notification in the Official Gazette, to extent the provisions of the Act or any of them, to the payment of wages to any class of persons employed in any establishments specified by the appropriate Government under sub-clause (h) of clause (ii) of Section 2. The power conferred on the Central Government under Section 1(5) is to extend the provisions of the Act to the classes of persons employed in a specific class of establishments. This power has been conferred, under Section 1(5) of the Act, on the Central Government as Section 1(4) of the Act makes the Act applicable, in the first instance, to the payment of wages to persons employed in any factory, to persons employed otherwise than in a factory upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration. While the Act was made applicable, in the first instance only to the establishments specified in Section 1(4) of the Act, the Central Government was conferred the power, under Section 1(5) of the Act, to extend the provisions of the Act to other classes of establishment also. It is in the exercise of such a power that the Central Government, by the notifications above referred, has extended the provisions of the Act to all classes of persons employed in the mines to which the Mines Act, 1952 is applicable. While the effect of the notifications, issued by the Central Government under Section 1(5) of the Act, is to make the Act applicable even to workmen employed in the mines to which the

Mines Act, 1952 applies, Section 1(6) of the Act restricts applicability of the provisions of the Act only to workmen whose monthly wages are below Rs.6,500/- per month. Consequently, workmen employed in mines and who are governed by the provisions of the Mines Act, 1952 would fall within the purview of the provisions of the Act only if their monthly wages is less than Rs.6,500/- per month. If any of the respondent-workmen were drawing a monthly wage, less than Rs.6,500/- per month when they went on strike, the proviso to Section 9(2) of the Act would have been attracted, and the appellant would have been justified in imposing a penal wage cut in terms thereof. It has not even been contended before us, by the learned Advocate General, that any of the respondent-workmen, who went on strike, were drawing a monthly wage less than Rs.6,500/- per month. Consequently, the Learned Single Judge was justified in holding that the appellant was not empowered to exercise its powers under Section 9(2) of the Act with respect to such employees.

The only other question which necessitates examination is whether the appellant is entitled to impose a penal wage cut, on the workmen for having gone on strike, *de hors* Section 9(2) of the Act and its proviso. As reliance is placed on the Division Bench judgment of this Court in **Divisional Secretary, APSRTC National Mazdoor Union**[2], it is necessary for us to take note of the law declared therein. The Division Bench observed:-

> "............We find that the Corporation is justified in imposing penal wage cut for eight days as the stoppage of work by the employees of the petitioner-Union caused great inconvenience to the public. The members of the petitioner-Union should have noticed that they are working in an organization which is meant for public utility.

> Stoppage of their work will definitely cause lot of inconvenience resulting in paralysing the entire day's activities and causing inconvenience to the public which cannot be compensated. Having undertaken to serve the organization, which is of public utility in nature, stoppage of work without reasonable cause amounts to indiscipline. In such an event, the authority which has right to hold disciplinary enquiry will have definitely right to impose a punishment in the nature of penal wage cut. Even if the provisions of Payment of Wages Act have no application to the case of the members of the petitioner-Union, still the authority, who passed the order, imposing penal wage cut, has got right and jurisdiction to impose such penalty. Such an action cannot be said to be illegal or without jurisdiction. The points now raised in this writ petition might not have been brought to the notice of their lordships at the time of disposal of W.A.No.3 of 1995. If that was done, the finding would have been otherwise. Therefore, that judgment is not of any help to the petitioners………"

A Learned Single Judge of this Court, in **Tyre Retreading Shop Committee**[1], noted that earlier a Single Judge of this Court, in his order in WP.No.4346 of 1992 dated 13.11.1992 and WP.No.3878 of 1996 dated 14.08.1996, had held that the provisions of the Act, including Section 9(2) thereof, had no application to workmen whose monthly salary was above the amount mentioned in Section 1(6) of the Act. The Learned Single Judge also referred to a Division Judgment in WA.No.3 of 1995 and batch dated 08.04.1996 wherein it was held that "imposition of penal wage cut on the workmen amounts to disciplinary action or penal action because it has imposed penalty, which is in consequence of disciplinary action", and to another Division Bench judgment in WP.No.12017 of 1992 and batch dated 02.05.1997 wherein it was held that the provisions of the Payment of Wages

Act had no application to workmen whose monthly salary was above the wage limit specified in Section 1(6) of the Act. The learned Single Judge opined that the Division Bench, in its judgment in **Divisional Secretary, APSRTC National Mazdoor Union[2]**, had not expressed any opinion taking a view other than the one taken earlier; there was no reference to Section 1(6) of the Act in the judgment; and it could not, therefore, be said that the Division Bench, in **Divisional Secretary, APSRTC National Mazdoor Union[2]**, had taken a view different the one take earlier by the learned Single Judge, and in two Division Bench judgments of this Court; and the judgment in **Divisional Secretary, APSRTC National Mazdoor Union[2]** had to be understood in the background of the facts and circumstances of the said cases. We are in complete agreement with the opinion expressed by the Learned Single Judge in **Tyre Retreading Shop Committee**[1].

Even otherwise, the Division Bench of this Court, in **Divisional Secretary, APSRTC National Mazdoor Union[2]**, has merely held that, even if the provisions of the Act have no application, the authority, who passed the order imposing a penal wage cut, could not be said to lack jurisdiction to impose such penalties; and such action cannot be said to be illegal or without jurisdiction. If the appellant-Corporation has been conferred power, either under the Standing Orders or the Rules and regulations governing its employees, it is always open to them to take action against the errant workmen for having resorted to an illegal strike. All that we have held is that the appellant lacks jurisdiction to take action against them under the Payment of Wages Act, 1936.

We may not be understood to have condoned the action of the respondent-workmen in resorting to strike, and in abstaining from work in espousing their demands. Sri G. Vidyasagar, learned Senior Counsel appearing on behalf of the respondent-workmen, would submit that, for the days for which the respondent-workmen did not work, they were denied wages; and the grievance in the Writ Petition is limited only to the penal wage cut imposed on them. As acts of indiscipline, such as resorting to illegal strikes, cannot be condoned by any employer, we make it clear that it is open to the appellant, in terms of the rules and regulations governing its employees, to take action against them for the illegal strike they are said to have resorted to. Subject to the aforesaid observations, we see no reason to interfere with the order under appeal.

The Writ Appeals fail and are, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

13th March 2017
RRB