

SUPREME COURT OF INDIA

A.P. Srtc, National Mazdoor Union

Vs.

A.P. Srtc

(S.B. Majmudar and U.C. Banerjee JJ.)

10.08.2000

ORDER

1. No case is made out for our interference in this Civil Appeal on grant of special leave under Article 136 of the Constitution of India.

2. Learned Counsel for the appellant vehemently contended before us that according to him, the Payment of Wages Act, 1936 did not apply in the facts of the present case and that point was not considered by the High Court. Unfortunately for him, neither in the List of Dates nor in the Civil Appeal, any such averment is even whispered that this submission was urged before the High Court, but the same was not considered. It has to be kept in view that the question about non-applicability of the aforesaid Act is a mixed question of law and fact, i.e., whether the employees concerned who went on an illegal strike at the relevant time, were drawing wages of more than Rs. 1600/- per month or not. That question required evidence to be led. Consequently, unless this point was argued for consideration of the High Court, no such contention can be raised for the first time before us.

3. Learned Counsel for the appellant also submitted that in the Memo of Writ Petition it was clearly mentioned and that was the only point which could have been argued. That may be so, but as the judgment under appeal does not mention this point and in the Civil Appeal there is no such averment that this point was urged and not considered, no such question arises for our consideration. Even apart from that, if it was mentioned in the Civil Appeal that this point was urged and not considered, the appellant would have been relegated to the remedy of review proceedings. That occasion has not arisen for the appellant in the peculiar facts of this case as mentioned above. Without expressing any opinion on the merits of this controversy between the parties, we close these proceedings. The Civil Appeal is disposed of.

4. No costs.