

(2008) 01 JH CK 0019
In the Jharkhand High Court

Mica Manufacturing Co. Pvt. Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Minimum Wages Act, 1948 — Section 2, 20

Citation : (2008) 2 LLJ 583

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Petitioner has prayed for quashing the order dated 31st March. 2001, passed by S.D.M. cum-Authority under Minimum Wages Act (respondent No. 2) (the Act for short) allowing the application filed by respondent No. 3 u/s 20(1) of the Act.

2. Respondent No. 3 filed the said application contending inter alia that he was removed from service illegally on or about 8.5.1996. Petitioner's offer of Rs. 6219/- was much less than the actual dues and therefore respondent No. 3 refused to receive the same. Respondent No. 3 claimed the salary with effect from March, 1996 till the date of filing of the application i.e. April, 1997; the increments with effect from April, 1992 till March, 1996; leave pay for the year 1996-97; and Bonus for 1995-96 and 1996-97. He also claimed provident fund amount.

3. Mr. V. Shivnath, appearing for the petitioner, submitted that respondent No. 2 had no jurisdiction to pass the order on the said application as it was not a case of payment of wages less than the minimum wages prescribed under the Act.

4. Mr. Sahani on the other hand tried to justify the impugned order.

5. It appears that petitioner offered a cheque of Rs. 6219/- before the Assistant Labour Commissioner, Giridih being the salary for March and April, 1996 for the

actual days of work calculated at Rs. 1019/-; the Bonus from 1st October, 1995 to March, 1996 calculated at Rs. 600/-; the leave wages from 1st October, 1995 to March 1996 calculated at Rs. 600/- and an amount of Rs. 4,000/- was added under protest. However, respondent No. 3 refused to accept the same and filed the said application before respondent No. 2.

6. "Wages" has been defined u/s 2(h) of the Act. Wages are to be paid in respect of the work done in the employment. Admittedly, respondent No. 2 did not work from May, 1996. He claimed that his termination being illegal salary after the period of termination be paid. So far as the salary from March and April, 1996 is concerned, according to respondent No. 3, the amount paid to him was less than the actual dues, whereas according to the petitioner the amount, to which the respondent No. 3 was entitled, was offered to him for payment. It may be noted here that petitioner claimed salary @ Rs. 1200 per month and petitioner also calculated his salary for the month of March and April, 1996 @ Rs. 1200 per month. Respondent No. 3 also claimed increment, Leave pay, Bonus and Provident Fund. It was not a case of payment of less than the minimum wages. At best, it was a dispute with regard to the dues, which was beyond the scope of Section 20(1) of the Act. Respondent No. 2 had no jurisdiction to entertain such application and pass order on the same. In 1991 Suppl. (2) SCC 465 Manganese Ore (India) Ltd. it was held that incentive Bonus was not wages under the Act. Provident Fund is also excluded from the definition of wages. Alleged non-payment of increment and Leave Pay will also not amount to payment of less amount than the Minimum Wages. Moreover, the onus was on the respondent No. 3 to prove his case whereas respondent No. 2 has wrongly shifted the onus on the petitioner saying that it did not produce any relevant document.

7. Mr. Sahani then submitted that petitioner has got alternative remedy of appeal against the impugned order.

This writ petition was filed on 5.10.2001 and on 8.10.2001, interim protection was granted to the petitioner. At this stage, I am not inclined to ask the petitioner to go and file appeal when it is clear that the impugned order is wholly without jurisdiction.

8. In the circumstances, the impugned order dated 31st March, 2001 passed by respondent No. 2 is quashed.

9. After dictating the order, Mr. Sahani submitted that petitioner may be directed to issue a fresh cheque in favour of respondent No. 3 of the said amount of Rs. 6219/- to which Mr. Shivnath has got no objection.

10. Accordingly, petitioner is directed to send account payee cheque of Rs. 6219/- in favour of respondent No. 3 at the address given in the application filed by him before respondent No. 2 within four weeks from today.

11. With these observations and directions, this writ petition is allowed. However, no costs.