

Item No. 12

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 31.03.2023

DELIVERED ON: 31.03.2023

CORAM:

**THE HON'BLE ACTING CHIEF JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**FMA 529 of 2020
with
I.A. NO. CAN 1 of 2018 (Old No. CAN 9392 of 2018)
CAN 2 of 2022**

**Arvind Pandey
vs.
Union of India & Ors.**

Appearance:-

Mr. Soumya Majumder
Mr. Ajitesh Pandey
Md. Zohaib Rauf

... for the appellant

Mr. Sanjib Kr. Mukhopadhyay
Ms. Nargish Parveen

... for the UOI

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Acting Chief Justice

T.S.SIVAGNANAM)

1. This intra-Court appeal filed on behalf of the writ petitioner is directed against the order dated 29th August, 2018 passed in WP 13690 (W) of 2015. The said writ petition was filed challenging the order passed by the authority under Section 15 of the Payment of Wages Act, 1936. The learned Single Bench disposed of the writ petition by giving liberty to the appellant to file an appeal before the concerned appellate authority and making it clear that none of the observations made in the order would in any manner prejudice the rights of the parties before the appellate authority.

2. Learned senior counsel appearing for the appellant would vehemently contend that the authority under the Payment of Wages Act, 1936 failed to appreciate the factual position, more particularly, the enquiry report on the complaint received from the Organizing Secretary of the Indian National Trade Union Congress regarding non-payment of commission to 172 catering vendors in the South-Eastern Railway dated 2nd April, 2013. It is submitted that the findings which have returned by the said authority, namely, the Regional Labour Commissioner was not considered by the authority and, therefore, the order is erroneous.

3. After we have elaborately heard the learned advocates for the parties, carefully perused the materials on record, we find that essentially the relief claimed by the appellant is payment of wages. To adjudicate such issue definitely facts have to be gone into and since the facts have been disputed by the respondent, the adjudicating authority's reply becomes all the more relevant because the veracity of the documents and the stand taken by the parties has to be examined. This exercise cannot be done in the writ petition filed under Article

226 of the Constitution of India. Therefore, we are of the view that the learned Single Bench was right in relegating the parties to avail the appropriate remedy under the Payment of Wages Act, 1936. The learned senior counsel for the appellant would contend that the appellant should be permitted to go before the authority under the Minimum Wages Act, who will be the appropriate authority to examine this issue as in their opinion the authority under the Payment of Wages Act, 1936 was not the appropriate authority and the appellant had bonafidely prosecuted the matter before a wrong forum.

4. In the light of the above, the appeal stands **disposed of** by giving liberty to the appellant to approach the appropriate authority under the Minimum Wages Act and if such application is filed, the said authority shall consider the same and adjudicate the claim without in any manner being prejudiced by any of the findings which have been returned by the Regional Labour Commissioner, the authority under the Payment of Wages Act, 1936 in his order dated 1st June, 2015. Consequently, the connected applications stand disposed of.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)