

(2007) 10 KAR CK 0073

In the Karnataka High Court

Case No : Writ Appeal No's. 3748 and 3749 of 2005

The Management of Davangere Cotton Mills

APPELLANT

Vs

C.R. Krishna and Another

RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Minimum Wages Act, 1948 — Section 20, 20 (2)

Citation : (2008) 117 FLR 24 : (2007) ILR (Kar) 4702 : (2008) 2 KarLJ 212 :
(2007) 4 KCCR 2761 : (2008) 2 LLJ 733

Hon'ble Judges : Manjula Chellur, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : Somashekar, for S.N. Murthy and Associates, for the Appellant;
Venkatesh C. Sharma, for Vaishnavi Law Associates for R1, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—These two writ appeals arise out of the common order dated 6.10.2005, allowing in part, W.P. Nos. 31507 and 31508 of 2000, by the learned Single Judge.

2. The 1st respondent, in both these appeals, were the writ petitioners. They had filed the said writ petitions, for directing the 2nd respondent, i.e., Labour Officer and Claims Authority ("the authority" for short), under Minimum Wages Act ("the Act" for short), Chitradurga, to pass an order, by taking into account the difference of minimum wages for the period from 1.1.1991 to 31.1.1998 and to pay penalty in terms of Section 20 of the Act and for other consequential reliefs.

3. The case of the writ petitioners in brief is that, they were* working as "measurers" under the appellant and they were entitled to be paid the minimum wages in terms of the notification No. SWL 18 LMW 86 dated 19.8.1987, Annexure-A to the writ petitions. They had filed applications before the "authority" u/s 20(2) of "the Act" for relief. The applications were opposed by the employer. Enquiry was conducted and separate orders dated 24.6.2000 were passed determining that, the employees are entitled to the difference of salary and penalty amount, at the rate of five times, over the difference of minimum

salary and directing the payment within 30 days therefrom. The employees being dissatisfied, filed the writ petitions for grant of relief, as claimed by them in their said applications.

4. The learned Single Judge has passed the common order, allowing the writ petitions in part, holding that, the writ petitioners are entitled to be paid the wages as per Clause 2(4) of the notification and directing the grant of benefits in terms thereof, within a period of eight weeks. The learned Single Judge has declined to grant penalty of ten times of the amount claimed. Taking into account that the authority had ordered payment of penalty at five times and as the amount was found to be substantial, the learned Single Judge also taking into consideration, the difficult situation being faced by Cotton Industry, has directed that, the penalty at two times be paid and it was ordered that in the case the payment is not made within eight weeks period, the employees would be entitled to 12% interest from the date of default till the date of settlement.

5. The employer has preferred these appeals, to set aside the order passed by the learned Single Judge..

6. We have perused the record of the writ appeals. We have heard the learned advocates appearing for the respective parties.

7. Sri Somasekhar, learned advocate for the appellant relying upon the judgment of the Hon''ble Supreme Court in the case of Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , contended that the applications before the authority under the Minimum Wages Act were not maintainable and the employees, if aggrieved, should have sought remedy under the provisions of the Industrial Disputes Act, by approaching the Labour Court.

8. Per contra, the learned advocate for the employees contended that the appellant did not question the maintainability of the applications, exercise of jurisdiction and ultimate act of passing of the orders by the authority under the Act. It was contended that, the order passed by the authority having been accepted by the appellant, it is not open to the appellant, to now contend that the authority had no jurisdiction, merely because the learned Single Judge has granted the relief. We find merit in the submission of the learned advocate for the employees. The appellant has accepted the order passed by the authority, in as much as, it complied with the order passed by the authority, by making payment inters of the order. As such, it is not open to the appellant now to contend that the authority had no jurisdiction. In the said view of the matter, the judgment relied upon by the learned advocate for the appellant cannot be of any help to it.

9. It was next contended by the learned advocate for the appellant that, equal pay for equal work is not applicable and the learned Single Judge has erred in passing the order. The learned counsel relied upon the judgment of the Hon''ble Supreme Court in the case of State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc., , in support of his submission.

10. Percontraj the learned counsel for the employees invited our attention to Clause 4 of the explanation 2 to the notification dated 19.8.1987 and contended that the categories of employees, which are not included in the schedule, shall have to be paid the same wages as employees in the employment of similar nature. He also referred to the evidence placed on record to establish that the employees in the employment of similar nature were admittedly paid higher wages, than the wages paid to the employees herein and that in terms of the said provision in the notification, the employees are entitled to be paid by the employer, the same wages as was being paid to the other employees discharging similar duties. We find force in the submission made by the learned advocate for the respondents. The learned Single Judge has held that the employees herein cannot be considered as falling in Sl. No. 6 of Index Group V of the notification. There being no dispute that when measurer in the show room of the appellant discharging similar duties as employees herein, were paid higher wages, the employees herein, should not have been discriminated and as such, the learned Single Judge held that the writ petitioners are entitled to be paid the same wages by applying the concept of "equal pay for equal work." We do not find any arbitrariness in the approach of the learned Single Judge in considering the matter on the context of "equal pay for equal work". taking into account Clause 4 of explanation 2 to the notification dated 19.8.1987. Hence the judgment relied upon by the learned advocate for appellant has no application.

12. The learned advocate for the appellant by relying upon the judgment of the Hon"ble Supreme Court in the case of Lingegowd Detective and Security Chamber (P) Limited Vs. Mysore Kirloskar Limited and Others, , contended that there is no liability to pay wages, by taking into account the notification dated 19.8.1987. We are not impressed with the submission. In the case of Lingegowda Detective and Security Chamber (P) Ltd. v. Mysore Kirloskar Ltd. and Ors. (Supra), there was a dispute about the jural relataonshi. Taking into account the facts and circumstances therein, it was held that the appellant therein had no liability to pay the minimum wages on the ground that the service provided therein, did not form part of the scheduled employment as detailed in the schedule. In the instant case, there is no dispute about the jural relationship, as well the liability to pay the minimum wages. Hence the said judgment can not be taken support of by the learned advocate for the appellant.

13. The learned counsel for the appellant next contended that, the applications were filed by the employees before the authority after long lapse of time, with inordinate delay and hence the authority was not justified in condoning the delay without any conditions. Even otherwise, it was contended that the learned Single Judge ought to take into account the said inordinate delay on the part of the employees and ought not to have awarded the penalty at two times of the wages. the teamed advocate for the employees submitted that the delay was explained before the authority and the authority has condoned the delay, which having not been questioned by the management, it is not open to the appellant now to raise objections regarding awarding of penalty. In or view, taking into

account that the inordinate delay was condoned by the authority in filing of the applications, the appellant should not have been directed to pay the penalty on the amount as has been determined by the learned Single Judge, on the concept of "equal pay for equal work", relying upon Clause 4 of explanation 2 to the notification. The learned Single Judge has taken into account the circumstances that the cotton industry is facing difficult situation and in that view of the matter, the ordering of penalty at two times, in our view, is not justified. Hence, the order of the learned Single Judge to that extent, only, requires modification.

14. In view of the above discussion, we pass the following:

ORDER

The appeals are allowed in part. The order of the learned Single Judge holding that the workmen are entitled for benefits in terms of Clause 4 to explanation 2 of the notification dated 19.8.1987, is upheld. The appellant shall pay the employees, the wages computed in terms thereof, after providing the deduction towards payment made in terms of the order passed by the authority. The appellant shall make the payment within a period of four weeks from the date of receipt of copy of this order. We hereby set aside the order of the learned Single Judge to the extend of directing the payment of penalty at two times. We hold that in view of the inordinate delay in filing the applications by the employees before the authority, as a condition for condonation of delay, the employees are not entitled to be paid any amount as penalty. If the amount as ordered herein is not paid by the appellant within the period stated above, the amount shall carry interest at 12% p.a. from the date of default till the date of actual payment.

No costs.