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Court : Allahabad Lucknow

Decided On : Feb-10-2015

Judge : Manoj Kumar Gupta

Appeal No. : Service Single Nos. 1334 & 1418 of 2003

Appellant : Mukesh Garg

Respondent : Munney Khan and Another

Judgement :

1. Both these writ petitions between the same parties, have been filed challenging the order of respondent no.2 under the Minimum Wages Act, 1948 dated 15.1.2003, whereby, claim of the employee respondent no.1 arising out of payment of less than the minimum rates of the wages, have been allowed together with the direction for payment of compensation.

2. The facts in brief giving rise to these writ petitions are that respondent no.1 filed an application under Section 20 (2) of the Minimum Wages Act, 1948, (hereinafter referred to as 'the Act') for payment of a sum of Rs.17502.75/- on account of payment of less than the minimum rates of the wages. It is alleged that he is working as a Mistri and is being paid Rs.1400/- per month, while in an inspection made by the Labour Enforcement Officer Sri G.N. Srivastava on 26.7.1998, he found him entitled for minimum wages at the rate of Rs.2566.85/- per month. It is alleged that on basis of such inspection, a claim under the Act being M.W. Case No.851 of 1998 was filed before the prescribed authority, which is pending. The employee is entitled to difference of wages at the rate of Rs.1166.85/- per month, total sum being Rs.17502.75/- for the period August, 1998 to October, 1999. The aforesaid application came to be registered as M.W. Case No.13 of 2000 giving rise to Writ Petition No.1334 (S/S) of 2003.

3. The employee-respondent no.1, while making similar assertions, filed another application under Section 20 (2) of the Act, registered as M.W. Case No.340 of 2000, claiming difference of wages at the rate of Rs.766/- per month alleging that for the period November, 1999 to August, 2000 he was paid wages at the rate of Rs.1800/- per month, while he was entitled for minimum wages at the rate of Rs.2566.85/- per month. According to him, the total amount illegally detained by the employer is Rs.7660/- on which he is entitled to 10 times compensation i.e. Rs.76600/-. Order passed on such application has resulted in filing of writ petition 1418 (SS) of 2013.

4. Both the applications were filed with delay alongwith application for condonation of delay. The employer contested the proceeding by filing objections to the delay condonation application and also preliminary objection regarding maintainability of the application under Section 20 (2) of the Act.

5. Respondent no.2, by separate orders, condoned the delay and admitted the applications for hearing on merits. On the basis of the objections made by the employer, the only issue framed by respondent no.2, was regarding maintainability of the applications under Section 20 of the Act and its effect on the present

proceedings.

6. By impugned order dated 15.1.2003, respondent no.2 decided the said issue in favour of the employee. It was observed that in M.W. Case No. 851 of 1998, respondent no.2, by order dated 1.6.2001 upheld the claim of the employee. The order dated 1.6.2001 in M.W. no.851 of 1998 is on record. A perusal thereof reveals that the employer himself took the plea that he had paid the difference in the amount to the employee, for which he had issued a receipt acknowledging receipt of the amount. The plea of the employee that receipt was procured, without actual payment, was repelled. However, it was held that the employer had wrongly withheld the payment of minimum wages, and consequently, the employer was directed to pay compensation. It is held in the impugned order, that receipt evidences payment to the employee treating him to be a 'Mistri'. In the present proceedings, the employer in spite of sufficient opportunity had failed to controvert these facts. Only preliminary objection was filed to the effect that the proceedings under Section 20 are not maintainable and the remedy, if any, was under Section 15 of the Payment of Wages Act, 1936 or under the provisions of the Industrial Disputes Act, 1947.

7. At the time of hearing of the writ petitions, Sri R.C. Saxena, learned counsel for the petitioner made only one submission, as was raised before respondent no.2 i.e. the entire proceedings under Section 20 were coram non jure, as the application itself was not maintainable. It is contended that the proceedings under Section 20 of the Act were meant for getting the minimum wages fixed but in the instant case, the same being not in dispute as the employee himself contends that minimum wages is Rs.2566.85/- per month and thus, the dispute relates to non payment thereof, for which remedy available was under the provisions of the Payment of Wages Act, 1936 or by raising dispute under the Industrial Disputes Act, 1947.

8. On the other hand, Sri Ranjan Shukla appearing on behalf of respondent no.1 and learned standing counsel representing respondent no.2 supported the impugned order by contending that the dispute between the parties was covered by the provisions of the Act. It is urged that while on one hand the employee contended that he was entitled to minimum wages at the rate of Rs.2566.85/- per month, but on the other hand, the said amount was denied to him by the employer by payment of lesser amount and thus, it cannot be said that there was no issue as regards the quantum of minimum wages to be paid to the employee.

9. I have considered the submissions made by learned counsel for the parties and perused the records.

Relevant part of Section 20 of the Act is as under:-

"(1) The appropriate government may, by notification in the Official Gazette appoint any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labor Commissioner for any region or any officer of the State Government not below the rank of Labor Commissioner or any other officer with experience as a judge for a civil court or as a Stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the overtime rate under section 14 to employees employed or paid in that area.

(2) Where an employee has any claim of the nature referred to in sub-section (1), the employee himself or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf or any Inspector or any person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3) :

Provided that every such application shall be presented within six months from the date on which the minimum wages or other amount became payable :

Provided Further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained the authority shall hear the applicant and the employer or give them an opportunity of being heard and after such further inquiry if any as it may consider necessary may without prejudice to any other penalty to which the employer may be liable under this Act direct -

(i) in the case of a claim arising out of payment of less than the minimum rates of wages the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid together with the payment of such compensation as the authority may think fit not exceeding ten times the amount of such excess;

(ii) in any other case the payment of the amount due to the employee together with the payment of such compensation as the authority may think fit not exceeding ten rupees;

and the authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application."

10. The Apex Court in the case of *Town Municipal Council, Athani Vs. Presiding Officer, Labour Courts, Hubli* (1969) 1 SCC 873 has pointed out the extent and scope of the proceedings under Section 20 (1) of the Act as compared to the proceedings under Section 15 (1) of the Payment of Wages Act, 1936 or under Section 33-C (2) of the Industrial Disputes Act, 1947 in the following terms:-

"The Minimum Wages Act is concerned with the fixing of rates - rates of minimum wages, overtime rates, rates for payment of work on a day of rest - and is not intended for enforcement of payment of wages. Under section 20(1) of the Minimum Wages Act, in which provision is made for seeking remedy in respect of claims arising out of payment of less than minimum rates, or in respect of remuneration for days of rest, or for work on such days, or of wages at the overtime rates, the Authority is to exercise jurisdiction for deciding claims which relate to rates of wages, rates for payment of work done on days of rest and overtime rates. The power under section 20(3) of the Minimum Wages Act given to the Authority dealing with an application under section 20(1) to direct payment of the actual amount found due, is only an incidental power for working out effectively the directions under s. 20(1) fixing various rates under the Act. That is, if there is no dispute as to rates between the employer and the employee and the only question is whether a particular payment at the agreed rate is due or not, then section 20(1) of the Minimum Wages Act would not be attracted at all, and the appropriate remedy would only be either under section 15(1) of the Payment of Wages Act, 1936, or under s. 33C(2) of the Industrial Disputes Act."

11. Learned counsel for the petitioner heavily relied on a more recent judgment of the Apex Court in the case of *Manganese Ore (India) Ltd. Vs. Chandi Lal Saha and others*, 1991 Supp (2) SCC 465. That was a case where the rate of minimum wages was fixed by Government of India by a notification issued under the Act. The workman demanded the minimum wages so fixed and the employer denied the same to the workman by pointing out that supply of certain essential commodities at concessional rates forms part of the minimum wages to be paid to the employee. However, the Apex Court, after examining the scheme framed in this regard, came to the conclusion that the concession is in the nature of amenity or additional facility provided to the employees and it does not come within the definition of "wages" under Section 2 (h) of the Act. It was held that for the said purpose, the proceedings invoked by the workmen under Section 33-C (2) of the Industrial Disputes Act, 1947 were perfectly maintainable, as there was no dispute between the parties regarding the minimum rates of wages fixed by the Government.

12. The jurisdiction of respondent no.2 to deal with the application filed by respondent no.1 under Section 20 of the Act is to be decided in the light of the law settled by the Apex Court in the case of *Town Municipal Council, Athani* (supra).

13. The employee in his application under Section 20 of the Act contended that he is entitled for minimum wages at the rate of Rs.2566.85/- per month, while he was being paid at a lesser rate i.e. Rs.1400/- per month

for the period giving rise to M.W. Case No.13 of 2000 and at the rate of Rs.1800/- per month for the period covered under M.W. Case No.340 of 2000. In pith and substance, the claims made in the applications is regarding payment of less than the minimum rates of wages. Such claim is specifically covered by Section 20 of the Act.

14. When an employee claims that he is being paid less than the minimum wages, it is ordinarily implicit in such claim that the employer disputes the amount being demanded by the employee as minimum wages. This becomes explicit on perusal of preliminary objection of the employer, wherein, it is pleaded that "the wages as shown by the applicant is disputed as it is not payable to the applicant being Mistri as stated by him". Thus, the basic issue between the parties was regarding the amount payable as minimum wages to the employee. This being the position, I am of the firm opinion that the applications filed by the employee under Section 20 of the Act, were not only maintainable, but invoking the jurisdiction of the authority under Section 20 of the Act was the most appropriate remedy. The jurisdiction of authority under Section 15 of the Payment of Wages Act, 1936 is in relation to claims arising out of deductions from wages or delay in payment of wages. In the instant case, the employer has not set up any plea that Rs.1400/- per month or Rs.1800/- per month was paid to the employee on account of any deduction from his wages, nor was it a case of delay in payment of wages. As held above, claims were in relation to payment of less than the minimum rates of wages, on account of dispute regarding the amount payable as minimum wages. The same is covered by Section 20 of the Act.

15. In view of the discussion made above, it cannot be said that the proceedings before respondent no.2 were coram non iudice or the applications under Section 20 of the Act were not maintainable.

16. No other argument was raised by learned counsel for the petitioner.

17. Writ petitions lack merit and are dismissed.

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