

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.723 of 2010

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking verbatim the following relief/s:

‘...to issue a Writ of certiorari or any other appropriate writ, order or direction calling for the records pertaining to case No.22-2-2009 dt.25-8-2009 and quash the same as illegal, arbitrary and unconstitutional and further declare that these orders have been passed without any jurisdiction vested in the 2nd respondent herein viz., Authority under payment of wages Act 1936 and Hon’ble Regional Labour Commissioner (Central) Hyderabad.’

2. I have heard the submissions of Ms.A.B. Lalitha Gayathri, learned counsel appearing for the writ petitioners, of Sri William Burra, learned counsel appearing for the 1st respondent, and of Sri K. Lakshman, learned Assistant Solicitor General, appearing for the 2nd respondent. I have perused the material record.

3. The facts necessary and relevant for consideration, in brief, are as follows: -“The 1st respondent herein filed a case in Case No.22/02/2009 before the authority under the Payment of Wages Act, 1936, [‘the Act’, for short] and Regional Labour Commissioner (Central), Hyderabad, claiming an amount of Rs.40,547/- [Rupees Forty Thousands Five Hundreds and Forty Seven only] stating that the said sum is due to him from the respondents therein, that is, the writ petitioners herein towards non payment of wages, that is, honorarium. Having considered the submissions of the parties, the said authority passed an order, dated 25.08.2009, in the application of the 1st respondent herein directing the writ petitioners herein to pay the above said sum to the 1st

respondent within two months from the date of receipt of the said order. Aggrieved thereof, the unsuccessful respondents therein assailed in this writ petition, the said order passed by the said authority.'

4. Learned counsel for the writ petitioners submits that the order of the authority under the Act is unsustainable as honorarium is not a wage as defined under Section 2(vi) of the Act and that the 1st respondent is drawing wages more than Rs.6,500/- per month and hence, his case does not come under the purview of the Act and that the claim period is from 1993 to 2000 and, therefore, the application filed in the year 2009 is clearly barred by limitation as a period of limitation of 12 months is prescribed under the proviso to sub-section 2 of Section 15 of the Act.

5. Learned counsel for the 1st respondent while supporting the impugned order of the authority under the Act submitted that the 1st respondent is employed in the establishment of South Central Railway, Secunderabad, as C.E & R.S, and that the 1st respondent herein performed the additional duties of cashier for the period from 1993 to 2000 and preferred claims for honorarium and that the said claims were processed as per procedure and that an amount of Rs.99,940/- was found due and that later Rs.59,393/- has been paid during the year 2006 and that the balance amount payable is not paid and that proposals were sent to the Chief Personnel Officer for obtaining the Railway Board's approval and that the matter was in the process of seeking clarifications with regard to signing of each page of the statement after the verification by a Junior Administrative Grade Officer and that there was no progress in the matter and that in the facts and circumstances, the order impugned passed by the authority under the Act directing payment of balance amount due and payable is

sustainable under facts and in law and that the writ petition is filed only to delay the payment even without exhausting the effective and alternative remedy under Section 17 of the Act and hence, the writ petition is liable to be dismissed.

6. I have given earnest consideration to the facts and submissions.

7. The order passed by the authority under the Act is admittedly based on the submissions made by both the parties and relevant documents. The writ petitioners are not disputing the fact that the 1st respondent has performed the additional duties of cashier for the period from 1993 to 2000 and made claims for honorarium and that the said claims were processed as per the procedure applicable and certification of Associate Accounts Department has been obtained by the concerned authority of the writ petitioners for payment of a total sum of Rs.99,940/-. They are also not disputing that from out of the said amount, a sum of Rs.59,393/- has already been paid by the writ petitioners to the 1st respondent. The claim in this writ petition is in regard to the balance amount, which remained unpaid. It is also not in dispute that the balance amount remained unpaid for the reason that the sanction of Railway Board is required and that such sanction is awaited as the proposal sent to the Chief Personnel Officer for approval of Railway Board is returned for want of clarification like verification and signing on each page by a Junior Administrative Grade Officer. Thus, the writ petitioners are only contending that sanction is required. So far as the contention that the case of the 1st respondent does not come under the purview of the Act no material documents are produced to substantiate the said plea. The order impugned was passed on consideration of submissions of both parties. So far as the plea

of bar of limitation, no specific dates are pleaded and averred to show that the claims for honorarium were made beyond time. On the other hand, the order of the authority under the Act, which is impugned, shows that claims claiming honorarium for the period were preferred and were processed as per procedure applicable and certification has been obtained for the whole of the amount as on 29.09.2005. If the writ petitioners wanted to show that the claim is not entertainable by the authority under the Act and is barred by time, they ought to have pleaded the necessary facts, the dates of claims and the time taken for processing etcetera and ought to have produced some semblance of documentary evidence. In the absence of necessary pleading and production of the record to substantiate the contentions, mere bald pleas of non-application of the provisions of the Act and bar of limitation are of no avail. Further, the writ petitioners, despite availability of right to appeal, an effective and alternative remedy under Section 17 of the Act, filed this writ petition having paid a part and not paid the remaining part of the amount.

8. On the above analysis, this Court finds that the writ petition is not maintainable and is also devoid of merit and is hence, liable for dismissal.

9. In the result, the Writ Petition is dismissed. The balance amount payable shall be paid to the 1st respondent within a reasonable time and in any event within four (4) weeks from the date of receipt of a copy of this order. On failure to so pay, the amount payable shall carry interest @ 12% per annum simple and shall be payable with the interest from the date of this order.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

14.06.2018

Vjl

