

(1975) 03 PAT CK 0016
In the Patna High Court

Labour Enforcement Officer (Central)	APPELLANT
Vs	
Labour Court, Authority under Minimum Wages Act and Others	RESPONDENT

Date of Decision : 05-03-1975

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 22D, 33C
Minimum Wages Act, 1948 — Section 18, 19, 2, 20, 3

Citation : (1975) 2 LLJ 492 : (1975) 8 PLJR 394 : (1975) PLJR 394

Hon'ble Judges : S. Ali Ahmad, J;Nagendra Prasad Singh, J

Bench : Division Bench

Judgement

Nagendra Prasad Singh, J.—This is an application under Articles 226 and 227 of the Constitution of India for quashing an order, dated the 28th October, 1972, passed by the Presiding Officer, Labour Court, and an authority under the Minimum Wages Act, Patna (hereinafter referred to as the "Presiding Officer"), By the impugned order, the respondent Presiding Officer has dismissed an application filed by the petitioner--Labour Enforcement Officer (Central) under Sub-section (2) of Section 20 of the Minimum Wages Act, 1948 (hereinafter referred to as the "Act").

2. According to the petitioner, he is an Inspector appointed u/s 19 of the Act. On the 4th June, 1970, he inspected the site and office of the respondent No. 2 Messrs. A.S. Dhupia and Company (hereinafter referred to as the "Company"). From the attendance-cum-wages sheets it transpired that the workers employed by the respondent-company were paid at a rate less than the rate fixed by the appropriate Government in exercise of the powers under the Act. The petitioner also noticed certain other irregularities, A show cause notice was, accordingly, served on the respondent-company. The defects pointed out having not been rectified, a notice, dated the 6th July, 1970, was sent to the company requiring it to show cause, within a fortnight from the date of the receipt of the said notice, and to produce the wages register from January, 1969 to the 31st March, 1970

on the 21st July, 1970 in the office of the Assistant Labour Commissioner (Central), Patna. It is alleged that the company instead of producing the records as directed, sent a reply on 27th July, 1970, saying that the records were not with it but were with its head office and they would be produced only after they had been received back from the head office. On the 9th September, 1970, the petitioner filed an application before the Labour Court, Patna u/s 20(2) of the Act, giving rise to M.W.A. Case No. 169 of 1970. In the said application, it was stated that the company had paid wage less than the minimum rate of wages fixed under the Act to its 20 workmen between the period 15th April, 1970 and the 15th May, 1970. It was also stated that the company did not pay wages at the overtime rate to its 92 workers during the period 15th April, 1970 to the 15th May, 1970, details whereof were given in the annexure of the said application. In the said application a sum of Rs. 99-20 paise was claimed as the difference of wages between the wages payable under the Act and the wages actually paid, and a further sum of Rs. 494-00 was claimed as wages for overtime work done by the workers. A further sum of Rs. 5,420-00 was claimed by way of compensation in accordance with Section 20(3)(i) and (ii) of the Act.

3. The company appeared and showed cause and contested the case on grounds, inter alia, (i) that the workers had been paid in accordance with the rates fixed under the Act, and (ii) that the application u/s 20(2) of the Act was not maintainable, because the workers in respect of whom the claim had been made had left the employment of the company long before the filing of the said application.

4. The respondent-Presiding Officer, after referring to the materials produced on behalf of the parties in support of their claims of non-payment and payment to the workers concerned, observed that it was difficult to say one way or the other regarding the plea of payment taken by the respondent-company. Thereafter, he took up the question regarding the maintainability of the application on the ground that on the day of application u/s 20(2) was filed the workers concerned had ceased to be employees of the company, and assumed that the workers concerned had not been paid according to the minimum rate prescribed by the Act, but, in his opinion, as the workers had ceased to be employees of the company on the date the application was filed, the application was not maintainable. According to the Presiding Officer, an application u/s 20(2) of the Act for claim could not be filed by or on behalf of ex-employees.

5. Learned Counsel appearing for the petitioner has urged that the respondent-Presiding Officer erred on both counts, inasmuch as (i) on the materials produced, he should have recorded a categorical finding on the question of payment to workers concerned and (ii) while holding that the application on behalf of ex-employees was not maintainable u/s 20(2) of the Act, he took an erroneous-view of the law

6. The word "employee" had been defined u/s 2(i) of the Act to mean "any person who is employed for hire or reward to do any work skills or un skilled,

manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleared, washed, altered, ornamented, finished, repaired, adopted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either "in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the armed forces of the union." "Scheduled employment" has been defined u/s 2(g) of the Act. u/s 3, the appropriate Government has to fix the minimum rates of wages payable to the employees in different types of employment specified in the schedule of the Act. u/s 18 of the Act, every employer has to maintain such register and records giving such particulars of employees employed by him, the work performed by them, the wages paid to them, the receipts given by them and such other particulars and in such form as may be prescribed. Inspectors are appointed by the appropriate Government in exercise of the powers u/s 19, who can enter, at all reasonable hours, any premises or place where employees are employed for the purpose of examining any register, record of wages or notices required to be kept or exhibited by or under the Act or rules made there under and require the production thereof for inspection. u/s 20, the appropriate Government has to appoint an authority to hear and decide, for any specified area, all claims arising out of payment of less than the minimum rates of wages. Sub-section (2) of Section 20 prescribes that where an employee has any claim of the nature referred to in Sub-section (i) the employee himself, or any legal practitioner or any official of 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 direction under Sub-section (3). The application has to be presented within six months from the date on which the minimum wages or other amount became payable. Sub-section (3) of Section 20 prescribes that, when any application under Sub-section (2) is entertained, the authority shall hear the applicant and the employer or given them an opportunity of being heard, and after such further enquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under the Act, direct, in the case of claim out of payment of less than the minimum rates of wages, the payment to the employee of 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. u/s 20(4), if the application is found to be malicious or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

7. In the instant case the application has been filed by the Inspector on behalf of the employees, and not by the employees concerned. In view of Sub-sections (2) and (3) of Section 20, it was incumbent on the respondent-presiding officer to

examine the materials, of whatever worth they might be, for the purpose of finding out as to whether or not the claim made on behalf of the employees concerned could be allowed. The respondent-company had taken the stand that there was no breach of the provision of the Act by way of payment to the employees concerned at a rate less than the rate prescribed. If the non-payment or less payment was not proved, he should have recorded a categorical finding, instead of saying that it was difficult to say one way or the other regarding the plea of payment taken by the company. If the respondent-presiding officer had recorded a definite finding that the plea of payment taken by the company was correct, then there was no necessity of deciding as to whether the application was maintainable or not, But, having held that it was not possible to decide one way or the other, on the second point he assumed that there had been a failure on the part of the respondent-company to make the payment in accordance with the prescribed rates.

8. On the basis of the expression "who is employed" used in the definition of the word "employee" it has been contended on behalf of the respondent-company that at the time the application u/s 20(2) of the Act is made the person concerned must be an "employee" and he must continue as such during the pendency of the proceeding, otherwise he cannot be said to be an "employee". According to the respondent-company if the Act was to apply even to such employees who had ceased to be in the employment of the company on the date of the filing of the application, or during the pendency of the proceeding, then the definition of the word "employee" should have made specific mention about such ex-employees. Counsel for the respondent-company has placed reliance on a decision of the Madras High Court in *Wakefield Estate (by Hitchi Gowder) Vs. Maruthan Uchi and 31 Ors. (Neelamalal Plantation Workers" Union)*, and a Bench decision of the Punjab High Court in *Municipal Committee Vs. Sham Lal Kaura and Others*,

9. In the case of *Wakefield Estate*, Balakrishna Ayyar, J. after having examined the different provisions of the Act, held, in the following words, that an employee under the Act does not include an ex-employee--

Since Section 20 speaks only of employees and does not speak of past employees, and since the word " employee " is defined as meaning a person who is employed, I consider that the summary remedy provided by Section 20 is not available to past employees.

In the case of *Municipal Committee, Rajkot*, it was held that the words "who is employed" mentioned in the definition of "employee" u/s 2(i) were relevant and they narrowed down the definition to persons who were in actual employment at the time of the filing of the application, and their Lordships preferred to follow the aforesaid judgment in the case of *Wakefield Estate* in preference to the decisions of other High Courts taking a contrary view. It may be mentioned that in the Madras High Court itself the decision in *Wakefield Estate's* case was not followed in *Proprietor, Murugan Transports, Cuddalore Vs. P. Rathakrishnan and*

Others, where Ramchandra Ayyar, J., examined the matter in detail and came to the conclusion that a claim u/s 20(2) of the Act by a discharged worker would be cognizable by the authority under the Act, and observed as follows:

It is obvious that Section 20 was intended to give a summary remedy to any person who having been an employee complains that he had not been paid the minimum wages. Apart from the terms of the definition to which I shall advert to presently, what all appears to be necessary is that the applicant should have been an employee at the time when he earned the minimum wages. If full effect were to be given to the intention with which the section was enacted, it would be necessary to bring within its scope not merely the present but also past employee. Section 2(i) no doubt would suggest that an employee should be one who is in service ; but the application of the definition contained in that section should conform to the context in which the term "employee" is used in the relevant portions of the Act.

10. The Kerala High Court in *Chacko Vs. Varkey and Others*, preferred to follow the judgment in *Murugan Transports*" case in preference to the judgment in *Wakefield Estate's* case. In that case a reference was made to another judgment of that very High Court where a similar view was taken that the provisions of the Act are applicable even to such employees who had ceased to be in the employment of particular concern on the day the application u/s 20(2) was made. A Bench of Mysore High Court in *Athni Municipality v. Shetepa Laxman Pattan* 1965 I LLJ 307 accepted the view of Ramchandra Ayyar, J. in the case of *Murugan Transports* and held that an application u/s 20(2) was maintainable even at the instance of a person who was not in the employment on the date of the presentation of the application. The Supreme Court, in *National Building Construction Corporation Vs. Pritam Singh Gill and Others*, , while examining the question as to whether or not a workman who was no longer in the employment could file an application u/s 33C(2) of the Industrial Disputes Act, 1947, referred to Section 2(i) of the Act and to the aforesaid decisions of the Madras, Kerala and Punjab High Courts and, having noticed the conflicting views taken by these High Courts, refrained from deciding the question one way or the other, but held that, so far as the provisions of the Industrial Disputes Act were concerned, they were applicable even to an ex-workman. Their Lordships specifically said in paragraph 8 of the judgment that they should not be considered to have expressed any opinion on the interpretation of the relevant provisions of the Minimum Wages Act.

11. I must say at the outset that something can be said in support of both the views, specially due to the definition of the word "employee" where the expression "who is employed for hire or reward" has been used. But, in such cases, for the purpose of determination as to whether the provisions of the Act are applicable to a particular type of employee or not, the Act as a whole has to be seen. The preamble of the Act says that it is an Act to provide for fixing minimum rates of wages in certain employment, e.g., in scheduled employment.

I have already mentioned above that "scheduled employment has been defined and it means" an employment specified in the schedule, or any process or branch of work forming part of such employment. The scheme of the Act appears to be to fix the minimum rates of wages of workmen and employees who are in scheduled employment, and the sole object is to protect their interest and safeguard them from exploitation. For that purpose Section 18 makes it obligatory on the part of the employers to maintain registers containing the details of the workmen employed, the work performed by them, the wages paid to them, receipts given by them, etc. Inspectors appointed under the Act have to inspect from time to time these registers to find out as to whether the employees are being paid in accordance with the rates fixed. Section 20 provides claims to be made either by the employees concerned or even by the Inspector on their behalf. The period of limitation for presentation of such applications is six months. There is no clear indication in the Act that the Act was to apply to a particular type of employees in a scheduled employment. The employees can be engaged for fixed period or under regular employment, but they may be dismissed or discharged during the course of such employment, or the employment may cease due to causation of the work or completion thereof. Section 2(i), while defining the word "employee" not only concludes those persons who are employed for hire or reward, but also includes outworkers to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, etc. These outworkers cannot always be deemed to be permanent employees. If a reference is made to the schedule of the Act where details of the scheduled employment have been given in parts I and II, it is difficult to hold that those employments do not cover the employment of persons which is casual in nature, that is, for a limited period. It is well known that in most of the employment mentioned in the said schedule a lot of employees are required only for a particular season, or for a particular occasion. Such employees cannot be expected to continue in the employment for six months after the case of action for making the claim arises, as well as during the pendency of the proceeding before the authority concerned. In this connection Section 22D of the Act is also relevant, which reads as follows:

22D. All amounts payable by an employer to an employee as the amount of minimum wages of the employee under this Act or otherwise due to the employee under this Act or any rule or order or cannot be paid to the employee on account of his death before payment or on account of his whereabouts not being known, be deposited with the prescribed authority who shall deal with the money so deposited in such manner as may be prescribed.

This section presupposes that at the time of payment the employee concerned may be dead, or his whereabouts may not be known, and in that case the amount can be deposited with the prescribed authority, who shall deal with the money so deposited in such manner as may be prescribed. Unless there are clear indications in the Act, in my opinion, it should not be easily presumed that the framers of the Act purported to deprive such ex-employees of their right to make

the application u/s 20 and to drive them for their remedy to the ordinary civil Court. In my opinion, the interpretation that the Act is not to apply to such employees who have ceased to be in the employment will lead to an anomalous and absurd result, because then it will have to be held that the Act ignores the claim of such employees who have worked and have been paid less, merely because they had been discharged from the employment on the date the application was to be made or on any day thereafter during the pendency of the proceeding. It is well-known rule of interpretation that, while construing a statute, an interpretation which may lead to absurd or outrageous consequences should be avoided. In this connection a reference may be made to the case of *Yates v. The Queen* [1885] 16 QBD. 648 where it was observed by Lindley, J.:

To my mind, this Court ought not construe any statute in such a way as to bring about such an absurdity unless driven to it by words which will admit of no other construction?.

12. In *Madaripur Commercial Bank Ltd. Vs. Lal Mohan Saha and Others*, , it was observed:

(4) It is certainly true that where the language of an Act is plain, it must be construed according to that language, whatever the inconvenience or apparent hardship caused. But it is also true that the plain meaning of certain language is not necessarily its literal meaning and a secondary meaning may be equally plain. So it may be found that a statute, although it comprehends all things in the letter, has yet to be expounded as but limited to certain things, if effect is to be given to all its parts or if the system of rights and remedies it purports to regulate is to work smoothly, without confusion or without friction with other well-established law or without causing outrageous consequences. These are cases where the Legislature may legitimately be held to have intended a particular meaning, although it used words of a general import or to have contemplated a specific object, although it appeared to provide for all things in general.

In *Bhagwat Parshad Vs. Inspector General of Police, Punjab and Others*, , it was observed:

The general words should receive a general construction and their meaning may in an appropriate case be expended or restricted with a view to see that construction does not lead to injustice, oppression or to an absurd consequence.

13. In my judgment, merely because in the definition of the word "employee" it has been mentioned that it is to mean a person "who is employed" it cannot be held that the person concerned must be in the employment on the date the application u/s 20(2) of the Act is made or during the pendency of the proceeding, the expression "who is employed" may mean who is employed at any relevant time. Accordingly, I hold that although the workmen concerned in the instant case were not in the employment of the respondent-company on the date the application was made, yet, as the claim has been preferred on their behalf within the statutory period, the application was maintainable and the

respondent-Presiding Officer erred in holding that the said application was not maintainable on that ground.

14. In the result, the writ application is allowed and the order of the Presiding Officer is quashed. The respondent-Presiding Officer is directed to consider the application on merits and hear the parties on the materials already on record; and if he comes to the finding that the petitioner has failed to prove that the payment to the workers concerned was less than that at the prescribed rate, or any other amount payable to them had not been paid to them, he would dismiss the application. If, however, he comes to the conclusion that non-payment or less payment had been proved, he will dispose of the application in accordance with the provision of the Act, irrespective of the fact whether the employees concerned were in the employment of the respondent-company or not on the date the application u/s 20(2) of the Act was made. In the circumstances, there will be no order as to costs.