

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8886 OF 2017

The Additional Commissioner of Customs
(Preventive) .. Petitioners
Vs.
Rajesh Mohan Dabhade .. Respondent

Mr.Aswini R.Singh, for the Petitioners.
Mr.Santosh G. Shirsat, for Respondent.

CORAM : M.S.KARNIK, J.

DATE : 11th APRIL, 2019

P.C. :

. Rule. Rule is made returnable forthwith and heard finally by consent of the parties. Learned Counsel waives service of Rule on behalf of the respondent.

2. Heard learned Counsel for the petitioners and learned Counsel for the respondent. The order passed by the Competent Authority under the Minimum Wages Act, 1948 (hereinafter referred to as 'Act') dated 30/11/2016 is under

challenge in this Petition filed under Articles 226 & 227 of the Constitution of India. The employee had filed an application before the Competent Authority under section 20(2) of the Act for the minimum wages during the period August 2015 to February 2016. The employee was working as a Hamal in the Customs Establishment and contended that he was paid less wages than the minimum wages fixed by the government during this period. He made claim of Rs.45,048/- being differential amount. He also prayed for maximum compensation i.e. 10 times of the claimed amount.

3. As the difference was for the period from August 2015 to February 2016, the application was made by the employee for condonation of delay. The proviso to sub-section 2 of section 20 of the Act says that every such application shall be presented within a period of six months from the date on which the minimum wages or other amounts became payable.

4. The Competent Authority allowed the application

and granted compensation.

5. Learned Counsel for the petitioners submitted that though the employee had filed an application for condonation of delay, the Competent Authority proceeded to allow the claim without first deciding the application for condonation of delay. He would further contend that no opportunity was given to the petitioner to contest on the point of the delay. It is also in his submission that the compensation is awarded by the Competent Authority under sub-section 3 of section 20 without any opportunity of hearing to the petitioners. Learned Counsel would moreover submit that the compensation awarded is unjustifiable in as much as during the course of hearing itself, the petitioners had agreed to pay the minimum wages claimed by the applicant. Learned Counsel would thus submit that having regard to bonafide stand of the petitioners, the Competent Authority was not justified in awarding the compensation at one time the claimed amount.

6. Learned Counsel for the respondent on the other hand would submit that the employee concerned is working from 04/01/1995. Learned Counsel would further submit that he has claimed the minimum wages only for the period from August 2015 to February 2016. He would submit that as the petitioners admitted paying minimum wages before the Competent Authority, there was no question of deciding the application for condonation of delay. Learned Counsel would submit that in these circumstances, the petitioners have given up their contention of delay. He would further submit that the minimum compensation is awarded by the Competent Authority. He would submit that the employee is very poor and therefore, the said order does not call for any interference.

7. I have heard learned Counsel for the parties. I have also gone through the Petition and annexures thereto. The period during which minimum wages payable as fixed by the government as claimed by the employee is from August 2015 to February 2016. As can be seen from paragraph 7 of the order it

is during the course of hearing that the petitioners vide their letter dated 25/10/2016 stated that they are willing to pay the employee the differential wages. The employee concerned had approached the Competent Authority some time in May 2016 by filing an application under section 20 of the Act.

8. Learned Counsel for the petitioner submits that he is aggrieved only by that part of the order passed by the Competent Authority awarding compensation. He submits that differential amount of minimum wages has been paid to the employee concerned and in fact, it is during the course of hearing of the application before the Competent Authority that the petitioners indicated their willingness to pay the differential amount. In this view of the matter, learned Counsel would submit that the Competent Authority was not justified in awarding one time compensation.

9. There is no dispute that under the provisions of section 20(3)(i) of the Act, the Competent Authority has power

to order payment of compensation not exceeding 10 times the amount of such excess. From the facts of the present case, it is apparent that for the differential minimum wages for the period from August 2015 to February 2016, an application is made by the respondent on 31/05/2016 before the Competent Authority. The petitioner on 25/10/2016 stated that they are willing to pay the workmen the differential amount as per the minimum wages due and payable. Considering this willingness of the respondent, though there has been some delay to pay the differential amount, I am of the opinion that this was not a fit case for the Competent Authority to have awarded compensation. Not only the petitioners admit to paying minimum wages during the course of proceeding before the Competent Authority, but the said amount in fact has been paid. However, I do not find any substance in the argument of the learned Counsel for the petitioner that the order is vitiated as there is no decision of the Competent Authority on delay condonation application. Once the petitioners volunteered to pay the amount as claimed, there was no occasion for the

Competent Authority then to have gone into the question of delay.

10. The impugned order to the extent the Competent Authority has awarded compensation is quashed and set aside.

11. Rule is partly made absolute with no order as to costs.

(M.S.KARNIK, J.)