

(2012) 07 KAR CK 0049

In the Karnataka High Court

Case No : Writ Petition No's. 42220-42223 of 2011 (L-MW)

Chief Warden, National Institute of Technology, Karnatak
Hostels, Mangalore

APPELLANT

Vs

Labour Enforcement Officer (Central) and Others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 33 C (2)

Minimum Wages Act, 1948 — Section 17, 20 (1), 20 (3)

Citation : (2012) 135 FLR 897 : (2013) 1 LLJ 82 : (2012) LLR 1242

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant; B. Pramod, ASG. for Respondent Nos. 1 and 6 and Notice dispensed with V.O., dated 15-11-2011 for Respondent Nos. 2 and 5, for the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar, J.—Petitioner in these proceedings is seeking for quashing of Order dated 22.9.2011 at Annexure-A passed by 6th respondent holding that said authority has got jurisdiction to entertain the claim of respondents 2 to 5 (contractors) relating to non-payment of overtime ("OT" for short) wages. Heard Sri P.S. Rajagopal, learned Senior counsel appearing for petitioner and Sri Pramod, learned Central Government Standing Counsel appearing for respondents 1 and 6. Notice to respondents 2 to 5 has been dispensed with by this court by order dated 15.11.2011.

2. It is the contention of Sri P.S. Rajagopal, learned Senior counsel appearing for petitioner that applicants have claimed for a direction u/s 20(3) of the Minimum Wages Act to the petitioner for payment of over time wages amounting to Rs. 2,96,460 and contends that under the Minimum Wages Act, the issue regarding rates of wages alone can be considered and when there is a dispute with regard to the actual overtime or claim for wages for having worked half days such issue

is to be resolved by taking recourse to the provisions under the Industrial Disputes Act and when there is a demand for such payment of wages either towards overtime or towards the wages for having worked on holidays, the authority under the Minimum Wages Act would not get jurisdiction. It is contended that the law governing the issue has not been considered by 6th respondent authority and in support of his submission he has relied upon the following judgments:

(1) Manganese Ore (India) Ltd. Vs. Chandi Lal Saha and others,

(2) Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.,

(3) Nirmal Singh Vs. State of Jharkhand and Others,

3. Per contra, Sri Pramod, learned counsel appearing for respondent 1 & 6 submits that petitioner had not paid both minimum wages and overtime wages to its employees and only on inspection being conducted on 18.8.2009 by 1st respondent, default in payment of Minimum Wages as also non-payment of overtime wages came to light and the petitioner establishment thereafter has promptly paid minimum wages to which employees were entitled to but did not pay overtime wages and as such, proceedings had been initiated by the Labour Enforcement Officer by filing claim application before 6th respondent u/s 20(3) of the Minimum Wages Act for a direction to the second respondent therein i.e., petitioner herein to pay overtime wages for the period from August 2008 to July 2009 to six workers amounting to Rs. 2,96,460 and contends that no error can be found in the impugned order and prays for dismissal of these writ petitions.

4. On proceedings being initiated by Regional Labour Commissioner in claim Application No 06/2010, petitioner herein appeared and filed an additional counter on 27.4.2011 contending that Regional Labour Commissioner has no jurisdiction to entertain the claim petition and same is not maintainable under the Minimum Wages Act. It was further contended that workers of respondent No. 1 did not work overtime and they were not eligible for overtime allowance and dispute does not fall u/s 20(1) of the Minimum Wages Act and in the instant case there is no dispute with regard to "rate of wages" and on these grounds, they sought for rejection of the claim petition. However, said contention came to be rejected and matter came to be listed for recording evidence before the Minimum Wages authority i.e., 6th respondent herein.

5. u/s 17 of the Minimum Wages Act, the minimum rate of wages is required to be paid by an employer at the rate fixed under sub-section (1) of section 20 of the Act and a claim petition can be filed where the claim arises out of payment of, wages less than the minimum rate of wages than what is prescribed. If the claim is towards overtime wages and the said fact is in dispute, same cannot be adjudicated by the Minimum Wages authority. The claim for overtime wages requires an adjudication namely as to the number of days, number of hours to which the workman has worked or discharged by him and same cannot be

adjudicated under the Minimum Wages Act. Thus, the remedy available to such employees would be to invoke section 33C(2) of the Industrial Disputes Act and seek redressal of their grievance.

6. At this juncture, it would be of benefit to note the judgment of the Hon''ble Apex Court in the case of Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., wherein it has held as under:

7. We have examined the applications which were presented before the Labour Court u/s 33C(2) of the Act in these appeals and have also taken into account the pleadings which were put forward on behalf of the appellant in contesting those applications and we are unable to find that there was any dispute relating to the rates. It is true that, in their applications, the workmen did plead the rates at which their claims had to be computed; but it was nowhere stated that those rates were being disputed by the appellant. Even in the pleadings put forward on behalf of the appellant as incorporated in the order of the Labour Court, there was no pleading that the claims of the workmen were payable at a rate different from the rates claimed by them. It does appear that, in one case, there was a pleading on behalf of the appellant that no rates at all had been prescribed by the Mysore Government. That pleading did not mean that it became a dispute as to the rates at which the payments were to be made by the appellant. The only question that arose was whether there were any rates at all fixed under the Minimum Wages Act for overtime and for payment for work done on days of rest. Such a question does not relate to a dispute as to the rates enforceable between the parties, so that the remedy u/s 20(1) of the Minimum Wages Act could not have been sought by the applicants in any of these applications. No question can, therefore, arise of the jurisdiction of the Labour Court to entertain these applications u/s 33C(2) of the Act being barred because of the provisions of the Minimum Wages Act. The first point raised on behalf of the appellant thus fails.

Further, the Hon''ble Supreme Court in the case of Manganese Ore (India) Ltd. Vs. Chandi Lal Saha and others, has held as under:

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 u/s 33C(2) of the Industrial Disputes Act, 1947.

7. A perusal of the above judgments of Hon''ble Apex Court would clearly go to show that Authority constituted under Minimum Wages Act can go into issue regarding rate of wages and if there is a dispute with regard to work discharged or denial of the claim itself, the remedy available u/s 20(1) of Minimum Wages Act cannot be invoked. In the instant case, petitioner has filed the counter statement as also the additional counter before 6th respondent specifically

contending that the claim does not disclose or quantify the actual overtime worked, it does not mention the working hours of the hostel mess/canteen, the basis for calculation of the amount claimed in the claim petition, the details of the overtime work alleged to have been discharged by these six workers, Apart from denying the fact that none of the Workers worked beyond eight hours, the issue before the 6th respondent was not with regard to the rate of wages and it is with regard to actual number of hours worked or discharged by them and said issue cannot be adjudicated before the sixth respondent. Thus, proceedings initiated by the 6th respondent and the order dated 22.9.2011 at Annexure-A passed by 6th respondent in claim application Nos. 6/2010, 8/2010, 10/2010 and 13/2010 at annexures B, E, H and L respectively cannot be sustained and requires to be quashed.

In view of the discussions made hereinabove, pass the following:

ORDER

- (1) Writ petitions are hereby allowed.
- (2) Order passed by the 6th respondent in Application No. 6/2010, 8/2010, 10/2010 and 13/ 2010 dated 22.9.2011 at Annexure-A is hereby quashed.
- (3) Consequently, claim application Nos. 6/10, 8/10, 10/10 and 13/10 at Annexures B, E, H and L respectively stands rejected.
- (4) The workers are at liberty to initiate appropriate proceedings in the jurisdictional court,
- (5) Quashing of the orders passed by the sixth respondent and dismissal of the claim applications by this Court would not come in the way of the petitioner and the workers who claim to have discharged their duties in the petitioners hostel to sit across and amicably settle their disputes if any.
- (6) No costs.
- (7) Ordered accordingly.