GAHC010186992023

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4965/2023

MONOWAR HUSSAIN
SON OF LATE BAHIAT ULLAH, UNARMED SECURITY GUARD, ERSTWHILE WIMCO LTD. LTD., DHUBRI, NOW MANAGED BY ITC LTD., RESIDENT OF A.M.CO.ROAD, P.S. AND DISTRICT- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM, REVENUE AND DISASTER MANAGEMENT DEPARTMENT, JANATA BHAWAN, DISPUR, GUWAHATI- 781006

2:THE DEPUTY COMMISSIONER
DHUBRI
DISTRICT DHUBRI
PINCODE- 783301
ASSAM

3:THE CERTIFICATE OFFICER
OFFICE OF THE DEPUTY COMMISSIONER
DHUBRI
PINCODE- 783301

4:THE ASSISTANT LABOUR COMMISSIONER CUM AUTHORITY
UNDER THE PAYMENT OF WAGES ACT
1936
DHUBRI
PINCODE- 78330

5:ITC LTD.
BEING REPRESENTED BY ITS MANAGING DIRECTOR
HAVING ITS REGISTERED OFFICE AT VIRGINA HOUSE

37
J.L.NEHRU ROAD
KOLKATA- 700071

6:SRI AMITENDRA MOHAN DUTTA
MANAGER OF ERSTWHILE WIMCO LTD. LTD.
DHUBRI
NOW MANAGED BY ITC LTD.
AM CO. ROAD
DHUBRI
P.O. ASSAM MATCH CO.ROAD
DHUBRI
ASSA

Advocate for the Petitioner : MR. D DAS, MR. K MOHAMMED,A M AHMED,MR R SENSUA

Advocate for the Respondent : GA, ASSAM, MR D KHAN (R-5),MS M HAZARIKA (R-5),SC, REVENUE

Linked Case : WP(C)/5398/2023

ITC LTD
A PUBLIC LIMITED COMPANY HAVING ITS REGISTERED OFFICE AT VIRGINIA HOUSE
37 JAWAHARLAL NEHRU ROAD
KOLKATA-700071
INDIA
REPRESENTED BY ITS SENIOR FINANCE MANAGER (EAST)
MS. DEBOLINA MOOKERJEE
R/O 11A
GOKUL BARAT STREET
KOLKATA-700012
DIST- KOLKATA
STATE-WEST BENGAL

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
LABOUR WELFARE DEPARTMENT
DISPUR
GUWAHATI-781006

2:THE CERTIFICATE OFFICER
OFFICE OF THE DEPUTY COMMISSIONER
DHUBRI

3:THE ASSISTANT LABOUR COMMISSIONER
-CUM-AUTHORITY UNDER THE PAYMENT OF WAGES ACT
DHUBRI
PIN-783301

4:MONOWAR HUSSAIN
S/O LATE BAHIAT ULLAH
R/O A.M. CO. ROAD
PS AND DIST- DHUBRI
ASSAM

Advocates for the petitioner(s) : Mr. R Sensua
In WP(C)No.4965/2023

Advocates for the petitioner(s) Ms. M Hazarika
In WP(C)No.5398/2023 Senior Advocate
Mr. D Khan

Advocates for the respondent(s) : Mr. K Gogoi
Addl. Senior Govt. Advocate

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

09.12.2025

Heard Mr. R Sensua, the learned counsel appearing on behalf of the petitioner in WP(C)No.4965/2023. This Court has also heard Mrs. M Hazarika, the learned Senior Counsel assisted by Mr. D Khan, the learned counsel appearing on behalf of the petitioner in WP(C)No.5398/2023. Mr. K Gogoi, the learned Additional Senior Govt. Advocate, Assam who appears on behalf of the State of Assam.

2. The learned counsel, who represents the petitioner in WP(C)No.4965/2023 represents the private respondent in WP(C)No.5398/2023 and the learned Senior Counsel, who represents the petitioner in WP(C)No.5398/2023 represents the private respondent in WP(C)No.4965/2023.

3. Both the writ petitions are interconnected. It is relevant to take note of that the petitioner in WP(C)No.4965/2023 was earlier employed in a company in the name and style of WIMCO Limited, which pursuant to a scheme of arrangement was taken over by the petitioner in WP(C)No.5398/2023. Certain disputes arose as regards non-payment of the dues of the petitioner in WP(C)No. 4965/2023. Pursuant to the said disputes, a Conciliation Proceedings was initiated wherein the petitioner in WP(C)No.4965/2023 as well as the representative of the petitioner in WP(C)No.5398/2023 were duly represented. In the said conciliation proceedings, the representative of the petitioner in WP(C)No.5398/2023 raised an issue that the petitioner in WP(C)No.4965/2023 was retrenched with effect from 01.01.2016. However, taking into account that there was no materials placed, it was recorded in the minutes of the Conciliation meeting held on 06.02.2017, that the representatives of the petitioner in WP(C)NO.5398/2023 had given up the claim that the petitioner in WP(C)No.4965/2023 was retrenched.

4. The only issue, therefore, which arose to be decided in the said Conciliation Proceedings is as regards the payment of the arrear salary. It was decided in the said minutes of the meeting held on 06.02.2017 that the arrear of salary would be paid to the petitioner in WP(C)No.4965/2023 within a period of one month by the management of the petitioner in WP(C)No.5398/2023.

5. It so happened that disputes arose as regards as to whether payments were made to the petitioner in WP(C)No.4965/2023 by the management of petitioner in WP(C)No.5398/2023, *inasmuch as,* Mrs. M. Hazarika, the learned Senior Counsel appearing on behalf of the petitioner in WP(C)No.5398/2023 submits that her client had duly offered the said amount which the petitioner in WP(C)No.4965/2023 had refused.

6. Be that as it may, in view of the disputes, an application was filed for payment of the arrear salaries w.e.f.01.01.2016 to 31.05.2022. The learned Assistant Labour Commissioner-cum-Authority under the Payment of Wages Act, 1936, (for short, '*the Act of 1936*'), Dhubri, who is the respondent No.3 in WP(C)No.5398/2023 passed an order dated 15.07.2022 thereby directing the petitioner in WP(C)No.5398/2023 to pay an amount of Rs.82,98,330/- within 15 days from the date of issuance of the said order, failing which, proceedings would be initiated under the provisions of the ***Bengal Public Demands Recovery Act, 1913.*** It is under such circumstances, WP(C)No.5398/2023 was filed before this Court and this Court vide order dated 18.09.2023 had stayed the order dated 15.07.2022 and all other consequential proceedings. The said interim order continues from time to time.

7. It is also relevant to take note of that WP(C)No.4965/2023 was filed by the petitioner seeking enforcement of the order dated 15.07.2022 which is impugned in WP(C)No.5398/2023.

8. This Court had duly heard the learned counsels appearing on behalf of parties on the legality and validity of the impugned order dated 15.07.2022.

9. Mr. R Sensua, the learned counsel appearing on behalf of the petitioner in WP(C)No.4965/2023 duly submitted that the order so passed vide the order dated 15.07.2022 does not require any interference taking into account that the said order has been passed in accordance with the provisions of Section 15 of the Act of 1936. The learned counsel further submitted that the petitioner in WP(C)No.5398/2023 ought not to have approached this Court taking into account that there was an alternative and efficacious remedy provided in terms with Section 17 of the Act of 1936. Mr. R Sensua, the learned counsel also submitted that in order to bypass the requirement of depositing 100% of the determined amount, the petitioner in WP(C)No.5398/2023 had approached.

10. *Per contra*, Mrs. M Hazarika, the learned Senior Counsel appearing on behalf of the petitioner in WP(C)No.5398/2023 submitted that the facts in the instant case are duly admitted. What is required is the application of facts to the law, more particularly, Section 15(3) of the Act of 1936. Referring to the judgment of the Supreme Court in the case of ***M/s. Godjrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Ors***.

reported in ***(2023) 109 GSTR 402***, the learned Senior Counsel submitted that when the facts are duly admitted and what is required is an application of law, the question of remitting the matter to the statutory authorities ought not to be done by the Court, while exercising the jurisdiction under Article 226 of the Constitution.

11. The learned Senior Counsel further submitted that a perusal of Section 15(3) of the Act of 1936 would categorically show that what is the compensation that can at best be imposed upon, if there is a delay in making payment, taking into account the instant proceedings relates to delay in payment and not a case coming within the ambit of deduction of any amount. The learned Senior Counsel submitted that the maximum compensation can be Rs.3000/- and the minimum to be Rs.1500/- and not more than that.

12. The learned Senior Counsel drawing a reference to the order dated 15.07.2022 submitted that the respondent No.3 contrary to Section 15(3) of the Act of 1936 had imposed a penalty 10 times the amount determined as delayed wages with effect from 01.01.2016 to 31.05.2022, which is not permissible as per the Act of 1936. Further to that, the penalty provisions as stipulated in Section 20 of the Act of 1936 can only be tried by a Court and not by the respondent No.3 i.e. the Assistant Labour Commissioner-cum-Authority under the Act of 1936, Dhubri.

13. Having heard the learned counsels appearing on behalf of the parties, the point for consideration which arises in both the writ petitions is as to whether

the Assistant Labour Commissioner-cum-Authority under the Act of 1936, Dhubri was justified in passing the impugned order dated 15.07.2022.

14. Upon hearing the learning counsels appearing on behalf of the parties, there is no issue as to the quantum payable on account of the delayed wages with effect from 01.01.2016 to 31.05.2022. What is being assailed in the order dated 15.07.2022 is the imposition of penalty of 10 times of the delayed wages to the tune of Rs.82,95,330/-. In that regard, this Court finds it pertinent to take note of Section 15(3) of the Act of 1936, which being relevant is reproduced hereinunder:

> "*15(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees:*
>
> *Provided that a claim under this Act shall be disposed of as far as*

practicable within a period of three months from the date of registration of the claim by the authority:

Provided further that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just manner:

Provided also that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or

(c) the failure of the employed person to apply for or accept payment."

15. A perusal of the above-quoted provision reveals that the authority as notified by the appropriate government in terms with Section 15(1) of the Act of 1936, have been authorized to entertain application filed under Sub-section (2) of Section 15 of the Act of 1936 and after giving a hearing to the employer or other person responsible for payment of wages under Section 3 of the Act of 1936, had been empowered to pass the following orders:

(i). Refund to the employed person of the amount deducted or direct payment of the delayed wages.

(ii). Payment of compensation is also segregated into two parts: One pertains to deduction of the amount and the other pertains to payment of delayed wages.

In the case of deduction of the amount, compensation can be directed to be paid not exceeding 10 times the amount deducted, and in the case of delayed payment of wages, the maximum compensation that can be awarded is Rs.3000/- and the minimum is Rs.1500/-.

16. It is further stipulated in Sub-section (3) of Section 15 of the Act of 1936 that the adjudication so carried out is without prejudice to any other penalty to which the employer or other person is liable under the Act.

17. In the backdrop of the above, if this Court now takes up the order dated 15.07.2022, it would be seen that on account of delayed payment of wages with effect from 01.01.2016 to 31.05.2022, an amount of Rs.8,29,533/- was determined. In addition to that compensation has been directed to be paid to the tune of Rs.3000/-.

18. It, however, surprises this Court as to how the penalty to the tune of ten times of the delayed earned wages could have been imposed by the Assistant Labour Commissioner-cum-Authority under the Act of 1936, Dhubri, taking into account that the imposition of penalty is stipulated under Section 20 of the Act of 1936, and the power to try offenses in respect to such penalty is conferred upon the Court and not the Assistant Labour Commissioner-cum-Authority under the Act of 1936.

19. Considering the above, this Court, therefore, is of the opinion that the imposition of penalty by the respondent No.3 in the impugned order dated 15.07.2022 was contrary to Section 15(3) of the Act of 1936. It is, therefore, the further opinion of this Court that as the instant matter pertains to wrong application of the provisions of law and in view of the judgment of the Supreme Court in the case of ***Godrej Sara Lee*** (supra), it would not be proper on the part of this Court to remit the matter to the statutory authorities. Accordingly, this Court, therefore, passes the following directions:

(1). The petitioner in WP(C)No.5398/2023 is directed to deposit an amount of Rs.8,29,533/- + Rs.3000/- = Rs.8,32,533/- before the Registry of this Court on or before 19.01.2026.

(2). Upon such deposit being made, the petitioner in WP(C)No.4965/2023 is given the liberty to file an application before the Registry for release of the said amount and the Registry upon carrying out the necessary verifications shall disburse the said amount to the bank account of the petitioner in WP(C)No.4965/2023.

20. List these matters again on 10.02.2026 for an update.

JUDGE

Comparing Assistant