

(2012) 10 MAD CK 0242

In the Madras High Court

Case No : Writ Petition (MD) . No. 8681 of 2011 and M.P. (MD) No. 1 of 2011

K.R. Pandalai

APPELLANT

Vs

Labour Enforcement Officer (Central), Tuticorin and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195
Minimum Wages Act, 1948 — Section 13, 14, 2(c), 20, 20(2)

Citation : (2013) 2 LLJ 182

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : P. Natarajan, for the Appellant; G. Thalaimutharasu and A. Uthaman, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The petitioner has approached this Court with a prayer for issuance of a writ in the nature of certiorari, to quash the impugned order passed by the Regional Labour Commissioner (Central), Chennai, in allowing the application filed by the Labour Enforcement Officer (Central), Tuticorin. The Labour Enforcement Officer (Central), Tuticorin has filed Claim Petition u/s 20(2) of the Minimum Wages Act, 1948.

2. Section 20 of the Minimum Wages Act, 1948 reads as under:

Claims.- (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) of Clause (c) of sub-section (1) of Section

13 or of wages at the overtime rate u/s 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 authorized 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 bearing 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 any 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 (5 of 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 (5 of 1898).

3. The first respondent filed a Claim Petition giving details of the case. It was pointed out that the petitioner herein was the contractor engaged by Southern Railways, Nagercoil Junction for the work of cleaning and sweeping work, which is a scheduled employment under the Minimum Wages Act, 1948.

4. The petitioner, therefore, fell within the definition of "an employer" u/s 2(c) of the Minimum Wages Act, 1948. The Labour Enforcement Officer (Central) had inspected the establishment of the petitioner on 13.7.2010 at 11.00 a.m., when it was noticed that the petitioner was guilty of not paying minimum wages, as notified by the Government. The first respondent, therefore, filed Claim Petition u/s 20(2) of the Minimum Wages Act, 1948. The first respondent led in evidence before the Regional Labour Commissioner (Central) Chennai, the authority notified under the Minimum Wages Act.

5. The petitioner took defence that difference of wages have been paid by demand draft and subsequently, took a stand that these wages already paid to the employees and for this purpose, he sought permission to lead evidence.

6. It is the case of the petitioner that the third respondent did not give an opportunity to the petitioner to lead evidence. Furthermore, though the application filed by the petitioner for posting the case for evidence is pending, the third respondent has passed the impugned order, directing the petitioner to pay a sum of Rs. 63,954/- (Rupees sixty three thousand and nine hundred and fifty four only).

7. The petitioner has challenged the impugned order on the ground of it being violative of principles of natural justice, as no opportunity was not given to the petitioner to prove the fact that the difference of wages had already been paid to the workers, by the petitioner.

8. There is a force in the contention of the learned counsel for the petitioner. The authority under the Minimum Wages Act, while deciding the Claim u/s 20, exercises the quasi judicial function and is vested with the powers of civil Court for calling of witnesses, etc.

9. When the first respondent was given an opportunity to lead evidence to prove the case, it was not open to the third respondent to pass the impugned order, by ignoring the application filed by the petitioner to lead evidence. The impugned order, therefore, being violative of principles of natural justice, cannot be sustained in law.

10. Consequently, the Writ Petition is allowed, the impugned order is set aside, and the case is remitted back to the third respondent to decide the application u/s 20 of Act, after giving an opportunity to the petitioner to lead evidence.

11. The parties through their counsel are directed to appear before the third respondent on 7.11.2012 at 11.00 a.m. Consequently, the connected Miscellaneous Petition is closed. No costs.