

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1341 OF 2010

PETITIONER: Khare & Company,
Variety Square, Sitabuldi, Nagpur-12,
through its Partner Shri Arun Khare

...VERSUS...

RESPONDENT: Pundlik Mahadeo Lokhande,
Aged 62 years, Occ. Retired,
R/o. Rahul Nagar, Somalwada,
Nagpur.

Ms. Shireen Meghe, Advocate, h/f Shri P.D.Meghe, Advocate for
petitioner
Shri S.B.Dhande, Advocate for Respondent.

CORAM : AVINASH G. GHAROTE, J.
DATE : 12/08/2021.

1] Heard Ms. Meghe, learned counsel for the petitioner
and Mr. Dhande, learned counsel for the respondent.

2] On 09.08.2021, this matter was part-heard and
I recorded the following position.

*1. Heard Ms Meghe, learned Counsel for the petitioner. The
order passed by the learned Labour Court dated 15/9/2009,
directing the petitioner, to deposit Rs.15,470/- towards*

difference of minimum wages payable to the applicant together with encashment of leave within 60 days or to pay the same to the applicant, has been challenged in the present petition.

*2. Ms Meghe, learned Counsel for the petitioner submits that two grounds are raised, firstly, whether the petitioner, falls within a definition of 'industry', as defined in Section 2(j) of the Industrial Disputes Act, 1947 for which she contends that the petitioner, is an establishment registered under the Shops and Establishments Act, and is engaged in retail selling of cloth and garments. There were only three employees working initially, out of which one by name Mr. Tale, has been retired and apart from the respondent, there was only one other person working in the establishment, in view of which, it would not satisfy the requirement of 'industry'. Learned Counsel for the petitioner places reliance upon **Umashankar Jaswal Vs. Royal Auto Centre and another, 1998 (I) CLR 740**, which holds that in absence of any organized labour in the employment of an employer or plurality of workmen and the activity done by the employer being substantially and mainly carried on by him, which could not said to be organized by co-operation between him and the employee, the establishment did not fall within the definition of 'industry', as defined in Section 2 (j) of the Industrial Disputes Act. She also relies upon the deposition of the petitioner, as recorded by the Labour Court in this regard.*

3. The next ground raised is that presuming otherwise, the employee himself, had admitted the receipt of the difference of minimum wages, which was evident from the receipt dated 10/6/1997 (page 49) issued by the employee himself (page 54) as put on record by the petitioner and therefore, the learned Labour Court was not justified in rendering a finding otherwise.

4. Shri Dhande, learned Counsel for the respondent/employee submits that the termination of the respondent, was challenged before the Labour Court, which was set aside and the observations made therein are material. The order of the Labour Court was also challenged by way of Writ Petition No.1701/2007, which has been dismissed on 27/2/2008. An letters patent appeal, against which, also came to be dismissed and so also an special leave petition before the Hon'ble Apex Court. He submits that the issue as to whether the petitioner was an 'industry' or not has been considered therein and decided and therefore it is not permissible for the petitioner, to raise the same again. However, copies of these documents are not on record.

3] Today Mr. Dhande, learned counsel for the respondent has tendered across the bar, the copy of the judgment in Writ Petition No. 1701 of 2007, decided on 27.02.2008, in which the question raised whether the petitioner was an 'Industry' was

specifically considered and was answered in the affirmative. A Letters Patent Appeal against this judgment in Writ Petition No. 1701 of 2007, being L.PA No. 305 of 2008, came to be dismissed on 30.03.2009, on the ground that the same was not maintainable. The matter was carried to the Hon'ble Apex Court by way of Civil Appeal Nos. 9895-9896 of 2011, wherein, by an order dated 23.03.2021, the same was dismissed. That being the position, the finding that the petitioner was an 'industry' became final between the parties, and it is now no longer open to challenge. The contention of Ms. Meghe in this regard, therefore, is contrary to the judgment in Writ Petition No. 1701/2007, which is inter parties and binding upon them and is accordingly rejected.

4] In so far as the plea that the respondent/employee had admitted that he had received all the amounts due and payable to him on account of difference of minimum wages under the receipt dated 10.06.1997, it is material to note that though there is no such plea in the written statement of the petitioner, that such an amount was paid, however, the receipt in that regard was placed on record which is indicated by the cross examination of the respondent, dated

12.07.2006, in which the respondent was confronted with the receipt, whereupon he admitted his signature on the receipt, as well as the date upon it as being in his handwriting. It is pertinent to note, that the respondent has not denied the contents of the receipt dated 10.6.1997, wherein it is recorded that he has received the entire difference of the minimum wages on 10.06.1997. In spite of a specific statement made in this regard in para 3 of the affidavit-evidence of the petitioner, there is absolutely no cross examination in this regard. This clearly indicates that the execution of the receipt and its contents stand proved by the petitioner. The order of the learned Labour Court does not indicate that the receipt dated 10.06.1997, indicating that the difference in minimum wages had been received by the respondent, has been considered and disbelieved by him. In view of it, the finding rendered that the respondent was entitled to difference of the minimum wages of Rs. 12,923/-, is clearly not sustainable in law. In so far as the claim of leave encashment of 42 days amounting to Rs.3144.18 is concerned, since the learned Labour Court has found that the leave register, although maintained, was not produced, the finding in that regard, is maintained.

5] In view of the above discussion, the petition is partly allowed. The judgment of the learned Labour Court, dated 15.09.2009, passed in IDA Case No. 95 of 1999, granting difference in minimum wages is quashed and set aside. However, the judgment to the extent it grants leave encashment, is maintained. The petition is accordingly partly allowed.

JUDGE

Rvjalit