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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 19.12.2019

+ **W.P.(C) 5558/2016**

M/S AMCON CONSTRUCTION

..... Petitioner

Through: Mr. Nalin Tripathi and Mr. Rakesh
Kumar, Advs.

versus

LABOUR ENFORCEMENT OFFICER AND ANR..... Respondents

Through: Ms. Ruchi Jain, Adv. for R1 & R2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, (ORAL)

1. The present writ petition filed by the management assails the order dated 28.03.2011 passed by the Competent Authority under the Minimum Wages Act, 1948 ('the MW Act') whereunder the petitioner has been directed to pay the differential amount between the minimum wages and the actual wages paid to five of its employees totalling of Rs.5035/- along with compensation equivalent to 10 times of the said amount. The petitioner also assails the order dated 29.02.2016 whereunder its review petition seeking recall of the order dated 28.03.2011 directing it to pay the aforesaid sum of Rs.55,385/- has been rejected.

2. Learned counsel for the petitioner submits that although it is the

petitioner's case that the Competent Authority had wrongly proceeded *ex parte* against it and that, in fact, no amount was payable to any of the workmen, but he has instructions to press the writ petition only qua the quantum of compensation awarded under the impugned order. He submits that even if the Competent Authority had come to the conclusion that there was a shortfall of Rs.5035/- in the wages paid to its employees by the petitioner, there was no justification for awarding them compensation equivalent to 10 times of the said differential amount.

3. On the other hand, learned counsel for the respondents, while supporting the impugned orders, submits that since the petitioner did not comply with the statutory requirement to pay minimum wages, the Competent Authority could not be faulted for awarding the respondents compensation in accordance with the MW Act. She, therefore, prays that the writ petition be dismissed.

4. I have considered the submissions of the learned counsel for the parties. As noted hereinabove, the only challenge to the impugned order being pressed by the petitioner is qua the compensation leviable under Section 20 (3) (i) of the MW Act, which reads as under:-

“(3) When any application under sub-section (2) is entertained the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct-

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid,

together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees;

and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.”

5. Inasmuch as Section 20 (3) (i) of the MW Act does indeed vest the Competent Authority with the discretion to pass an award imposing payment of the maximum compensation on a defaulting employer, i.e., not exceeding 10 times the differential amount, this power must be exercised after paying due consideration to exigent factors such as *inter alia* nature of employment, status of employer, nature of defaults, number of defaults, amount involved and any delay in payment of the wages which are less than the minimum wages. Ultimately, while exercising its discretion, the Competent Authority cannot be arbitrary or whimsical, but remains bound by the principles of equity and judiciousness after carefully considering the peculiar facts and circumstances of each case, in order to further the cause of justice.

6. Merely because the Competent Authority was vested with the discretionary power to pass an order directing payment of maximum compensation, does not mean that it should *necessarily* pass such an order without setting out any compelling reasons for directing the highest compensation grantable under the statute. The impugned

order, on the other hand, is lacking in this regard since the only two grounds relied upon by the Competent Authority to arrive upon this exorbitant figure of Rs.50,350/- was the hardships caused to the respondent no.2 and the petitioner's default in not paying the minimum wages to its five employees. While these are certainly valid factors which must be taken into consideration, the discretionary power under Section 20(3)(i) of the MW Act must be exercised impartially by balancing the rights and claims of both the claimant and the employer to carry out justice on both sides. From the impugned order, however, it is evident that the Competent Authority has wielded its discretion in a punitive manner against the petitioner, when that is not the object and purpose of Section 20(3)(i) of the MW Act; the provision serves to even out the losses and hardships caused to an employee from the wrongful acts of an errant employer. Therefore, the core intent of Section 20(3) of the MW Act is equity, not punitive. In these circumstances, I am of the view that the direction in the impugned order insofar as it awards compensation of Rs.50,350/- cannot be sustained and is, accordingly, set aside.

7. At this stage, this Court is confronted with the task of determining what is the correct amount of compensation to be granted to the respondents, in place of the quantum awarded by the Competent Authority. For this purpose, it is relevant to note that when the petitioner was proceeded ex parte, its specific stand that none of its employees had ever made any complaint of its default under the MW Act had already been made before the Competent Authority, which was vehemently opposed by the respondent who averred that a

complaint in this regard had been received by the Labour Commissioner. In the light of these conflicting taken by the parties, it was incumbent upon the petitioner to appear before the Competent Authority and place documents and evidence in support of its plea, which it failed to do. In these circumstances, though awarding a compensation equivalent to ten times the differential amount may not be warranted in the present case, I am of the considered opinion that awarding compensation equivalent to twice the differential amount to the respondents would serve the interests of justice.

8. Accordingly, while upholding the direction to the petitioner to pay the differential amount of Rs.5035/-, the amount of compensation as awarded under the impugned order is reduced.

9. The writ petition is allowed by modifying the impugned order and directing the petitioner to pay a sum of Rs.5035/- along with compensation equivalent to twice the differential amount, i.e., a sum of Rs.10,070/-, and totalling a sum of Rs.15,105/- will be deposited by the petitioner with the concerned Recovery Officer within a period of four weeks.

10. At this stage, learned counsel for the petitioner submits that pursuant to the order dated 15.07.2016, the entire awarded amount of Rs.55,385/- was deposited with this Court and, therefore, prays that the said amount be refunded to the petitioner along with upto date interest accrued thereon.

11. In view of the directions passed hereinabove, the Registry is directed to forthwith refund the amount deposited by the petitioner along with interest accrued thereon.

12. The petition is disposed of in the aforesaid terms.

REKHA PALLI, J

DECEMBER 19, 2019

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