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W.P.No.11725 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.11725 of 2010 and
M.P.No.1 of 2010

The Management of
Gateway Distriparks (South) Pvt. Ltd.
Container Freight Station,
No.200, Ponneri High Road,
New Manali, Chennai – 600 103.
rep. By its Deputy General Manager

... Petitioner

Vs

1.The Deputy Commissioner of Labour – II
(Authority under the Minimum Wages Act)
Labour Welfare Board Building,
D.M.S. Compound, Teynampet,
Chennai – 600 006.

2.The General Secretary
Thennidhiya Tharaivazhi Pokkuvarathu
Oozhiyargal Sangam,
V.P. Sinthan Complex,
Old No.24 (New No.11)
Lawyer Jaganathan Street,
Guindy, Chennai – 600 032.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for the records of the 1st respondent in MW I.A.No.11 of 2008 and quash its order dated 23.10.2009.



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For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

For Respondents : Mr.M.Muthusamy
Government Advocate for R1

: Mr.K.R.Ram Siddharth
for M/s.Row & Reddy

ORDER

This writ petition is filed challenging the order of the 1st respondent, the Deputy Commissioner of Labour – II, Chennai dated 23.10.2009. By the impugned order, the 1st respondent has allowed the petition filed by the 2nd respondent for amendment allowing the claim for payment of minimum wages for a period from 01.04.1999 to 31.05.2008 instead of 01.06.2000 to 31.10.2007.

2. The brief facts which are necessary for disposal of this writ petition are as follows:

(i) The writ petitioner is a Company which has constructed a Container Freight Station (CFS) at Ponneri High Road, Manali, Chennai. The petitioner is carrying on business in storage of containers received by ships and stores them, till customs clearance and the importer makes



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arrangements for the movement of the goods through the containers. The 2nd respondent is a Trade Union who has filed an application before the 1st respondent making a claim alleging non-payment of minimum wages as per the Notification vide G.O.Ms.No.2679 dated 06.12.1988 and connected G.Os, for a period from 01.06.2000 to 31.10.2007. The claim was for 23 persons employed under the petitioner's company.

(ii) The contention of the petitioner that every claim under the Minimum Wages Act has to be filed within a period of six months. However, it is also admitted that the power is given to the 1st respondent to condone the delay. When the application was filed before the 1st respondent by the 2nd respondent Union, the 2nd respondent filed an application to condone the delay of 2528 days and the said delay was condoned to sue the claim for the period from 01.06.2000 to 31.10.2007.

(iii) On receipt of the notice from the 1st respondent, the writ petitioner appeared and filed its counter affidavit specifically disputing the *bona fides* for the delay. One of the submission before the 1st respondent by the writ petitioner was that the employees are entitled to minimum wages in terms of G.O.(D).No.10, Labour and Employment,



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dated 4th January 1995 . The said G.O. is applicable to the classes of employees under the Tamil Nadu Shops and Commercial Establishments Act. It is admitted that the employees claimed minimum wages on the basis of a different G.O. vide G.O.Ms.No.2679, Labour and Employment, dated 06.12.1988.

(iv) The 2nd respondent being convinced with the stand taken by the writ petitioner that the employees engaged in the petitioner's company are only entitled to minimum wages in terms of G.O.(D)No.10 dated 04.01.1995 filed a petition for amendment in MW.I.A.No.11 of 2008 before the 1st respondent for amendment of the claim application to make a claim in terms of the G.O.Ms.No.10 dated 04.01.1995. While making amendment, the 2nd respondent wanted to enlarge the scope of the application by claiming the benefit with effect from 01.04.1999 even though original claim application was from 01.06.2000. The said application was contested by the Management mainly on the ground that the original application for condonation of delay was only to justify the claim with effect from 01.06.2000 and a claim which is for the period prior to 01.06.2000 cannot be entertained without an independent application to condone the delay or for an explanation for the delay.



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(v) However, ignoring the objection raised by the writ petitioner, the 1st respondent passed an order accepting amendment. Aggrieved by the same, the above writ petition has been filed by the petitioner before this Court .

3. As it was contended before the 1st respondent, the learned counsel appearing for the petitioner submitted that the 1st respondent ought not to have allowed the petitioner for amendment to enlarge the scope of application to include the period prior to 01.06.2000. He further pointed out that the petition for condonation of delay was specific and that the delay for the period from 01.06.2000 to 31.10.2007 alone is condoned and the 1st respondent cannot entertain the claim for the period prior to 01.06.2000 without there being sufficient cause for the delay and an order being passed. Having chosen to claim for the period from 01.06.2000, it is contended that the subsequent amendment application enlarging the scope of application to include the claim which is time barred.

4. The learned counsel appearing for the 1st and 2nd respondents however filed a counter affidavit and submitted that the amended claim is



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for lesser amount, therefore the application for amendment cannot be thrown out merely on a technical reason. It is also highlighted by the 2nd respondent that the minimum wages for the period from 01.06.2000 to 31.10.2007 was subsequently modified from 01.04.1999 to 31.05.2008. The previous claim was under different heading and that the 2nd respondent is entitled to enlarge the claim in the interest of justice .

5. The learned counsel appearing for the 2nd respondent has relied upon the judgment of this Court in the case of *Thiru Alankadu Immudi Ahora Vs. Udumalpet Samayapuram Ayira* reported in **2005 (4) CTC 664** wherein it is observed as follows:

“5. .. (1) The general rule is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred.

(2) It is well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation.”



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6. The judgment relied upon by the learned counsel for the 2nd respondent arise out of an application under Order 6 Rule 17 C.P.C. for amendment of plaint. Though the amendment is normally permissible even after the expiry of the statutory period of limitation, the learned Judge has held in the said judgment that it is well recognised that where the amendment does not constitute addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, it is permissible. However, it is further held that an objection on limitation need not be considered while deciding the amendment petition and that it can be decided later if it involves question of fact.

7. The expression of the learned Single Judge of this Court on the interpretation of Order 6 Rule 17 C.P.C. cannot be applied in every case, where there is no dispute on facts. In this case, every claim has to be filed within a prescribed period. The discretion had been exercised by the 1st respondent to condone the delay of 2528 days in the application itself was filed in 2007. The said application cannot be amended to include time barred claim. If application is filed to enlarge the scope of



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application including a period prior to 01.07.2000, it should be condoned. While submitting an application for condonation of delay, the Court has not examined the cause for the delay for the period prior to 01.07.2000. Therefore, the amendment of application for a period prior to 01.07.2000 may not be proper unless by a special order or permission the 2nd respondent gets the delay condoned for the period from 01.04.1999 to 31.06.2000.

8. Regarding the other part of amendment, the 1st respondent has accepted the case of the petitioner company that the employees are entitled to get minimum wages under the classes of employees in Shops and Commercial Establishments. Therefore, the amendment that part cannot be challenged by the petitioner himself taking different stand. Therefore, the writ petition is partly allowed. While the petition regarding amendment of classification of the employees, this Court confirms the order of the 1st respondent that the claim of 2nd respondent should be considered by treating the employees as Employees in Shops and Commercial Establishments under the State of Tamil Nadu. As regards the period during which the claim made by the 2nd respondent before the 1st respondent, the amendment for the period from 01.04.1999



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to 01.06.2000 cannot be sustained and hence the application shall be treated only for the period after 01.06.2000.

9. If the 2nd respondent wants to make a claim for the period prior to 01.06.2000, he has to file an application for condonation of delay before the 1st respondent and only after getting a delay condoned, it may be open to the 2nd respondent to seek amendment subject to objection that may be raised by the petitioner.

10. With the above observations, this Writ Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

30.03.2023

Index : Yes / No

Speaking Order : Yes / No

Sgl

To

The Deputy Commissioner of Labour – II
(Authority under the Minimum Wages Act)
Labour Welfare Board Building,
D.M.S. Compound, Teynampet,
Chennai – 600 006.



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S.S.SUNDAR, J.

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