

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10456 OF 2016

M/s.Shriram Foundry Ltd.

... Petitioner

Versus

Prabhakar Bhikaji Lambe & Ors.

...Respondents

Mr.Meelan Topkar with Ms.Pavitra Manish, for the Petitioner.

Mr.Dilip B. Shinde, for the Respondents.

CORAM: G. S. KULKARNI, J.

DATED: JANUARY 03, 2023

ORAL JUDGMENT

1. Rule, returnable forthwith. Respondents waive service. Heard finally by consent of the parties.

2. This petition under Article 226 and 227 of the Constitution, impugns the judgment and order dated 6 April 2016 passed by the Industrial Court No.2, Maharashtra, at Kolhapur, whereby the Complaint (ULP) No.182 of 2007 as filed by the respondents-workmen, has been allowed in terms of the following operative order:-

“(i) The complaint is hereby allowed.

(ii) It is hereby declared that respondent engaged in unfair labour practice under item Nos.9 and 10 of Sch.IV of MRTU & PULP Act, 1971 and further directed to cease and desist the same forthwith.

(iii) The respondent is hereby directed to pay difference of wages for the period from 14/05/2007 to the complainant employees as per the Government Notification dt.14/05/2007

and relevant special allowance declared by Government for 1/07/2007 to 31/12/2007 within three months from the date of this order.

(iv) No order as to costs.”

3. Mr.Topkar, learned Counsel for the petitioner in assailing the impugned order has limited submissions. He would submit that the respondents were permanent workers of the petitioner establishment, however, his contention is that considering the minimum wages as applicable to the said workmen who belong to semi-skilled category under the notification dated 14 May 2007 issued by the Government of Maharashtra under Section 3(1)(b) and Section 5(2) of the Minimum Wages Act, the pay scale as acceptable from 14 May 2007 was Rs.3230/- as per the Schedule set out in the said notification. The Schedule is required to be noted which reads thus:-

SCHEDULE

Serial Number	Classification	Minimum wage-rate of workers (Rupees per month)		
		Zone One	Zone Two	Zone Three
(1)	(2)	(3)	(4)	(5)
1.	Skilled	3730.00	3630.00	3330.00
2.	Semi-skilled	3630.00	3530.00	3230.00
3.	Unskilled	3530.00	3430.00	3130.00

4. There is an Explanation issued under Clause (d) of the said Schedule in regard to the daily wages workers, which reads thus:-

“D. Minimum wage rate of the labour charges due and payable to the worker working on daily wages, shall be determined by dividing the monthly wage rate determined for the class to which the said worker belongs to by 26 and by

making the quotient rounded off to the nearest paise.”

5. Mr.Topkar has drawn Court’s attention to the observations of the Industrial Court in paragraph 16 to contend that Explanation (d) has been applied to set out the comparative wages that came to be paid to the respondents. Mr.Topkar would urge that the respondents are permanent workers and Explanation (d) (supra) under the said notification was not applicable once monthly pay was prescribed at Rs.3230/- in the Schedule.

6. To appreciate the contention of Mr.Topkar, the observations of the Industrial Court in paragraph 16 are required to be noted, which read thus:-

“16. The procedure of calculation of per day wages is mentioned in explanation (d) of Notification dt. 14/05/2007 in Government Gazette i.e. daily wages payable to daily wagger employees which is fixed should be divided by 26 days and divided amount should be rounded up. Moreover minimum wages includes wages for weekly off. Therefore, the amount of daily wages comes to Rs.3230/- (basic pay) + Rs.550/- (special allowance in Zone III)= Rs.3780/- ÷ 26 days = Rs.145/- per day wages. Thus the employees are entitled to get wages Rs.145/- per day as per the Government Notification dt.14/05/2007.”

7. On the basis of such calculation, applying Explanation (d), in paragraph 17 the Industrial Court has set out a comparative table of the employees in respect of the wages paid to them and the wages as per proportion as set out in paragraph 16 which are required to be paid to the workmen from the month of December 2007. Further, taking into consideration such exercise, in paragraph 18 the Industrial Court/Tribunal has observed thus:-

“18. From the perusal of above said comparison it is clear that the respondent has not paid difference of wages (basic pay) to the

complainant employees as per the directions laid down in Government Notification dt. 14/05/2007 and paid less wages. Undoubtedly the respondent has paid more dearness allowance than the special allowance shown for the period 1/7/2007 to 31/12/2007 but the respondent has paid less basic pay (Rs.3230/-) as mentioned in Government Gazette dt.14/5/2007. The respondent has paid wages less than minimum wages of Rs.3780/- (basic pay + dearness allowance) per month to all 37 employees from 14/05/2007. Not paying wages to the complainant employees as per above said norms certainly amounts to indulgence in unfair labour practice under Item Nos.9 and 10 of Sch.IV of MRTU & PULP Act, 1971 which is a breach of service conditions. Thus the respondent is engaged in unfair labour practice under item Nos.9 and 10 of Sch.IV. There is a recurring cause of action therefore complaint is within limitation. The argument canvassed by learned advocate Mr.T.B.Vaze on behalf of respondent is not acceptable. In sum, the complainant employees are entitled to the reliefs claimed. Hence, I answer issue Nos.1 & 2 in the affirmative and proceed to pass the following order.”

8. Mr.Topkar would submit that the observations as made by the Industrial Court in paragraph 18 applying the Explanation (d) are not tenable inasmuch as the limited issue before the Industrial Court was ‘whether minimum wages as per the Notification dated 14 May 2007 were in fact paid to the respondents-workmen.’ Mr.Topkar submits that it has been the consistent case of the petitioner that the petitioner has complied with the said notification and had paid to the respondents the amount of minimum wages as to what was prescribed by the Notification dated 14 May 2007. To substantiate such contention, Mr.Topkar has drawn Court’s attention to the extract of the cross-examination of the respondents’ witness as set out on page 57, which reads thus:-

“ Total salary which I get today is Rs.3900/-. I get HRA of Rs.160/- p.m. and I get separate allowance of Rs.524/-. Apart from this I get Basic and D.A. It is not true that as on today, I

am getting salary more than minimum wage. It is true that I have received the rise in my D.A. as per the rise in cost of living. It is true that P.F. is deducted on the basic of Basic & D.A. and I also get the bonus on the basic of Basic & D.A. It is not true that I have filed false affidavit although I am getting salary more than minimum wages. I have not received D.A. for 2007.”

9. It is thus Mr.Topkar’s submission that the impugned order is required to be interfered with, as there was no unfair labour practice in payment of minimum wages indulged by the petitioner as observed by the Industrial Court in the impugned order.

10. On the other hand, learned Counsel for the respondents – workmen would submit that the grievance of the respondents was in regard to non payment of the minimum wages and more particularly, non compliance of the mandatory minimum wages to be paid under the Notification dated 14 May 2007. He submits that the case of the respondents before the Industrial Court was that the respondents-workmen were not being paid the minimum wages as per the prescribed rate which according to him the petitioner was liable to pay from 14 May 2007 and the difference was also required to be paid. He has drawn Court’s attention to the relevant paragraphs of the complaint i.e. paragraphs 8 and 10 to submit that it was a categorical case of the respondents that the petitioner had not made payment of minimum wages as per the Notification dated 14 May 2007 and that the said notification was not implemented to any respondents-workmen. He has also drawn Court’s attention to the prayers as made in the complaint wherein the first prayer was for a declaration of unfair labour practice of the petitioner in regard to non-payment of minimum wages as per the

Notification dated 14 May 2007, as also there is a specific prayer in paragraph 11(2) that the concerned workmen shall be paid the differential amount by applying the minimum wages as per the Notification dated 14 May 2007. Prayers (1) and (2) as made in the complaint are required to be noted which read thus:-

“1) It is humbly prayed that it may be declared that the Opposite Party has ordinarily adopted unfair labour practices.

2) It is humbly prayed that directions may be given to the Opposite Party to give to the labourers mentioned in the list annexed herewith, the benefits of the revised minimum pay as per the Minimum Wages Act togetherwith previous arrears and to give the salary to them by adding the enhanced basic pay in their original basic pay.”

11. On such backdrop, learned Counsel for the respondents submit that the impugned order passed by the Industrial Court cannot be faulted, hence, no interference is called for in the present writ petition. Learned Counsel for the respondents has however, not disputed that the respondents-workmen are the permanent workmen and are not on daily wages.

12. Having heard learned Counsel for the parties and having perused the record as also the impugned order, in my opinion, Mr.Topkar has fairly conceded to the contention in regard to the applicability and binding effect of the Notification dated 14 May 2007 of the State Government prescribing minimum wages in so far as the establishment of the petitioner is concerned. He would also submit that the respondents-concerned workers belong to the semi-skilled category and would be entitled to the monthly wages of Rs.3230/- as prescribed in

the said notification. His only contention is that the Industrial Court ought not to have applied Explanation (d) which was the position in respect of the daily wages and admittedly the concerned workmen-respondents herein were the permanent workmen with the petitioner establishment.

13. The Industrial Court has clearly applied Explanation (d) (supra) as seen from the observations in paragraphs 16 and 17 of the judgment. Such an exercise appears to be not warranted. Also, in making the observations in paragraph 18 which are noted above, the Industrial Court appears to have formed an opinion that there was difference of wages on the basis of such calculation. Although in regard to applicability of the said notification, there is no dispute whatsoever. However, as seen from the operative order, there is no reference therein to the calculation as undertaken by the Industrial Court in paragraphs 16 and 17 applying Explanation (d). Thus, what emerges is that the operative order stands independent, which is wholly on the basis of minimum wages as statutorily notified by the State Government under the Notification dated 14 May 2007.

14. In the aforesaid circumstances, in my opinion, the petition is required to be disposed of by clarifying that the directions to the petitioner as contained in the impugned order to make payment of minimum wages to the respondents-workmen be implemented without reference to the calculations as set out by the Industrial Court in paragraphs 16 and 17 of the impugned judgment and order. In other words, the respondents-workmen are entitled to the minimum wages and difference in the minimum wages for the period from 14 May 2007 strictly as per the Notification dated 14 May 2007, and also the relevant

special allowance declared by the State Government for the period from 1 July 2007 to 31 December 2007. Let an exercise in regard to the calculation of such amounts and any difference in that regard be undertaken within a period of three months from today. Accordingly the amounts be disbursed to the respondents-workmen.

15. The compliance of such calculation be jointly placed by the parties before the Industrial Court No.2, Kolhapur, within such period of three months.

16. Rule is made absolute in the above terms. No costs.

G. S. KULKARNI, J