

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.217 OF 2017

JUDGMENT: (*Per Hon'ble Dr. Justice Shameem Akther*)

This Appeal is preferred against the dismissal order passed by the learned Single Judge in Writ Petition No.10414 of 2015 dated 22.11.2016.

The Writ Petition was filed challenging the order dated 22.11.2014, passed in M.W. No.5 of 2013, on the file of the Authority Appointed under Section 20 of the Minimum Wages Act, 1948 (for short, 'the Act') and Deputy Commissioner of Labour, Kurnool District, who is respondent No.1 herein.

The appellants-writ petitioner Nos.1 and 2 are the President and Secretary of Yemmiganur Weavers Co-operative Production and Sale Society Limited, Yemmiganur, Kurnool District (hereinafter referred to as 'Society'). The case of respondent No.2 is that he joined services of the Society on 18.12.1974 and promoted as Marketing Manager on 28.03.1997; and by proceedings dated 12.09.1998, he was demoted as Salesman on the allegations that he was responsible for missing of three teakwood pieces and thereafter, he was again posted as Manager at Anantapur Sales Depot by proceedings dated 29.05.2003 and subsequently, he was transferred as Manager of Gonegondla Production Branch by order dated 26.05.2004; later, he was brought back to Yemmiganur and made In-charge of Yarn Godown and handed over certain additional tasks; and he retired on 31.07.2010; in the proceedings of the retirement, it was mentioned that respondent No.2 had a designation of "General Checking Clerk"; thereafter, he filed an application before respondent No.1 under Section 20 of the Act in M.W. No.5 of 2013, claiming that appellant Nos.1 and 2 are responsible for payment of minimum rates of wages, as fixed by the Government in

G.O.Ms.No.56 dated 22.06.2007, the appellants have not paid the minimum rates of wages, though respondent No.2 had retired in the capacity of “Manager”, the appellant Nos.1 and 2 have treated him retired as “General Checking Clerk” and had claimed an amount of Rs.47,468/-, being the differences between the minimum rates of wages payable and the actual wages paid to him, as General Clerk instead of Manager, for the period from 01.10.2007 to 31.07.2010; respondent No.1 after considering the said application, passed an order dated 22.11.2014, directing the appellants-writ petitioners to deposit an amount of Rs.47,468/-, by means of a demand draft drawn on any nationalized bank, drawn in favour of respondent No.1 herein, within a period of 30 days from the date of the order, failing which, respondent No.2 will be entitled to interest at the rate of 9% per annum on the said amount from the date of the order; challenging the said order, the appellants-writ petitioners filed W.P. No.10414 of 2015 contending that they have no other alternative or efficacious remedy available to them except to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India, stating that respondent No.1 failed to appreciate that while respondent No.2 was working in P.P.D. Section as Manager had misappropriated three teakwood pieces, the management issued charge sheet, conducted an enquiry and after enquiry, the said allegation was proved and thereafter, the respondent No.2 was demoted as Salesman, vide proceedings dated 12.09.1998, and thereafter, the respondent No.2 did not work as Manager till his retirement, however, claimed for the basic wages as per G.O.Ms. No.56 dated 22.06.2007, for which he is not entitled.

Respondent No.2 herein preferred W.P. No.8466 of 2016 challenging the same order dated 22.11.2014 passed by respondent No.1 for not granting compensation and costs.

The learned Single Judge dismissed both the Writ Petitions, i.e., W.P. Nos.10414 of 2015 and 8466 of 2016, vide the common order dated 22.11.2016. Challenging the said order, the appellants-writ petitioners in W.P. No.10401 of 2015 preferred the present Writ Appeal.

Heard both the learned counsels, appearing for the appellants-writ petitioners and respondent No.2, and also the learned Government Pleader appearing for respondent No.1.

Learned counsel appearing for the appellants would submit that respondent No.2 is not eligible for wages as Manager, as he was demoted prior to the Government Order and retired as General Checking Clerk only; respondent No.2 worked as clerk from the date of his joining in the Society; his claim of wages in the category of Manager is illegal and arbitrary; the claims under A.P. Shops and Establishments Act, 1988, are required to be made within one year from the date of due (as per Section 51(1) of that Act); since respondent No.2 had filed the claim beyond the period with a delay of three years, he is not entitled for any minimum wages as per G.O.Ms.No.56 dated 22.06.2007; and finally, prayed to allow the writ appeal by setting aside the order passed by the learned Single Judge and also the order passed by respondent No.1.

On the other hand, learned Government Pleader appearing for respondent No.1 would submit that the order passed by the learned Single Judge as well as the order passed by respondent No.1 do not suffer from any infirmity and prayed to dismiss the writ appeal.

Learned counsel appearing for respondent No.2 would also submit that there are no merits in the appeal and prayed to dismiss the writ appeal.

During the pendency of proceedings before respondent No.1, the respondent No.2 deposed as A.W.1 and marked Exs.A.1 to A.10. The appellants examined R.W.1 and no documents were marked on their behalf.

On perusal of the entire record reveals that the respondent No.1, vide order dated 22.11.2014, held that respondent No.2 herein was discharging duties as Manager during the period of claim i.e., between 01.10.2007 and 31.07.2010; the punishment imposed against the respondent No.2 in the year 1997-98; as the demand of minimum wages relates to the year 2007-2010, the punishment imposed is of no relevance; the wages fixed in G.O.Ms. No.56 dated 22.06.2007 are statutory minimum wages and no wage less than that of the same is required to be paid; respondent No.2 was paid less than the statutory basic wages of Rs.3,098/- per month against Rs.4,048/- per month; during the period in question, respondent No.2 worked as a Manager and retired on 31.07.2010; and ultimately, granted minimum wages as per G.O.Ms. No.56 dated 22.06.2007. Aggrieved by the order dated 22.11.2014, passed by respondent No.1, the appellants have preferred W.P. No.10414 of 2015 and respondent No.2 herein also preferred W.P. No.8466 of 2016 claiming damages and interest. Both the writ petitions are dismissed by the learned Single Judge, vide common order dated 22.11.2014, upholding the order passed by respondent No.1.

It is evident from the evidence of respondent No.2 and the documents marked on his behalf, he discharged duties under the appellants as Manager during the period in question, i.e. from 01.10.2007 to 31.07.2010, i.e., till his retirement. It is not in dispute that the minimum wages fixed for the Managers as per G.O.Ms.No.56 dated 22.06.2007 is Rs.4,048/-. As per Ex.A.1-Service Register entries of respondent No.2 (20 pages), the designation of respondent No.2 is shown as Manager; as per Ex.A.9-Proceedings No.YWCS/EST/03/1529 dated 29.05.2003, he was posted as Manager of Anantapur Depot; and as per

Ex.A.10-Proceedings No.YWCS/EST/04/2036 dated 26.05.2004, he was transferred as Manager to Gonegandla Production Branch and discharged duties as Manager till his retirement, i.e., the period in question. There is nothing to disbelieve Exs.A.1, A.9 and A.10. The disciplinary proceedings and the punishment inflicted on respondent No.2 in the years 1997 and 1998, is of no relevance, since respondent No.2 worked as Manager in the years 2003 to 2010. Though, the appellants contended that respondent No.2 did not work as Manager, they could not file any record to substantiate the same, but simply stated that respondent No.2 was only a General Checking Clerk, but no record is placed before respondent No.1 to substantiate the same. It is not in dispute that as per G.O.Ms. No.56, the minimum wages payable to the Manager is Rs.4,048/- together with VDA applicable from time to time. It is also not in dispute that respondent No.2 was paid the basic wage of Rs.3,098/- per month. The payment made to respondent No.2, i.e., Rs.3,098/- per month, is not the basic wage for the Manager, it is the basic wage for the Accountant, Clerk, Typist, Cashier, Delivery Man, Packer, Store Keeper and Salesman. There is substantial material on record to believe that respondent No.2 had worked as Manager under the appellants for the period between 01.10.2007 to 31.07.2010, i.e., till the date of retirement, though the appellants have contended that respondent No.2 had responsible for missing of three teakwood pieces and he was demoted from the post of Manager to the post of Salesman on 12.09.1998. As per the record available, respondent No.2 was promoted as Manager and posted at different places, which is evident from Exs.A.1, A.9 and A.10, during the period in question, i.e., from 01.10.2007 to 31.07.2010, i.e., till the date of retirement. Therefore, the punishment imposed demoting respondent No.2 on 12.09.1999 as Salesman is not helpful to the appellants.

As per the record available, an application was filed by respondent No.2 before respondent No.1 to condone the delay caused in seeking the relief. The

same is numbered as M.W.M.P. No.1 of 2010 and it was allowed on 05.03.2013 and thereafter, an order was passed by respondent No.1 in M.W. No.5 of 2013 on 22.11.2014, directing the appellants to pay minimum wages. The respondent No.1 has power to condone the delay under Section 20(2) of the Act, when sufficient cause for the whole delay is shown and explained, the length of the delay is of no significance as held in a decision of the Hon'ble Supreme Court in **N.Balakrishnan v. M.Krishnamurthy**¹. The order dated 05.03.2013 allowing M.W.M.P. No.1 of 2010 was not challenged before appropriate authority and now the appellants cannot contend that the application for the grant of minimum wages is filed with a delay of three years.

In the circumstances of the case, it is relevant to state that in an intra-court appeal filed under Section 15 of the Letter Patent, the jurisdiction of the appellate Court is limited, no interference is made unless a patent irregularity is committed. In the circumstances of the case, the finding of respondent No.1 as well as the order of the learned Single Judge are based on record and do not suffer from any infirmity and no interference is warranted and all the contentions raised on behalf of the appellants before this Court do fail.

In the result, the order under appeal is confirmed and the Writ Appeal is dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J.)

Date: -03-2017
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¹ AIR 1998 SC 3222