

THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.26109 of 2003

ORDER:

This writ petition is filed seeking to issue a writ of certiorari to call for the records related to and connected with the impugned orders passed by the 1st respondent in MW No.12/2002, dated 30-7-2003 and quash or set aside the same by holding it as arbitrary, illegal and without jurisdiction.

Heard Sri Saloori Ramesh, the learned counsel for the petitioner and Sri A.Seetaram. the learned counsel for the respondents.

It has been contended by the petitioner that the petitioner is a registered private company incorporated under Companies Act and it is engaged in the business of manufacturing/process/Water Bottling of packaged drinking water. It has been further contended by the petitioner that in order to carry on the manufacturing process at his factory, the petitioner had engaged the services of respondent-workmen, through contractor by name Md.Mahboob Ali to do petty works of loading and unloading. The petitioner had engaged the contractor for loading and unloading work at his factory. The contractor, in turn, has employed the respondent-workmen and to that effect the petitioner has also obtained license to enter the work of contract. The contractor and the respondent-workmen have approached the authority under Minimum Wages Act complaining that minimum wages were not extended to the respondent-workmen. The complaint of the respondent-workmen was numbered as MW No.12 of 2002 and the 1st respondent had entertained the complaint of the respondent-workmen and the petitioner has very clearly demonstrated before the 1st respondent that the respondent-workmen were directed to engage by them. The respondent-

workmen were engaged by a licensed contractor of the petitioner and there is no master and servant relationship between the petitioner and the respondent-workmen. The petitioner further contended that G.O.Ms.No.54, dated 22.10.1998, wherein a notification was issued for the scheduled employment has no application in respect of the petitioner's business activity. The respondent-workmen were claiming wages of Water Transport Operator/Boiler Operator/Chilling Plant Operator Carry Operator. In the cross-examination before the 1st respondent authority, the witness examined by the respondent-workmen had categorically admitted that she was never engaged or discharging the duties of an Operator and when once the PW1 has admitted that none of the respondent-workmen are working as Boiling Operator or Chilling Plant Operator, the question of first respondent authority directing the petitioner along with contractor to pay minimum wages to them would not arise and the same is liable to be set aside.

It has been further contended by the petitioner that the 1st respondent authority had adjudicated the matter, even though he has no jurisdiction to file a case, when the first respondent authority was never engaged the respondent-workmen and came to an erroneous conclusion that an amount of Rs.1,25,453/- is to be paid to the respondent-workmen and on that, the 1st respondent authority has imposed two times of the penalty totaling Rs.3,76,359/- to be paid by the petitioner along with contractor to the respondent-workmen. Challenging the same, the present writ petition is filed.

The learned counsel for the petitioner submits that, prima facie, there is no master and servant relationship between the petitioner and the respondent-workmen and this was clearly admitted by the respondent-workmen and, in spite of the same admission by the PW1, the 1st respondent authority has passed orders, holding that the petitioner is jointly and severally liable to pay the

difference of minimum wages as indicated by the 1st respondent erroneously and the said order is liable to be set aside.

The learned counsel for the petitioner further contends that this Hon'ble Court was pleased to grant interim suspension of the orders passed by the 1st respondent, vide orders dated 17-12-2003 subject to the condition that the petitioner deposits Rs.50,000/- within a period of four weeks and the respondent-workmen were at liberty to withdraw the same without furnishing any details.

The learned counsel for the petitioner further contends that in compliance with the interim orders passed by this Hon'ble Court, the petitioner has deposited Rs.50,000/- and contends that the orders passed by the 1st respondent authority are liable to be set aside. However, the petitioner would not claim the amount of Rs.50,000/- which has already deposited and which was already withdrawn by the respondent-workmen and contends that appropriate orders be passed setting aside the orders passed by the 1st respondent authority in so far as the petitioner is concerned as the petitioner is principal employer of unofficial respondent and he has nothing to do from the orders passed by the 1st respondent and the petitioner be absolved from the orders impugned by the 1st respondent dated 30.7.2003.

The learned counsel, appearing for the respondent-workmen contends that the issue raised by the petitioner was dealt by the 1st respondent at Para 16 of the impugned orders and held that G.O.Ms.No.54, dated 22.10.1998 is applicable to the petitioner establishment and hardly makes any difference whether respondent-workmen are employed through employer or through a contractor. As long as G.O.Ms.No.54, dated 22.10.1998 is made applicable, the petitioner is bound to pay minimum wages to the respondent-workmen. The petitioner cannot contend that they are not liable to pay the minimum wages to

the respondent-workmen. There are no merits in the writ petition and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions made by the parties, is of the considered view that the 1st respondent erred in holding that the petitioner is liable to pay the difference of minimum wages to the respondent-workmen as the petitioner never engaged the services of the respondent-workmen and the PW1, who was examined on behalf of the respondent-workmen, had categorically admitted that they were engaged through a contractor and the respondent-workmen never worked as Operator so as to claim minimum wages under G.O.Ms.No.54, dated 22.10.1998.

In view of the above observation, this court is of the considered view that the ends of justice would be met if the amount of Rs.50,000/-, which was already deposited by the petitioner and which was withdrawn by the respondent-workmen shall not be recovered from the respondent-workmen. However, the order with regard to the balance amount, as directed by the 1st respondent, is liable to be set aside. Accordingly, the same is set aside as there is no master and servant relationship between the petitioner and the unofficial respondent. It is always open for the respondent-workmen to proceed against the contractor, who is party respondent No.20 in this writ petition, in accordance with rules.

With this observation, the writ petition is disposed of. .

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

ABHINAND KUMAR SHAVILI, J

4th December, 2018

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