

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.1547 of 2016 (O&M)

The Executive Officer, Municipal
Council, Nabha

... Petitioner

Versus

Authority under Minimum Wages Act,
1948 and others

... Respondents

2. CWP No.1632 of 2016 (O&M)

The Executive Officer, Municipal
Council, Nabha

... Petitioner

Versus

Authority under Minimum Wages Act,
1948 and others

... Respondents

3. CWP No.1633 of 2016 (O&M)

The Executive Officer, Municipal
Council, Nabha

... Petitioner

Versus

Authority under Minimum Wages Act,
1948 and others

... Respondents

4. CWP No.1634 of 2016 (O&M)

The Executive Officer, Municipal
Council, Nabha

... Petitioner

Versus

Authority under Minimum Wages Act,
1948 and others

... Respondents

5. CWP No.1635 of 2016 (O&M)

The Executive Officer, Municipal
Council, Nabha

... Petitioner

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1948 and others ... Respondents

6. CWP No.1638 of 2016 (O&M)

The Executive Officer, Municipal
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7. CWP No.1639 of 2016 (O&M)

The Executive Officer, Municipal
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8. CWP No.1641 of 2016 (O&M)

The Executive Officer, Municipal
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9. CWP No.1643 of 2016 (O&M)

The Executive Officer, Municipal
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10. CWP No.1644 of 2016 (O&M)

The Executive Officer, Municipal
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11. CWP No.1647 of 2016 (O&M)

The Executive Officer, Municipal
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12. CWP No.1649 of 2016 (O&M)

The Executive Officer, Municipal
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13. CWP No.1650 of 2016 (O&M)

The Executive Officer, Municipal
Council, Nabha ... Petitioner

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14. CWP No.1651 of 2016 (O&M)

The Executive Officer, Municipal
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15. CWP No.1652 of 2016 (O&M)

The Executive Officer, Municipal
Council, Nabha ... Petitioner

Versus

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1948 and others ... Respondents

16. CWP No.1671 of 2016 (O&M)

The Executive Officer, Municipal
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17. CWP No.1672 of 2016 (O&M)

The Executive Officer, Municipal
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18. CWP No.1683 of 2016 (O&M)

The Executive Officer, Municipal
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19. CWP No.1954 of 2016 (O&M)

The Executive Officer, Municipal
Council, Nabha ... Petitioner

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1948 and others ... Respondents

20. CWP No.2001 of 2016 (O&M)

The Executive Officer, Municipal
Council, Nabha ... Petitioner

Versus

Authority under Minimum Wages Act,
1948 and others

... Respondents

21. CWP No.1646 of 2016 (O&M)

The Executive Officer, Municipal
Council, Nabha

... Petitioner

Versus

Authority under Minimum Wages Act,
1948 and others

... Respondents

Date of Decision: 10.03.2017

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Pankaj Jain, Advocate,
for the petitioner.

Mr. Ravi Gakhar, Advocate,
for respondent-workman.

Mr. Ashish Gupta, Advocate,
for respondents No.4 and 5.

RAJIV NARAIN RAINA, J.(Oral)

1. This order will dispose of 21 writ petitions mentioned above.

The facts are taken from CWP No.1547 of 2016.

2. These petitions are by the Municipal Council Nabha challenging twenty one similar orders passed by the Authority under Minimum Wages Act, Patiala.

3. The principal contention taken in assailing the impugned orders is that the claim applications were not maintainable before the Authority in the absence of respondents impleading the Contractor as a necessary party when the respondent workers were employed thought him and there was no direct employer-employee relationship between the parties and, therefore,

the Municipal Council, Nabha was not responsible for payment of minimum wages.

4. However, I find that the contractor has been impleaded for the first time in these writ petitions whereas it was not a party before the Authority under Minimum Wages Act, Patiala in the claim applications filed under Section 20 of Minimum Wages Act, 1948 (for short 'the Act'). In para.2 of the writ petition filed by the Municipal Council, Nabha against the impugned orders passed by the Authority allowing the applications it has been tried to be explained that the contractor was a necessary party and should have been impleaded since relief was the liability of the Contractor and not of the municipality. If the applicants failed to make the contractor party to the dispute then no effort was made by the Municipal Council, Nabha to make an application before the Authority under Act asking it to implead the contractor in absence of whom a full and complete adjudication of the case could not take place. The Council put in appearance and contested the case on merits without raising this objection as though it was the employer of the respondent workers and as a result a new plea cannot be permitted to be entertained at this stage. Accordingly, the objection is overruled as waived. I would, therefore, proceed to strike out the name of the contractor from the array of respondents in the memorandum of parties the writ petitions and restore them as were before the Authority.

5. In any case, the obligation and duty of the principal employer being a local body and an agency or instrumentality of the State to pay those who work for it the minimum wages prescribed for the category of employment under the Act by the Deputy Commissioner of the District and

in this the Council should not be heard to raise technical pleas of bar of limitation or belated approach by the workers in accessing justice.

6. The argument as to the applications being barred raised by Mr. Pankaj Jain is based on First proviso to Section 20 which prescribes a period of six months for bringing applications claiming payment of wages less than the minimum prescribed. However, the Second proviso to Section 20 guarantees that an application may be admitted after the period of six months if the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

7. The question of entertainment is a matter of discretion and a mixed question of law and fact exercised by the authority in a judicious manner. It is not for the High Court acting under Article 226 of the Constitution to go into the sufficiency or inadequacy of reasons which led to entertainment of the applications on sufficient cause shown in explaining the delay and if discretion has been exercised by the authority in a fair and proper manner and the were applications entertained and decided then it is not for this Court to take another view of the condoning of delay and interfere with the order when it does substantial justice and causes no prejudice to the authority which is bound by the provisions of the Act.

8. The delay in this case is of 13 years but the demands of substantial justice and the salutary provisions of the beneficial legislation in the Minimum Wages Act should be given full effect. When absence of destruction of record is not pleaded by weeding out as per rules and the claim is just and can be proved by simple evidence then it would not behove the municipality to raise the plea of limitation. If the limitation prescribed in

the First proviso had elapsed it cannot be said that the rights of the workmen had been destroyed.

9. The Second proviso to Section 20 comes to the rescue when it is worded in such fashion that it prescribes no outer limit after expiration of the period of six months in the First proviso where after the issue is left to the discretion of the Authority to entertain an application without imposing a legal bar curtailed by maximum time when an action can be brought.

10. The Second proviso in character and substance is akin to Section 5 of the Limitation Act, 1963 and the party approaching has to satisfy the Court that he had sufficient cause for not preferring the proceeding within the prescribed time, for the whole of the period of the delay. The High Court will not review the discretion of the authority judicially exercised, while it may interfere if the exercise of discretion is capricious or perverse or ultra vires. The Act creates a right in employees for receipt of wages at the notified rates, but the fulfillment of the rights and obligations are not made the responsibility of any particular authority which is a matter of trial. Besides, Section 24 of the Act bars the jurisdiction of any Court to entertain any suit for the recovery of wages which could be recovered under Section 20.

11. I would, therefore, think that the authority committed no error of jurisdiction in entertaining the applications and deciding them on merits. If the issue of limitation goes against the petitioner Council then Mr. Jain fairly conceded that he has nothing more to offer in prosecution of the case as far as merits are concerned.

12. For the foregoing reasons, I find no fundamental flaw or a

substantial error apparent on the face of the record or any palpable legal infirmity or injudicious or wanton exercise of discretion in entertaining the claim applications to compensate the workers of short payment of wages in passing the impugned orders by the Authority under Minimum Wages Act, Patiala and would accordingly dismiss the petitions.

(RAJIV NARAIN RAINA)
JUDGE

10.03.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>