(2001) 01 JH CK 0009

Jharkhand High Court

Case No: C.W.J.C. No. 788 of 1999 (R)

Chacha Nehru Vidyapith		APPELLANT
	Vs	
Authority under Minimum Wages Act, 1948-cum-Assistant Labour Commissioner and Others		RESPONDENT

Date of Decision: Jan. 31, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226
- Minimum Wages Act, 1948 - Section 2, 27, 3(1), 4, 5

Citation: (2001) 1 LLJ 1439 : (2001) 1 JLJR(Jhar) 121 : (2001) 49 BLJR 1066 : (2001) 89 FLR 1060

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: A.K. Srivastava, for the Appellant; Ruby Parween, J.C. to G.P. 1, for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.
In this writ application the petitioner seeks declaration that employment in the petitioner-school, namely, Chacha Nehru Vidyapith, is not schedule-employment and it is not covered by any employment specified in a schedule of Minimum Wages Act, 1948 and further for quashing the orders passed by respondents whereby it is held that the petitioner school is liable to pay Minimum Wages to its employees mentioned therein.

2. The facts of the case lie in a narrow campus.

3. Petitioner is a school imparting education upto Class VI standard. The employees of the petitioner school are teachers as well as clerk and ad-ministerial staff. In 1994, respondent No. 3, Labour Superintendent-cum-Inspector under Minimum Wages Act, filed an application against the Secretary of the School for and on behalf of the teachers and non-teaching employees of the school for awarding compensation equal to the wages alleged to have been paid less than the minimum wages. Petitioner resisted the claim on the ground in ter alia that the petitioner- school is not covered by the notification inasmuch as it is not a schedule employment. Respondent No. 1 Assistant Labour Commissioner rejected the objection of the petitioner. The petitioner then challenged the said order by filing CWJC No. 850/96R, challenging the order passed by respondent No. 1. This Court in terms of order dated 30.7.1996 partly allowed the writ application by holding that the Act does not apply to the teachers. Other points raised by the petitioner were left open with a direction to the'' petitioner to file appeal. Petitioner then filed appeal before respondent No. 2 Deputy Development Commissioner-cum-Appellate Authority challenging the order of respondent No. 1. Respondent No. 2 dismissed the appeal by order dated 29.1.1997 and refused to interfere with the order passed by respondent No. 1 condoning the delay in filing appeal and the direction to deposit 50% of arrears of wages. Petitioner then challenged the order of respondent Nos. 1 and 2 whereby it was directed to deposit 50% of the arrears of wages by filing CWJC No. 640/97R. In the meantime, respondent No. 1 by order dated 15.4.1997 finally allowed all the applications and ordered for payment of arrears of wages as calculated by it along with compensation of 5 times of the total alleged arrears of minimum wages. Petitioner then filed appeal against the aforesaid order before respondent No. 2 who by order dated 5.2.1999 disposed of the appeal by upholding the order of respondent No. 1 but with modification in relation to percentage of compensation from 5 times to 3 times only. These orders are impugned in this writ application.

4. The respondent''s case in the counter-affidavit is that respondent No. 3 filed claim petition in respect of teaching and non-teaching employees of the petitioner-school after receipt of complaint of the employees working therein. Since there was likelihood of objection being raised on the point of limitation, the period of claim was limited to 19.7.1993 to 31.12.1993. According to the respondents by virtue of gazette notification dated 9.7.1993, petitioner being Educational Institution, is liable to pay minimum wages to its employees.

5. Mr. A.K. Srivastava, learned counsel for the petitioner assailed the impugned orders on the following grounds :

(1) Whether respondent No. 1, the Assistant Labour Commissioner was justified in condoning the delay and entertaining the applications which were barred by limitation.

(2) Whether the notification by which University, Educational Research or Cultural Institution stated in para 1 of the schedule to the Act covers the petitioner.

(3) Whether the impugned order being a non-speaking order cannot be sustained in law.

6. Re. (1)-

From perusal of the original order dated 30.1.1996 passed by Assistant Labour Commissioner, it appears that the authority before condoning the delay recorded its satisfaction that the claimant was prevented by sufficient cause from filing application within time. The Appellate Authority also considered the question and came to a finding that the satisfaction recorded by original authority and condoning the delay needs no interference.

It is true that generally Court should not come in aid of a party where there has been unwarrantable delay in seeking statutory remedy and the remedy-must be sought with reasonable promptitude having regard to circumstances. But at the same time the plea of limitation is one which the Court always looks upon with disfavour and it is unfortunate that a public authority or any institution, in all morality and justice take up such plea to defeat just claim of a citizen. It is always permissible to adopt a beneficial construction of a rule of limitation, particularly in giving the relief under a beneficial legislation. This Court, therefore, in exercise of writ jurisdiction cannot probe into the question as to whether there existed sufficient cause which give jurisdiction to the authority to condone the delay. This question is answered against the petitioner.

7. Re. (2)-

Second question raised by the petitioner is that petitioner-school does not come within the purview of University, Educational Research or Cultural Institution as stated in para 1 of the schedule to the Act and therefore, the authorities have no jurisdiction to enforce the notification dated 9.7.1993 issued u/s 5(2) of the said Act.

It is well settled that the object for which Minimum Wages Act has been enacted is to prevent exploitation of the workers and for that purpose fixed minimum wages which the employers must pay. The Act had been passed for the wel- fare of the labour working under different, employment. So far as applicability of the Act in the employment of University, Educational Research or Cultural Institution in the State of Bihar is concerned, the notification reads as under :

NOTIFICATION

Patna 22, dated the 9th July, 1993.

S.O.--In exercise of the powers conferred by clause (b) of Sub-section (1) of Section 3 of the Minimum Wages Act, 1948 (11 of 1948), read with Sub-section (2) of Section 5 of the said Act and after having considered all the representations received on the

proposal notified under clause (b) of the Sub-section (1) of Section 5 of the said Act and also after consulting the Bihar Minimum Wages Advisor Board, the Governor of Bihar is pleased to revise the minimum rates of wages for certain category of employees employed in the employment in Any University, Educational Research or Cultural Institution in the State of Bihar fixed in the labour and Employment Department''s notification No. S.O. 651, dated 20th September, 1990 specified in columns 3, 4 and 5 of the schedule hereto annexed against each category of employee as specified in the corresponding entry in Column 2 thereof which shall be payable in the whole of the State of Bihar to such different categories of employees employed in the said employment.

2. The minimum rates of wages so revised shall be within the meaning of column (iii) of Sub-section (a) of Section 4 of the said Act.

3. This notification shall come into force with effect from the date of its issue.

SCHEDULE

Sl No.	Categories of employees	Minimum rates of wages
1.	Un-skilled	Rs. 27.00 per day.
2.	Semi-skilled	Rs. 32.50 per day.
3.	Skilled	Rs. 40.00 per day.
4.	Highly skilled	Rs. 49.00 per day.

From perusal of the aforesaid notification, it is manifest that the employees working in the University, other Educational and Cultural Institutions have been divided in

different categories, namely, un-skilled employees, semi-skilled, skilled and high-skilled employees and different rates of minimum wages have been fixed.

Applying the said notification the employees working in the Educational Institutions may be broadly divided into two categories, teaching employee and non-teaching employee. In other words, in Educational Institution one category of employees are teachers and another category of employees are those who are working not as a teachers but are doing other skilled, semi-skilled or un-skilled work.

So far as teachers of Educational Institution are concerned the question whether they come within the purview of the definition of employees, has been set at rest by the Apex Court in the case of Haryana Unrecognised Schools Association Vs. State of Haryana, . In that case after considering various provisions of the said Act the Apex Court held that the teachers of an Educational Institution cannot be brought within the purview of the Act and the State Government in exercise of powers under the Act is not entitled to fix minimum wage of such teachers. Their Lordships observed that:

"A combined reading of the aforesaid provisions as well as the object of the legislation as indicated earlier make it explicitly clear that the State Government can add to either part of the Schedule any employment where persons are employed for hire or reward to do any work skilled or unskilled, manual or clerical. If the persons employed do not do the work of any skilled or unskilled or of a manual or clerical nature then it would not be possible for the State Government to include such an employment in the Scnedule in exercise of power u/s 27 of the Act. Since the teachers of an Educational Institution are not employed to do any skilled or unskilled or manual or clerical work and therefore, could not be held to be an employee u/s 2(i) of the Act, it is beyond the competence of the State Government to bring them under the purview of the Act by adding the employment in Educational Institution in the Schedule in exercise of power u/s 27 of the Act. This Court while examining the question whether the teachers employed in a school is workmen under Industrial Dispute Act had observed in Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, :

"We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate to postgraduate education cannot be called as workmen within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be construed as skilled or unskilled manual work or clerical work. Imparting of education in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching."

The question now falls for consideration is whether the employees of the Educational Institutions other than the teachers are also excluded from the purview of the definition of employee u/s 2(i) of the Act. At this stage, it is worth to mention here that in the case of "Haryana Unrecognised School Association" (Supra), the Apex Court has not held that all the employees of Educational Institutions are excluded rather question raised and decided was only in respect of teachers of Educational Institutions.

As noticed in the instant case, the claimant on whose behalf application for minimum wages were filed are non-else but junior clerk, peon, mali, maidservant and rickshaw-pullers. Admitted- ly, these employees are doing unskilled, semi-skilled, or skilled work. The employees of these categories working in the employment of any educational institution certainly comes within the purview of the Act and they are entitled to get minimum wages time to time fixed under the Act- The respondent-authorities rightly entertained the applications filed by these categories of employees of the petitioner-school and passed order for payment of minimum wages, I do not find any illegality or impropriety in the impugned orders whereby the petitioner has been directed to pay the arrears of difference of wages as indicated in the said order.

So far as direction for payment of compensation besides minimum wages is concerned, I am of the view that in the facts of the case, the petitioner may not be saddled with additional liability for payment of compensation. It appears that petitioner was of bonafide belief that the notification is not applicable to the educational institution, namely the school, specially after the decision of the Apex Court to the effect that the teachers of a school do not come within the purview of the said Act. Regard being had to all these facts, it is not proper to direct the petitioner to pay compensation in addition to minimum wages and also arrears of difference of wages.

8. Re. 3-

Lastly, it was contended that the impugned orders passed by the respondent authorities are non-speaking orders. I do not find any force in the submission of the learned counsel. The respondent authorities have considered each and every objection raised by the petitioner and decided the matter after full application of mind. The respondent authorities further recorded a finding as to how the employees who had made claim are entitled to get benefit of the Act.

For all these reasons, I allow this writ application in part and upheld the orders passed by the respondent-authorities whereby petitioner has been directed to pay arrears of differences of minimum wages as also the minimum wages to its employees mentioned in the said order.

9. Writ application partly allowed.