

(2014) 08 AHC CK 0209

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 21064 of 2010

J.H.V. Distillery and Sugar Mill

APPELLANT

Vs

Dy. Labour Commissioner

RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 — Section 3

Citation : (2014) 8 ADJ 425 : (2014) 143 FLR 568

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Shakti Swarup Nigam, Advocate for the Appellant; Umesh Chandra Tripathi and Vinay Khare, Advocate for the Respondent

Judgement

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Manoj Misra, J.—Heard Sri Shakti Swarup Nigam for the petitioner; Sri Vinay Khare for the contesting respondent No. 3; and the learned Standing Counsel for the respondent Nos. 1 and 2. By the present petition, the petitioner has challenged the order dated 20.7.2009 passed by the Deputy Labour Commissioner, U.P., Gorakhpur Region, Gorakhpur whereby, in exercise of power under Section 3 of the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 (hereinafter referred to as Act, 1978), he has directed recovery of a sum of Rs. 16,14,563/- from the petitioner-Company towards arrears of salary allegedly payable to the respondent No. 3, who claims himself to be a staff welfare officer. The petitioner has also challenged the consequential recovery certificate dated 14.10.2009 as also the order dated 12.3.2010 by which the application of the petitioner seeking recall of the order dated 20.7.2009 has been rejected as not maintainable.

2. Briefly stated the relevant facts of the case are that the respondent No. 3 filed an application under Section 3 of Act, 1978 claiming, inter alia, that pursuant to the notification dated 30.6.2000, he was entitled for a raise in salary with effect from January, 1996 and, as such, was entitled to arrears payable up to June,

2008, which comes to Rs. 16,14,563.87p. It was claimed that the employer (the petitioner herein) had failed to pay and, therefore, the said amount be recovered from the employer and be paid to him. On the aforesaid application, the Deputy Labour Commissioner proceeded to issue notice to the employer and as no one responded to the notice, passed an order dated 20.7.2009 thereby directing recovery of the aforesaid amount as arrears of land revenue. Pursuant to the said order, on 14.10.2009, a recovery certificate was issued. At this stage, the petitioner applied for recall of the order dated 20.7.2009 claiming that the order was passed ex parte and that the petitioner was not served with any notice of the proceedings. The recall application was rejected by order dated 12.3.2010 on the ground that it was not maintainable.

3. The petitioner has challenged the recovery order as well as consequential recovery proceedings on three grounds : (a) that for an individual dispute the provisions of Section 3 of the Act, 1978 cannot be invoked in view of the judgment of the Apex Court in the case of *Modi Industries Ltd. Vs. State of Uttar Pradesh and others*, ; (b) that the dispute has been raised after 13 years, inasmuch as difference of wages from 1996 up to 2008 were sought and as such the claim had become stale and time barred; and (c) that the petitioner had taken over the assets under the sanctioned scheme of the B.I.F.R. and, therefore, its relation with the respondent No. 3, if any, came into existence in the year 2005 and, as such, the petitioner was not liable for the dues, if any, payable since 1996.

4. In support of the submission that the provisions of the Act, 1978 could not have been invoked for an individual dispute, the learned counsel for the petitioner placed reliance on the observations of the Apex Court in the case of *Modi Industries Ltd.* (supra) where the Apex Court observed as follows:

"It will thus be clear from the preamble, the Statement of Objects and Reasons and the provisions of the Act that, firstly, the Act has been placed on the Statute-Book to ensure timely payment of wages by the bigger establishment, the incidence of disturbance of industrial peace being greater in such establishments on account of the default in payment of wages. Secondly, the Act deals with defaults in payment of the wage bill of all the workmen in the establishment. It is not meant to provide a remedy for the default in payment of wages of individual workmen. That can be taken care of by the provisions of the payment of Wages Act, 1936 which provisions are found inadequate to ensure timely payment of wages of the whole complement of workmen in an establishment."

5. Learned counsel for the petitioner further placed reliance on a Division Bench decision of this Court in Writ C No. 21885 of 2001 where, in its judgment dated 12.3.2010 while dealing with the claim of a Welfare Officer, as is in the present case, the Division Bench observed as follows:

"Coming to the facts of the present case, the impugned order cannot be allowed to stand in view of the aforestated pronouncements of the Apex Court. Firstly,

the respondent No. 5, Narendra Das Gaur, sought to raise his individual dispute by invoking the provisions of the Act, 1978, which is not permissible. There was no dispute with regards to timely payment of wages of all the workmen of the establishment...."

6. The learned counsel for the petitioner has also placed reliance on a Single Judge decision of this Court in the case of M/s. Shakumbari Sugar and Allied Industrial Ltd. Vs. Dy. Labour Commissioner, Saharanpur and Others, , wherein, in paragraph 11 of the report, this Court placing reliance on decision of the Apex Court in Modi Industries Ltd. (supra) observed as follows:

"The supreme Court in Modi Industries Ltd. (supra) clearly indicated that the claim of the workers as a whole could only be filed and that claim of individual workers was not sustainable under the Act."

7. Relying on the aforesaid decisions, the learned counsel for the petitioner submitted that the application of the respondent No. 3 to recover the alleged amount by invoking the provisions of Section 3 of the Act, 1978 was not maintainable and, therefore, the order passed by the Deputy Labour Commissioner is without jurisdiction and the said order as well as the consequential proceedings are liable to be quashed.

8. Sri Vinay Khare, who has appeared on behalf of respondent No. 3, submitted that under the Factories Act, 1948, rules have been framed. Rule 22 of the U.P. Factories Welfare Officers Rules, 1955, provides that the provisions of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 shall also apply in the case of Welfare Officers. Relying on the aforesaid rule, the learned counsel for the respondent No. 3 submitted that since by a specific provision, the Act, 1978 has been made applicable on Welfare Officers, and it is not in dispute that the respondent No. 3 is a Welfare Officer, therefore, the order of recovery and the consequential recovery cannot be said to be without jurisdiction. Sri Vinay Khare further submitted that despite notice, the petitioner had not filed a response, therefore, the Deputy Labour Commissioner was justified in directing recovery of the amount. It has, thus, been prayed that the writ petition be dismissed and the interim order be vacated.

9. Having considered the submissions of the learned counsel for the parties, this Court is of the view that mere mention in the Rule 22 of the U.P. Factories Welfare Officer Rules that the provisions of the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 would also apply in the case of Welfare Officers does not mean that a Welfare Officer can invoke the provisions of the aforesaid Act even if a dispute as conceived by the Act, 1978, does not exist. The Apex Court in Modi Industries Ltd. (supra) had clearly laid down that the Act is not meant to provide a remedy for the default in payment of wages of individual workman. The same view has been reiterated by the Apex Court in the Hotel and Restaurant Karamchari Sangh Vs. Gulmarg Hotel and Others, , where, in paragraph 7, the Apex Court has observed as follows:

"It will thus be clear from the preamble, the Statement of Objects and Reasons and the provisions of the Act that, firstly, the Act has been placed on the statute-book to ensure timely payment of wages by the bigger establishments, the incidence of disturbance of industrial peace being greater in such establishments on account of the default in payment of wages. Secondly, the Act deals with defaults in payment of the wage bill of all the workmen in the establishment. It is not meant to provide a remedy for the default in payment of wages of individual workmen. That can be taken care of by the provisions of the Wages Act which provisions are found inadequate to ensure timely payment of wages of the whole complement of workmen in an establishment. Thirdly, it is not in respect of the default in payment of every wage bill; but only if a wage bill exceeds Rs. 50,000 the Labour Commissioner can be approached under the Act for redressal of the grievance. Fourthly, the Act is not applicable to all establishments but only to those establishments which produce, process, adopt or manufacture some articles. It will, therefore, be evident that the Act does not supplant or substitute the Wages Act but supplements the said Act, in the limited area viz. where the establishment, as stated above, (i) produces, processes, adopts or manufactures some articles, (ii) where there is a default in the wage bill of the entire such establishment, and (iii) where such wage bill exceeds Rs. 50,000. The object of the Act as stated above is not so much to secure payment of wages to individual workmen but to prevent industrial unrest and disturbance of industrial peace on account of the default on the part of the establishment in making payment of wages to their workforce as a whole. It appears that many establishments had a tendency to delay the payment of wages to their workmen and were playing with the lives of the workmen with impunity. This naturally led to a widespread disturbance of industrial peace in the State. Hence the legislature felt the need for enacting the present statute. This being the case, the inquiry by the Labour Commissioner contemplated under Section 3 of the Act is of a very limited nature viz. whether the establishment has made a default in timely payment of wages to its workmen as a whole when there is no dispute that the workmen are entitled to them."

10. Further, a Division Bench of this Court had the occasion to deal with the claim of a staff welfare officer, like the petitioner, in Writ C No. 21885 of 2001 and it took the view that invoking the provisions of the Act, 1978 for settlement of an individual dispute was not permissible. As it is not in dispute that it was the individual claim of the respondent No. 3 and not of all workmen in the establishment, in view of the binding pronouncements of the Apex Court as also of a Division Bench of this Court, this Court is of the view that the recovery order dated 20.7.2009 passed by the Deputy Labour Commissioner, U.P., Gorakhpur is without jurisdiction and is, therefore, liable to be quashed. The writ petition is, therefore, allowed. The order dated 20.7.2009 and the consequential recovery certificate dated 14.10.2009 are hereby quashed. The respondent No. 3 would, however, be at liberty to take recourse to such other remedies as may be available to him in law.