

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JANUARY, 2022

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

WRIT PETITION NO.8730 OF 2016 (L-MW)

BETWEEN:

SMT.PARVATHAMMA
AGED 45 YEARS,
W/O SRI KRISHNE GOWDA,
R/AT KALLURU YEDAHALLI,
ILWALA HOBLI,
TALUK:MYSURU

... PETITIONER

(BY SRI V.S.NAIK, ADVOCATE)

AND:

1. THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
DEPARTMENT OF FOREST & ENVIRONMENT,
ARANYA BHAVANA, MALLESHWARAM,
BENGALURU - 560 003.
2. THE RANGE FOREST OFFICER,
SOCIAL FORESTRY, ARANYA BHAVANA,
MYSURU - 570 001.
3. THE ASST. LABOUR COMMISSIONER
AND THE AUTHORITY UNDER THE PAYMENT
OF WAGES ACT, 1936,
MYSURU DIVISION,
MYSURU - 570 001.

... RESPONDENTS

(BY SRI SHIVANANDA D.S., AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, SEEKING CERTAIN RELIEFS.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Sri.V.S.Naik, learned counsel for petitioner and Sri.Shivananda D.S., learned AGA for respondents, have appeared in-person.

2. In this writ petition, petitioner has assailed the order passed by the third respondent at Annexure-A, dated 28.01.2015 in case No.ಸಕಾಲಮೈ/ವೇಪಾಕಾ/ಸಿಆರ್-8/14-15 and the order dated 28.08.2015 vide Ref.No.ಸಕಾಲಮೈ/ವೇಪಾಕಾ/ಸಿಆರ್-8/14-15 at Annexure-'D'.

3. The facts of the case are stated as under:-

It is stated that the petitioner was working under the second respondent as a Watcher. The petitioner's husband Sri.Krishne Gowda was also working as a Watcher. Both of

them were working continuously. It is stated that the second respondent did not pay the wages to the petitioner with effect from 21.01.2012 onwards. Similarly, petitioner's husband Sri.Krishne Gowda was also denied wages from 03.04.2012 onwards. Both of them were requesting the second respondent to pay them the wages regularly and the request was not considered by the second respondent.

It is also averred that the petitioner was due in a sum of Rs.78,708/- (Rupees Seventy-Eight Thousand Seven Hundred and eight only) towards wages from January 2012 to 28.02.2013 at the rate of Rs.5622.14/- (Rupees Five Thousand Six Hundred and Twenty-Two and fourteen paise only) being the monthly wage. The petitioner's husband Sri.Krishne Gowda was due in a sum of Rs.67,464/- (Rupees Sixty-Seven Thousand Four Hundred and Sixty-Four only) towards unpaid wages from the second respondent.

The petitioner and her husband filed an application before the Assistant Labour Commissioner and the Authority under the Payment of Wages Act, 1936 (hereinafter referred to as 'Act'). A joint application was filed. The application was registered as CR-S of 2014-15 by the third respondent. On behalf of the applicants 7 witnesses were examined as PWs.1 to 7 and 3 documents were marked as Exs.P1 to P3. The respondents did not lead any evidence and no documents were marked.

It is further stated that the third respondent allowed the claim petition only in respect of petitioner's husband Sri.Krishne Gowda by order dated 28.01.2015 holding that the said Sri.Krishne Gowda is entitled to claim wages on the basis of minimum wages notified by the Government i.e., at Rs.3727.92/- (Rupees Three thousand seven hundred and twenty seven and ninety two paise only) per month and further held that Sri.Krishne Gowda is entitled for a sum of Rs.40,385.80/- (Rupees Forty Thousand Three Hundred and Eighty Five and eighty paise only) towards 10

months wages and for delay in not paying the wages due to the workman, the second respondent was held liable to pay Rs.16,500/- as compensation and in all, it was held that Sri.Krishne Gowda is entitled for a sum of Rs.60,613.72/- (Rupees Sixty Thousand Six Hundred and Thirteen and Seventy two paise only). However, the claim of the petitioner was rejected on the ground that the petitioner did not sign the claim application and as such she cannot maintain the application claiming unpaid wages from the second respondent.

Aggrieved by the rejection, petitioner filed an application under Section 18 of the Act read with Section 151 CPC to recall the order dated 28.01.2015 insofar as it relates to her case and permit her to rectify the defect in the claim application filed by her under Section 16 of the Act.

The petitioner also filed another application under Section 5 of the Limitation Act to condone the delay in filing the recalling application. The third respondent issued

an Endorsement rejecting the claim made by the petitioner vide application dated 28.07.2015 holding that the Authority under the Act is not empowered to recall the order and hence, the petitioner was advised to take up the matter in appeal for redressal of her grievance.

Under these circumstances, left with no other alternate or efficacious remedy, petitioner has invoked the writ of jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

4. Sri.V.S.Naik, learned counsel for petitioner submits that order / endorsement issued by the third respondent is liable to be quashed since the third respondent has committed errors which are apparent on the face of records.

Next, he submitted that the third respondent ought to have seen that not signing the claim application by the petitioner is a defect which is curable and the Authority under the Act has got powers to permit the claimant to

cure the defect and thereafter prosecute the claim application in accordance with law.

A further submission was made that it is only a technical mistake which is curable and the Authority under the Act is empowered to entertain the application after the defect is cured. However, the third respondent failed to exercise powers vested in it. It is submitted that in any view of the matter the Payment of Wages Act being a beneficial piece of legislation, the weaker section i.e., the Workmen cannot be denied the legal entitlement by applying technicalities while adjudicating the claim applications.

Counsel submitted that petitioner is an illiterate and belonging to the lowest cadre i.e., Watcher working under the second respondent is denied of her earned wages. In view of the same, the issue of endorsement and non-consideration of petitioner's claim cannot be sustained. Hence, the same is liable to be quashed and the matter requires remand.

Lastly, he submitted that a direction may be issued to the third respondent - The Assistant Labour Commissioner to permit the petitioner to sign the claim petition and to direct the third respondent to adjudicate the dispute in accordance with law.

5. Sri.Shivananda D.S, learned Additional Government Advocate justified the endorsement.

Next, he submitted that petitioner should be diligent in prosecuting the claim. He also submitted that apparently the petitioner did not sign the claim application. Therefore, the third respondent - The Assistant Labour Commissioner is justified in not considering the claim of the petitioner.

Counsel vehemently urged that the third respondent in extenso referred to the oral and documentary evidence on record and rightly concluded that the claim petition of the petitioner cannot be considered. He also submitted that once the order is passed, there is no provision to

recall the order and permit the petitioner to agitate the matter in the same Court. Therefore, he submitted that petitioner has to approach the appropriate forum to challenge the order passed by the Assistant Labour Commissioner at Annexure-'A'.

Lastly, he submitted that petitioner has not made out any good grounds to exercise the power under Articles 226 and 227 of the Constitution of India . Accordingly, he prayed that the petition may be dismissed.

6. Heard the contention urged on behalf of the parties and perused the Annexures with care.

The short point which arises for consideration is whether the third respondent - the Assistant Labour Commissioner is justified in not considering the claim of the petitioner?

7. The facts have been sufficiently stated. It is not in dispute that the petitioner and her husband moved a joint application for payment of wages before the

Assistant Labour Commissioner. The claim petition was partly allowed and the claim of the petitioner was not entertained on the ground that she has not signed the claim application. It is also not in dispute that permission was sought to rectify or cure the defect. But the same was not accorded.

Sri.V.S.Naik, submitted that non-signing the application is only a technical mistake and the same is curable. I find considerable force in the said submission. The Authority under the Act could have permitted the petitioner to sign the application and thereafter decided the claim.

While addressing the argument learned AGA submitted that an appeal under Section 17 of the Payment of Wages Act, 1936 is maintainable.

By way of answer, Sri.V.S.Naik, learned counsel submitted in the instant case, the claim petition itself is not considered by the Assistant Labour Commissioner on

technical ground that the claim application is not signed by the petitioner. Hence, the question of filing an appeal before the appropriate forum does not arise.

I have considered the rival contentions with care. The appeal under Section 17 will be filed when the claim is adjudicated and the amount is awarded. But in the instant case, no amount is awarded to the petitioner. Hence, question of filing appeal does not arise.

It is needless to say that Payment of Wages is a beneficial piece of enactment. The workmen cannot be denied the legal entitlement by applying technicalities while adjudicating the claim application more so, when the defect is simply curable.

In the present case, the petitioner has not signed the claim application and the same is curable by permitting her to sign the same. Hence, I have no hesitation in holding that the non-consideration of the claim petition is totally

unsustainable. In my considered view, the matter requires a remand.

8. Accordingly, the writ petition is **allowed**. The order dated 28.01.2015 in Case No. ಸಕಾಆಮೈ/ವೇಪಾಕಾ/ಸಿಆರ್--8/14-15 passed by - The Assistant Labour Commissioner- the third respondent at Annexure-'A' is quashed insofar as claim of the petitioner is concerned.

The matter is remitted to the third respondent - The Assistant Labour Commissioner. The Assistant Labour Commissioner is hereby directed to permit the petitioner to sign the claim application and adjudicate the dispute in accordance with law within a period of six months from the date of receipt of a copy of this order.

In view of quashing of Annexure-'A', the endorsement dated 28.08.2015 vide Ref No. ಸಕಾಆಮೈ/ವೇಪಾಕಾ/ಸಿಆರ್--8/14-15 at Annexure-'D' issued by

The Assistant Labour Commissioner -the third respondent
is hereby quashed.

**Sd/-
JUDGE**

VMB

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