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Court : Kerala

Decided On : Aug-03-1961

Reported in : (1962)ILLJ341Ker

Judge : C.A. Vaidialingam, J.

Appellant : Chacko

Respondent : Varkey and ors.

Judgement :

C.A. Vaidialingam, J.

1. Sri K.V. Kuriakose, learned Counsel for the writ petitioner, attacks the order of the authority appointed under the Minimum Wages Act in M.W.C. 1 of 1959, dated 31 October 1960.

2. The respondent filed an application on 26 March 1959 claiming overtime wages for the period from 1 October 1958 to 29 January 1959.

3. The claim of the worker was resisted by the petitioner-employer on several grounds, namely, on fact and also on law. The legal contention that was raised was to the effect that the workman has been dismissed from service by the employer on 31 January 1959 and inasmuch as the application before the Minimum Wages Authority was filed only on 26 March 1959, the application is not

maintainable as he has ceased to be an employee of the petitioner. The other ground of attack was purely on facts, namely, that the workman concerned was not given any overtime work in order to make him eligible to claim overtime wages as made in the application, and there was also a contention raised that the burden of proving the claim made in these proceedings was entirely on the workman concerned.

4. So far as the legal contention is concerned, the authority was faced with two conflicting decisions on that matter, one of Balakrishna Ayyar, J., of the Madras High Court and another of my learned brother N. Varadaraja Ayyangar, J., of this Court, I will have to advert to those two decisions later in this judgment. The tribunal was not prepared to adopt the view expressed by Balakrishna Ayyar, J., and in preference to that adopted the view of Varadaraja Ayyangar, J., to the effect that an application even by an ex-employee is maintainable under the Minimum Wages Act. Therefore, on this ground, the legal objection to the maintainability of the application was overruled.

5. So far as the contentions raised on facts are concerned, the tribunal again was faced with a situation where, according to it, the employer was not willing to assist the tribunal by placing the necessary materials which ought to be available with him, by producing the necessary records which he was bound to maintain under the provisions of the statute. Therefore, left with no other alternative hut to consider the evidence that was adduced by the workman, it has chosen to accept the materials that were placed before it by the workman concerned and ultimately believed his case that he had actually worked overtime during the period for which the claim was made and accordingly decided that the management should pay him overtime wages for that particular period.

6. In this view, ultimately the tribunal directed the payment of a sum of Es. 300.60 nP as overtime wages to the workman concerned. Though no doubt, a claim for compensation under Section 20 of the Act appears to have been made on behalf of the workman, that claim was not accepted by the authority.

7. It is this order of the authority under the Minimum Wages Act that is challenged by Sri K.V. Kuriakose. learned Counsel for the writ petitioner.

8. The first contention that has been raised before me by Sri K.V. Kuriakose is that the petition filed by the workman on 26 March 1959 after he was dismissed from service is not maintainable and that is in effeot, he desired this Court to adopt the view of Balakriehna Ayyar, J, in preference to that of Varadaraja Ayyangar, J. I will deal with this contention after I dispose of the contention on facts raised by Sri K.V. Kuriakose. So far as the facts are concerned, the learned Counsel urged that his client had not been given a fair opportunity to place his evidence before the Court and that the only evidence available before the Court, namely, the materials produced by the workman concerned are not in the eye of law sufficient to enter findings in favour of the workman in these proceedings. The learned Counsel also urged a subsidiary contention to the effect that there was no legal evidence available before the Court from which the conclusions that have been drawn, would in law be drawn by the authority.

9. Sri N. Gangadhara Menon, learned Counsel appearing for the workman, has urged that under the Act and rules as stated by the authority, the management was bound to maintain books of certain records as enjoined by those provisions. There was an opportunity to the management to assist the tribunal by placing necessary materials and satisfy the authority concerned that the claim made by the workman, could not be sustained. On the other hand, the management, apart from not assisting the tribunal in such matters, has chosen to give various inconsistent explanations for the non-production of the books that were available for the purpose of this case, and could have been produced if really the management was honest in trying to disprove the case of the workman and therefore, under these circumstances, the authority has drawn quite rightly, according to him, adverse conclusions as against the management and has also chosen to accept the evidence adduced by the workman.

10. The acceptance of the evidence in this case, according to Sri N. Gangadhara Menon, was quite proper and justified and in any event, a finding recorded in that respect, on a pure question of fact should not be interfered with by this Court. The learned Counsel also urged that the evidence produced, was found sufficient by the tribunal and therefore, no interference is called for with those findings recorded by that authority.

11. I am not impressed with the contentions raised by Sri K.V. Kuriakose on facts, namely, that either there is no material from which the conclusions would have been arrived at or that the management in this case did not have an opportunity of placing the evidence to rebut the case of the workman concerned. The management should have certainly known, when it entered appearance in these proceedings before the authority, the nature of the claim made by the workman. If the management felt that by production of sufficient evidence which is solely available with it, it could have disproved the case of the workman concerned, there was a duty on the part of the. management to make available for the tribunal all the records that were in its possession. If the management felt that it was not necessary for the purpose of this case, the consequence for the non-production must entirely rest upon the shoulders of the management, It cannot turn round now and make a grievance that if an opportunity had been given, It could have produced much better evidence than it has done. If such an opportunity has been asked for and refused by the tribunal, that is a totally different matter. That is not the grievance that is placed before me now in these proceedings and the only point, as I mentioned earlier, that is pressed before me is that his client had no opportunity to place. As I mentioned earlier the petitioner must have had known the nature of the claim and it was up to him to have availed himself of the opportunity given in these proceedings to place the necessary material. Therefore, there is no question of denial of opportunity in this case.

12. As to whether the tribunal should have accepted the evidence adduced by the workman or the explanations offered by the management, is entirely a matter resting with the absolute discretion of the tribunal and in so far as it has not acted Illegally or arbitrarily, it is not the province of this Court to consider the correctness or otherwise of the views expressed by that authority on the state of evidence available before it. I am satisfied that there is no irregularity or illegality committed by that authority in considering and acting upon the evidence that was made available. Therefore, the contention raised by the learned Counsel on facts, has to be rejected.

13. Then the question is whether the legal contention which is raised, namely, that the application filed by a dismissed workman under the Minimum Wages Act is not

maintainable, is correct or not. No doubt, the view expressed by Balakrishna Ayyar, J., of the Madras High Court supports the contention of Sri K.V. Kuriakose. The decision of Balakrishna Ayyar, J., is reported in Wakefield Estate v. Maruthan Uchi and Ors. 1959--I L.L.J. 397. The learned Judge, after considering the definition of the term 'employee' given in Section 2(i) of the Minimum Wages Act and also taking it along with the other sections, has come to the conclusion that an ex-employee is not entitled to file an application under the Act, It is not necessary for me to go into any great detail regarding that judgment, because it is now brought to my notice by Sri N. Gangadhara Menon that Ramaohandra Ayyar, J. (as he then was) of the Madras High Court has expressed dissent from the views of Balakrishna Ayyar, J. Ramaohandra Ayyar, J., if I may say so with respect, in the recent decision reported in Murugan Transports v. Rathakrishnan and Ors. 1961--I L.L.J. 283 has considered the matter in great detail and has ultimately come to the conclusion that even an ex-employee or a dismissed employee is competent to file an application claiming relief under the Minimum Wages Act. It is not really necessary for me again to cover the same ground excepting to say that I am in respectful agreement with the reasons given by the learned Judge.

14. My learned brother Varadaraja Ayyangar, J., had also occasion to consider a similar question in O.P. No. 198 of 1958. The learned Judge, if I may say so with respect, has correctly negatived a similar contention that was raised before the learned Judge and has held that an application by even a dismissed or ex-employee is maintainable under the provisions of the Minimum Wages Act. I may also add one additional reason for expressing my agreement with the judgment of Ramachandra Ayyar, J. (as he then was) of the Madras High Court and of Varadaraja Ayyangar, J., of our High Court. If the contention raised by Sri K.V. Kuriakose is accepted, it will lead to this position, namely, that under the proviso (i) to Sub-section (2) of Section 20 of the Act, a period of limitation, so to say namely, six months from the date on which the minimum wages or other amount became payable is provided for an application to be filed by an employee before the Minimum Wages Authority. To take a concrete case, when a claim can be made by an employee within six months and unfortunately, he waits till the last day of the six months to file his application, and if one day before the expiry of the period of limitation, the management chooses to dismiss him from service for whatever may

be the reasons, it will come to this that the management can effectively succeed in preventing the filing of an application by an employee or prevent an employee from claiming relief under the provisions of the Minimum Wages Act.

15. Having due regard to the object and purpose of that enactment, the construction placed upon the sections of the Act by Ramachandra Ayyar, J. (as he then was) and Varadaraja Ayyangar, J., are, in my view, to be accepted, in preference to the views expressed by Balakrlshna Ayyar, J. Therefore, this ground of attack made upon the order also fails and the writ petition is dismissed with costs; one set of the respondents.