

BEFORE THE AUTHORITY UNDER THE MINIMUM WAGES ACT, 1948, CIRCLE -I,
GURGAON.

Bibha Devi

APPLICANT

V/S

M/s Modelama Exports Ltd.
Gurgaon

RESPONDENT.

REPLY ON BEHALF OF M/s MODELAMA EXPORTS LTD. TO THE CLAIM APPLICATION U/S
20 OF THE MINIMUM WAGES ACT, 1948.

PRELIMINARY LEGAL OBJECTIONS

1. That the present claim petition against the answering management is not maintainable in the present form and is without jurisdiction.

② That the applicants had filed their claim against respondent named M/s Modelama Exports and accordingly the Authority had issued the notice in Form IX for appearance on the claim application to M/s Modelama Exports Ltd. The claim application is against the company/establishment named M/s Modelama Exports and not against the answering respondent i.e. M/s Modelama Exports Ltd., hence the present claim is without jurisdiction, bad in Law and is not maintainable.

③ That the present Claim Application under consideration is barred by Limitation. That the alleged applicant / claimant have demanded wages for the period July 2013, Nov 2014 to July 2015, Oct 2015 & Jan 2016 and according to the law as per Sec 20 Sub Sec (2) the claim application shall be presented within 6(six) months from the date on which the minimum wages [or other amount] became payable, whereas the above mentioned application dated nil under consideration before your good Authority was filed on ..1.0.18.16..... The applicant neither mentioned plausible valid reason for delay nor has been supported by any

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application/affidavit in this regard and no order has been passed by the Authority condoning the delay period before dealing the above application. Therefore present application liable to be dismissed in limine on this ground alone.

4. That the Claim Application under consideration not Filed in Form VII. That the workman/applicant has not filed the claim application before Authority in prescribed format "Form VII" as per The Punjab Minimum Wages Rules, 1950. The Hon'ble Judicial Courts have also held that the Claim Application should be filed in proper Form/format, giving complete details of permanent address of the worker/applicant. The above mentioned Claim application is legally deficient as it has not been filed in Form VII also the said claim application is not verified by the applicant, which is necessary and must according to the law. This application needs to be dismissed without delay as it has not been filed in the prescribed format as such the present application/claim be dismissed and filed.

5. That the Claim Application under consideration filed through ARs Kumar Ravishankar/Monilisa having Authority under their name and the same is presented before the Authority with the Claim, but the same is invalid as the same is not filed as per the prescribed format "Form VIII" as per The Punjab Minimum Wages Rules, 1950, hence the above ARs are not eligible to file/appear the present claim in absence of the valid Authority, hence the present application be dismissed and filed on this score alone.

6. The applicants have not come to the court with clean hands and the claim / application has been filed for malafide considerations and had concealed the actual facts that when she join the establishment she had issued the appointment letter in which the company had mentioned the monthly salary/wages, the applicant had agreed on the same and acknowledge her acceptance the same was much higher than the minimum wages and always getting the wages more than the minimum wages till she left the establishment of her own by way of resignation followed by acceptance of Full and final as such the provisions of minimum wages are not attracted in the matter, only after acceptance of the same when the applicant doesn't filed the equivalent job elsewhere and under the influence had filed the present application on the wrong, false and concocted facts to enrich in the illegal manner which is reflected by contents of the claim application hence the present claim not to be considered and be filed and dismissed.

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absurd
acceptance
of the
fact of
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of
Minimum
Wage
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7. That the Claim/Application is Malicious/Vexatious. The alleged workers/ claimants have filed the above Claim Application with Malafide intentions and at the behest of someone else as reflected in evidence. Therefore the present claim should be immediately dismissed being malicious / vexatious.

In the light of the submissions made above, it is humbly prayed in the interest of justice and proper adjudication of the matter, the application be answered in favour of the respondent and dismiss and filed the claim filed by the applicants holding that claim is not maintainable, barred by limitation, not in proper form/format, bad in law and is without jurisdiction on account of the detailed reasons given above.

Without prejudice to the above legal contentions our parawise reply to the statement of claim is given as under :-

MOST RESPECTFULLY SHEWETH: -

1. Contents of para no 1 are admitted to the extent that the applicant had joined the establishment as final checker on 01/11/2014, rest of para is wrong, incorrect and hence denied. The applicant was initially appointed on probation basis for six months and the same would be extended further for 3 months and will be confirmed there after considering the working and conduct of the worker. The applicant had worked with the respondent in 2013 only for month or two on trial basis and had left the establishment. It is vehemently denied that the respondent had terminated the applicant on 27/04/16, but in actual the applicant has tendered her resignation voluntarily of her own and had asked for full and final dues on which the management had simply accepted the same and had given her full an final dues too. The applicant had accepted the full and final dues by way of acknowledgment. The respondent management had made aware about the actual facts with supporting documents in the demand notice and accordingly the Authority had given his report as such there is on pendency of the demand notice as on date.
2. Contents of para no 2 are admitted to the extent that the applicant was directly employed by the company, rest of para is wrong, incorrect and hence denied. The applicant had never paid wages lower than the minimum wages as prescribed/notify by the Govt. The applicant try to impose false allegation on the respondent management and the same is also reflected through this para as the

applicant herself stated the above version as per salary slips issued by the company but fails to note that the salary fixed or approved by the company was 6800 /- and the same is higher than the minimum wages i.e. 5769.50 /- in such case when the wages/salary is higher than the prescribed minimum wages the provisions of minimum wages are not attracted. The applicant had filed the present application only to harass the management and to make pressure to fetch the monetary benefit in illegal manner and the same is malicious /vexatious. Details of the wages fixed and the minimum wages for that period/year are annexed herewith as Annexure "A".

3. Contents of para 3 are correct as mentioned, but the applicant fails to consider/understand the same it is correct that recognition of the experience gained by the works, more the experience, higher the wages, but if the working of the worker is not at par or satisfactory and is not able to get efficiency in the work what he/she is doing form last many years either even then the same would get the wages of the higher rank, the answer is no, moreover the applicant had joined the company in semi skilled "A" category and after the experience of three years may be treated under the category semi skilled "B" considering the above facts/data/working. The applicant had joined the establishment only on 01/11/2014 and left on 27/04/16 with in 1.5 year approx how could be considered for above rank and the above provisions are attracted/applicable in case where the worker is getting the minimum wages not in case where he/she gets the salary/wages higher than the prescribed minimum wages.
4. Contents of para no 4 are admitted to the extent that the applicant was employed as final checker rest of para is wrong, incorrect and hence denied. The applicant was under the semi skilled "A" category not in skilled job.
5. Contents of para 5 are correct to the extent that the applicant was earlier been employed as checker, but on trial basis, it's on the workman or the person who applied for the job for which grade/post applied for not on the employer to employee an unskilled person to the post of skilled job, the company notify the jobs required any employee/person qualified for that job may apply for the same after (interview if) considerable company hire the same.
6. Contents of para 6 are wrong, incorrect are denied. The worker/applicant when had approached the respondent management for job in Nov 2014 she had not

Had knowledge of the EOP

disclose about her experience at all and had concealed the facts regarding previous working as such the respondent company is not at all aware about the experience of the applicant.

- 7/ Contents of para 7 are wrong, incorrect are denied. The applicant had annexed her salary slips issued to her and as per the salary slips issued there is already mentioned that she used to get the salary of RS 6800 /- and the same is more than the minimum wages in Nov 2014. The table under this para reflects the wrong data as the same is manipulated and used by the applicant as per her own convenience. In 11 columns in the table since July 2013 till April 2016 the applicant used to get the wages more than the minimum wages and the same is proved by the salary slips as well.
 - 8/ Contents of para 8 are wrong, incorrect are denied. The applicant is not aware about the bifurcation of the wages even the minimum wages can be split, moreover if an employee is getting more than the minimum wages the provisions of minimum wages are not attracted.
 9. Contents of para 9 are wrong, incorrect are denied. There is no such practice or procedure followed or adopted by the respondent as alleged by the applicant in this para.
 - 10/ Contents of para 10 are wrong, incorrect are denied. It is correct that the applicant had approached the respondent management for the job of checker and had worked as checker only for two months on trial basis and had left the establishment after a gap the applicant had again approached for job and was hired for the job of final checker as fresh, the applicant was never promoted as alleged. The hierarchy of the checker and final checker are of same level even the working is also same, moreover checker, final checker, Meas/checker are in same category that is semi skilled "A" and are eligible for the wages under this category only. The applicant is getting the salary more than the above grade. Checker, final checker, meas checker are names given by the respondent only to define the place where the same has to work daily, as such there is no illegality on behalf of the respondent management.
- a) Contents of sub para a are wrong, incorrect and are denied. The applicant was well aware of the post or designation on which is used to work, as the

applicant had approached the management for job of checker/final checker both are same, moreover the same is also reflected and confirmed by the salary slip for the month of Nov 2014 issued to the applicant.

- b) The applicant had joined the establishment under the category of semi skilled "A" and had worked only for 1.5 year approx, the advantage of promotion may be considered after the three years of working with the employer under the same grade only.
- c) The applicant was never promoted as alleged she had joined as final checker and had left with the same designation, hence in absence of the promotion the question of to providing the salary of higher grade is not attracted.
- d) Contents of sub para d are wrong, incorrect and are denied.
- e) Contents of sub para e are wrong, incorrect and are denied. No promotion was ever given to the applicant in her tenure of service.
- f) Contents of sub para f are wrong, incorrect and are denied. It is correct that "After 3 years of experience in semi skilled "A" the employee would be deemed categorized as semi skilled "B", but the applicant fails to consider/mentioned that the company requires the checker/final checker and the applicant had approached the respondent for job as per requirement and its on the employee to mention the experience at the time of joining and if the job is not appropriate or not equivalent what he/she is searching for may not join the company, without disclosing by the employee, employer not able to know about the experience or working of the employee who approached for the job.
- g) Contents of sub para g are wrong, incorrect and are denied.

11. Contents of para 11 are wrong, incorrect are denied. It is correct that as per Sec 13(1) of minimum wages Act, 1948 the workers are entitled to a day of rest in every period of seven days and the same is to be allowed to all employees and for payment of remuneration in respect of such days of rest." and the same was also provided to the applicant not even to applicant to each and every employee worked with the company it's a provision and the respondent company is a Law binding company and used to work with the national and international buyers who are very much strict in compliances of the statutory compliances otherwise the company may face tune of the same. The applicant tries to put false

allegation on the respondent only to make pressure to fetch monetary benefit in illegal manner.

12. Contents of para 12 are wrong, incorrect are denied. The respondent company tries to avoid the do work on overtime, but even if required always pay the worker double the rate of the wages as also admitted by the applicant in this para.
13. Contents of para 13 are wrong, incorrect are denied. There is no such practice or procedure adopted by the respondent management as alleged by the applicant, if this is across Gurgaon why the applicant fails to mention the name of such Industries.
14. Contents of para 14 are correct that as per Sec 12 of the minimum wages Act, 1948 "the employer shall pay to every employee engaged in the scheduled employment under him wages at the rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without deductions except as may authorized within such time and subject to such conditions as may be prescribed" , but in this matter/case the employer is paying the salary/wages more than the minimum wages prescribed by the Govt. as such the provisions of the minimum wages are not attracted in the present matter, hence there is no illegality by the employer under the Act.
15. Contents of para 15 are correct that Nonpayment of minimum wages if an offence as per Sec 22 of the Act and companies that fail to pay minimum wages, are liable under the Act, but if the company is paying more than the minimum wages that is not a offence its obligation of the employer towards employee.
16. Contents of para 16 are correct that judgments' of Supreme Court have also held nonpayment of minimum wages as serious violation of labour rights.
17. Contents of para 17 sub para a & b are wrong, incorrect are denied. The applicant had worked with the company on her own will and had also left as per her will there was no compulsion of doing job with the company as there is always much demand of checker/final checkers in the garment industry. The applicant had presented the story only to cover/hide her illegal motive and it is not believable that workers are not aware about the revision of minimum wages each and every workers now a days are very much aware and had knowledge about each and

every aspect related to the workers, moreover the companies also mentioned the changes in the minimum wages as and when made by the Govt. on the notice board.

Prayer clause is wrong and hence denied the applicant used to get the wages more than the minimum wages there is no issue of dues left with the answering respondent and the applicants had also not approached the authority with clean hands, hence the present application is bad in law, be answered in favour of the respondent and against the applicants on account of the detailed reasons given above. The applicant is not entitled to any relief under the Act.

In the light of the submissions made above, it is humbly prayed that the present application be answered in favor of the answering respondent and against the applicants holding that the application is not maintainable, bad in law and is without jurisdiction on account of the detailed reasons given above. Since there is basis at all in the present application and the same is also proved by the documents provided by the applicant itself, as such the applicants are not entitled to any relief for the detailed reasons given above.

Sayju Yadav
Respondent

Verification:

Verified that the contents of the paras of the preliminary legal objections and the reply on merits are based on the true facts and are correct one. Nothing has been concealed therefrom. Verified on this 7th day of Sep 2016 at Gurgaon.

Sayju Yadav
Deponent.

ANNEXURE "A"

Table towards payment and Minimum wages in that period.

Year	Month	Salary fixed/paid	Minimum wages
2014	November	6800	5769.5
	December	6800	5769.5
2015	January	6800	5942.75
	Feb	6800	5942.75
	Mar	6800	5942.75
	April	6800	5942.75
	May	6800	5942.75
	June	7200	5942.75
	July	7200	5942.75
	August	7200	5942.75
	Sep	7200	5942.75
	Oct	7200	5942.75
	Nov	8100	7980
	Dec	8100	7980
2016	January	8100	8375.01
	Feb	8100	8375.01
	Mar	8100	8375.01
	April	8100	8375.01

Wages difference for the period of January 2016 to April paid to the applicant as arrear copy of the same is also enclosed herewith as the notification was received in April 2014 regarding the minimum wages.

Santosh Yadav