

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 2nd OF APRIL, 2024

WRIT PETITION No. 16946 of 2021

BETWEEN:-

1. THE FACTORY MANAGER RCCPL THROUGH UTTAM KUMAR ROY, VILLAGE BHAROLI POST ITEHARA DISTRICT SATNA M.P. 485773 (MADHYA PRADESH)
2. M/S SECURITY AND INTELLIGENCE SERVICE INDIA LIMITED NEW DELHI THROUGH SINGAR PANDEY BUILDING NO. 112 MALL ROAD GTB NAGAR NEW DELHI 110009.

.....PETITIONER

(BY SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI EIJAZ NAZAR SIDDIQUE - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY DEPARTMENT OF LABOUR VALLABH BHAWAN M.P. (MADHYA PRADESH)
2. AUTHORITY UNDER MINIMUM WAGES ACT CUM ASSISTANT LABOUR COMMISSIONER REWA REWA DIVISION SATNA (MADHYA PRADESH)
3. INSPECTOR MINIMUM WAGES ACT 1948 THE LABOUR INSPECTOR O/O THE ASSISTANT LABOUR COMMISSIONER REWA DIVISION SATNA (MADHYA PRADESH)

.....RESPONDENTS

(BY SMT.SWATI A.GEORGE – DEPUTY GOVT. ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

1. This petition under Article 226 of the Constitution of India has been filed against the order dated 6.8.2021 passed by the Assistant Labour Commissioner, Rewa Division Satna in Case No.36/2020 by which it has been held that less overtime was paid to 142 employees and accordingly, it has been directed that the amount of difference, together with amount of compensation, i.e. Rs.70,46,638/- be deposited by the petitioners within a period of 30 days from the date of receipt of the impugned order.
2. Challenging the order passed by the authority below, it is submitted by counsel for the petitioners that Assistant Labour Commissioner is not competent to exercise the powers under the Minimum Wages Act and secondly, the complaint was not filed in respect of less payment of over time, but it was filed on the ground of non-payment of minimum wages. It is submitted that, since neither complaint nor notice issued by the complaint authority before filing of the complaint, was specific in terms of less payment of overtime, therefore, it has prejudiced the defence of the petitioners and accordingly, it is submitted that the impugned order is bad in law.
3. Per Contra, the petition is vehemently opposed by counsel for the State. It is submitted that the State Government in exercise of power under section 20(1) of the Minimum Wages Act has appointed all Commissioners for Workmen's Compensation to exercise powers

under section 20 of the Minimum Wages Act and, therefore, Assistant Labour Commissioner has authority to try the complaint. It is further submitted that once a notice was issued to the petitioner, that minimum wages have not been paid, therefore, that would include the allegation of less payment of overtime, and thus no prejudice was caused to the petitioner.

4. Heard the learned counsel for the parties.
5. **The authority of Assistant Labour Commissioner to try a complaint file under section 20 of the minimum wages act.**
6. In order to justify the authority of the Assistant Labour Commissioner to try the complaint, the respondents have filed a copy of notification dated 6.11.2020 issued by the State Government published in the official gazette on the same day, which reads as under :

श्रम विभाग

मंत्रालय, वल्लभ भवन, भोपाल

भोपाल, दिनांक 6 नवम्बर 2000

क. एफ 4(ई) 4-2000-सोलह-ए.-मध्यप्रदेश राज्य को लागू हुए रूप में, न्यूनतम मजदूरी अधिनियम, 1948 (1948 का सं. 11) धारा 20 की उपधारा (1) द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य सरकार, एतद्वारा, कर्मकार प्रतिकर के समस्त आयुक्तों जां अधिसूचना क. एफ 4(ई)-8-96-16-ए, दिनांक 26 जून 1998 द्वारा सिविल न्यायालय के न्यायाधीश के रूप में नियुक्त किए गए मजदूरी की न्यूनतम दरों से कम भुगतान से उद्भूत समस्त दावों, जिनमें उक्त अधिनियम की धारा 20 की उपधारा (1) के अधीन ऐसे दावों से अनुषंगिक समस्त मामले सम्मिलित हैं, की सुनवाई करने और उनकी अपनी-अपनी अधिकारिता के क्षेत्र के भीतर शक्तियों का प्रयोग करने के लिए प्राधिकारी के रूप में नियुक्त करती है।

No. F 4(E) 4-2000-XVI-A.- In exercise of the powers conferred by sub-section (1) of Section 20 of the Minimum Wages Act, 1948 (No. XI of 1948), in its application to the State of Madhya Pradesh the State Government hereby appoint all Commissioners for Workmen's Compensation who were appointed vide Notification No. F-4-(E)-8-96-XVI-A, dated 26 June 1998 as a judge of a Civil Court to be the

authority to hear all claims arising out of the payment of less than the minimum rates of wages and including all matters incidental to such claims under sub-section (1) of Section 20 of the said Act and exercise the powers within the area of their respective jurisdiction.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
ओ. पी. शर्मा, उपसचिव.

7. Accordingly, another circular was issued by the Labour Department on 24.1.2004 thereby delegating the jurisdiction to Assistant Labour Commissioner. The respondents have also relied upon the notification dated 26.6.1998 by which all the Assistant Labour Commissioners of the State were appointed as Commissioner for Workmen Compensation and were assigned the duties to exercise the powers and perform all the duties under the Workmen Compensation Act.
8. Now, the only question for consideration is as to whether the notification dated 26.6.1998 by which the Assistant Labour Commissioners were given the powers and responsibility to perform the duties under the Minimum Wages Act, would confer any jurisdiction on the Assistant Labour Commissioner or not, and whether the subsequent notification dated 6.11.2000 would override the notification dated 26.6.1998 or not.
9. Section 20(1) of the Minimum Wages Act reads as under :-

20. Claims.—(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 Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as a Judge of a Civil Court

or as 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.

10. From plain reading of this section it is clear that the appropriate government may, by notification in the official gazette, appoint any Commissioner for Workmen's Compensation or any officer of the State Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner, or any other officer with experience as a Judge of the a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area arising out of payment of less than the minimum rates of wages.
11. Thus, it is clear that any Commissioner, or any officer not below the rank of Commissioner or any officer with experience as a Judge of Civil Court or as a stipendiary Magistrate, can be appointed as an authority to hear and decide the claims arising out of payment of less than the minimum rates of wages.
12. Now, the only question for consideration is as to whether Assistant Labour Commissioner would fall within any of the above mentioned categories or not ?
13. Accordingly, counsel for the respondents was directed to point out as to whether the rank of Commissioner would include Asistant Commissioner or not ?

14. The counsel for the respondents could not point out any provision of law which may indicate that the Assistant Labour Commissioner shall be at par with the rank of Commissioner. Counsel for the respondents also could not point out as to whether Assistant Commissioner is subordinate to Commissioner or is holding the similar rank. However, during the course of arguments, it was fairly conceded by Smt.Swati George, that Assistant Commissioner is subordinate to the Commissioner.
15. Under these circumstances, this court is of considered opinion that even by issuing a notification in the official gazette an Assistant Labour Commissioner cannot be assigned the duties or cannot be appointed as an authority to decide the claims arising out of payment of less than the minimum rates of wages and that is why it appears that the State Government issued another notification dated 6.11.2020, thereby appointing all Commissioners of Workmen Compensation as a judge of a civil court to be the authority to hear all claims arising out of payment of less than the minimum rates of wages.
16. Under these circumstances, this Court is of considered opinion that Assistant Labour Commissioner was not competent to decide the complaint filed by the Inspector under the Minimum Wages Act.

Whether the factum of payment of less overtime than the minimum rates of wages was the specific dispute or not ?

17. The complaint which was filed before the competent authority has been filed as annexure P/4 which reads as under :-

श्रीमान प्राधिकारी एवं सहायक श्रम आयुक्त सतना (म.प्र.)
न्यूनतम वेतन अधिनियम 1948 सहपठित म.प्र. न्यूनतम वेतन निर्धारण अधिनियम
1962 की धारा 20 के अंतर्गत नियुक्त प्राधिकारी

क्रमांक 36/20

शासन द्वारा निरीक्षक मनोज यादव न्यूनतम वेतन अधिनियम 1948 सहायक श्रमायुक्त सतना म.प्र.

प्रार्थी

विरुद्ध

ऋतुराज किशोर सिन्हा

3rd फ्लोर शिवनगर विजयनगर

जवलपुर म.प्र.

प्रतिप्रार्थीगण

प्रार्थी निम्नलिखित निवेदन करता है:-

1. यह कि प्रार्थी न्यूनतम वेतन अधिनियम 1948 जैसा कि म०प्र० राज्य में प्रभावशील है कि धारा 9 के अधीन निरीक्षक है जिसकी नियुक्ति श्रम विभाग म०प्र० की अधिसूचना क० 1 2 - नवम- (1) 86, इंदौर दिनांक 6 नवम्बर 2017 में की गई है जो म०प्र० राजपत्र में प्रकाशित हुई है।
2. सिक्वोरिटी एजेन्सियाँ अधिसूचित नियोजन है यह कि प्रतिप्रार्थी का संस्थान न्यूनतम वेतन अधिनियम 1948 सहपठित म०प्र० न्यूनतम वेतन निर्धारण अधिनियम 1962 के अंतर्गत अनुसूचित नियोजन की परिधि में आता है उक्त नियोजन में कार्यरत कर्मचारियों पर म०प्र० शासन की अधिसूचना क्रमांक 4 (बी)-1-2014-ए- सोलह, म.प्र. राजपत्र दिनांक 10 अक्टूबर 2014 के अधीन निर्धारित न्यूनतम वेतन दर प्रभावशील है।
3. यह की उपलिखित अधिनियम उपबंधों के प्रवर्तन हेतु प्रार्थी ने प्रतिप्रार्थी के संस्थान में नियोजित श्रमिकों के बयान लिपिबद्धकिये/रखे गये अभिलेखों का निरीक्षण दिनांक 12/12/19 को किया । व पाया कि संस्थान पर नियोजितों को नियोजक द्वारा पारिश्रमिक दिया गया है वह निर्धारित न्यूनतम वेतन दर से कम है। संबंधित निरीक्षण टीप परिशिष्ट - क पर एवं नियोजितों को अधिनियम के अधीन देय वेतन एवं नियोजक द्वारा किये गये भुगतान आदि का विवरण परिशिष्ट -ख पर संलग्न है। नियोजक को अवशेष राशि का भुगतान किये जाने के संबंध में सूचना पत्र दिया गया जो परिशिष्ट - ग पर एवं प्रतिप्रार्थी का उत्तर परिशिष्ट च पर संलग्न है।
4. यह कि नियोजक से संबंधित नियोजितों को परिशिष्ट - ख में वर्णित वेतन दर से भुगतान करने के लिये वैधानिक रूप से उत्तरदायी है। जो कि नियोजक द्वारा नहीं किया गया है। फलस्वरूप परिशिष्ट -ख में अंकित शेष मजदूरी की रकम का भुगतान संबंधित नियोजितों के प्रतिप्रार्थी के द्वारा अवशेष है। इस परिशिष्ट का आधार प्रतिप्रार्थी के संस्थान पर श्रमिकों के बयान के आधार पर निरीक्षण टीप है। जो मूलतः इस प्रार्थना पत्र के साथ संलग्न ।
5. यह कि समस्त संबंधित नियोजितों को जिनका उल्लेख परिशिष्ट -ख पर है बकाया भुगतान किये जाने की रकम रुपये 846294 मात्र होती है।
6. यह कि प्रार्थी निवेदन है कि उक्त अधिनियम की धारा 20 की उप धारा (2) के अधीन रकम का भुगतान करने हेतु निम्न निर्देश प्रसारित करने की कृपा करें।
अ- अवशेष वेतन जो नियोजितों को देय है कि राशि रुपये - 846294 है।
ब - क्षतिपूर्ति के आकार की राशि रु० 9309234/- है।

7. प्रार्थी निवेदन करता है कि यदि आवश्यक हुआ तो इस प्रार्थना पत्र में संशोधन एवं परिवर्तन किया जा सकेगा। प्रार्थी गंभीरता पूर्वक धोशित करता है कि उक्त लिखित कथन उसकी यथा सीघ्र जानकारी विचार तथा विश्वास के आधार पर सत्य है तथा इस पर दिनांक 23/10/20 को सतना (म०प्र०) में हस्ताक्षर किये।

साक्ष्य :-

संलग्न - परिशिष्ट - क, ख, ग, एवं घ

निरीक्षक

न्यूनतम वेतन अधिनियम 1948
श्रम संभाग सतना (म०प्र०)

18. Furthermore, the Labour Inspector was also cross examined and in his cross examination, he admitted that he had filed the complaint only in respect of overtime and in the complaint there is no reference of overtime, but in the complaint, it is alleged that the less wages to the rates of minimum wages were paid. Payment of less than the minimum rates of wages is a wide word and unless and until a specific allegation is pointed out, that under what head and for what reason it is being alleged by the Labour Inspector that payment of less than the minimum rates of wages were made by the employer, in the considered opinion of this court, it would cause great injustice and prejudice to the employer to take his defence in an effective manner.
19. During the course of examination, the employer cannot be taken by surprise. Since the complaint was filed in a vague manner and without there being any reference to payment of less overtime than the minimum rates of wages, this court is of considered opinion that the valuable right of the petitioner to take his proper defence was violated.
20. Under these circumstances, this Court is of considered opinion that the impugned the order cannot be affirmed on that ground also.

21. Now, the only question for consideration is as to whether this court should quash the order in its entirety, or the matter should be remanded back to the competent authority to decide the question afresh after giving full opportunity of hearing to the petitioner or not.
22. Minimum Wages act is a welfare legislation and has been brought into existence in order to avoid the exploitation of labourers. Accordingly, this Court is of considered opinion that instead of quashing the order in its entirety, it would be in the fitness of things that the matter is remanded back to the competent authority, i.e. Commissioner, Workmen Compensation to decide the question as to whether the overtime less than the minimum rates of wages was paid to 142 employees or not. It is further clarified that, in view of the specific admission made by the Labour Inspector in his cross examination, that the complaint is, in fact, confined to the overtime only and not in respect of payment of less than the minimum rates of wages, therefore, the complaint shall be treated only in respect of overtime, which was allegedly paid less than the minimum rates of wages. The petitioners shall be well within their right to file their reply to the said allegation.
23. Accordingly, the order dated 6.8.2021 passed by the Assistant Labour Commissioner Rewa Division Satna is hereby **set aside**. The matter is remanded back to the Commissioner. Workmen Compensation / competent authority to take up the complaint file by the Labour Inspector, annexure P/4, which shall be confined only to the allegation as to whether the petitioner had paid overtime less than the minimum rates of wages to 142 employees named in the impugned order or not.

24. The petitioner shall appear before the competent authority on 13.5.2024 and no fresh notice would be required.
25. Office is directed to return the record back to the Assistant Labour Commissioner, who, in his turn, shall forward the same to the Commissioner, Workmen Compensation for decision on merits. It is made clear that the Commissioner, Workmen Compensation shall decide the matter by conducting the proceedings *de novo* without relying upon the evidence of the witnesses recorded by the Assistant Labour Commissioner.
26. With aforesaid observation, the petition is finally disposed of.

(G.S. AHLUWALIA)
JUDGE

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