

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (LDG.) NO. 1719 OF 2018

1. M/s. All Service Global Pvt. Ltd., ... Petitioner.

V/s.

1. Shri Ajit Uttam Sagale & Ors.

1A. Labour Enforcement Officer,
(C)-III, Mumbai

2. The Senior Divisional Mechanical
Engineer (Cog.) Central Railway.

... Respondents.

Mr. Sudhir Talsania, Senior Counsel a/w. Shakuntala Joshi & Nikita Pawar, I/by S. I. Joshi & Co. for the Petitioner.

Mr. Devyani Kulkarni, Advocate for Respondent No. 1.

Mr. R. V. Govilkar, Advocate a/with D. P. Singh, for Respondent No.1A.

Mr. T.J. Pandian, Advocate for Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : MARCH 13, 2019.

P.C. :

1 Rule. Rule is made returnable forthwith and heard finally by consent of the parties.

2 By this petition, under Articles 226 and 227 of the Constitution of India, the Petitioner takes exception to an order dated 27th April, 2018 passed by the competent authority

under the Minimum Wages Act, 1948 -cum- Regional Labour Commissioner (Central), Mumbai.

3 The claim application was filed by the Labour Enforcement Officer (Central) -III, Mumbai through Ms. Rohini Jadhav on 31st July, 2017, 16th August, 2017 and 26th September, 2017 under section 21(1) of the Minimum Wages Act, 1948 and notices were issued to all concerned.

4 By the impugned order, the petitioner is directed to deposit the claim amount being the difference of minimum wages in respect of 87 workers as per the annexure i.e. Rs. 7,60,853/- alongwith compensation amount which is decided at three times the claim amount, totaling Rs. 22,82,559/-. The authority also directed the Petitioner to pay the overtime amount of Rs. 8,83,152/- with compensation amount which is decided at the rate of Rs. 10/- per worker per wage period at Rs. 3,340/-. In so far as the determination of claim amount in respect of 87 workers to the tune of Rs. 7,60,853/- towards minimum wages difference, learned senior counsel would submit that though they were disputing the minimum wages liability, the said amounts have, in fact, been paid.

5 Learned senior counsel makes a grievance that while imposing a penalty three times the amount of Rs.7,60, 853/-, the authority has not taken into consideration

the genuine difficulties the petitioner had to face as a result of increase in minimum wages, pursuant to the notification issued by Central Government on 20.3.2017. The notification increased minimum wages from Rs. 374/- per day to Rs.523/- per day i.e. 44% for the period from 19.01.2017 to 31.03.2017. The increase was midway and unexpected which the Petitioner could never foresee.

6 Learned senior counsel would contend that while imposing the penalty, not only the explanation offered by the Petitioner is not considered, but even the impugned order contains no reasons before imposing the penalty. He further would contend that no opportunity of whatsoever was given by the authority to the petitioner to deal with the aspect of payment of overtime wages before arriving at a finding that Petitioner is liable to pay overtime wages.

7 Learned counsel Ms. Devyani Kulkarni was requested by this court to espouse the cause of Respondent No.1. She invited my attention to the findings recorded by the authority. In her submission, the petitioner had deliberately avoided paying the minimum wages and therefore, they are liable to payment as awarded. In her submission, the authority has power to impose penalty to the extent of ten times the differential amount of minimum wages. However, in the present case, if the authority awarded compensation of three

times, the said penalty is not unjustified. More-over, learned counsel would invite my attention to the impugned order, wherein it has been specifically recorded that the claim for non-payment of overtime wages from 19.01.2017 to 30.04.2017 was very much to the knowledge of the petitioner, inasmuch as the claim was based on oral assessment of the LEO (III) on the physical verification of records.

8 Having heard learned counsel, I am of the view that impugned order calls for interference. While awarding penalty which is three times the differential amount of minimum wages, no reasons howsoever brief, have been given by the authority in the context of the explanation of the Petitioner. In so far as the claim of payment of overtime wages is concerned, it appears that no opportunity has been given to the Petitioner to meet this claim.

9 I find that the claim of payment of overtime wages was not part of the application that was made by the concerned employees. The claim of overtime was completely based on the assessment made by the LEO -Central (III). It was, therefore, necessary that the authority should have given an opportunity to the petitioner to deal-with the claim of payment of overtime wages.

10 The impugned order is quashed and set-aside. The matter is remitted back to the authority under the Minimum Wages Act i.e. Regional Labour Commissioner, Central Mumbai (Operation and Adjudication). Needless to state that the authority shall decide the application afresh after giving all concerned an opportunity of hearing in accordance with law. The authority shall not be influenced by any of the observations made by me and the application shall be decided on its own merits.

11 Learned senior counsel submits that the amount of Rs. 7,60,853/- is already deposited with the authority after passing of the impugned order. He has no objection if the differential amount of Rs. 7,60,853/- is paid over to the concerned employees as per their entitlement. This also includes the claim of Respondent No. 1- Mr. Ajit Uttam Sagale as well. The amount be paid expeditiously.

12 In this view of the matter, amount of Rs. 49,106/- which has been deposited by the petitioner in this court pursuant to the order dated 15.10.2018 passed by this court, be refunded back to the petitioner herein.

13 The Authority to decide the application afresh on its own merits in accordance with law, within a period of three months from today.

14 Petition is partly allowed in the above terms. Rule is partly made absolute with no order as to costs.

15 I sincerely appreciate the efforts and assistance rendered by Ms. Devyani Kulkarni in espousing the cause of Respondent No.1, on a request made by this court.

(M. S. KARNIK, J.)

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