

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : WAGES

W.P. (C) 15993/2004

Reserved on: 14.07.2006

Date of Decision: August 18, 2006

M/s Poly Plast Pvt. Ltd.
6/3, Kirti Nagar Industrial Area,
New Delhi - 15

..... Petitioner

Through : Mr. Rajesh Goyal, Advocate

versus

Shri Shiv Prasad
C/o Mazdoor Vikas Samiti (Regd.)
18/50 azad Marg, Azad Nagar,
Bagh Khare Khan,
Delhi-110007

..... Respondent

Through : Mr. M.N. Singh, Advocate

JUSTICE SHIV NARAYAN DHINGRA:

1. By this writ petition the petitioner has challenged the order dated 18.4.2002 passed by the claim authority under the Minimum Wages Act, 1948 (for short the Act) whereby the claim authority directed that the difference between the minimum wages amounting to Rs.2544/- along with ten times compensation of Rs.25,440/- be paid to the applicant Shiv Prasad Yadav within 30 days.

2. The brief facts are that claimant Shiv Prasad Yadav filed an application before the claim authority under section 20 of the Act that since September 1999 to February 2000 he was being paid Rs.424/- less than the minimum wages applicable to him. He was working as machine man but he was being paid Rs.2348/- while the minimum wages for machine man as per notification were Rs.2772/-. The management had been taking work of machine man from him but paying minimum wages of a helper to him. When he requested the management to pay him minimum wages of a machine man, management threatened to throw him out of service. He made a complaint in this regard to the Labour Department. Labour Inspector visited the site and found him working as machine man on the machine. Despite directions of the Labour Inspector to pay him wages of a machine man, minimum wages of a machine man were not paid to him. He, therefore, requested for minimum wages along with interest and costs.

3. A notice of the application of Workman was sent to the petitioner. The order sheets of the proceeding placed on record by the petitioner show that despite notice petitioner or its Authorized Representative did not appear before the authority on 21.9.2000. The claim authority on that day fixed the case for 5.12.2000 for ex parte proceedings. On 5.12.2000 Workman was present and management/ petitioner was again not present and a notice for proceeding ex parte was directed to be sent to petitioner. Claim Authority fixed the case for 8.3.2001 for taking evidence of workman by affidavit. Petitioner's A.R appeared before the claim authority on 8.3.2001. Claimant/Workman filed his affidavit and the case was fixed on 21.5.2001. On 21.5.2001 an application for setting aside ex parte order was made by the petitioner's representative which was allowed subject to costs of Rs.500/- and with a condition that on next date of hearing the petitioner shall appear in person at 11 a.m along with the written statement. The case was adjourned to 27.9.2001. On 27.9.2001 petitioner was not present. Authorized representative of the petitioner prayed for adjournment. Claim authority fixed 2.11.2001 as last opportunity for filing written statement and appearance of the petitioner. On 2.11.2001 while claimant was present, petitioner and his representative were absent and the case was again proceeded ex parte against the petitioner and the next date was fixed 31.1.2002. On 31.1.2002 the claimant was present. Authorised representative of petitioner was present and authorised representative made an application for setting aside ex parte order, the claim authority reserved the order. On 18.4.2002 an order was passed by the claim authority on the claim petition and on 18.12.2002 claim authority passed an order on the ex parte application of the petitioner.

4. It is stated in the petition that no notice to show cause was given by the authority before awarding compensation to the respondent and without assigning any reason authority had awarded compensation which is ten times the minimum wages. In the list of dates filed by petitioner it is stated that on 27.9.2001 though the AR of the petitioner management was present still the authority passed the order that the petitioner was absent. This statement is wrong because the authority marked the presence of the AR while marking the absence of the petitioner in person. It is stated that on 31.1.2002 that though management representative was present the authority passed an order that petitioner did not present. This contention is also wrong because authority has marked present of AR of the petitioner but has specifically recorded that petitioner himself was not present. It is also recorded that AR of the petitioner made an application to set aside the ex parte order. It is further stated that while application for setting aside ex parte proceedings was pending an order was reserved by the authority on the application but the Authority passed the final order on 18.4.2002 whereby the management was directed to pay amount along with ten times of compensation in 30 days. This contention is also not supported by record. Record shows the application for setting aside ex parte order was simply kept on record. Workman was not asked to file reply. Authority could not have reserved order on application without giving opportunity to workman for reply. Order was reserved on main application of Workman, to which no reply was being filed.

5. I have perused the entire record filed by the petitioner. It would be seen that at the complaint of the workers dated 2.8.1999, a Labour Inspector had visited the factory. His report shows that respondent was working on the machine as machine man

and he was getting wages of Rs.2348/- while Ram Ratan, Supervisor and Ram Safar Yadav, Foreman were being paid wages Rs.2772/-. It is only after this inspection, respondent/ Workman made an application for payment of difference in minimum wages and his actual wages. The petitioner has placed on record the appointment letter issued to the respondent workman which shows that in 1985 he was appointed as a helper. Petitioner is justifying payment of minimum wages of a helper to the workman because he was initially appointed as helper. No doubt, respondent/Workman was initially appointed as helper but it cannot be assumed that after 15 years of his service he continued to work as helper in the factory. This is proved from the inspection made by the Labour Inspector and his report that Workman was found working on the machine as machine man.

6. The proceedings of the Competent authority would show that the petitioner was not sincere before the Competent authority and was proceeded ex parte twice. The Competent authority may not be right in insisting upon personal appearance of some one from the management of the petitioner but still proceedings show that even written statement was not filed despite there being seven hearing between 21.9.2000 and 31.1.2002. Either adjournments were sought or none appeared and the management was proceeded ex parte. The claim of the workman was for a petty amount of Rs.2540/-. It was a perfectly justified claim. The workman had been working with the petitioner for 15 long years and it could be expected from the petitioner that keeping in view long association of the workman at least minimum wages for the work being done by him were paid. Instead of paying him minimum wages of a machine man, the petitioner was paying him wages of a helper which was sheer exploitation of the workman. When workman filed claim before the claim authority, petitioner did everything to frustrate the efforts of claim authority to decide the claim within reasonable time. Twice petitioner was proceeded ex parte, no written statement was filed even during one and a half year.

7. Claim authority is not supposed to conduct proceedings like an ordinary civil court nor C.P.C. is applicable in such proceedings. _roceeding are to be conducted following broad principles of natural justice. When no reply was filed by the petitioner despite giving opportunities and the petitioner remained elusive despite the fact that affidavit of evidence has been filed by the workman, I consider that claim authority was justified in passing order on the claim of the workman. It would be preposterous to ask a workman to appear before the claim authority repeatedly for a claim of Rs.2540/-. Every time workman appears before the claim authority, he loses wages paid to him for that day because he was not on duty on that day. I consider that if such a latitude is given to employer and a claim application for minimum wages or difference in minimum wages is allowed to linger on, no workman would file claim before the claim authority. Management has money power and management can engage counsels for appearing before claim authority as well as before High Court but the workman is handicapped in this respect. Instead of paying dues of Rs.2348/- to the workman, management preferred paying fees to the Advocates to contest the claim of the workman even if it have to pay much more to the counsel than justified wages of the workman. The attitude of the management in denying to the workman his justified and legal minimum wages and frustrating efforts of claim authority by non filing reply and none appearance are

condemnable. I consider that the claim authority should have decided the claim of the workman immediately after affidavit was filed by the workman and management had not filed written statement denying the claim. Many opportunities given by the claim authority for filing reply and taking second application for setting aside ex parte on record was unjustified. The claim authority should not act like a regular civil court and should summarily decide the claims of the workmen by giving one or two opportunities to the management.

8. I consider that the writ is misconceived and mis-adventure of the management, who instead of paying due wages to the workman, had tried to deprive and harass him before the claim authority.

9. I dismiss this writ petition with costs. The amount already deposited be released in favour of the workman. Cost is quantified at Rs.10,000/-.

Sd/-
SHIV NARAYAN DHINGRA,J