
(2023) 05 KL CK 0185

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 26817, 26790 Of 2013

M/s City Hospital Pvt Ltd

APPELLANT

Vs

Maria Margret

RESPONDENT

Date of Decision : 25-05-2023

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(g), 2(s), 20, 33C(2)
Minimum Wages Act 1948 — Section 3(1A)

Citation : (2023) 05 KL CK 0185

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : K.M.Sathyanatha Menon, KavaryS Thampi, T.S.Abdul Khader,
Paulson C.Varghese

Final Decision : Allowed

Judgement

Amit Rawal, J

1. This order of mine shall dispose off two writ petitions WP(c) No. 26790 of 2013 and WP(c) No. 26817 of 2013 preferred by common petitioner M/s.City Hospital Pvt. Ltd. against party respondents who were employees of the petitioner hospital and have retired on 05.08.2011 after attaining the age of superannuation, hereinafter called as first writ petition and second writ petition. The petitioner hospital has approached this honourable court assailing the common order dated 29.07.2013 of Labour court Ernakulam in claim petition No. 26 of 2011 and claim petition No. 27 of 2011 filed by the party respondents seeking arrears of minimum wages, leave wages and bonus due from the petitioner under section 33C (2) of the Industrial Disputes Act.

2. Facts in brief of the first writ petition WP(c) No. 26790 of 2013, is that the respondent Maria Margret, an employee of the petitioner hospital, who joined the service as a clerk on 15.1.1977 and retired from service on 05.08.2011, after attaining the age of superannuation filed a claim petition no. 26 of 2011 Ext.P1 dated 24.11.2011 before the Labour Court, Ernakulam alleging non payment of

wages as per the G.O No: SRO 511/2000/LBR, though the petitioner was a super speciality hospital with more than 300 bed facility, as per the notification No: G.O(MS)174/2009/LBR dated 16.12.2009 the respondent was not allowed to avail the statutory benefits such as 12 casual leave, 12 annual leave, 12 sick leaves, bonus of 8.33% minimum wages and restricted her claim for a period of 5 years i.e., from 2006 to 2011.

3. Facts in brief of the second writ petition WP(c) No. 26817 of 2013, is that the respondent Usha Stanley, an employee of the petitioner hospital, joined the service, as a clerk on 01.12.1979 and retired from service on 05.08.2011, after attaining the age of superannuation, filed a claim petition no. 27 of 2011 Ext.P1 dated 25.11.2011 before the Labour Court, Ernakulam alleging non payment of wages as per the G.O No: SRO 511/2000/LBR and petitioner being a super speciality hospital with more than 300 bed facility, as per the notification No: G.O(MS)174/2009/LBR dated 16.12.2009 did not allow respondent to avail the statutory benefits such as 12 casual leave, 12 annual leave, 12 sick leaves, bonus of 8.33%, minimum wages and was restricted her claim for a period of 5 years i.e., from 2006 to 2011.

4. The said claim petitions were commonly objected by the petitioner hospital Ext.P2 on grounds of maintainability and contended that there was no employer-employee relationship at the time of filing of claim petition as the respondents ceased to be workmen as defined under section 2(s) of the Industrial Disputes Act. The petitioners also submitted that they are only a primary care centre and not a super speciality hospital having only 15 bed facility as per notification No: G.O(MS)174/2009/LBR dated 16.12.2009 and the same notification was already stayed by this honourable court in writ petition nos. 31637/2009, 1981/2010 and 3970/2010 pending consideration. Since common questions arose for determination labour court decided both the claim petitions 26 of 2011 and 27 of 2011 with the following points for consideration:

- Whether the claim petitions are not maintainable under
- Whether the petitioners are entitled to claim arrears of wages as claimed for? If so, what is the amount due to the petitioners?

5. Claim petitioners (party respondents herein) and respondent hospital (petitioner in the writ petitions) appeared before the labour court and lead evidence marked as exhibits P1 to P3 and D1 to D6 respectively. Thereafter the Labour court observed that the claim petition was maintainable as there were pre existing right with respect to the employer hospital and employee respondents and concluded that the petitioner is a super speciality hospital hence liable to pay minimum wages to the claimants-respondents at the rate shown in Ext.P1 and further ordered the hospital management to pay additional allowance at the rate of 30% to the claim petitioners/party respondents herein. With respect to the claim of the respondents for the leave wages the Labour court found that the petitioner had already availed the statutory leave and wages with bonus at the

prevailing rate of salary and thus held party respondents were not entitled to claim leave wages and ordered that an amount of Rs 1,61,575 /- due as arrears of wages inclusive of leave wages and bonus to the respondent herein for the period from 2006 to 2011 be paid within three (3) months from the date of the order and in case of non payment within a period of 3 months, the said amount shall carry an interest at the rate of 9% per annum by order Ext.P3 dated 29.07.2013 which has been assailed by the petitioner hospital through the instant writ petitions.

6. Learned counsel for the petitioner submitted that the Government notification No: G.O(MS)174/2009/LBR dated 16.12.2009 had already been stayed by this honourable court in in writ petition nos. 31637/2009, 1981/2010 and 3970/2010 and pending consideration which was the sole basis for passing of Ext.P3 order by the Labour court and hence the order is unsustainable and illegal. The learned counsel further contended that the party respondents were paid their eligible wages and also paid minimum bonus of 8.33% during the years they were under employment hence there was no basis in the claim for balance of wages, arrears of leave wages and bonus as claimed in Ext.P1 claim petition. Also the petitioner hospital is neither a super speciality hospital nor an hi-tech hospital and it does not have departments like urology, nephrology, cardiology, pediatry, gynaecology and neurology as alleged by the party respondents rather a primary care centre with only 15 beds for inpatients and thus prayed for setting aside Ext.P3 order passed by the Labour court.

7. Learned counsel for the respondents filed counter affidavit and submitted that the writ petition is not maintainable on account of non-joinder of necessary parties since labour court has not been made a respondent in the party array. Also submitted that labour court has categorically found the petitioner hospital as a super speciality hospital on the basis of documents produced by this respondents and produced Ext. R1(a) internet brochure wherein it was stated that the petitioner hospital is providing umpteen number of specialities. Furthermore Ext R1(b) admission statement of DW1 on behalf of the petitioner hospital/respondent in claim petitions stated during cross examination that statutory minimum wages were not paid to the employees/ claim petitioners before the Labour Court.

8. I have heard the learned counsel for the parties and appraised the paper book.

9. Section 3(1A) of the Minimum Wages Act opens with a non obstante clause refraining the Government from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment and the number of the employees in any scheduled employment in respect of which has been refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment. Scheduled employment has been defined under Section 2(g) of the Act specifies the schedule against Sl.No.68 to the schedule covers the employment in private

hospitals, dispensaries, pharmacies, clinical labs, scanning centers, X-ray center units and other allied institutions. The genesis of the judgment of the labour court has been on the brochure produced by the claimants during the course of the evidence to show that the hospital of the petitioner, a super specialty. But in my view, the date of the brochure has gone unnoticed as it was in 2012 whereas the wages are of 2006 onwards. The labour court has not been able to give any finding as to whether at the relevant time and date, hospital was a tertiary or a super specialty hospital by confining the minimum wages of the employer as 10% or the employees were liable to 30% as ordered.

10. The argument with regard to the maintainability of the petition under Section 33C(2) does not merit acceptance for the reason that this Court in *Vimal Printers v. Omana* (1982 (KLT) 923) has held that the Minimum Wages Act is not a self-contained code incorporating all the provisions relating to payment of wages or even minimum wages and the Act does not disclose any intention that the proceedings for payment of minimum wages shall be exclusive preserve of the authority appointed under Section 20. In other words claims arising under the Act could also be tackled under Section 33C(2) of the Industrial Disputes Act. The labour court examined the calculation which was based upon allowing 10% of the additional allowance but did not accept the same on the ground that the employees were entitled to 30% on the ground that it was a super specialty. The core issue again revolves whether on the relevant date the employees were in employment the hospital was with 50 bed or a super specialty hospital has not been deliberated. Thus in my view it is a fit case that the matter is required to be revisited at the level of the labour court.

Order of the labour court is set aside. Writ petitions are allowed. The matter is remitted to the labour court to decide the petition afresh. The parties are permitted to lead additional evidence in support of their cases by taking 2-2 opportunities. This Court is sanguine of the fact that the labour court shall endeavour to decide the claim within a period of six months from the date of receipt of a copy of this judgment.