
(2013) 05 AHC CK 0056

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44781 of 2009

M/s. Laxmi Palace (Cinema)

APPELLANT

Vs

Prescribed Authority and Another

RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Citation : (2013) 3 UPLBEC 1858

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : S.S. Nigam, for the Appellant; Ankit Saran, for the Respondent

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, J.—Heard Sri S.S. Nigam, the learned Counsel for the petitioner and Sri Ankit Saran, the learned Counsel for the respondents. The facts leading to the filing of the writ petition is that an ex parte award dated 3.7.1995 was passed by the labour Court directing reinstatement with back-wages. The petitioner, thereafter, filed a recall application, which was rejected by the labour Court by an order dated 6.8.1997. The petitioner, being aggrieved, filed a writ petition, in which an interim order was passed staying the award subject to deposit of 50 per cent of the amount of the back-wages before the Registrar of this Court. Subsequently, by an order dated 25.11.2003, the interim order was modified. Since this order will have bearing on the ultimate result of this petition, the order dated 25.11.2003 is extracted here under:

.....After hearing the Learned Counsel for the parties and perusal of the record. I consider it appropriate to direct petitioner to allow opposite party No. 4 to join service latest by 15.12.2003. In case respondent submits joining report to the petitioner, petitioner shall take work from here and pay salary month to month on due date. Put up on 16.12.2003.

2. Pursuant to this order, the workman was reinstated. The writ petition eventually was decided finally and was allowed by a judgment dated 24.2.2005

and the award of the labour Court was set aside.

3. During the pendency of the writ petition, the workman filed two applications before the Prescribed Authority under the Minimum Wages Act, 1948 for payment of minimum wages for the period 1.11.2004 to 31.1.2005 and for the period 1.5.2004 to 31.7.2004. Both the applications were allowed by the Prescribed Authority by two separate orders dated 18.6.2009 awarding 11,570/- towards balance of the minimum wages plus double the amount i.e. Rs. 23,240/- towards penalty and in the second application awarded Rs. 22,125.50/- towards minimum wages and Rs. 44,251 towards penalty including cost. The petitioner, being aggrieved by the said orders, has filed the present writ petition.

4. Before the Prescribed Authority as well before this Court, the petitioner has contended that the workman was being paid last drawn wages in terms of Section 17-B of the Industrial Disputes Act in pursuance of the interim order passed by this Court, and consequently, the application under the Minimum Wages Act was patently misconceived and could not have been adjudicated. It was contended that in the event, the workman had any grievance, he should have moved an appropriate application before the Writ Court itself for clarification or modification of the interim order.

5. In order to appreciate the submission of the learned Counsel for the petitioner, Section 17-B of the Industrial Disputes Act is extracted hereunder:

Section 17-B Payment of full wages to workman pending proceedings in higher Courts.--Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this Section for such period or part, as the case may be.

6. A perusal of the aforesaid provision indicate that where the Labour Court or Tribunal makes an award directing reinstatement of a workman and the employer prefers a writ petition questioning the validity of the award, in which case, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court, full wages last drawn by him.

7. In the opinion of the Court, this provision automatically comes into play the moment an employer files a writ petition, but this provision get superseded the

moment the Writ Court passes an interim order on wages.

8. In the instant case, the Writ Court passed an interim order dated 25.11.2003 directed the petitioner to reinstate the workman and further directing the petitioner to take work from the workman and pay salary month to month on the due date. The words to "take work" and the words to "pay salary month to month" leads to an irresistible inference, namely, to pay the current salary. It would be too much to expect that the employer will take work and pay last drawn wages. It is not permissible to pay last drawn wages when work is being taken. The workman becomes entitled to be given a fair remuneration and in the opinion of the Court, fair remuneration is nothing else, but current salary since the last drawn wages was being paid, the workman rightly moved an application for payment of minimum wages under the provisions of the Minimum Wages Act. The said application was maintainable and the Prescribed Authority rightly calculated the difference. The Court is of the opinion that the order of the Prescribed Authority was perfectly justified.

9. However, the Court is of the opinion that awarding penalty was harsh. No mens rea was involved and the petitioner had taken a stand to pay wages as the provision of 17-B of the Industrial Disputes Act. In the absence of mens rea, the Court is of the opinion that the imposition of penalty was not correct. Consequently, the award of the Prescribed Authority awarding penalty cannot be sustained and to that extent, the order of the Prescribed Authority is liable to be quashed. In the result, the writ petition is partly allowed. The order of the Prescribed Authority dated 18.6.2009 is partly quashed to the extent of imposition of the penalty. The amount towards payment of the balance amount of wages is affirmed, which shall be paid to the workman concerned.