

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.20494 OF 2007

ORDER

When the matter is taken up for hearing, it is noticed that during pendency of the writ petition, the petitioner had approached the Assistant Commissioner of Labour-cum-Authority under the Payment of Wages Act, 1936 (for short 'the Act') *vide* PW.M.P.No.1 of 2012 and the same was dismissed on 27.05.2014 by the Assistant Commissioner of Labour on the premise of pendency of the present writ petition.

The petitioner herein filed M.P.No.54 of 2004 under Section 33-C (2) of the Industrial Disputes Act, 1947 (for short 'the Act') before the Industrial Tribunal-cum-Labour Court, Visakhapatnam, claiming certain arrears of wages during his service period. The Tribunal *vide* order dated 06.06.2007 dismissed the same and the operative portion of the order reads as under:

“That being the case in the light of the principles laid down by the Apex Court in the decision cited above under Section 33-C(2) of I.D.Act, this Court cannot determine the amount due to the petitioner which has to be adjudicated under proper reference under Section 10 of the I.D.Act. Hence, I hold that the petition as such under Section 33-C(2) is not at all maintainable. That being the case, question of determining the quantum of amount the petitioner would be entitled to by this Court does not arise at all. If so advised the petitioner can

move the appropriate forum for determination of these claims. Accordingly, this point is answered against the petitioner.

In the result, the petition is dismissed. However, the petitioner is at liberty to move the appropriate forum for determination of amounts due to him, if so advised and such a claim should be made within three months from the date of this order.”

Challenging the same, the present writ petition is filed by the petitioner.

Admittedly, the Tribunal has rightly dismissed M.P.No.54 of 2004 filed by the petitioner. The petitioner is pursuing alternative remedy by filing PW MP.No.1 of 2012, before the Assistant Commissioner of Labour, Visakhapatnam, who, had dismissed the same on the premise of pendency of the present writ petition. Hence, ends of justice would be met if a direction is given to the Assistant Commissioner of Labour-cum- Authority under the Payment of Wages Act, 1936, to re-open the case and adjudicate the same, on merits.

Accordingly, the Writ Petition is disposed of directing the Assistant Commissioner of Labour-cum- Authority under the Payment of Wages Act, 1936, to re-open the case and adjudicate the same, on merits and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

20th September, 2018
rkk

