

CWP-24185-2022**105****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CWP-24185-2022****Date of Decision: 11.09.2023**

Dharamraj Yadav

...Petitioner

Versus

M/S Metro Ortem Limited, Sidhrawali, Gurgaon,
through its Authorized Signatory and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGERPresent : Mr. Amandeep Rana, Advocate
for the petitioner.**HARSH BUNGER, J. (ORAL)**

1. Petitioner (Dharamraj Yadav) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari* for quashing the impugned Order dated 13.07.2022 (Annexure P-3) passed by learned District Judge-Cum-Appellate Authority (under the Payments of Wages Act, 1936), Gurgaon; whereby, the appeal filed by the respondent No.1-M/s Metro Ortem Limited (in short 'respondent-management') was allowed and order dated 29.05.2018 (Annexure P-2), passed by the authority under the Payments of Wages Act, 1936, was set aside.

2. Briefly, the petitioner along with co-workers (proforma respondents), filed a claim petition against the management under section 15(2) of the payment of Wages Act, 1936 (in short 'the 1936 Act'), claiming that the management had failed to pay overtime wages to the petitioner along with other workers for the period i.e. January 2014 to December 2014. The

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workers, who were 51 in number, gave details of “Overtime Wages” claimed by them.

3. Upon notice on the application, the respondent-management contested the above-mentioned claim of petitioner and others, by filing a written statement, wherein the management had taken preliminary objections inter-alia regarding maintainability of the application. As per the management, the claim application was filed without jurisdiction and that it was filed in respect of the amount which was never due and therefore, the approach of the petitioners, to the authority, was not with the clean hands.

4. The workers in their evidence had examined workers No. 1 to 4, 6 to 14, 17 to 21, 23 to 25, 27, 28, 30 to 38, 41 to 46, 48, 49 & 51 as witnesses before the authority and they had deposed on oath that their “overtime Wages” were due. The Management, too, had placed on record certain documents such as a copy of a settlement deed dated 10.10.2014 and the accounts book about payment of overtime wages for the period January 2014 to December 2014.

5. Vide order dated 29.05.2018 (***Annexure P-2***), passed by the learned authority under the 1936 Act, Gurugram, the claim application was allowed, and 41 workers were held entitled to the claimed amount and the management was directed to deposit a sum of Rs.21,87,498/- in the Court within 30 days from the date of order.

6. Being aggrieved, the respondent-Management filed an appeal under Section 17 of the Payment of Wages Act, 1936, challenging the order dated 29.05.2018 (***Annexure P-2***), passed by the Authority under the 1936 Act. The aforesaid appeal came to be allowed by Appellate Authority under

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the 1936 Act, vide order dated 13.07.2022 (Annexure P-3), whereby, order dated 29.05.2018 passed by the Authority was set aside.

7. In the aforementioned circumstances, the petitioner has filed the instant Writ Petition.

8. Learned counsel for the petitioner has submitted that the impugned order has been passed by the learned Appellate Authority without appreciating the evidence and without application of judicial mind. It is contended that the learned Appellate Authority has not appreciated the fact that 41 workers had appeared before the authority as witnesses and deposed on oath that their overtime wages for the period January 2014 to December 2014, were not paid by the management and despite thorough cross-examination, their credibility could not be discarded. It is further submitted that the respondent-Management was in possession of relevant record and it failed to produce the same before the Authorities below, therefore adverse inference was required to be drawn against the respondent-Management.

With the aforesaid submissions, learned counsel for the petitioner has prayed for quashing of the impugned order dated 13.07.2022 (*Annexure P-3*).

9. I have heard learned counsel for the petitioner and have also gone through the paper book with his able assistance.

10. The conclusions drawn by the Lower Appellate Authority can be summed up as under:-

- a) Referring to the judgment in the case of The Hind Samachar Ltd., Jalandhar through its Manager (Accounts) versus Shri Kewal Krishan Mahendru and Another, 1989 (2) PLR 687; it was observed that it was

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for the workmen to prove that there were some unpaid dues

- b) Except the self-serving testimony of the claimants, no other evidence whatsoever was adduced by the claimants
- c) Account Books showing payment of overtime wages to workers were produced by the Respondent-Management and payment of such wages were duly admitted by the claimants who appeared in the witness box.
- d) The only dispute which has surfaced is that the overtime paid to the workers was not as per the prescribed rules i.e. double the wages; however there was no pleadings to that effect by the workers/claimants
- e) Once the pleading and the evidence adduced by the respondents was not in consonance with each other and contradictory to each other and on the other hand documentary evidence led by the Management showed that overtime wages were properly paid, therefore the plea of the claimants was not believable that due overtime wages were denied to them
- f) It has been duly proved that overtime wages were paid by the management to the workers and the only dispute between the parties was as to whether the overtime wages paid by the management were proper or not. In order to ascertain the said fact, it was necessary for the workers to prove firstly the number of hours for which overtime duty was performed and secondly the amount paid to

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them. Such details were not provided by workers. The best evidence was record pertaining to marking of presence by workers, however workers failed to summon the said record. If such efforts would have been made and the Management had failed to produce the same, only then adverse inference could have been drawn against the Management.

- g) All the claimants witnesses admitted that by virtue of settlement dated 10.10.2014 (Ex. R-1), all pending disputes between the Management and the workers were settled, therefore the plea of the claimants stood falsified that from January 2014 onwards they were not paid overtime wages at proper rate. If there had been any such situation that proper overtime wages were not being paid by the Management to the claimants, definitely such issue would have cropped up at the time of settlement dated 10.10.2014, but no such issue was there.

On the basis of the aforesaid conclusions, the Appellate Authority below vide its order dated 13.07.2022 held that the claimants had failed to prove that any overtime wages were due and the Management was bound to pay the same. Consequently, the appeal filed by the management was allowed by setting aside the order dated 29.05.2018 and the application filed by the claimants-workers claiming overtime wages has been dismissed.

11. Learned counsel for the petitioner has failed to refer to any material or raise any argument for dislodging the findings returned by the Appellate Authority below. The only submission put forth by the counsel for

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the petitioner is that an adverse inference was required to be drawn against the Management for not producing the relevant record, however I donot find any merit in the aforesaid submission as the presumption as regards adverse inference for non-production of evidence is always optional and not obligatory. In the instant case, as indicated above, no effort was made on behalf of the claimants-workers to summon the records from the Management. Had such effort been made and the management had not produced the relevant record, in that eventuality, an adverse inference could have been drawn. The claimants had failed to prove its pleaded case.

12. In the case of “***The Hind Samachar Ltd., Jalandhar v. Kewal Krishan Mahendru***”, 1989 (2) PLR 687; this court had held as under:-

*“3. Learned counsel for the petitioner, submitted that the whole approach of the learned Authority was wrong and illegal and, thus, he has acted illegally and with material irregularity in the exercise of its jurisdiction. It is for the workman to prove that the alleged deductions were not justified as contemplated under section 7 of the Act and similarly whether the application was within the time or not was for the workman to prove because admittedly he is claiming wages with effect from May, 1985, whereas the application has been filed on September 10, 1986, i.e., beyond a period of one year. In support of his contention, he referred to **Shanker Chakravarti v. Britannia Biscuit Company, 1982 Lab. I.C. 551**. In Shankar's case (supra) the Supreme Court observed that the rules of fair play demand where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary. The*

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Supreme Court further observed that "can it for a moment be suggested that this elementary principle does not inform industrial adjudication ? The answer must be an emphatic "no" Thus, keeping into consideration the facts and circumstances of the case, the burden of the two issues should have been on the workman, who has approached the authority under the Payment of Wages Act. It is for the workman to prove that the alleged deductions have been wrongly made by the employer. Consequently, this petition succeeds; the impugned order is set aside and the burden of both the issues is shifted on the workman. There will be no order as to costs..."

13. In view of the above discussion, I do not find any illegality or perversity in the impugned order dated 13.07.2022 (Annexure P-3), passed by the Appellate Authority below, which may call for any interference by this court in exercise of its writ jurisdiction. Consequently, the instant writ petition fails and the same is accordingly dismissed.

14. All pending applications (if any) shall also stand closed.

September 11, 2023*Himani***(HARSH BUNGER)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No