

(2010) 10 MAD CK 0406

In the Madras High Court

Case No : Writ Petition (MD) No. 5688 of 2008 and M.P. (MD) No's. 1 and 1 of 2008

The President

APPELLANT

Vs

The Assistant Commissioner of Labour/Competent Authority
and Others

RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Minimum Wages Act, 1948 — Section 2(G), 22(F), 27
Payment of Wages Act, 1936 — Section 1(4), 15, 17

Citation : (2010) 10 MAD CK 0406

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Saravanakumar, for the Appellant; S.C. Herold Singh,
Government Advocate for Respondent No. 1, Tmt.K.Thangammal and P.Kuppan,
for the Respondent

Judgement

K. Chandru, J.—Heard both sides.

2. In both the writ petitions, the Petitioners are the President of Mana Muna Kovilur Panchayat and Periyakottai First Grade Panchayat.

3. Both the writ petitions are challenging the orders passed by the first Respondent authority constituted u/s 15 of the Payment of Wages Act 1936, dated 03.01.2007, in Sa. Pa. Case Nos. 5 of 2006 and 9 of 2006.

4. In both the writ petitions, notice of motion was ordered. On notice, the contesting Respondents are appearing through counsel. Even before filing of the writ petitions, it is brought to the notice of this Court, the contesting Respondents filed two writ petitions in W.P.(MD)Nos. 5688 and 5697 of 2008 seeking for enforcement of the said orders. This Court, by an order, dated 31.01.2008, directed the implementation of the order within a period of three months, if no stay has been granted by any competent authority. Therefore, the order came to be passed. This Court was well aware that there was a right on the

part of the Petitioners to move an appropriate forum by way of appeal to any other Court. Since the order has not been complied with, it is now claimed that the Petitioners have filed a contempt petition, for the alleged disobedience of the order passed earlier on 31.01.2008. The contempt petitions are still pending. In the meantime, both the panchayats have filed two writ petitions as stated already.

5. It is seen from the records that the contesting Respondents were working as sanitary workers in the panchayat and their grievance was that the State Government issued Government Order and they have been paid a monthly salary of Rs. 600/-and the State Government, by G.O. Ms. No. 60, Rural Development, dated 03.05.2005 has enhanced the salary to another Rs.200/-whereas the panchayats have increased the salary only by Rs. 65/- and hence, the approach by the authorities under the Payment of Wages Act, claiming difference in the amount of Rs. 135/-per month. Notice was issued by the Petitioners panchayat and on the basis of the claim made by the contesting Respondents, two issues framed by the Payment of the Authority viz., whether the Petitioners are entitled for enhanced salary in terms of G.O. Ms. No. 60, dated 03.05.2005 and if so, to what relief they are entitled to.

6. The authorities found from the Government Order that the State Government has directed the fulltime clerk, part time clerk, overhead water-tank operators and sanitary workers, salary which were paid on consolidated basis, was directed to be increased by another Rs. 200/-with effect from 01.04.2005 and therefore, the workmen are eligible to get the enhanced salary as per the G.O. and hence, in the light of the above G.O., the impugned orders came to be passed.

7. Challenging the said orders, the Petitioners contended that the panchayat did not come within a purview of the Payment of Wages Act and the authority had erroneously allowed these petitions applying the Government Order whereas the Petitioners panchayat themselves have revised the salary with effect from 01.04.2005 at Rs. 600/-and as against, they cannot claim the amount what has been paid. The contesting Respondents were working as part-time clerks on a consolidated pay scale and they have been paid the salary as due to them from time to time. With reference to the question whether the Payment of Wages Act, 1936, will apply to the panchayat, it must be noted that u/s 1(4), it applies, in the first instance to the payment of wages to persons employed in any factory, railway administration, or either directly or through a sub-contractor, and also to persons employed in an industrial or other establishment specified in Sub-clauses (a) to (g) of Clause (ii) of Section 2.

8. The State of Tamil Nadu has included by an amendment by amending Tamil Nadu Act 9/1959, introducing a clause in substituting the clause 2(ii)(h) which reads as follows:

Tamil Nadu Amendment.-By Act 9 of 1959 the following has been inserted:

(h)establishment or undertaking which the State Government may, by

notification in the Official Gazette, declare to be an industrial establishment for the purposes of this Act.

9. Pursuant to the said amendment, the State Government had issued a notification covering the local bodies. Even otherwise, by virtue Section 22F of the Minimum Wages Act, the Payment of Wages Act 1936 has been made applicable to all the schedule employments under the Minimum Wages Act. In the schedule to the Minimum Wages Act, in Part (I) r/w Section 2(g) and Section 27 of the Minimum Wages Act, Item No. 6, "employments under local authority" has been notified. Therefore, the first objection raised by the Petitioners cannot be countenanced.

10. The 2nd objection was that the authority has no power to decide the question of application of the Government Order and the authority can only confine himself any claim in terms of the contract between the parties.

11. The said contention is well founded u/s 15 of the Payment of Minimum Wages Act, 1936. The Payment of Minimum Wages Act, 1936 empowers the authority to hear and decide for any specified area all claims arising out of deduction from the wages or delay in payment of wages of person employed or paid in that area, including all matters incidental to such claims. Therefore, it was contended that the present claim does not come within a purview of the jurisdiction of the authority under the Act.

12. In this context, it is necessary to refer to the judgment of the Supreme Court in A.V. D'costa Vs. B.C. Patel and Another, , while construing the parameters of Section 15, the Supreme Court in para 10 observed as follows:

10. In our opinion, the scheme of the Act as set forth above shows that if an employee were to state that his wages were, say Rs. 100 per month, and that Rs. 10 had been wrongly deducted by the authority responsible for the payment of wages, that is to say, that the deductions could not come under anyone of the categories laid down in Section 7(2) that would be a straight case within apurview of the Act and the authority appointed u/s 15 could entertain the dispute. But it is said on behalf of the Respondent that the authority has the jurisdiction not only to make directions contemplated by sub-s(3) of Section 15 to refund to the employed person any amount unlawfully deducted but also to find out what the terms of the contract were so as to determine what the wages of the employed person were.

There is no difficulty in accepting that proposition. If the parties entered into the contract of service, say by correspondence and the contract is to be determined with reference to the letters that passed between them, it may be open to the authority to decide the controversy and find out what the terms of the contract with reference to those letters were. But if an employee were to say that his wages were Rs. 100 per month which he actually received as and when they fell due, but that he would be entitled to higher wages if his claims to be placed on the higher wages scheme had been recognized and given effect to, that would

not, in our opinion, be a matter within the ambit of his jurisdiction.

The authority has the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages; but the authority has no jurisdiction to determine the question of potential wages. The Respondent's complaint in the present case comes within the latter illustration. If the Respondent's claim to be placed on the scheme of higher wages had been unduly passed over by the Appellant, if indeed he had the power to do so, the obvious remedy of the Respondent was to approach the higher authorities of the railway administration by way of departmental appeal or revision; but instead of doing that, he has sought his redress by making his claim before the authority under the Act.

The question is, has the authority the power to direct the Appellant or his superior officers who may have been responsible for the classification, to revise the classification so as to upgrade him from the category of a daily wage earner to that of an employee on the monthly wages scheme. If the Respondent had been on the cadre of monthly wages and if the Appellant had withheld his rise in wages to which he was automatically entitled, without any orders of his superior officers, he might justly have claimed the redress of his grievance from the authority under the Act, as it would have amounted to an underpayment.

But in the present case, on the case as made on behalf of the Respondent, orders of the superior officers were necessary to upgrade him from a daily wage earner to a higher cadre. The authority under the Act has not been empowered u/s 15 to make any such direction to those superior officers. The Appellant is responsible to pay the Respondent only such wages as are shown in the relevant register of wages presumably maintained by the department under the provisions of the Act, but he cannot be directed to pay the Respondent higher wages on the determination by the authority that he should have been placed on the monthly wages scheme.

(Emphasis added)

Therefore, the decision rendered by the first Respondent, in both the writ petitions are clearly beyond his jurisdiction.

13. The counsel for the contesting Respondents contented that u/s 17, a regular appeal lies to the District Court and the panchayat ought to have approached the District Court and should not come before this Court and hence, both the writ petitions should be dismissed on that ground. However, the question of directing a party not to a remedy is one of the discretion and not automatic.

14. The Supreme Court in *Seth Chand Ratan Vs. Pandit Durga Prasad (D) by Lrs. and Others*, has held that even if there are well laid principles directing the parties to exhaust statutory remedies, it has an exception that in case of want of jurisdiction, such rule of exclusion will not apply. Under these circumstances, the preliminary objection raised by the counsel appearing for the contesting

Respondents has to be over-ruled.

15. In the light of the well laid legal precedent and the limited jurisdiction conferred on the payment of Wages authorities, the two impugned orders willst and set aside. Accordingly, both the writ petitions are allowed and the impugned orders are set aside. However, this will not prevent the contesting Respondents from making claim before the appropriate forum. Consequently, connected Miscellaneous Petitions are closed. However, there will be no order as to costs.