

(2006) 12 DEL CK 0068

In the Delhi High Court

Case No : Writ Petition (Civil) No. 4747 of 2006

Dr. (Mrs.) Mala Bhandari

APPELLANT

Vs

Authority under the Delhi Shops and Establishment Act 1954
and Another

RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Delhi Shops and Establishments Act, 1954 — Section 2(3), 21(1)
Minimum Wages Act, 1948 — Section 2

Citation : (2009) 93 DRJ 372 : (2007) 112 FLR 528 : (2007) 2 LLJ 464

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Saurabh Prakash, for the Appellant; Sewa Ram, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—Heard.

2. The petitioner made an application before the Authority under the Shops and Establishment Act, 1954 (hereinafter referred to as the Authority and the Act) asking for the "earned wages" for the month of November and December, 2003 and January, 2004. The respondent No. 2, namely, the M/s Institute of Social Sciences paid wages up to 16.12.2003 during the pendency of the application before the Authority. For the rest of the period, i.e., from 17.12.2003 to 31.1.2004 the Authority declined to pass any order on the ground that admittedly for this period the applicant/petitioner had not worked with the respondent and, Therefore, did not earn any wages.

3. The order of the Authority to this effect dated 17.11.2005 is the impugned order.

4. The petitioner entered into a contract of service with the respondent which was to expire on 31.1.2004. Her salary for the month of November, 2003 was withheld on the ground that she had come late for work for certain days in the

course of past several months. Vide her letter dated 16.12.2003 she offered to discontinue. She alleged before the Authority that the respondent forfeited the salary due to her after November, 2003 on the ground that she was required to give one month's notice or one month's salary in lieu of the notice at the time of resignation. The respondent resisted the claim and claimed notice pay for a month and further alleged that the claim being disputed is outside the scope of the Act. The respondent further disputed the maintainability of the claim on the ground that the respondent was not covered by the Act. Nonetheless the respondent offered to pay the wages up to 16.12.2003 and paid the same as mentioned above. The only question, Therefore, to be gone into by the Authority was in respect of the petitioner's claim arising after 16.12.2003. The Authority observed that it had not been empowered to go into the merits of the validity or otherwise of the alleged resignation of 16.12.2003 and that the petitioner/claimant could seek her remedy before other forum as may be advised. However, the Court ordered for payment of the salary of one day amounting to Rs. 400/- which had not been paid and also imposed the penalty of Rs. 100/- for late payment of the salary.

5. The petitioner has filed two letters dated 16.12.2003. The first letter is issued by the respondent Institute to the petitioner referring to the petitioner's letter dated 16.12.2003 and the discussions based thereon in respect of non-payment of salary for the month of November, 2003. The petitioner then wrote the letter dated 16.12.2003 referring to the above mentioned letter of the respondent. The petitioner wrote:

Reference to your letter dated 16th December, 2003, it will be very difficult for me to continue working in the Institute with immediate effect. I am handing over my work, done so far, to Mr. Jacob John. Please clear my dues for the month of December, 2003, as early as possible. I have cleared the library dues too.

6. The respondent has treated this as a resignation letter. The petitioner's case is that the petitioner reported to work again on 17.12.2003 but she was not allowed to work. The petitioner thereafter wrote a letter on 18.12.2003 clarifying that she did not intend to actually resign on 16.12.2003 and that the letter was written out of anguish hoping that the respondent would reconsider its stand. Be that as it may the petitioner did not work with the respondent after 16.12.2003. The Authority in its impugned order has referred to the provisions of Section 21(1) of the Act which gives power to the Authority to decide the claims arising out of delayed payment or non-payment of "earned wages" of an employee employed in any establishment. Section 21(1) is extracted below:

Claims relating to wages (1) The Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation Act or other officer with experience as a Judge of a Civil Court or as a Stipendiary Magistrate to be the authority to hear and decide all claims arising out of delayed payment or non-payment of earned wages of an employee employed in any establishment.

7. The Authority observed that it had not been given jurisdiction to go into the merits of validity or otherwise of the alleged resignation and that the petitioner did not earn any wages from 17.12.2003 to 31.1.2004 and, Therefore, it was not within his jurisdiction to grant such wages.

8. The order is impugned on the ground that the Act gives the Authority power to decide all claims of wages which included the expression "earned wages" and, Therefore could not have been declined to examine this part of the petitioner's claim. The petitioner's counsel has taken through the definition of wages in the Act. Wages is defined in Section 2(3) of the Act as under:

Wages means wages as defined Section 2 of the Minimum Wages Act, 1948(XI of 1948)

9. Minimum wages Act defines wages as under:

2(30) "Wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment (and includes house rent allowances), but does not include-

(i) the value of

(a) any house accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any traveling allowance or the value of any traveling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge

10. The learned Counsel for the petitioner has submitted that wages as defined in the Minimum Wages Act means remuneration capable of being expressed in terms of money, which would have been payable to the employee if the contract of employment had been fulfilled and, Therefore, in the present case as the employment had been fulfilled, the petitioner would have been entitled to the wages for the period of 17.12.2003 to 31.1.2004 and it would have been within the jurisdiction of the authority to decide. The learned Counsel has not been able to distinguish between "wages" and "earned wages". The word "earned" has not been included in Section 21(1) without any purpose. This adjective to the word "wages", Therefore, has to be given some meaning. The only meaning that can be given to this word is the wages that have been earned by actual working. The Authority, Therefore, cannot enter into the question as to how much the

employee would have earned had he continued in the employment and pass an order for payment of such amount. Nor can the Authority decide the question as to whether the letter dated 16.12.2003 amounted to resignation and whether the contract of employment stood terminated by said letter.

11. The Authority is not a substitute of a Labour court or the civil court. The authority had been empowered to decide only certain specific claims. It does not have the powers of a civil court. Since the word used in Section 21(1) of the Act is "earned wages" and the only way it can be defined is wages earned by actual working, the impugned order cannot be faulted.

12. I find no merit in the writ petition, the same is accordingly dismissed in liming.