

ALLAHABAD HIGH COURT

Jaswant Sugar Mills Ltd.

Vs.

Sub-Divisional Magistrate

Civil Misc. Writ No. 331 of 1959

(V.G. Oak, J.)

24.03.1960

ORDER

V.G. Oak, J.

1. This petition under Article 226 of the Constitution is directed against a decision of an Authority under the Minimum Wages Act. Messrs, Jaswant Sugar Mills Ltd., Meerut are the petitioner here.
2. The writ petition has arisen under the following circumstances. Several employees of the petitioner filed applications under the Minimum Wages Act. Their case was that, the employer was bound to provide weekly rests to the employees with wages in accordance with Rules made under the Minimum Wages Act. In spite of repeated demands by the employees, the employer refused to allow weekly rests. The employees, therefore, made claims for payments in lieu of weekly rests, and for compensation.
3. There were in all 90 such applications for payment in lieu of weekly rests and compensation. All these claims were opposed by the employer on a variety of grounds. All the pleas raised in defense by the employer were overruled by the Sub Divisional Magistrate, Meerut acting as the Authority under the Minimum Wages Act. Ho passed a consolidated order on 30-12-1958 allowing the various employees certain sums in lien of weekly rests and Rs. 5/- as compensation in each case. The present petition by Messrs Jaswant Sugar Mills Limited, Meerut is directed against the order dated 30-12-1958.
4. Initially, there were as many as 91 respondents in the writ petition. Several names were repeated. By a subsequent amendment, the number of the respondents has now been reduced to 20. Respondent No. 1 is the Sub-Divisional Magistrate, Meerut sitting as the Authority under the Minimum Wages Act. The remaining 19 respondents are the employees who succeeded before

the Authority under the Minimum Wages Act.

5. Mr. S.N. Misra appearing for the employees raised a preliminary objection that, a single writ petition against a number of employees is not maintainable. He further pointed out that, there were as many as 90 cases before the Sub Divisional Magistrate. It was, therefore, urged by Mr. Misra that, a single writ petition challenging the decision in 90 cases is not maintainable.

6. Reliance was placed upon a decision by a Division Bench of this Court reported in *Umashankar Roy v. Divisional Superintendent, Northern Railway, Lucknow*¹, It was held in that case that, a writ petition can be filed only by one, unless the rights of different claimants were joint and inseparable. In case of a common right it is not open to the persons who are affected by a common order to file a joint writ petition. In that case four persons filed a joint writ petition on a common ground. It was held by the learned Judges that, a single writ petition by the four persons was not maintainable.

7. In *Umashankar Roy's case*, 1959 All WR (HC) 664 : (AIR 1960 Allahabad 366) there was a single writ petition by four persons. In the present case Messrs. Jaswant Sugar Mills Limited are the sole petitioner. It is true that there are several respondents in the case. But there is only one petitioner. So the circumstances of the present case are the reverse of those, which obtained in *Umashankar Roy's case*, 1959 All WR (HC) 664 : (AIR 1960 Allahabad 366). No authority was brought to my notice to the effect that, one person cannot file one writ petition against a number of persons on a common ground.

8. This writ petition is directed against the order dated 30-12-1958 passed by the Sub Divisional Magistrate, Meerut. The same order is to govern all the cases before the authority. If this decision dated 30-12-1958 is quashed, such an order will automatically govern all the connected cases. This is a petition for a writ in the nature of certiorari. It is directed against a certain decision by a Tribunal. I do not see any difficulty in entertaining this petition, although the decision under consideration governs several cases. The points of law involved in all these cases are the same. It will, therefore be convenient to dispose of all these cases by a single writ petition. I overrule the preliminary objection, and hold that a single writ petition is maintainable.

9. It was urged for the petitioner that, no notification under Section 3 of the Minimum Wages Act has yet been issued. This contention is not correct. The State Government issued a notification under Section 3 of the Minimum Wages Act on 20-10-1954 prescribing the minimum rates and wages. The notification is published on page 432 of the Annual Review of Activities, Department of Labour, U. P. 1954.

10. Another contention on behalf of the petitioner was that the learned Magistrate had no jurisdiction to entertain claims under Section 20 of the Minimum Wages Act. This contention is also not correct. The learned Magistrate has pointed out that he find authority under Government

Notification No. 9060, dated 27-11-1957 to entertain such claims. The learned Sub Divisional Magistrate, Meerut had therefore jurisdiction to entertain the claims by the employees.

11. The main contention of the learned counsel for the petitioner was that there is no rule under the Minimum Wages Act, 1948 (Act No. XI of 1948) providing for weekly

¹1959 All WR (HC) 664 : (AIR 1960 All 366)

rests with payment. The impugned order was, therefore, without jurisdiction. In order to appreciate the contention of the parties with reference to this ground, it is necessary to examine the general scheme of the Minimum Wages Act.

12. Minimum Wages Act, 1948 (Act No. XI of 1948) is a Central Act. Section 3 of the Act provides for the fixing of minimum, rates of wages. Section 13 provides for fixing hours for a normal working day etc. Section 13 runs thus :

"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."

13. Section 20 deals with claims. Section 23 provides for penalties and procedure. Section 30 of the Act confers powers on the appropriate Government to make rules. Clause (f) of sub-section (2) of Section 30 contemplates a provision for a day of rest in every period of seven days and for the payment of remuneration in respect of such day.

14. In exercise of the powers conferred by Section 30 of the Minimum Wages Act, 1948, the State Government has framed Rules. These are U. P. Minimum Wages Rules, 1952. Rule 23 of the U. P. Minimum Wages Rules is important. It deals with weekly holidays, Rule 23 runs thus :

(23) Unless otherwise permitted by the State Government no employee shall be required or allowed to work in a scheduled employment, on the first day of the week (hereinafter referred to as the said day) except when he has had or will have a holiday for the whole day on one of the five days immediately before or after the said day for which he shall receive payment equal to his average daily Wages during the preceding week :

Provided that the weekly holiday may be substituted by another day :

Provided further that no substitution shall be made, which will result in any employee working for more than ten days consecutively without a holiday for a whole day.

(2) Where in accordance with the provision of sub-rule (1), any employee works on the

said day and has had a holiday on one of the five days immediately preceding it, the said day shall, for the purposes of calculating his weekly hours of work, be included in the preceding week.

Explanation - For the purposes of this rule, "week" shall mean a period of seven days beginning at midnight on Saturday night."

15. It is common ground that, the petitioner did not allow the 19 respondents weekly holidays with wages. The 19 respondents may be divided into two classes. Some are employed on monthly wages. Others are employed on daily wages. The petitioner filed on 11-3-1960 two lists giving the classification of the 19 respondents. Annexure-A of the affidavit dated 11-3-1960 contains a list of nine respondents employed on daily rates. Annexure-B of the same affidavit contains a list of ten respondents employed on monthly basis. It will be convenient to refer to these two sets of employees as employees of list A and employees of list B. Parties are agreed that in the case of employees who work on daily wages, weekly rest was allowed. But wages were not paid for such weekly rests. In the case of employees working on monthly basis, no weekly rest was allowed. The question is whether on these facts the Tribunal was wrong in allowing the 19 employees wages in lieu of weekly rests and compensation.

16. We have seen that Section 13 of the Minimum Wages Act (hereinafter referred to as the Act) provides for fixing hours for a normal working day etc. Section 13 contemplates directions, to be issued by the appropriate Government on various matters. Clause (a) of Section 13 deals with the number of hours of work in a normal working day. We are not concerned with clause (a) in the present case. Clause (b) of Section 13 deals with a day of rest and for the payment of remuneration in respect of days of rest. Clause (c) deals with payment for work on a day of rest.

17. Under Rule 23 of Minimum Wages Rules, the State Government has made provision for weekly holidays. Although the rules have been framed under Section 30 of the Act, there is no difficulty in looking upon R. 23 as a direction by the State Government as contemplated by Section 13 of the Act. Parties are not agreed about the interpretation of R. 23 of Minimum Wages Rules. Both the parties relied upon a decision of Bombay High Court reported in *Port of Bombay v. Authority under the Payment of Wages Act*², In that case certain employees of the Port of Bombay approached the Authority under the Payment of Wages Act for wages for Sundays. The Authority allowed the claim by the employees. The Port of Bombay took up the matter before the Bombay High Court by two civil applications. Those applications were allowed; and the order passed by the Authority was set aside. It was held that, R. 23 of the Minimum Wages Rules did not recognize such a claim for wages for Sundays. Rule 23 mentions payment for a certain day. The question arises whether the payment was to be for Sunday or for some other day. On this point it was observed on page 629 thus :

" 'For which', must, in our opinion, refer to the holiday mentioned in the earlier clause."

18. The first sentence of R. 23 of the Minimum Wages Rules is rather involved. But the general plan of R. 23 seems to be clear. Rule 23 lays down that, every employee should get a weekly holiday. Normally the weekly holiday would be on Sundays. But in special cases the weekly holiday may be on a day other than Sunday. Rule 23 makes provision for payment with respect to a holiday. The principle is that although an employee does not actually work on a holiday, he should still receive wages for that day. For applying that principle, it should make no difference whether the actual holiday happens to be Sunday or some other day of the week. The employee should

²(1957) 1 Lab LJ 626

get wages whether his holiday happens to be Sunday or some other day of the week.

In my opinion, R. 23 lays down that, every employee shall have a weekly holiday with wages.

19. The petitioner conceded that, he did not grant the 19 respondents weekly holidays with wages. Rule 23 was contravened by the petitioner in the case of all the 19 respondents. But the nature of the contravention differed in the two classes of the employees. In the case of the nine employees of list A, the default lay in non-payment of wages for the weekly holidays. In the case of the 10 respondents of list B, the default lay in not allowing weekly holidays at all.

20. On comparing Section 13 of the Act with R. 23, we find that certain matters contemplated by Section 13 have been covered by R. 23. Clause (b) of Section 13 contemplates a day of weekly rest and remuneration in respect of such days of rest. This matter has been covered by R. 23. Clause (c) of Section 13 contemplates payment for work on a day of rest. This matter is not covered by R. 23. Rule 23 does not lay down the procedure, if an employer declines to grant a weekly holiday to his employees. Under Rule 23, the nine employees of list A were entitled to receive payments for the days of rest. But R. 23 does not provide for additional remuneration for work done by the ten employees of list B throughout the month. It may be that the employer was liable to a penalty under Section 22 of the Act for not granting the ten employees of list B a weekly holiday as required by R. 23. But there is no provision in R. 23 for additional remuneration claimed by these ten employees of list B.

21. The claims by the employees were made under Section 20 of the Act. Originally, Section 20 of the Act merely provided for claims arising out of payment of less than minimum rates of wages. In the present case there is no grievance about payment of less than the minimum rates of wages. So the claims in question might not have been maintainable under Section 20, as it originally stood. But Section 20 of the Act has been amended by Act XXX of 1957. By this amendment, the scope of Section 20 of the Act has been widened. Section 20 of the Act now runs thus :

"20. (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 a stipendiary Magistrate to be the Authority to hear and decide for any specified areas all claims arising out of payments 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.

"(2) Where an employee has any claim of the nature referred to in sub-section (1), the employee himself, or any legal practitioner or any official of a registered trade union authorized 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) :

Provided that every such application shall be presented within six months from the date on which the minimum wages or other amount became payable :

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

(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 employees 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) If, the Authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or

(b) if the authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(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 C. P. C. (V of 1908) for the purposes 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 XXXV of the Cr. P. C. (V of 1898)."

22. It will be seen that, in the present form, Section 20 covers claims under clauses (b) and (c) of Section 13 of the Act. But Section 13 of the Act merely enables the appropriate Government to issue certain directions. In the absence of the necessary directions, Section 13 by itself does not create any liability against an employer. The liability can arise only under Rule 23 of Minimum Wages Rules. We have seen that under Rule 23, the employer was liable to pay the employees remuneration for days of rest. But under Rule 23 the employer was under no obligation to pay employees additional remuneration for work done throughout a month.

23. Mr. S.N. Misra relied upon sub-section (3) of Section 20 of the Act to support the demand made by the ten employees of list B. The material part of sub-section (3) of Section 20 of the Act runs thus :

".....the Authority may direct -

(i)

(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....."

24. Clause (ii) of sub-section (3) of Section 20 contemplates directions of two kinds. The first direction may be for the payment of amount due to the employee. The second direction is for payment of compensation. Before a direction can be made by the Authority under the first part of clause (ii) of sub sec. (3) of Section 20, an employee has to establish that a certain amount is due to him. In the present case the ten employees of list B are claiming extra remuneration on the ground that they worked throughout the month without a break. We have seen that, the Act and the Rules do not contain any provision for such additional remuneration. In the absence of any such provision in the Act and the Rules, it cannot be said that such extra remuneration is due to the employee. The Authority had, therefore, no jurisdiction to grant relief to the ten employees of list B under the first part of clause (ii) of sub-section (3) of Section 20 of the Act. We have seen that, although there is no provision for extra remuneration, these ten employees have succeeded in establishing a breach of R. 23. The breach having been established, they would be entitled to receive compensation under the second part of clause (ii) of sub-sec, (3) of Section 20 of the Act.

25. The position, therefore, is that, the nine employees of list A were entitled to receive payment for the weekly rests under Rule 23. In the case of these nine employees, the impugned order is proper. But in the ease of the ten employees of list B, the Tribunal had no jurisdiction to grant wages or additional remuneration. It was open to the Authority to direct payment of compensation on the ground of breach of R. 23. Since the petition partly succeeds and partly fails, parties may be directed to bear their own costs.

26. The petition is partly allowed. The order of the Sub Divisional Magistrate, Meerut, dated 30-12-1958 will stand, so far as it is in favour of the nine respondents enumerated in Annexure-A to the affidavit dated 11-3-1960. The order will also stand in so far as court-fee charges, counsel's fee, witnesses' expenses and compensation were granted to the ten respondents enumerated in Annexure-B to the affidavit dated 11-3-60. But the order dated 30-12-1958 is quashed only in so far as amounts in lieu of weekly rests were granted by the authority to the ten respondents enumerated in Annexure-B to the affidavit dated 11-3-1960. Parties shall bear their own costs in this Court.

Petition partly allowed.