

(2002) 02 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 29009 of 1995 and 2873 of 2000

Management of Ramakrishna Pharmaceuticals, Hyderabad APPELLANT
Vs

State Authority under Minimum Wages Act, 1948 and Joint RESPONDENT
Commissioner of Labour, A.P., Hyderabad and Another

Date of Decision : 14-02-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3)

Citation : (2002) 3 ALD 247 : (2002) 4 ALT 678 : (2002) 95 FLR 15

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : S. Ravindranath, for the Appellant; Govt. Pleader, V. Vishwantham, G. Ravi Mohan and Govt. Pleader for Finance and Planning, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—WPNo. 29009 of 1995 is filed seeking a writ of certiorari to quash the order of the first respondent in MW No. 13 of 1995 dated 30-11-1995 directing the petitioner to deposit Rs. 1,71,844-50 ps. towards the difference in minimum wages payable under G.O. Ms. No. 1833 dated 26-12-1992 and the actual wages being paid by the petitioner management. WP No. 2873 of 2000 is filed by the same petitioner to quash the order in MW No. 1 of 1997 dated 29-12-1999 directing them to deposit Rs. 12,37,709/- which includes the alleged difference of minimum wages of Rs. 6,18,854.50 ps. and equal amount of compensation.

2. The facts in brief are that the second respondent-employees in the petitioner company filed MW Case Nos. 1 of 1997 and 13 of 1995 claiming Rs. 9,56,785/- and Rs. 1,71,844-50 ps. respectively towards payment of difference of wages due to the workmen and the compensation thereof.

3. The petitioner is engaged in the manufacture of Homoeo medicines at its factory in Katedan Industrial Area, Ranga Reddy District. The petitioner employs

about 36 persons in its manufacturing activity. The service conditions of the employees of the petitioner are governed by various settlements entered into between the petitioner and the second respondent union u/s 12(3) of Industrial Disputes Act and the employees are paid accordingly.

4. The second respondent in both the writ petitions filed Minimum Wages Cases u/s 20 of the Minimum Wages Act and subsequently, the petitioner filed writ petition in WP No. 19945 of 1993 seeking a direction to the respondent authority not to proceed with the MW Case No. 13 of 1995. The said writ petition was disposed of directing the respondent authority to adjudicate the legal issue along with the merits of the case.

5. The petitioner management contested MW Case No. 13 of 1995 stating that the petitioner being a manufacturer of Homoeo medicines will not come under the category of scheduled employment and has not been notified as such u/s 27 of the Act and that G.O. Ms. No. 1833 dated 26-12-1992 is not applicable to the petitioner. The respondent authority allowed the claim in MW Case No. 13 of 1995 and also awarded compensation of Rs. 1,75,294/-, which is the same as the difference of wages claimed by 2nd respondent. Further, the authority has imposed compensation at the rate of 100% on the petitioner.

6. The second respondent in WP No. 2873 of 2000 also filed MW Case No. 1 of 1997 u/s 20 of the Minimum Wages Act claiming wages as per G.O. Ms. No. 1833 dated 26-12-1992. The respondent authority allowed the claim and directed the petitioner to deposit Rs. 6,18,854-50 ps. towards difference of minimum wages plus one time compensation of Rs. 6,18,854-50 ps. for non-payment of minimum wages. Thus the petitioner was directed to deposit Rs. 12,37,709/-.

7. The first respondent authority having adverted to the evidence adduced on behalf of the management held that in view of the manufacturing activity being undertaken by the petitioner and the nature of finished products, the said GO is applicable and ordered the difference in wages since the management is not paying basic wages as contemplated in the said GO. There is no dispute with regard to applicability of the GO, but GO contemplates payment of minimum wages in respect of each category and the said minimum basic pay has not been paid. The petitioner management had advanced a contention that the total emoluments being paid to the employees is higher than the minimum prescribed and the management had been paying other allowances namely special allowance, conveyance allowance, HRA and DA. Thus, the wages being paid are higher than the minimum wages prescribed in the said GO.

8. Learned Counsel of the petitioner management contended that the first respondent authority did not consider the scope of Section 12(3) of the Industrial Disputes Act and the settlement between the petitioner management and the union, who is a signatory to the settlement, which is a statutory one and in spite of the same, the workmen filed a claim petition u/s 20 of the Minimum Wages Act. Considering the charter of demands raised by the union, the management

entered into a settlement and the total wages being received by the employees are more than the minimum wages.

9. Learned Counsel for the petitioner management submits that the petitioner does not come under Scheduled Employment and even assuming that GO is applicable, the petitioner management is paying more than the wages prescribed in the said GO. Learned Counsel has drawn my attention to the definition of "wages" as per Section 2(h), which reads:

"wages" means all remuneration, capable of being expressed in terms of money, which would if the terms of the contract 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 house rent allowance but does not include--

(i) the value of--

(a) any house accommodation, supply of light, water, medical attendance; or

(b) any other amenity or any service excluded by general or special order of the appropriate Government.

(ii) any contribution paid by the employer to any Pension fund or Provident fund under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession.

(iv) any sum paid to the person employed to defray special expenses entitled to him by the nature of his employment; or

(v) any gratuity payable on discharge."

Section 4 of the Minimum Wages Act reads as under:

"(1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employment u/s 3 may consist of --

(i) a basic rate of wages and a special allowance at a rate to be adjusted at such interval and in such manner appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the cost of living allowance); or

(ii) a basic rate of wages with or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concession rates where so authorised; or

(iii) an all-inclusive rate allowing for the basic rates the cost of living allowance and the cash value of the concession, if

any."

10. The petitioner and second respondent union representing the employees entered into a settlement and the employees cannot contend that the minimum wages paid is less than the one fixed under GO. Accordingly, u/s 12(3) of the Act, an agreement is statutory in nature and binding on the petitioner and having raised the charter of demands and agreed to the settlement with the aid of conciliation, the second respondent cannot contend that the basic pay excludes other allowances namely special allowance, conveyance allowance and HRA. Learned Counsel for the petitioner has also drawn by attention to Section 4 of the Minimum Wages Act to the effect that minimum wages fixed for scheduled employment is inclusive of special allowances. It is further contended that the Travelling Allowance and Conveyance Allowance are different and distinct and the Travelling Allowance is given to an employee for the outstation journey whereas Conveyance Allowance is paid to the employees to enable them to reach the factory and the authority was not justified in granting claimed amount. The total pay, which the employees are being paid, are more than the minimum wages fixed by the Government. Learned Counsel has drawn my attention to the judgment of the Bombay High Court in *HJDG Hindu Sabha Hospital v. M.G. Kamgar Union* 2000 (1) LLJ 163 (Bom.), wherein an identical controversy as in the present case was decided in favour of the management considering the judgments of the Apex Court in *Airfreight Ltd. Vs. State of Karnataka and Others*, , and Karnataka High Court in *Municipal Borough, Bijapur Vs. Gundawan (M.N.) and Others*, and *The Imperial Tobacco Co. of India Ltd. Vs. The State of Bihar and Others*, and held as under:

"It is thus clearly seen that Section 4(1) of the Act provides for the minimum rate which could consist of component parts. Section 4(1) does not postulate different minimum for the several components; nor can each such minimum constitute the minimum rate of wages within the meaning of Section 4(1). If the employer has paid the total wages more than the minimum rate of wages within the meaning of Section 4(1), there cannot be any contravention of the provisions of the Act. In the instant case, the minimum wages comprises of two component parts, namely, basic wages and dearness allowance. It is not disputed that the employee in the present case has been paid the wages under both the component parts and the total amount paid to the employee is higher than the minimum wages prescribed under the notification. Under the circumstances, it cannot be said that the employer has contravened the provisions of the Minimum Wages Act."

11. The Apex Court in *Airfreight v. State of Karnataka* (supra) held as under:

"The Notification issued under the Act prescribing minimum wages applies to all kinds of shops and commercial establishments big or small and that payment of more than prescribed minimum rates of wages is not relevant for deciding its applicability. It cannot be stated that as they are paying more than the prescribed minimum wages the Act or the Notification would not be applicable. For determining whether they are paying minimum rates of wages or not, the

amount paid for the value of items which are excluded u/s 2(h) of the Act is not to be taken into consideration.

Minimum rate of wages fixed under the Act is remuneration payable to the worker as one package of fixed amount. In cases where minimum wage is linked with the cost of living index, the amount paid on the basis of dearness allowance is not to be taken as an independent component of the minimum wages but as part and parcel of the process of computing the rates of minimum wages which is to be determined after taking into consideration the cost of various necessities."

12. Learned Counsel for the second respondent contended that the basic wage as fixed by the Government has not been paid and the authority has rightly allowed the claim and there is no difference between the conveyance allowance and travelling allowance and they are identical to each other. The definition specifically excludes the travelling allowance and hence the same has to be deleted. The Act is a beneficial legislation and the authority has interpreted in favour of the employees.

13. Learned Government Pleader for Labour contended that Travelling Allowance and Conveyance Allowance are identical and the authority rightly implemented the minimum wages fixed by the Government after issuing notification and inviting objections and the minimum wages fixed vide, the said GO as also the basic pay have not been paid. Further, in the absence of any specific order of the appropriate Government, the employer is not justified in including the conveyance and other special allowances.

14. The controversy lie in narrow compass namely whether the total wages paid to the employees by the employer have to be taken into consideration and when once the recognised union has put up a charter of demands and subsequently entered into settlement in the course of conciliation and when once the aggrieved parties had entered into a settlement, whether it is open to the employees to claim difference of wages on the ground that the basic wage is not a as fixed vide said GO and whether the special allowances have to be included or not. Section 4 of the Minimum Wages Act clearly postulates the inclusion of special allowances which the employer is paying to the employees and in an identical case in *HJDG Hindu Sabha Hospital v. M.G. Kamgar Union* (supra) where the employer was paying less than the basic wage prescribed by the Government, the Bombay High Court upheld that the total pay is the criteria. Section 4 includes special allowances and also variable dearness allowance paid to the employees in case of inflationary trends in the markets to meet the exigencies.

15. Considering the law laid down by the Apex Court, I am of the view that the petitioner and the second respondent having entered into a statutory settlement after raising a charter of demand and having agitated the matter before the Conciliation Officer, the settlement is binding on the petitioner and the second respondent and the first respondent authority has not examined the matter

objectively. The Apex Court clearly laid down that the total pay packet has to be taken into consideration for fixing the minimum wages as revised from time to time. In the instant case, the employees are receiving the more wages than the one fixed by the GO. Further, it is not open to the second respondent to separate only one component namely minimum wage and contend that the basic wages paid are less than the wages prescribed under GO.

16. In view of the above circumstances, the impugned orders in both the writ petitions are quashed and the writ petitions are accordingly allowed. No costs.