06.12.2021
Item No. 02
Ct. No. 16
PG/RP

M.A.T.66 of 2021
with
IA No.CAN 1 of 2021

M/s. Talbot & Company
Vs.
Jitendranath Ray & Anr.

Mr. Soumya Majumder
Mr. Rananeesh Guha Thakurata
.... For the Appellant

Mr. Suvadip Bhattacharjee
Mr. Balaram Patra
.... For Respondents

This mandamus appeal by the management is directed against the order dated 16th December, 2020 passed in WPA 19756 of 2020 challenging the order dated 25th January, 2019 passed by the second respondent herein, the competent authority under the provisions of West Bengal Shops & Establishments Act, 1963 (hereinafter referred to as the 'said Act') and for consequential reliefs.

The first respondent workman filed an application in Form N before the second respondent seeking for payment of total sum of Rs.57,537/- for the period from November 2012 to March 2013. According to the first respondent/workman during that period wages were not paid to him. The application filed by the first respondent/workman before the second respondent authority is dated 11th July, 2013. The first respondent/workman retired on attaining the age of superannuation on 31st March, 2013. The appellant management resisted the application by raising a preliminary objection stating that the application in Form N dated 11th July, 2013 is time barred. Apart from that, on merits of the matter also the appellant/management put forth their case. The second respondent authority adjudicated the matter and passed an order dated 25th January, 2019 holding that the first respondent/workman is entitled to the amount of Rs.57,537/- in terms of the said Act and is also entitled for compensation in terms of the 2015 Act (as amended), which was computed as twice the amount of wages determined by the second respondent and in all, ordered payment of Rs.1,72,611/-. The appellant/management had challenged the said order before the learned writ Court and the learned writ Court dismissed it by order dated 16th December, 2020 on the ground that there is an appellate forum provided under Section 14(6) of the said Act and therefore the writ petition cannot be entertained. Challenging the said order the management/appellant is before us by way of this appeal.

We have heard Mr. Majumder, learned Counsel and Mr. Rananeesh Guha Thakurata, learned Counsel for the appellant/management and Mr. Suvadeep Bhattacharya, learned Counsel appearing for the first respondent/workman. Two issues, which are in the nature of legal issues, have been raised by Mr. Majumder in this appeal. Firstly, that the second respondent authority has no jurisdiction to entertain the claim as the first respondent workman had attained the age of superannuation as on 31st March, 2013 and he is no longer a person employed under Section 2(10) of the said Act. The second ground is that an application under Section 14 of the said Act has to be filed within six months from the date on which the deduction from the wages was made or from the date referred to in Sub-Section 1 of Section 14 and the application has been filed belatedly and therefore not maintainable.

So far as the second issue is concerned, namely, on the ground that an application has been filed belatedly, we note that in terms of the provisions in Section 14(2) there is sufficient power conferred upon the authority to condone the delay in filing the application, if sufficient cause has been shown. In any event, the age of superannuation has been mentioned as 31st March, 2013 and the application was filed on 11th July, 2013 and we find that the delay is not inordinate or prolonged for the authority to reject the same. In any event, the enactment under which the claim was made is a labour welfare legislation and the interpretation should lean in favour of the workman especially when matter concerns limitation. Therefore, we are of the view that on such technical ground the application cannot be thrown out and second respondent authority was right in taking up the application and deciding the same on merit.

So far as the first contention raised by the learned Counsel for the appellant that the first respondent would not come within the definition of a "person employed" as defined under Section 2(10) of the said Act is concerned, we require to read the enactment as a whole, more particularly Sub-section 1 of Section 14, which states that all wages payable to a person employed in a shop or an establishment shall be paid not later than tenth day of the month immediately succeeding that in respect of which such wages are payable. Therefore, the claim for payment for wages, if not paid on the tenth day of the month, by the employer, can be made by the person employed. Therefore, the claim for payment and recovery of wages shall obviously mean in respect of the past period during which the workman claims that wages have not been paid in full and wrongful deduction has been made. Furthermore, in terms of Sub-section 3 of Section 14 the person who seeks such wages has been termed to be an applicant and not a person employed or a workman. An applicant can be termed as an employee or could have been a past-employee of an establishment and that would be the proper and purposive interpretation that may be given to a labour welfare legislation. Further more, wages has been defined as defined under the Payment of Wages Act, 1936. Therefore, obviously it will include wages for the past period as well. In fact, the Hon'ble Supreme Court in AIR 1974 SC 34 held that even a part-time employee is also covered by the definition of person employed, if he is wholly and principally employed in the shop and establishment. All that has been excluded under the definition of "person employed" is the owner of shop or the establishment or his husband, wife, child, father etc. Further more, the claim made by the first respondent/workman is for wages payable to him for a period during which he is stated to be employed, much prior to the age of superannuation i.e. 31st

March, 2013. Therefore, for all purposes the first respondent/workman is a person employed in the shop and establishment owned by the appellant insofar as the claim made by the respondent is concerned. Therefore, both the contentions raised by the appellant have to fail.

So far as the facts are concerned, since the learned writ Court has not adjudicated the same but dismissed the writ petition on the ground of availability of alternative remedy, we cannot adjudicate the factual matter and we leave the factual issue open and the appellant is at liberty to file the appeal before the Small Causes Court at Calcutta, if so advised.

We make it clear that the appellant cannot canvass the above two legal issues, which we have already decided and concluded and if at all the appellant wishes to contest the matter, it would be at liberty to raise all points on the merits of quantum payable and the correctness of the computation of compensation.

We also note that the order passed by the second respondent authority was dated 25th January, 2019 and the appellant/management filed the writ petition before the Single Bench after nearly eight months i.e. 29th July, 2019. Assuming there is some delay in getting certified copy of the order, yet this delay in approaching the writ Court has not been explained to our satisfaction. Therefore, this is all the more reason why the appellant/management cannot non-suit the first respondent on the ground of limitation.

The appeal and the connected application are dismissed.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)