

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.14900 of 2001

ORDER:

This writ petition is filed questioning the order dated 02.05.2001 of the 1st respondent, i.e., Authority under Section 20(1) of the Minimum Wages Act, 1948 (for short 'the Act') cum Assistant Commissioner of Labour, Kadapa, passed in Case No.MW/ 52/ 2000 and to quash the same insofar as direction for payment of Rs.5140/- to the 2nd respondent towards purported differential wages for the period between April, 1999 to March, 2000.

2. The brief facts, insofar as they are relevant for the purpose of this writ petition, are that the petitioner is a company, engaged *inter-alia* in the business of marketing of drugs, having its registered office and factory at Bangalore; it has been engaging medical sales representatives for the purpose of canvassing the promotion of sale of the products manufactured by it, including the State of Andhra Pradesh; it does not have 'shop' or 'commercial establishment' in the State of Andhra Pradesh within the meaning of A.P. Shops & Establishments Act, 1988; the 2nd respondent is a medical sales representative, employed by the petitioner with effect from 17.04.1993; the 2nd respondent filed application under Section 20(2) of the Act on 09.05.2000 in case No.MW/ 52/ 2000 before the 1st respondent-Authority, complaining that the petitioner is not paying minimum wages as per G.O.Ms.No.33, EDCW and Labour (Lab.II) Department dated 06.03.1991 and as such, claimed an amount of Rs.6,555/- towards ten times penalty and Rs.1000/- towards alleged differential wages; the petitioner filed objections, *inter-alia* contending that G.O.Ms.No.33 dated 06.03.1991 is not

applicable to both the petitioner and 2nd respondent, as the petitioner has no 'shop' or 'commercial establishment' within the State of Andhra Pradesh, much less within the territorial jurisdiction of the 1st respondent-Authority; the 2nd respondent was paid far higher wages than those prescribed by the notification; applying the ratio of the judgment of the Supreme Court in the case of '*Airfreight Limited vs. State of Karnataka & others*¹', the claim of 2nd respondent is unsustainable.

3. Before the 1st respondent-Authority, 2nd respondent was examined as AW.1 and the petitioner examined its Deputy Regional Sales Manager as RW.1. The notification was marked as Ex.A.1 and wages paid to the 2nd respondent was marked as Ex.B.1.

4. Upon considering the evidence of the parties and material on record, the 1st respondent-Authority, allowed the claim of the 2nd respondent for the period between April, 1999 and March, 2000 as against his claim for the period from April 1993 to March 2000 and directed the petitioner to pay a sum of Rs.5,140/- to the 2nd respondent.

5. Aggrieved by the said order, the petitioner filed the present writ petition. This writ petition was admitted on 23.07.2001 and interim stay was granted by this court on the same day.

6. On 21.01.2016, the petitioner filed WP MP No.2352 of 2016, seeking amendment of the cause title, as by virtue of amalgamation proceedings initiated at the High Court of Karnataka, Bengaluru, in Company Petition Nos.33 to 38 of 2004, the High Court vide its order dated 05.01.2005, sanctioned the scheme of Amalgamation of the erstwhile 'Eros Pharma Limited' with 'Micro Labs Limited'. The said petition was ordered by this court on 30.01.2018.

¹ 1999 LLR 1008

7. Even though, notice was served on the 2nd respondent, none appeared on his behalf. Heard Sri C.R. Sridharan, learned senior counsel for the petitioner.

8. Learned counsel for the petitioner submits that the petitioner admittedly does not have a 'shop or commercial establishment' within the State of Andhra Pradesh, much less within the territorial jurisdiction of the 1st respondent-Authority; G.O.Ms.No.33 dated 06.03.1991 issued by the Government of Andhra Pradesh in exercise of the powers conferred under Section 3 of the Act, cannot be made applicable to the petitioner; when the petitioner does not have any establishment much less a 'shop' or 'commercial establishment' in the State of Andhra Pradesh, it cannot be construed as 'employer' within the meaning of Section 2(e) of the Act, because, it provides that 'employer' means any person who employs, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act; the 2nd respondent is a sales promotion employee, specifically covered under the Sales Promotion Employees (Conditions of Service) Act, 1976, the 1st respondent-Authority, without discussing applicability of the Act to the petitioner, gave a finding that it is applicable even to a 'sales promotion employee'. The application under Section 20(2) 1st proviso of the Act, shall be presented within six months from the date on which the minimum wages become payable. Second proviso says that the application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period. In this case application has been made on 09.05.2000 claiming minimum wages for the period from April 1991 to March 2000, which is hopelessly

barred by time. No petition whatsoever has been filed explaining the delay in filing the said application. Only a letter dated 09.05.2000 is filed along with the application, stating that due to ignorance he could not file in time.

9. The 2nd respondent Authority under the Minimum Wages Act specifically held that “ignorance of law is no excuse and hence the total period of claim is not allowed by this authority; but on humanitarian grounds a judicious part is allowed. The difference of wages in the claim statement from 1.4.99 to 31.3.2000 is allowed.”

10. After holding that ignorance of law is no excuse, the authority ought not to have allowed the appeal, which is filed much beyond the time stipulated under Section 20(2) of the Act. As no reason whatsoever has been given seeking condonation of delay, the authority ought to have dismissed the application.

11. Even though other contentions are raised with regard to the non-applicability of the Minimum Wages Act, 1948 to the petitioner, it is not necessary to go into those issues, as the application itself is time barred.

12. For the reasons stated above, the Writ Petition is allowed and the order of the Authority under the Minimum Wages Act in Case No. M.W.52 of 2000 dated 02.05.2001 is quashed. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 29.03.2018
BSS

HON' BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

53

Writ Petition No.14900 of 2001



Date: 29.03.2018

BSS