W.P. No.9679/2011

30.01.2017

Shri P.N.Dubey, learned counsel for petitioner.

None for respondents, though served.

Petitioner vide present petition under Article 227 of the Constitution of India takes exception to order dated 07.12.2009 passed by the Authority under Minimum Wages Act-cum-Labour Court; whereby, while entertaining an application under Section 21 (1) of the Minimum Wages Act, 1948 (for short '1948 Act'), claim of respondents/workmen has been allowed who are held entitled for the wages in lieu of rest day.

Contending inter alia that having worked on daily wages from 1986 till 2000, the respondents were given employment for six days a week till the year 1998, entitling them for privilege of rest day and payment in lieu thereof under Section 13(b) of 1948 Act. And that after the year 1999 the workmen are not provided the work for six days consecutively and are thus deprived of the privilege of rest days; the respondents filed application under Section 21(1) claiming wages for 54 days in lieu of rest days for the year 1999 and 2000 amounting to Rs.7000/-.

The petitioners besides denying the claim, raised preliminary objections as to maintainability of the application

on the ground that the claim for wages could be availed only by raising a dispute and that the application is barred by limitation.

As to merit the petitioner-employer denied the entitlement. It was contended that the workmen were given the benefit of rest day as per law/rule in vogue. And that they worked for 20/22 days in each month and were paid wages from the fund received from the Indian Council of Agriculture Research, Government of India. The petitioner further denied respondents entitlement for wages under Section 13 of 1948 Act.

The Authority after framing the issues as to whether the claim is time barred and whether the application is tenable and as to the entitlement of the workmen afforded the opportunity to the parties to led evidence. The workmen availed the opportunity but the petitioner-employer despite repeated opportunity did not avail the same, accordingly, their right to adduce evidence was closed on 22.05.2006.

As to limitation the Labour Court found the recurring cause of action as to the claim towards wages.

Sub-section (2) of Section 20 of 1948 Act provides that :

> "(2) Where an employee has any claim of the nature referred to in sub-section (1), the

> employee himself, or any legal practitioner or an official of a registered trade union authorised 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);"

Second proviso to sub-section (2) of Section 20 gives discretion to admit the application even after the period of limitation if satisfied that there was sufficient cause for not making the application within time. The expression "sufficient cause" should receive liberal construction as held in **Sarpanch, Lonand Grampanchayat vs. Ramgiri Gosavi : AIR 1968 SC 222,** wherein it is observed :

> "4. The wording of the second proviso is similar to the provisions, of S. 5 of the Indian Limitation Act. In Krishna v. Chathappan (1890) ILR 13 Mad 269 the Madras High Court indicated in the following passage how the discretion under S. 5 should be exercised
>
> > "We think that section 5 gives the Courts a discretion which in respect of jurisdiction is to. be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause receiving a liberal construction so as to advance substantial justice when no negligence not inaction nor want of bona fides is imputable to the appellants."
>
> This decision received the approval, of this Court in 1) an Dinabandhu Sahu v. Jadumoni Mangaraj 1955-1 SCR 140 at p. 146: (AIR 1954

> SC 411 at p. 414) and Ramlal, Motilal v. Rewa Coalfields Ltd. 1962-2 SCR 762 at p.767: (AIR 1962 SC 361 at p.363). The words "sufficient cause" in the second proviso to S. 20(2) should receive a similar liberal construction.
>
> 5. No appeal lies from an order of the Authority, under s. 20. But the High Court is vested with the power of judicial superintendence over the tribunal under Art. 227 of the Constitution. This power is not,greater than the power under Art. 226 and is limited to seeing that the tribunal functions within the limits of its authority, see Nagendra Nath Bora and another v. The Commissioner of Hills Division and Appeals, Assam, 1958 SCR 1240 at p.1272: (AIR 1958 SC 398 at p. 413). The High Court will not review the discretion of the Authority judicially exercised, but it- may interfere if the exercise of the discretion is capricious or perverse or ultra vires. In Sitaram Ramcharan, etc. v. M. N. Nagarshana , 1960-1 SCR 875 at p.884: (AIR 1960 SC 260 at p. 263) this Court held that a finding of fact by the authority under the similarly worded second proviso to S. 15 (2) of the Payment of Wages Act 1936 could not be challenged in a petition under Art. 227. The High Court may refuse to interfere. ,under Art. 227 unless there is grave miscarriage age of justice."

The conclusion arrived at by the Authority when tested on the anvil of the law laid down in Sarpanch, Lonand Grampanchayat (supra), cannot be faulted with.

Furthermore, Section 13(1)(b) of the Act of 1948 provides that :

> "13. **Fixing hours for normal working day etc.** (1) In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act the appropriate government may –
>
> (a) fix the number of hours of work which shall constitute a normal working day inclusive of one or more specified intervals;
>
> (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;
>
> (c) provide for payment for work on a day of rest at a rate not less than the overtime rate."

Sub-Section (1) of Section 20 of 1948 Act envisages entitlement of an employee for 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.

Contention that the employees were intermittently in employment could not be carried forward in absence of any such declaration to that effect warranted under sub-section (2) of Section 13 of 1948 Act read with sub-section (3) which mandates :

> "(3) For the purposes of clause (c) of sub-section (2) employment of an employee is essentially intermittent when it is declared to be so by the appropriate government on the ground that the daily hours of duty of the employee or if there be no daily hours of duty as such for the employee the hours of duty normally include periods of inaction during

> which the employee may be on duty but is not called upon to display either physical activity or sustained attention."

Taking any view of the matter, the impugned order since does not suffer the vice of perversity, cannot be faulted with.

Consequently, petition fails and is dismissed.

Interim order stands vacated. No costs.

(SANJAY YADAV)
JUDGE

anand