

(1969) 07 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Writ Petition No. 145 of 1967

Kunjbehari Lal

APPELLANT

Vs

The Regional Assistant Labour Commissioner, Jaipur and
Others

RESPONDENT

Date of Decision : 11-07-1969

Acts Referred:

Minimum Wages Act, 1948 — Section 20, 20(1), 3
Payment of Wages Act, 1936 — Section 15, 15(2), 2

Citation : AIR 1970 Raj 265 : (1969) WLN 326

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Advocate : D.P. Gupta, for the Appellant; S.K. Tewari, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.P. Tyagi, J.—Petitioner Kunjbehari Lal, a quarry-holder, has filed this petition under Articles 226 and 227 of the Constitution challenging the order passed by the Regional Assistant Labour Commissioner, Jaipur, who was working as an Authority under the Payment of Wages Act, 1936 (hereinafter called the Act) for Alwar area.

2. The facts giving rise to this litigation are as follows:

Respondent No. 2 Labour Enforcement Officer, Jaipur, who was incharge of the office of Inspector under the Act, moved an application u/s 15 of the Act before respondent No. 1, the Authority appointed under the Act, that the petitioner illegally deducted Rs. 2929.54 Paise from the wages of the employees employed by him at his quarries. This claim was raised by the Labour Enforcement Officer for a period from May, 1965 to September, 1965. The ground on the basis of which this claim was made by the said officer was that the State Government had fixed the wages under the Minimum Wages Act but the contractor, namely, the petitioner did not pay to the labourers who worked at his quarry at the rates

so fixed under the Minimum Wages Act by the Government of Rajasthan. The petitioner raised certain preliminary objections before respondent No. 1. One of the objections was that the respondent No. 1 had no jurisdiction to entertain a dispute under the provisions of the Act which ought to have been raised u/s 20 of the Minimum Wages Act. The other preliminary objections, which have not been pressed before me, need not be mentioned here. Respondent No. 1, after hearing the arguments of both the parties, decided this objection of the petitioner against him and held that he had jurisdiction to entertain such a claim under the provisions of the Act. It is against this order dated 27th December, 1966 that the present writ application has been filed with a prayer that the order passed by respondent No. 1 may be quashed as the respondent had no jurisdiction to entertain any claim of respondent No. 2 under the provisions of the Act.

3. The only question that has been urged before me is that the labour working at the quarry of the petitioner was of casual nature that was employed for the purpose of crushing or breaking those pieces of stones which were not used for building purposes. According to the petitioner, mostly females were engaged by him who used to work only for two hours in a day and that too at their sweet will when they could make themselves free after finishing their house-hold work and therefore they were paid piece-rate wages. It is also averred by the petitioner that this work was done merely as an incidental work to the main mining operation and therefore those employees who were crushing or breaking the stones were not in the regular employment of the petitioner and were not working daily at the quarry. It is also averred that the Government of the State of Rajasthan by a notification dated 24th of February, 1965 had fixed minimum wages at Rs. 60/- per month or Rs. 2-31 np. per day for those employees who were engaged on daily wage system but no minimum piece rate wage was fixed by the Government under the Minimum Wages Act.

The employees engaged by the petitioner did not claim the minimum wages as fixed by the Government of Rajasthan and did not move any authority u/s 20 of the Minimum Wages Act. It was the respondent No. 2, the Labour Enforcement Officer, Jaipur, who was working as an Inspector under the Payment of Wages Act and who raised this claim after the expiry of six months from the date of the notification issued by the Government of Rajasthan under the Minimum Wages Act fixing the minimum wages of the labourers. According to the petitioner, this claim was made before respondent No. 1 by respondent No. 2 on 10th of March, 1965 which date falls outside the period of limitation fixed u/s 20 of the Minimum Wages Act for making any claim to get the minimum wages. In this manner, it is contended that the respondent No. 2 wanted to by-pass the provisions of Section 20 of the Minimum Wages Act under which he could not put up his claim as being time-barred and now wants to get things which he could not have otherwise got under the Minimum Wages Act,

4. A reply has been filed on behalf of respondent No. 2 wherein it has been

admitted by him that the employees of the petitioner on whose behalf the claim had been put up by the replying respondent were piece-rated workers and these so-called casual workers were paid the wages according to the work done by them on piece-rate basis. It was, however, submitted that payment of wages less than the wages fixed under the Minimum Wages Act falls within the category of deduction under the Act and, therefore, respondent No. 2 was entitled to put up a claim for the amount mentioned in his application filed before respondent No. 1.

5. From the pleadings of the parties, it is clear that the employees of the petitioner for whom this dispute has been raised were of casual nature and that they were paid wages according to the work done by them on piece-rate basis. It is also not disputed that the Government did not fix any minimum wages for such workers, but Section 17 of the Minimum Wages Act provides that where an employee is employed on piece work for which minimum time rate and not a minimum piece-rate has been fixed under this Act, the employer shall pay to such employee wages at not less than the minimum time rate. This provision shows that an employee working on the basis of piece-rate wages could claim minimum rate of wages for time worker which in the language of the Minimum Wages Act is known as a minimum time rate.

6. The real question that has been raised for the determination of this Court in this petition is whether by making an application u/s 15(2) of the Act the respondent No. 2 could ask an Authority appointed under the Act to declare that the employees were entitled to get their wages at the rate of the minimum wages fixed by the Government of Rajasthan u/s 3 of the Minimum Wages Act. Section 15(2) of the Act provides:

"Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered Trade Union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under Sub-section (1), may apply to such authority for a direction under Subsection (3):"

7. The case of the respondent No. 2 before the Authority under the Act was that the petitioner had deducted from the wages of the employed persons because, according to him, the petitioner did not pay to his employees in accordance with the minimum wages fixed under the Minimum Wages Act. It is not disputed that whatever amount was paid to the employees as wages for the period in question it was not in accordance with the rate fixed between the employer and the employees. Even before me this dispute has not been raised that the payment was not made in accordance with the agreed wages between the labour and the employer. The grievance of the respondent No. 2 is that after the minimum wages were fixed by the State Government, it was the duty of the petitioner to have paid his employees in accordance with the provisions of the notification issued by the State Government under the Minimum Wages Act fixing the

minimum wages for the workers at the quarry,

8. In this connection, reference may be made to certain provisions of the Minimum Wages Act of 1948. u/s 3 of this Act, the appropriate Government, which is the State Government of Rajasthan in this case, has been authorised to fix the minimum wages for the employees employed in an employment specified in Parts I and II of the Schedule of that Act. A procedure has also been provided therein for the appropriate Government to arrive at the minimum wages to be fixed thereunder.

9. Section 20 of this Act provides:

"(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) or 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."

10. Sub-section (2) provides that:

"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 or a registered trade union authorised 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)."

11. A proviso has been added to this subsection which reads as follows:--

"Provided that every such application shall be presented within six months from the date on which the minimum wages or other amount became payable."

12. From these provisions, I find that under the scheme of the Minimum Wages Act, minimum wages are fixed in accordance with the procedure laid down in the Act by the appropriate Government for the employees employed in an employment specified in Part I or Part II of the Schedule to that Act and that if an employer makes a payment of the wages which are less than the minimum rates of wages fixed under the Minimum Wages Act, then the claims that may arise therefrom may be put up by the persons mentioned in Sub-section (2) of Section 20 of that Act before the authority created under Sub-section (1) of Section 20. The Legislature has also provided a time limit for raising a claim under the provisions of the Minimum Wages Act and it is six months from the date on which the minimum wages or other amount became payable. It is not disputed that the State Government in this case had fixed the minimum wages

for the stone-breakers and stone-crushers by issuing a notification on 4th March, 1905 and according to that notification, a worker on the quarry, who was engaged for stone-breaking or stone-crushing could claim Rs. 60/-per month or Rs. 2.31 nP. for a day as minimum wage under the minimum wages fixed by the Government.

Mr. Gupta argued that according to this notification the wages of the employees of the petitioner calculated at the rates fixed under the Minimum Wages Act became payable to them from the date the said notification was issued by the Government and if the employer (petitioner) failed to recognise the rights of the employees which accrued to them by virtue of the said notification then according to the proviso a dispute in that respect could be raised before an authority appointed u/s 20(1) of the Minimum Wages Act only within six months from the date of the said notification. His grievance is that the Inspector did not care to file any claim under the Minimum Wages Act before the Authority constituted u/s 20 of that Act, and now by making a claim u/s 15 of the Act the Inspector wants indirectly to raise the dispute on behalf of the employees of the petitioner under the Minimum Wages Act for which the time prescribed under proviso to Section 20 of the said Act had already expired. I find force in this argument of Mr. Gupta and the real question that virtually arises in these circumstances is whether such a dispute that wages should have been paid by the petitioner to his employees at the rate the Government had fixed the minimum wages under the Minimum Wages Act could be raised before an Authority constituted under the Act.

13. The decision of this dispute depends upon whether non-payment of the minimum wages fixed by the State Government under the Minimum Wages Act would be covered under the term "deduction" u/s 7 of the Act ? This brings me to the consideration of the definition of the term "wages" as given in the Act. Section 2(vi) of the Act describes "wages" as follows:

" "wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms 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 -

14. From this definition of the term "wages" the Authority under the Act could see only as to what was the remuneration under the terms of the contract of employment payable to a person employed in respect of his employment or of work done in such employment. This definition suggests that the Authority under the Act has the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages of the employees but it had no jurisdiction to determine the question of the potential wages which the employee ought to have got. In my opinion, the claim raised by the Inspector in this particular case falls in the latter category. By making such a claim before an Authority under the Act the Inspector virtually wants the

Authority first to adjudicate that the employees were entitled to get the minimum wages and then to pass an order for the payment of such potential wages which, in my opinion, does not fall within the ambit of the jurisdiction of respondent No. 1. I am fortified in my view by the judgment of the Supreme Court in A.V. D'costa Vs. B.C. Patel and Another, wherein the majority held that the jurisdiction of the Authority under the Act is to determine the actual wages to be paid and not the potential wages.

By adopting this method, the Inspector wants that the Authority created under the provisions of the Act should first assume jurisdiction as an Authority created under the Minimum Wages Act and then pass an order that the payment should have been made in accordance with the minimum rates fixed by the State Government under the Minimum Wages Act. In my opinion, this course is not open to the respondent. The respondent No. 1, therefore, had no jurisdiction to decide this question while dealing with the claim of the respondent No. 2 whether the employees in this case were entitled to get their wages at the rate fixed by the Government under the Minimum Wages Act as it obviously falls within the jurisdiction of the Authority created u/s 20 of the Minimum Wages Act. Since this question was never raised by the employees of the petitioner before a competent authority under the provisions of the Minimum Wages Act, the respondent No. 2 cannot now be permitted to raise that issue indirectly before respondent No. 1. Unless this fact was determined by a competent authority that the minimum wages fixed by the Government governed the wages of the employees of the petitioner also, the question of deduction from the wages of the employees does not arise simply because the payment was not made by the employer to the employees at the rate of the potential wages they were entitled to receive under the provisions of the Minimum Wages Act. In this view of the matter, the claim put by the respondent No. 2 before respondent No. 1 on behalf of the labour employed by the petitioner could not be entertained by respondent No. 1.

15. The order impugned passed by respondent No. 1 cannot, therefore, be sustained and it is hereby quashed. No order as to costs.