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W.P.No.10928 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.04.2024

Pronounced on : 12.07.2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

W.P.No.10928 of 2024

and

W.M.P.Nos.12025 of 2024

M/s.Gem Granites,
rep.by S.K.Aasaithambi,
Partner,
No.78, Cathedral Road,
Chennai – 600 086.

...Petitioner

Vs

1. Regional Labour Commissioner (Central) Chennai,
(Authority under the Payment of Wages Act,1936)
26, Haddows Road, Shastri Bhavan,
Chennai – 600 006.

2. S.Venkata Ramani

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records to quash the first respondent order dated 19.01.2024 passed in C.A.No.2 of 2021.

For petitioner : Mr.M.R.Dharani Chander

For R1 : Mr.C.Samivel,
Senior Central Government Standing
Counsel

For R2 : Mr.K.Balan Haridas



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ORDER

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This writ petition is been filed to quash the order dated 19.01.2024 passed by the first respondent Labour Commissioner (Central) Chennai under the Payment of Wages Act, in C.A.No.2 of 2021.

2. Facts which are necessary for the disposal of this writ petition are as follows:-

2.1. The second respondent has worked for more than 26 years as Senior Executive in Villupuram Sector of the petitioner company which is involved in granite and quarry works. On account of the directions of the Hon'ble Supreme Court in *MC Mehta Vs. Union of India* reported in *SCC 2014 Volume (XII) Pg.No.118* and *Deepak Kumar vs. State of Haryana* reported in *SCC 2012 volume (IV) Pg.No.629*, as per the directions of the National Green Tribunal, Principal Bench, New Delhi and as per the orders of the Government of Tamil Nadu that without clearance of EC certificate mining activities should not be permitted, the mining activity in Tamil Nadu in more than 2000 mining activities was stopped from 2017.

2.2. Accordingly, in the year 2017 the petitioner's company has



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declared that all quarry works are suspended under the principle of 'no work and no pay' . Thereby, quarry work of the petitioner company in Pazhavalam, Sathaputhur and other quarries in the Villupuram District was completely stopped. It is informed to the workmen that due to suspension of operation of the quarry works for not having Environment Clearance Certificate from the Government, the workmen and the other staff will be given alternative employment if they are willing to work. It is further informed them that those who are not willing to work in other places can resign and get their gratuity amount settled. It is also informed that those who are handling the court cases and those who are working more than 15 days in a month will be retained with full wages.

2.3. After suspension of the quarry works the second respondent was engaged only for attending essential court works. The second respondent taking advantage of the fact that no other employee was working in the quarry stealthily sold all the trees in Sathaputhur quarry costing few lakhs of rupees without informing the petitioner company. He has also not deposited the money in the account of the petitioner company. As per the letter dated 19.10.2018, the second respondent has admitted that he has not visited the quarry works from October 2017 to July 2018. However, the second



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respondent on 30.07.2018 sent a letter stating that he was not paid salary from January 2017 to June 2018 and demanded wages for the said period. On considering the report dated 24.10.218 of the Salem Branch of the petitioner company, it is found that the second respondent has not attended quarry work during the period April, September and December 2017 and from January, February, May, to September 2018 thereby, salary was not paid to him. It is also found that the second respondent has sent bogus and fake documents for the period from 01.01.2017 to 31.08.2018 belatedly as if he worked even though there was no quarry work. The second respondent has ultimately resigned from service on 12.11.2018.

2.4. The second respondent filed claim application No.2 of 2021 on 28.11.2023 before the first respondent, claiming wages to the tune of Rs.3,77,880/- for the period January 2017 to November 2018. The first respondent without considering the submissions of the petitioner company has passed impugned order dated 19.01.204. Aggrieved by the same, the present writ petition is filed.

3. Heard both sides and perused the material available on record.



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4. On perusal of the impugned orders, it is clear that though, the petitioner and the second respondent have filed documents, the first respondent authority without appreciating any of the contentions raised by both the sides has simply directed the petitioner to pay an amount of Rs.3,77,880/- within a period of 30 days. The relevant portion of the impugned order is extracted for ready reference:

“In exercise of power conferred on me under Section 15 (3) of the Payment of Wages Act, 1936, the opponent is directed to pay an amount of Rs.3,77,880/- to the applicant S.Venkararamani within 30 days from the date of receipt of this order. No costs.”

5. There are no reasons mentioned in the impugned order as to why the petitioner is required to pay salary. The petitioner has in fact disputed the claim of the second respondent stating that he has not attended duty during the period for which salary was claimed.

6. It is submitted by the learned counsel for the petitioner that the salary of the second respondent was Rs.24,000/- per month thereby, as per Section 21 (4) and (6) of the Payment of Wages Act, 1936 (for brevity 'the Act') the authority under the Act has no jurisdiction to entertain application.



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However, the learned counsel for the respondent submits that the second respondent used to get only Rs.15,000/- as his basic wages and Rs.1,800/- as dearness allowance. The learned counsel for the petitioner has brought to the notice of this Court the claim statement filed by the second respondent before the appellate authority under the Act wherein at paragraph 7 it is mentioned by the second respondent that his gross salary was Rs.30,000/- and that after statutory deductions, provident fund deductions his salary is Rs.18,200/-. Therefore, there is no clarity as to what was the salary of the second respondent. This writ petition is filed challenging the impugned orders passed by the first respondent on various grounds including the fact that the first respondent has no jurisdiction. In order to decide the issue of jurisdiction the quantum of salary the second respondent has to decided. The first respondent, Labour Court should have conducted enquiry in respect of quantum of monthly salary which was being received by the second respondent and should have given finding as to whether the first respondent has jurisdiction or not.

7. The second respondent has claimed wages for the period commencing from January 2017 to July 2018 and the said application was filed before the concerned authority in the year 2021. The learned counsel for the petitioner has submitted that as per Section 15 (2) of the Act, application for



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seeking payment of wages shall be filed within 12 months from the date on which payment of wages falls due thereby, the first respondent cannot entertain the application.

8. In respect of the limitation under 15 (2) of the Act, it is submitted by the learned counsel for the second respondent that every time when ever salary is not paid by the petitioner to the second respondent, cause of action arises for the second respondent to agitate before the appropriate forum, thereby, the limitation under Section 15 (2) of the Act does not apply. In respect of this issue also the competent authority has not considered and has not given any findings.

9. In addition to the above, the impugned orders passed are cryptic and are passed without giving any reasons in respect of the issues raised by both the parties. Accordingly, the impugned orders are required to be interfered with.

10. In view of the above, this writ petition is allowed in part. The impugned orders passed by the first respondent are hereby set aside and the matter is remanded back to the competent authority to give a finding in



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respect of the jurisdiction of the authority so also in respect of the limitation in claiming the wages. The first respondent is directed to dispose of the same on merits after giving opportunities to both sides as quickly as possible not later than 12 weeks from the date of receipt of a copy of this order. Connected W.M.P is closed. No costs.

12.07.2024

vca

Internet : Yes/No

Index : Yes/No

Citation : Yes/No

To

Regional Labour Commissioner (Central) Chennai,
(Authority under the Payment of Wages Act,1936)
26, Haddows Road, Shastri Bhavan,
Chennai – 600 006.

Dr.D.NAGARJUN,J

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Pre-Delivery order made in
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