

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.22571 OF 2002

ORDER

This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with order dated 18.10.2002 passed in MWMP.No.57 of 2002, by the Authority under Minimum Wages Act and the Assistant Commissioner of Labour-III, Hyderabad, and to quash or set aside the same by holding it as arbitrary and illegal.

It is the case of the petitioner that the petitioner is doing business and the 2nd respondent-workman was employed under him in the year 1991. He was not a regular employee and was discharging his duties intermittently as and when there was work. The 2nd respondent had filed MWMP No.57 of 2002 contending that the petitioner is not paying minimum wages to him since 1991, and without issuing any notice, he was illegally terminated and the difference of wages comes to Rs.32,815/-. The respondent-workman had filed the said case with a delay of more than 10 years and filed the application to condone the delay and the same was condoned by the 1st respondent-Authority. Challenging the same, the present writ petition is filed.

While admitting the writ petition on 13.11.2002, this Court granted interim stay.

Learned counsel appearing for the petitioner contends that since the respondent-workman had filed the said MWMP No.57 of 2002 with a delay of more than 10 years, the 1st respondent-Authority ought not to have condoned the delay and each day delay has to be explained; that in the instant case, the respondent-workman has not explained the reasons for delay; that without giving any reasons and without appreciating the fact that the respondent-workman has not explained the each day delay, the 1st respondent-Authority had erroneously condoned the delay and posted the case on 31.10.2002 for further hearing in the main case; that as per Section 20 (2) of the Minimum Wages Act, 1948 (for short 'the Act') every application shall be presented within six months from the date on which the minimum wages become payable.

Learned Government Pleader appearing for the 1st respondent contends that since the respondent-workman filed claim petition seeking an amount of Rs.32,815/- towards wages complaining that the petitioner failed to pay the minimum wages for the service rendered by him, and also filed MWMP No.57 of 2002 to condone the delay, the 1st respondent-Authority after taking into consideration the status of the respondent-workman, had rightly condoned the delay; that according to Section 20 (2) of the Act, a case can

be filed complaining about non-payment of minimum wages within six months. If six months is to be taken from the date of filing, it would be from December, 2001. In support of his contention, he relied upon the judgment rendered by this Court in *Mansoor Ahmed vs. the Labour Court and another*¹, wherein this Court held that delay has to be explained by the authority. Further, the Assistant Inspector is one of the authorities empowered under Section 20(2) of the Act and is bound to comply with the statutory provisions of the said Section and he should satisfactorily explain the delay for not filing the application within the statutory period. Unless the requirement is satisfied, the application cannot be entertained merely on the ground of hardship that might be caused to the employees.

On the strength of the said judgment, learned counsel appearing for the petitioner contends that in the instant case, the 1st respondent-Authority has not explained the day today delay and mechanically allowed the delay application filed by the 2nd respondent-workman and the order passed by the 1st respondent-Authority is arbitrary, illegal and violative of Section 20 (2) of the Act. He placed reliance on the judgment of the Bombay High Court in *Prem Narayan Amritlal Varma vs. Divisional Traffic Manager*, wherein it was held that the

¹ 1975 LAB I.C.1113

authorities must be satisfied that there is *prima facie* case for condoning the delay and it cannot be adjudicated *ex parte*.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that the judgment rendered by the petitioner has no application in the present case, as the 1st respondent-Authority has neither condoned the delay *ex parte* nor has mechanically allowed the delay application preferred by the respondent-workman. In the delay condonation application, the respondent-workman has clearly stated his entire case and the circumstances in which he approached the authorities. The 1st respondent authority having considered the reasons given in the delay condonation application has rightly condoned the delay. No irregularity has been committed by the 1st respondent-Authority in condoning the delay. The total claim of the respondent- workman may be right from 1991 i.e., that could be exaggerated claim also, but the petitioner never allowed the case to be decided on merits.

Admittedly, there is policy of non-payment of minimum wages even prior to six months from 1991. The 1st respondent-Authority can definitely look into that particular aspect and adjudicate the case on merits and he can also reduce the total claim made by the 2nd respondent-workman.

The writ petition filed by the petitioner is only to drag on the proceedings before the Authority. There are no merits and the writ petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

31st October, 2018

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