

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.22572 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 M.W.M.P.No.58 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 second respondent-workman was employed under him as Sweeper for six months and thereafter, she was never in service at any point of time. Therefore, the question of terminating her services on 16.01.2001 does not arise. The second respondent had filed M.W.M.P.No.58 of 2002 contending that the petitioner was not paying minimum wages to her, and without issuing any notice, she was illegally terminated and the difference of wages comes to Rs.48,403/-. The respondent-workman had filed the said case with a delay and the first respondent entertained the case without there being any affidavit for condonation of delay. 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 M.W.M.P.No.58 of 2002 with a delay of more than six years, the first 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 first 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 first respondent contends that since the respondent-workman filed claim petition seeking an amount of Rs.48,403/- towards wages complaining that the petitioner failed to pay the minimum wages for the service rendered by her, and also filed M.W.M.P.No.58 of 2002 to condone the delay, the first 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 v. 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

¹ 1975 LAB I.C.1113

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 first respondent-Authority has not explained the day today delay and mechanically allowed the delay application filed by the second respondent-workman and the order passed by the first 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 v. Divisional Traffic Manager**, wherein it was held that the 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 first respondent-Authority has neither condoned the delay *ex parte* nor has mechanically allowed the delay application preferred by the respondent-workman. The first respondent had entertained the application of the second respondent without there being any affidavit filed for condonation of delay. The first respondent authority, having considered the reasons given in the delay condonation application, has rightly condoned the delay. No irregularity has been committed by the first 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 first 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 second 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. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(ABHINAND KUMAR SHAVILI, J)

2nd November 2018
RRB

