

(1960) 02 AHC CK 0014

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 247 of 1958

M.L. Gupta

APPELLANT

Vs

City Magistrate, Lucknow and
Another

RESPONDENT

Date of Decision: Feb. 16, 1960

Acts Referred:

- Minimum Wages Act, 1948 - Section 20

Citation: AIR 1960 All 541 : (1960) CriLJ 1173

Hon'ble Judges: J.K. Tandon, J

Bench: Single Bench

Advocate: Babu Ram Gir, for the Appellant; Senior Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

J.K. Tandon, J.

This petition is directed against an order dated 15-10-1958, passed by Sri Markandey Singh, City Magistrate, Lucknow, in a case started u/s 20 of the Minimum Wages Act, 1948. The case before him was started on the application of one Sri J. N. Gupta, Labour Inspector, appointed under the said Act. The petitioner, who is a Government Contractor, was the opposite party. It was pointed out that the petitioner here, the opposite party in proceedings before the learned Magistrate, had not paid the wages to his employees within 7 days of their falling due. The amount payable by him to the labourers was reported to be Rs. 821/14/-. The petitioner disputed his liability for the amount pointing out that none of the persons except one Babu Lal to whom the arrears were said to be due, had ever worked under him.

In the case of Babu Lal the justification put forward was that his work was unsatisfactory. A significant fact and with which this petition will be directly

concerned is that there was no dispute as regards the rate of wages payable to the several employees. The question before the Magistrate merely was whether a certain set of persons had worked as employees of the petitioner and, therefore, were entitled to be paid their wages also. The difference in the case of Babu Lal which differed from the case of the remaining employees again was whether he was entitled to the wage asked by him because his work had not been found to be satisfactory. The learned Magistrate framed the following four issues:

1. Whether the O. P. was liable to pay the wages to the workers whose names are mentioned in para 4 of the application?
2. To what wages, if any, are these workers entitled?
3. To what compensation, if any, are the workers entitled?
4. To what relief, if any are the workers entitled?

While discussing the first three issues he referred to the evidence of certain persons including the report of the Labour Inspector on the basis of which he held that the persons reported by the Labour Inspector had worked as employees of the petitioner and the wages or rather the arrears of wages asked by them were due. He also held that a sum of Rs. 50/- was payable as compensation. In the end, therefore, he passed an order directing the petitioner to pay Rs. 821/14/- to the workers as arrears of their wages and Rs. 50/- as compensation within a period of fifteen days.

2. By the present petition the petitioner has impugned the above proceedings before the learned Magistrate on the ground, broadly stated, that the Minimum Wages Act failed to confer any such jurisdiction on the Magistrate who, therefore, was incompetent to make the order in question. A survey of the provisions of the Minimum Wages Act, 1948, would point out, as the preamble thereto has also stated, that it was an Act to provide for the fixing of minimum rates of wages in certain employments. Section 2 has defined certain expressions including an "employer" and "scheduled employment". The term "wages" too has been defined and likewise the expression "employee".

The next Section gives power to the appropriate Government to fix minimum rates of wages which it can do in the case of employments specified in the schedules which are part of the Act. The minimum wages can be fixed with reference to hour, day and month or any larger period as should be prescribed. Section 4 describes what the minimum rate of wage shall consist of. In Section 5 the procedure for fixing and revising the wages is laid down and the next few sections lay down the establishment of Advisory Board etc. to advise the Government in relation to its duties under the Act.

The next relevant Section is 12 which says that where in respect of any scheduled employment a notification u/s 5 is in force, the employer shall pay to every

employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed for the particular employment. Section 13 is not attracted in the present case but Section 14 which also is not directly relevant provides for payment of work done in excess of the number of hours constituting a normal working day.

The next few sections make provision for calculating wages in certain cases and the liability of the employer to maintain appropriate records and registers. u/s 19 the State Government can appoint inspectors; their duties too are laid down in this section. Then comes Section 20 under which the proceedings were held by the learned Magistrate in the instant case. The relevant portion of it is thus;

"20 (1) The appropriate Government may, by notification in the Official Gazette, appoint..... 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 of 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 u/s 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 inspector..... .may apply to such Authority for a direction under subsection (3) :

Provided

Provided

(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.

(4)

(5)

(6) Every direction of the Authority under this Section shall be final.

(7) Every Authority appointed under Sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter 35 of the Code of Criminal Procedure (V of 1898)".

The only other provision of the Act to which reference is necessary is Section 24 which debars a court from entertaining any suit for the recovery of wages in so far as the same claim forms the subject of an application u/s 20 or could have been recovered by an application under that section.

3. The short question which clearly will decide the fate of this petition is whether a claim for arrears of wages said to be payable by an employer to the employee is entertainable u/s 20 of the Minimum Wages Act, 1948. It is this Section which has given to a Magistrate empowered under it the jurisdiction to settle the types of claims described in it. Unless, therefore, the claim can be proved to be one covered by its provisions the Magistrate will have no jurisdiction to entertain it or pass a legal order for the recovery of the amount. One type of claims which can be laid under this Section can be claims arising out of payment of less than the minimum rates of wages.

Another class can be in respect of payments 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 and yet another class can be claims for wages at the overtime rate u/s 14. Admittedly there was no dispute in the instant case arising out of payment of less than the minimum rate of wage; because as the respondents' own affidavit has accepted there was no dispute as regards the rate of wage. The dispute at the most was for arrears of wages but none arising out of any controversy with regard to the rate at which wage was payable,

4. Since the arrears were not in respect of wages for work done on days of rest etc., it was again not a claim to which Section 13 was applicable. Section 14 too is not attracted as it was never a claim for overtime work. On the other hand, the claim was precisely for the amount of arrears said to be payable to the employees not as difference arising out of payment of less than the minimum wage but from the fact that no payment at all had been made. The plain meaning and purpose of Section 20 of the Minimum Wages Act 1948 is to give effect to the provision for payment of minimum wage.

That is the object of the Act also and it is in this context that Section 12 to which the learned Standing Counsel has referred and Section 20 itself have to be read and construed. Section 20 does not provide the machinery for recovery of arrears of wages independently of any dispute arising from controversy as regards the

minimum wage payable. Proceedings under this Section can be commenced where a dispute exists as regards the rate of wage payable.

5. In such a case the authority concerned will be entitled u/s 20 to require the payment of the difference; but if such a dispute does not exist, it cannot be utilised for recovering the arrears. In the above view of Section 20 it is clear that the learned Magistrate had no jurisdiction to make the impugned order as there was never any dispute regarding the minimum wage payable. His order dated 15-10-1958 being one without jurisdiction, therefore, deserved to be quashed and I order accordingly. The petitioner will get his costs from the respondents.