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**(2015) 09 RAJ CK 0081**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 4310/2001**

Bhartiya Khan Mazdoor Sangh

APPELLANT

Vs

Udaipur Mineral Development Syndicate Ltd. and Others

RESPONDENT

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**Date of Decision :** 10-09-2015

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 33C, 33C(2), 33-C(2)  
Minimum Wages Act, 1948 — Section 12, 13, 13(1), 14, 14(1)  
Payment of Wages Act, 1936 — Section 15, 15(1)

**Citation :** (2015) 09 RAJ CK 0081

**Hon'ble Judges :** Arun Bhansali, J.

**Bench :** Single Bench

**Advocate :** D.K. Parihar, for the Appellant; Vineet R. Dave, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Arun Bhansali, J.—This writ petition has been filed by the petitioner-Union aggrieved against the order dated 28.2.2001 passed by the Prescribed Authority under the Minimum Wages Act, 1948 ("the Act"), whereby the application filed by the petitioner under Section 20(2) of the Act has been disposed of by holding that the dispute raised was cognizable by the Labour Court and the petitioner was free to seek relief under Section 33-C(2) of the Industrial Disputes Act, 1947 ("ID Act").

2. The petitioner-Union filed a group application under Section 21(i) of the Act (Annex.2) inter-alia claiming that the applicants whose name appeared in the schedule attached to the application were employed from 12.7.1994 to 19.5.1995 as sorter (category) in Soapstone Mines, Gewariya, Tehsil Kotdi, District Bhilwara of the respondent and were engaged in sorting in Soapstone, which is scheduled employment within the meaning of Section 2(g) of the Act and the applicants were paid wages at less than the minimum rate of the wages fixed for the category of employment under the Act by Rs. 34.00, 35.22 and 37.68 per day for the period from 12.7.1994 to 19.5.1995 and based on the

calculation, the value of relief was estimated as Rs. 1,60,311.90 P. and it was prayed that direction be issued under Section 20(3) of the Act for payment of difference between the wages payable under the Act and the wages actually paid.

3. The application was opposed by the respondents employer by filing reply Annex.-3, disputing the averments made in the application. It was indicated that the applicants whose name appeared in the schedule annexed to the application were in the employment as "Mazdoor" during the period 12.7.1994 to 19.5.1995 as un-skilled employees at the Soapstone Mines of the respondents and it was wrong to say or suggest that they were employed as sorters; their employment falls in the category No. 6 of classification of un-skilled workers "Mazdoor (M/F)" as notified by Government of India vide notification dated 12.7.1994 and they were being paid accordingly. It was also contended that as the category of employment was Mazdoor and not Sorter, the Mazdoor falls in the category of un-skilled worker and as such, they are not entitled to the amount claimed by them in the statement annexed. It was prayed that the application be dismissed.

4. Based on the submissions made by the parties, evidence was also led before the prescribed authority, wherein the affidavits were filed and the deponents were cross-examined.

5. The Prescribed Authority by its impugned order dated 28.2.2001, came to the conclusion that the though the authorities prior to the incumbent had not examined the issue as to whether the dispute is within the jurisdiction of the Prescribed Authority or not, however, the authority found it appropriate to examine the said issue and after referring to provisions of Section 20(3) of the Act, came to the conclusion that the authority under the Act can only decide cases where there is no dispute between the parties regarding the category and payable minimum wages and where the employer has paid less than the minimum wages, application will be maintainable. However, as the present case involves a dispute as to whether the petitioners were Mazdoor or were un-skilled or semi-skilled Labourers, said aspect would be examined by the Labour Court and the Industrial Tribunal and the application was not maintainable and as noticed herein-before leaving it open for the petitioner to approach the Labour Court under Section 33-C(2) of the ID Act, disposed of the application.

6. It is submitted by learned counsel for the petitioner that the Prescribed Authority fell in error in holding that it had no jurisdiction to decide the category of the workman; documentary proof was submitted in this regard showing the nature of work done by the workers, which clearly indicated that they should have been classified as semi-skilled workers and therefore, the Tribunal could not have rejected the application.

7. With reference to provisions of Section 12 & 20 of the Act, it was submitted that it is well within the jurisdiction of the Prescribed Authority to determine as to which category the workman fall and grant relief accordingly. The failure of the Prescribed Authority to do the same has resulted in passing of a patently wrong

order and the same deserves to be quashed and set-aside and the matter needs to be remanded back to the Prescribed Authority to determine the issue on merits.

8. Reliance was placed on Division Bench judgment of this Court in M/s. Theopharma v. The Labour Inspector and Ors. : DBCWP No. 3111/1987 - decided on 29.3.1989 and Cachar Cha Sramik Union and Another Vs. Manager, Majhegram Tea Estate, .

9. Opposing the submissions made by learned counsel for the petitioner, the learned counsel for the respondents submitted that the order passed by the Prescribed Authority does not call for any interference, inasmuch as, the relief claimed by the petitioner does not fall within the jurisdiction of the Prescribed Authority as the petitioner was not seeking enforcement of minimum wages and was seeking determination of his status, which relief could not be granted by the Prescribed Authority and therefore, the writ petition filed by the petitioner deserves to be dismissed.

10. Reliance was placed on C.S. Parameswaran Vs. The Authority under the Minimum Wages Act, 1948 for Nandgaon and Manmad, .

11. I have considered the submissions made by learned counsel for the parties and have perused the material placed on record.

12. The issue pertaining to the jurisdiction of the prescribed authority under the Act has been determined by the Hon"ble Supreme Court in the case of Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , wherein the Hon"ble Supreme Court observed as under:-

"6. The long title and the preamble to the Minimum Wages Act show that this Act was passed with the object of making provision for fixing minimum rates of Wages in certain employments. The word "wages" has been given a wide meaning in its definition in Section 2(h) of that Act and, quite clearly, includes payment in respect of overtime and for work done on weekly off-days which are required to be given by any employer to the workmen under the provisions of that Act itself. Section 13(1) , which deals with weekly off-days, and Section 14(1) , which deals with overtime, are as follows:-

"13. (1) In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may-

(a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;

(b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;

(c) provide for payment for work on a day of rest at a rate not less than the

overtime rate."

"14. (1) Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher."

In order to provide a remedy against breach of orders made under Sections 13(1) and 14(1) , that Act provides a forum and the manner of seeking the remedy in Section 20 which is as follows:-

"20. (1) The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of Section 13 or of wages at the overtime rate under Section 14 , to employees employed or paid in that area.

(2) Where an employee has any claim of the nature referred to in sub-section (1), the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub-section (1), may apply to such Authority for a direction under sub-section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages or other amount became payable:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct-

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten

times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees;

and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.

(4) If the Authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered-

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or

(b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898."

We have mentioned these provisions of the Minimum Wages Act, because the language used at all stages in that Act leads to the clear inference that that Act is primarily concerned with fixing of rates-rates of minimum wages, overtime rates, rate for payment for work on a day of rest - and is not really intended to be an Act for enforcement of payment of wages for which provision is made in other laws, such as the Payment of Wages Act No. 4 of 1936, and the Industrial Disputes Act No. 14 of 1947. In Section 20(1) of the Minimum Wages Act also, provision is made for seeking remedy in respect of claims arising out of payment of less than the minimum rates of wages or in respect of payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of Section 13 or of wages at the overtime rate under Section 14 . This language used in Section 20(1) shows that the Authority appointed under that provision of law is to exercise jurisdiction for deciding claims which relate to rates of wages, rates for payment of work done on days of rest and overtime rates. If there be no dispute as to rates between the employer and the employees, Section 20(1) would not be attracted. The purpose of Section 20(1) seems to be to ensure that the rates prescribed under the Minimum Wages Act are complied with by the employer in making payments and, if any attempt is

made to make payments at lower rates, the workmen are given the right to invoke the aid of the Authority appointed under Section 20(1) . In cases where there is no dispute as to rates of wages, and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off-days is due to a workman or not, the appropriate remedy is provided in the Payment of Wages Act. If the payment is withheld beyond the time permitted by the Payment of Wages Act even on the ground that the amount claimed by the workman is not due, or if the amount claimed by the workman is not paid on the ground that deductions are to be made by the employer, the employee can seek his remedy by an application under Section 15(1) of the Payment of Wages Act. In cases where S.15 of the Payment of Wages Act may not provide adequate remedy, the remedy can be sought either under Section 33C of the Act or by raising an industrial dispute under the Act and having it decided under the various provisions of that Act. In these circumstances, we are unable to accept the submission made by Mr. Sen on behalf of the appellant that Section 20(1) of the Minimum Wages Act should be interpreted as intended to cover all claims in respect of minimum wages or overtime payment or payment for days of rest even though there may be no dispute as to the rates at which those payments are to be claimed. It is true that, under Section 20(3) , power is given to the Authority dealing with an application under Section 20(1) to direct payment of the actual amount found due; but this, it appears to us, is only an incidental power granted to that Authority, so that the directions made by the Authority under Section 20(1) may be effectively carried out and there may not be unnecessary multiplicity of proceedings. The power to make orders for payment of actual amount due to an employee under Section 20(3) cannot, therefore, be interpreted as indicating that the jurisdiction to the Authority under Section 20(1) has been given for the purpose of enforcement of payment of amounts and not for the purpose of ensuring compliance by the employer with the various rates fixed under that Act. This interpretation, in our opinion, also harmonises the provisions of the Minimum Wages Act with the provisions of the Payment of Wages Act which was already in existence when the Minimum Wages Act was passed. In the present appeals therefore, we have to see whether the claims which were made by the workmen in the various applications under Section 33C(2) of the Act were of such a nature that they could have been brought before the Authority under Section 20(1) of the Minimum Wages Act inasmuch as they raised disputes relating to the rates for payment of overtime and for work done on weekly off-days."

13. The said judgment in the case of Manganese Ore (India) Ltd. Vs. Chandi Lal Saha and others, , wherein the Hon"ble Supreme Court observed as under:-

"16. The third argument of Mr. Sanghi based on the interpretation of S. 20 of the Act is again devoid of any force. This precise argument was considered by this Court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., and decided in the following terms:

"The Minimum Wages Act is concerned with the fixing of rates - rates of minimum wages, overtime rates, rate for payment of work on a day of rest and is not intended for enforcement of payment of wages. U/S. 20(1) of the Minimum Wages Act, in which provision is made for seeking remedy in respect of claims arising out of payment of less than minimum rates, or in respect of remuneration for days of rest, or for work on such days, or of wages at the overtime rates, the Authority is to exercise jurisdiction for deciding claims which relates to rates of wages, rates for payment for work done on days of rest and overtime rates. The power u/S. 20(3) of the Minimum Wages Act given to the Authority dealing with an application under S. 20(1) to direct payment of the actual amount found due, is only an incidental power for working out effectively the directions u/S. 20(1) fixing various rates under the Act. That is, if there is no dispute as to rates between the employer and the employee and the only question is whether a particular payment at the agreed rate is due or not, then S. 20(1) of the Minimum Wages Act would not be attracted at all, and the appropriate remedy would only be either u/S. 15(1) of the Payment of Wages Act, 1936, or u/S. 33-C(2) of the Industrial Disputes Act."

17. In the present case there was no dispute regarding the rates of wages and it is admitted by the parties that the minimum rates of wages were fixed by the Government of India under the Act. The workmen demanded the minimum wages so fixed and the appellant denied the same to the workmen on extraneous considerations. Under the circumstances the remedy u/S. 20 of the Act was not available to the workmen and the Labour Court rightly exercised its jurisdiction under S. 33-C(2) of the Industrial Disputes Act, 1947."

14. From the above judgments of the Hon"ble Supreme Court in the case of Town Municipal Council, Athani (supra) and Manganese Ore (India) Ltd. (supra), it is apparent that the claim under Section 20 relates to rates of wages for the payment of work done. The power under Section 20(3) of the Act given to the authority dealing with an application under Section 21(1) to direct payment of actual amount found due only as an incidental power for working out effectively the directions under Section 20(1) fixing of authorised rates under the Act i.e. if there is no dispute as to rates between the employer and employee and only question is whether a particular payment on the agreed rate is due or not; then Section 20(1) of the Act would not be attracted at all. The appropriate remedy would only be either under Section 15(1) of the Payment of Wages Act, 1936 or Section 33-C(2) of the ID Act.

15. So far as judgments cited by learned counsel for the petitioner are concerned, while in the case of M/s. Theopharma (supra), the authority under the Act found the workman entitled to the claim made by them and the objection raised was held to be not maintainable by this Court; in the case of Cachar Cha Sramik Union (supra), though it was held that an authority appointed to hear and decide the claim under Section 20 of the Act has jurisdiction to determine the class to which the employee belongs, however, the said judgment being contrary

to law laid down by the Hon''ble Supreme Court in the case of Town Municipal Council, Athani (supra) would have no application to the facts and circumstances of the present case.

16. The judgment cited by learned counsel for the respondents, in the case of C.S. Parameswaran (supra) has after referring to the judgment in the case of Cachar Cha Sramik Union (supra) come to a similar conclusion as has been laid down by the Hon''ble Supreme Court in the case of Town Municipal Council, Athani (supra) and as held by the Hon''ble Supreme Court in the case of Manganese Ore (India) Ltd. (supra).

17. As the present dispute between the parties involved not only the non-payment of the minimum wages, but as to which category the workman belonged, which aspect could not be determined by the Prescribed Authority.

18. In Model Intermediate College, Kanpur Vs. Prescribed Authority under Minimum Wages Act/Addl. Labour Commissioner, U.P., Kanpur Region and others, , after reviewing the judgments on the aspect, it was held as under:-

"30. It is apparent from the case laws as well as section 20(1) of the Act that it does not cover all the claims in respect of minimum wages and covers only those cases where there is dispute as to the rate at which minimum wages are to be paid. But where dispute is not about the rate but question of wage to which workmen is entitled, it would not be a matter falling under section 20(1) of the Minimum Wages Act and consequently, application under section 33-C(2) of the Industrial Disputes Act would be applicable. In short, claim under the Minimum Wages Act can only be the difference between wages actually paid and the wages payable under the Act."

19. In view of the above discussion, the order passed by the Prescribed Authority does not call for any interference. There is no substance in the writ petition, the same is, therefore, dismissed.