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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8181 of 2013.

Date of Decision : Sept. 10, 2018

The Dulheri Coop. Credit & Service Society Ltd.

.... Petitioner.

Versus

Authority, under the Minimum Wages Act, Bhiwani and others

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by: Mr. Pardeep Solath, Advocate
for the petitioner.

Mr. Narender Kaajla, Advocate
for respondent No.2.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash the impugned order dated 17.10.2012 (Annexure-P/3), whereby respondent No.1 has issued direction to the petitioner-society and the proforma respondents, to deposit an amount of Rs.27,150/- on account of difference of wages in the Court within 30 days failing which said amount was ordered to be recovered alongwith interest @ 12 per cent per annum.

2. Facts relevant for the purpose of decision of this writ petition; in the year 1997, the petitioner-Society was having one godown and Mani

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Ram, respondent No.2, was given the work of Sweeper on 14.03.1997. He was also to fill up one *Matka* of drinking water and thereafter he was free to do his own work. The total work in the petitioner-Society was only for 15 minutes in a day and thereafter respondent no.2 used to run a General store-cum-Tea stall at Dulheri Bus Stand. Vide resolution dated 05.03.1999, the honorarium of respondent No.2 was enhanced from Rs.50/- to Rs.200/- per month and work of Chowkidar was included in the above said resolution, but respondent No.2 never joined the post of Chowkidar. On 30.09.2006, the petitioner-Society was wound-up and Tosham PACS Ltd. Tosham was formed. Respondent No.2 did not work with the present society and the earlier society itself was not in existence.

3. As per the petitioner, after more than 12 years of passing of the resolution and even after winding up of the petitioner-Society, respondent No.2 filed a claim petition (Annexure-P/1) before respondent No.1 on the ground that he had worked on the post of Chowkidar, but he had not been paid the minimum wages as per the Minimum Wages Act, 1948 (for short, '**the Act**'). The petitioner-society filed its detailed reply on the ground that respondent No.2 was never employed, rather he was working on part time basis to sweep the premises of the society, but authority, respondent No.1, passed the impugned order, Annexure P/3, directing the petitioner-Society to deposit a sum of Rs.27,150/- on account of difference of wages and, as such, the present writ petition before this Court.

4. Notice of the petition was issued and having heard learned

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counsel for the parties, this Court is of the considered view that the matter in controversy involves payment of minimum wages by the petitioner-Society. The case of respondent No.2 is that he had worked with the petitioner Society, but he has not been paid wages as per provisions of the Act and respondent No.1 has passed the order, which has been challenged in this writ petition, without any basis.

5. Learned counsel for the petitioner, while challenging the order, mainly contended that the application before respondent No.1 itself was not maintainable, because respondent No.2 was not an employee as defined under Section 2(I) and Section 20 of the Act because the definition of "Employee" contained in Section 2(I) does not include an 'ex-employee'. For ready reference, extract of Section 2(I) and Section 20 are reproduced hereunder:-

"(i). "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union."

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“20. Claims (1) The appropriate Government may, by notification in the official gazette, appoint any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any other region, or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as a Judge of a civil Court or as a stipendiary magistrate to be the authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under Clause (b) or Clause (c) of Sub-section (1) of Section 13 or of wages at the overtime rate under Section 14, to employees employed or paid in that area.

(2) Where an employee has any claim of the nature referred to in Sub-section (1), the employee himself, or any legal practitioner or any official of a registered trade union authorized in writing to Act on his behalf, or any inspector, or any person acting with the permission of the authority appointed under Sub-section (1), may apply to such authority for a direction under Sub-section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages or other amount became payable:

Provided further that any 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. ”

6. Perusal of Section 20(2) of the Act makes it ample clear that claim can be preferred by an employee only, which does not include 'ex-

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employee' and such an application is to be presented within a period of six months from the date on which minimum wages or the other amount became payable.

7. In the present case, respondent No.2 had worked only till 1999 and the application was filed before respondent No.1 after a period of 12 years of passing of resolution. More so, on 30.09.2006 itself, petitioner-society was wound up and Tosham PACS Ltd. Tosham was formed, which started functioning on 01.10.2006. Thereafter, respondent No.2 has not done any work and at his best, he can be termed as 'ex-employee'. Application at his behest was not maintainable before respondent No.1. On this point, reliance was placed upon judgment from Hon'ble Division Bench in **Municipal Committee, Raikot vs. Sham Lal Kaura and others, 1965(2) ILR (Punjab) 837.** Similar view was also taken by Hon'ble Division Bench of this Court in **Chairman Managing Committee, Army School, Hoshiarpur vs. Inderjeet Singh, 1995(1) CLJ (Service) 184.** In **Sham Lal Kaura's case (supra)**, Hon'ble Division Bench, while elaborating the provisions of Section 20 of the Act observed in para No. 20 of the judgment, as under:-

“20. It is also significant that in Section 20 of the Act the word employee is not left alone but the phrase used is "employees employed." If the intention was to include ex-employees, there would have been no meaning in adding the word "employed" to the phrase. Again in Section 2(i) of the Act 'employee' is defined as a person 'who is employed'. Special rights have been conferred under the Act on a certain class of persons. This also involves a corresponding special liability on

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the employers. The scope of such special legislation cannot be allowed to be extended beyond what is expressly stated in the Act or is quite obvious by necessary intendment. It is not as if an ex-employee has no remedy to recover the amounts to which he would have been entitled under the Act. In the absence of any special definition of wages and in view of the manner in which that phrase is defined in the Act, the sum payable to an ex-employee would not be included in that term but would indeed assume the character of a debt which can be recovered by the ex-employee either by resort to the machinery provided by the Workmen's Compensation Act or if that Act is not applicable, by an action in an ordinary Court of original civil jurisdiction. He may even raise a dispute under the Industrial Disputes Act if he is a "workman" within the meaning of that Act. There appears to be no reason why the special machinery provided by Section 20 of the Act for 'employees' should be allowed to be extended to ex-employees. It appears to be plain that one, who is not employed, cannot be said to be an employee."

8. In the present case, respondent No.2 worked with the petitioner-society till 1999 and the petitioner-society itself discontinued to work in 2006 and there was no question of employment of respondent No.2 thereafter, but the claim has been preferred in the year 2011. Respondent No.1 has not taken into consideration this legal aspect and provisions as envisaged under Section 2 and Section 20 of the Act and passed the order dated 17.10.2012 (Annexure-P/3) which is legally not maintainable.

9. Resultantly, the order impugned in this writ petition dated 17.10.2012 (Annexure-P/3) is set aside. The writ petition stands allowed in

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the above terms.

(SHEKHER DHAWAN)
JUDGE

September 10, 2018.
jitender/som

Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes