
(2010) 07 AHC CK 0068
In the Allahabad High Court
Case No : Writ Petition (C) No. 13145 of 1995

Fertilizer Corporation of India Ltd., G Uhit	APPELLANT
Vs	
Authority Under M.W.A.C. for W.A.L.C. and Others	RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Factories Act, 1948 — Section 2(1)
Minimum Wages Act, 1948 — Section 20(2), 20(3)

Citation : (2011) 129 FLR 748 : (2010) 4 LLJ 662 : (2011) LLR 172

Hon'ble Judges : Prakash Krishana, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishana, J.—Raising a short controversy, the present writ petition which arises out of proceedings under the Minimum Wages Act, has been filed against the order dated March 31, 1995 whereby the Petitioner has been directed to pay the difference in between the minimum wages and wages actually paid by the labour contractor along with the compensation to the extent of 10 times of such difference to the Respondent Nos. 3 to 21 herein.

2. No dispute with regard to the first part of the order, so far as it directs the payment of the difference of wages in between the minimum wages and the actual wages is there in the present petition. The only grievance raised by the Petitioner is that on the facts of the present case, the Petitioner is not liable to pay compensation what to say 10 times of the differential amount.

3. The facts of the case may be noticed in brief;

Respondent Nos. 3 to 21 filed 19 applications separately, u/s 20(2) of the Minimum Wages Act 1948. They claimed a total sum of Rs. 24600/- as difference between the wages actually paid and the minimum wages for work done on weekly rest days and 10 times of the total wages as compensation. These applications were contested by the Petitioner on the allegations that these

persons were never employed by him. There was no relationship of-employer and the employee in between the Petitioner and the claimants therefore, they are not liable to pay any wages to these workmen. These workmen were employed by Labour Contractor who has been impleaded herein as Respondent No. 2. It is the Labour Contractor who is liable to pay the minimum wages to these claimants.

4. The authority concerned on a perusal of the material on record, after taking into consideration, the gate passes issued to these persons and the statement of work, reached to the conclusion that in view of the definition given in Section 2(1) of Factories Act, these persons were workmen which included persons employed through contractor with the knowledge of the main employer. Consequently, the claims of the workmen were allowed.

5. The learned Counsel for the Petitioner submits that in view of the finding that these persons were not directly employed by the Petitioner but were employed at the business premises of the Petitioner through Labour Contractor Shri Dubar, Respondent No. 2 herein, the Petitioner could at the most be held liable to pay the differential amount. The liability to pay the compensation amount was disputed by him on the ground that there is no such provisions under the Minimum Wages Act.

6. Considered the respective submissions of the counsel for the parties and perused the record.

A bare perusal of the impugned order, Issue No. 2 in particular, would show that it has been found that these persons were engaged through Contractor Shri Dubar, Respondent No. 2 herein. The authority concerned proceeded to fix the liability on the Petitioner by invoking Section 2(1) of Factories Act which includes the workmen employed directly or through a contractor within the knowledge of the principal employer. By invoking the said provisions of the Factories Act, it has been held that there was a relationship of employer and the employee between the parties. To this extent, the Petitioner has not raised any dispute. The contention of the Petitioner is that there being no provision for payment of compensation, the compensation to the extent of 10 times of the differential amount could not be awarded. The provisions for payment of compensation amount has been made under Sub-section (3) of Section 20 of the Minimum Wages Act 1948 but there is no such provision under the Contract Labour and Regulation Act.

7. I have given careful consideration to the submissions of the counsel for the Petitioner.

The case of the Petitioner is that at the most it could be held liable to ensure the payment of the minimum wages to the workers employed through labour contractor. If the labour contractor fails to pay even that much of the amount, the Petitioner be held liable to make good the deficit. But it could not be asked to pay any other amount for no fault of theirs. It follows that if the contractor has violated the provisions of the Minimum Wages Act, the compensation cannot be

awarded for paying the wages less than the wages as prescribed by the Minimum Wages Act. The contract Labour and (Regulation & Abolition) Act 1970, operates in a different field. It was enacted with a view to employ contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

8. A reference was made to a decision of Apex Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., in particular.

It has been held that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour was not accepted.

9. Coming to the impugned order, the authority below has awarded 10 times compensation amount which is the maximum amount provided under the Minimum Wages Act.

10. It was pointed out to him that the-establishment is closed and no production work is being done and wages to permanent employees are being paid in full. On this premise, the concerned authority has awarded the maximum compensation amount. In my view, when the establishment is closed and no production is being done, there was no justification for awarding any damages to the Respondent workmen for no fault of the Petitioner. Indisputably the Respondent workmen were not employed or engaged by the Petitioner. They were employed and engaged through labour contractor. The grievance if any was against the labour contractor for non payment of even the minimum wages. The Petitioner has been asked to pay the differential amount, which has been paid. I find no justification for awarding any compensation amount to the contesting Respondents. To this extent, the submission of the Petitioner is well founded and deserves acceptance.

11. In the result, the writ petition succeeds and is allowed in part by holding that the impugned order so far as it relates to the award of compensation amount is concerned, is bad. The other part of the order remains as it is.

12. In view of divided success, no order as to costs.