

Before the Authority under the Minimum Wages Act, 1948, Circle 1, Gurgaon

Bibha Devi

.....Worker/Applicant

Versus

M/s Modelama Exports Ltd.

.....Employer/Respondent

Written Arguments On Behalf Of The Worker/Applicant.

1. The reply filed by the Respondent is ill conceived and badly researched. It has been severally stated by the Supreme Court of India across a plethora of judgments that technicality and minor discrepancy in the form of institution of suits and petitions cannot be allowed to defeat the purpose of Substantial law. Procedural law cannot take away what Substantial law has conferred and cannot create any right which is not available in Substantial law.
2. The respondent says that the Petitioner has filed the application against M/s Modelama Exports whereas the name of the Respondent Company is M/s Modelama Exports Ltd so the present claim is bad in law and not maintainable. This Ld. Authority can understand that the assertion of the Respondent is naïve and ludicrous and based on mere technicality.
3. The respondent then goes on to say that the Claim is barred by limitation and we agree that some incidents of claim are indeed past the period of limitation, but not all. The claims for the months of February to April, 2016 are well within Limitation. As for the months prior to February, though they are past the period of Limitation, the Supreme Court has time and again, across numerous Judgments has enumerated that the question of

Condonation of Delay should be handled liberally and wherever there is sufficient cause as to the delay, it should be condoned.

4. The Respondent states that the Petitioner has not mentioned any plausible reason nor has furnished any application for the Condonation of delay. What the Respondent is ignorant about is that the petitioner has indeed mentioned the point and reasons for Condonation of delay. Whereas, we also tried to tender the application of Condonation of delay on 19.10.2016, on the day of framing of the issues, the respondent asserted that the written application of Condonation should have been filed at the time of filing of the Petition, to this the Ld. Authority became skeptical to allow the application. The Hon'ble High Court of Punjab and Haryana propounded in **Om Prakash and Ors vs Dogar Das Sachdeva, (2000) 125 PLR 25**, has propounded that any formal application for Condonation of Delay is not necessary and Oral applications/request is sufficient. Annexure PJ- 1 is attached here for perusal. Other judgements for perusal are mentioned as follows.

- I. **Perumon BhagvathyDewaswom vs Bhargavi Amma(Annex PJ- 2)**
- II. **Ram Sumiran v DDC (Annex PJ 3)**

5. The respondent is again using technicality when it says that the form of the Application is not as per form VII of the Punjab Minimum wages Rules, 1950. There is minor discrepancy between the Petitioner's Application and the form under Punjab Minimum wages Rules, 1950. The respondent is only trying to divert the Authority's attention and also trying to divert attention from the rampant noncompliance of minimum wage regulations.

6. Whereby in the Minimum Wage Notification of the State of Haryana it is specifically mentioned that bifurcation of the salary of the Employee into components is not allowed, denial of the Respondent to acknowledge statutory legal provisions is preposterous. Even if the worker was getting some allowances over and above her basic salary, under the notification her Basic Wage should be at par with the Notification as various other benefits like PF and ESI are linked to the Basic Wage.

7. The Respondent says that if the working of the Employee is not at par or satisfactory and efficient then the years of experience in determining Minimum Wages is immaterial. We find this preposterous and based on unjustified and unreasonable fancies.
8. When the Respondent says that it did not know and that the worker also did not inform about the years of experience, the question which can be asked is that how, then the respondent hired the worker on the semi- skilled category whereas the general practice is to appoint a new worker as an unskilled 'Helper'. The Experience to be counted is in the entire Industry and not for any particular Company, performing the same function. This is made abundantly evident in the annexures of the Petition.
9. In the para 8 of the reply, shows clear ignorance of law when the Respondent goes on to say that "even the minimum wages can be split". There is no need for any actual promotion in hierarchy in case of Minimum Wages Act, when a worker has gained 3 years of experience the Worker is deemed to be promoted in Skill sub category B.
10. The Respondent, as already mentioned in the petition was paying the wage of the worker in two parts and not through the single pay- slip which gives us the hint that the Respondent was extracting illegal overtime work from the worker. Why was there a need to pay the worker incentive separately through the bank account without providing any slip or proof of the same to the worker is beyond understanding and the Respondent also fails to explain the same in its reply.

Therefore in the interest of justice it is important that:

- I. The Ld. Authority hold this Petition/ Application as maintainable and proceed with a proper trial of the issues.
- II. The Authority Condone the Delay as to the incidents of claim which have fallen past the period of limitation.

III. The Authority also ask the Respondent all the pay- slips and the date Appointment letter of the Petitioner for the Authority's perusal.

It is prayed accordingly.

Date: 02.11.16

Place: Gurgaon

Worker/Petitioner

**Through ARs
Shreya Sarkar/Kumar Ravishankar
Garment and Allied Workers Union,
Plot no. 1, Jwala Mill,
Gurgaon**