

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5126 OF 2015

M/s Auto Cars,
14 Km. Stone, Aurangabad-Paithan Road,
Chittegaon village, Tal.Paithan,
Dist. Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra,
(Through Dy.Commissioner of Labour)
Maljipura, Station Road, Aurangabad,
2. Videocon Group Employees Union
(Through its President/General Secretary),
N-4, Cidco, Aurangabad.

RESPONDENTS

Mr.Ashok Patil with Mr.B.R.Kaware, Advocate for the petitioner.
Mr.T.K.Prabhakaran, Advocate for respondent No.2.
Mrs.V.A.Shinde, AGP for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

RESERVED ON : 31/07/2015

PRONOUNCED ON : 14/08/2015

J U D G M E N T :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the order dated 28/01/2015

passed by the Assistant Commissioner of Labour and Authority under the Minimum Wages Act, 1948, (in short, Act of 1948) Aurangabad, in Appl. (MWA) No.1/2013.

3. The submissions of Mr.A.V.Patil on behalf of the petitioner is as under :-

- a. The petitioner is a partnership firm engaged in the business of transportation, ware house services and logistics.
- b. The petitioner has its own buses, cars, tractors and forklifts.
- c. The petitioner also hires different types of vehicles for rendering transportation services to its customers.
- d. Respondent No.2 is the Employees' Union which represents the claimant workers, who are mentioned in the annexure at page 36 to 63.
- e. The said Union submitted a charter of demands on 16/01/2013 to the petitioner claiming wage rise benefits and other long term benefits.
- f. Several meetings were conducted for exploring an amicable settlement.
- g. The conciliation proceedings failed and hence the competent authority referred the dispute to the Industrial Tribunal at Aurangabad bearing Ref.(IT) No.5/2013.
- h. The respondent/Union moved Application (MWA) No.1/2013 before the competent authority under the Minimum Wages Act, 1948.
- i. By the impugned judgment dated 28/01/2015, the competent authority allowed the application and directed the petitioner to

pay the difference of minimum wages as per the statement Exh. 1 to each of the applicant members for the period 01/07/2013 to 31/10/2013.

- j. An amount equal to the difference of minimum wages was directed to be paid as compensation as per Exh.1.
- k. The Union misrepresented before the competent authority that all the drivers mentioned in the list were skilled 'A' workers and were in fact falling within the category of skilled 'B' workers.
- l. The impugned order could not have been passed since the petitioner does not fall within the definition of "Public Transport" and therefore the impugned judgment is unsustainable.
- m. When charter of demands were pending before the Industrial Tribunal in the reference case, the competent authority under the Minimum Wages Act, could not have taken up the issue as regards the wage structuring of the said employees.
- n. Section 2(g) and 2(h) of the Motor Transport Workers Act, 1961 would indicate that none of the claimants were entitled for the difference as was granted by the competent authority.
- o. A notification dated 20/07/2010 was issued by the Industries, Energy and Labour Department by which the minimum rates of wages applicable to the employees employed in the scheduled employment viz. employment in public motor transport, thereby revising the basic minimum rates of wages per month in relation to Zone I and Zone II mentioned in the Schedule thereunder.
- p. The total emoluments paid to the claimant workers under a settlement is much higher than the minimum rates of wages

prescribed by the notification dated 20/07/2010.

- q. About 10 persons amongst the claimants have taken Voluntary Retirement Scheme (VRS) and cannot stake any claim before the competent authority
- r. Reliance is placed upon the judgment of the Apex Court in the case of Airfreight Limited Vs. State of Karnataka and others, AIR 1999 SC 2459 and the judgment of the Karnataka High Court in the matter of Sunrise Industries Vs. Sunrise Industries Unit Workers Association, 2013 (136) FLR 488 = 2013 LLR 60.

4. Mr.Prabhakaran, learned Advocate appearing on behalf of the respondent No.2 Union submits as under :-

- a. The petitioner has obtained registration certificate to work a Motor Transport Undertaking by application dated 24/06/2014.
- b. Certificate of registration is granted on the same date 24/06/2014.
- c. The said certificate is issued with retrospective effect from 2006.
- d. On one single date 24/06/2014, the Chief Inspector, Motor Transport Workers Act, Maharashtra, BKC, Bandra-East, Mumbai - 51 has issued the said certificate and renewed it till 31/12/2014.
- e. The said authority has then renewed the said certificate on 10/12/2014 from 01/01/2014 to 31/12/2015.
- f. The mystery with regard to the above stated certificate of registration is undisputedly linked with the pending claim of

the workers in Application (MWA) No.1/2013.

- g. The definition u/s 2(h) of the Act of 1948 will clearly indicate that the claim of the workers was sustainable.
- h. It is conceded that all the workers fall in skilled 'B' and not in skilled 'A' in Zone No.II, whereby the amount assessed by the competent authority will be reduced as there is a difference of Rs.200/- in the basic minimum rates of wages in between skilled 'A' and skilled 'B'. Similarly, there would be a difference in the special allowance payable to them.
- i. Section 2(33) of the Motor Vehicles Act, 1988 (for short, Act of 1988), defines a private service vehicle.
- j. Section 2 (35) of the Act of 1988 defines public services.
- k. The competent authority has considered the contentions of both the sides and has arrived at a proper conclusion.
- l. The compensation payable to each of the employees is specifically arrived at in Exh.1 to the impugned judgment.
- m. Section 25 of the Act of 1948 prevents Contracting Out.
- n. Section 20(3)(i) prescribes penalty to the maximum of 10 times of the difference in the wages paid and yet, the competent authority has granted compensation only to the extent of one times the difference payable, which is reasonable.
- o. The jurisdiction of the appropriate authority to deal with non payment of minimum wages is restricted only for a duration of 6 months at a time.
- p. Reliance is placed upon the judgment of the Kerala High Court in the matter of Ponnamalan Vs. Authority under Minimum Wages Act, 1993(II) CLR 494, judgment of the Madras High Court in the matter of Management of Senthil Motor Service, Tiruppur vs. Deputy Commissioner of Labour, Coimbatore and

another, 2009 (II) CLR 71, judgment of the Karnataka High Court in the case of Krishna Flour Mills and others Vs. Commissioner of Labour in Karnataka and others, 1998 II CLR 929.

5. I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.

6. The petitioner has stated that its business includes transportation of trucks, containers, goods transport trucks, tempos, buses, mini buses, tractors, forklifts, etc. It also provides drivers to its customers. Some vehicles are owned by the petitioner and some are hired or are owned by the customers of the petitioner.

7. The petitioner provides services of drivers and vehicles to its client companies to bring the employees from Aurangabad to the factory premises and vice-a-versa as a part of the conveyance services. Direct and indirect work force is engaged by the petitioner.

8. Section 2(g) and 2(h) of the Act of 1961 defines motor transport undertaking and motor transport worker as follows :-

“2(g) “motor transport undertaking” means a motor transport undertaking engaged in carrying passengers or goods or both by

road for hire or reward, and includes a private carrier ;

(h) “motor transport worker” means a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time-keeper, watchman or attendant, but except in section 8 does not include –

- (I) any such person who is employed in a factory as defined in the Factories Act, 1948 (63 of 1948) ;*
- (II) any such person to whom the provisions of any law for the time being in force regulating the conditions of service of persons employed in shops or commercial establishments apply ;*

9. A “motor transport undertaking” therefore is such an undertaking which engages in the business of carrying passengers or goods or both by road for hire or reward, and includes a private carrier. The petitioner has obtained registration as a 'Motor Transport Undertaking'. This, therefore, means that a vehicle offered on rental basis and used as a mode of transporting or carrying passengers or workers, for hire or reward for offering such services, can be said to be a motor transport undertaking. The petitioner is, therefore, squarely covered by this definition.

10. A “motor transport worker” is a person who is employed in a motor transport undertaking directly or through an agency as is defined in Section 2(h) hereinabove. The Act of 1961 u/s 1(4) applies to every “motor transport undertaking” and “motor transport workers”. The decision of the Supreme Court in the case of Government Transport Service Vs. S.L.Mishra, 2002(3) LLJ 265, is therefore applicable to this case.

11. Section 2 (h) of the Act of 1948 defines “wages” and also indicates those payments which are not to be included in the definition of 'wages', which is as under :-

“wages” means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, [and includes house rent allowance], but does not include--

(i) the value of--

(a) any house-accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social

insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge;"

12. Section 2(i) of the Act of 1948 defines an employee as under :-

"2(i) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the [Union]."

13. It is, therefore, apparent that the wages mean all remunerations which are capable of being expressed in terms of money and which are payable to an employee as per the terms of the

contract of employment and includes house rent allowance as well.

14. Section 2(33) of the Motor Vehicles Act, 1988 defines a “Private Service Vehicle” and section 2(35) defines a “Public Service Vehicle”, which read thus :-

“2(33) “private service vehicle” means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;

2(35) “public service vehicle” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage ;”

15. Considering the effect of Section 2(g) of The Act of 1961 r/w Section 2(35) of the Act of 1988, it has to be construed that the petitioner is in the business of Public Motor Transport and hence, the notification dated 20/07/2010 would be applicable to the petitioner.

16. It is clear from the facts of this case that the petitioners are using their vehicles or hired vehicles for carriage of passengers, who

are employees of different client companies. The petitioner charges these client companies for hiring its services and its vehicles. It is, therefore, a business for profit that is being conducted by the petitioner for hire or reward as is defined under the definition. I am, therefore, of the view that the competent authority has rightly considered that the petitioner operates its business in the public transport arena and is therefore covered by the notification dated 20/07/2010 issued by the appropriate government for prescribing the minimum rates of wages payable to employees employed in public motor transport.

17. Section 25 of the Act of 1948 provides for “Contracting Out”, which reads as under :-

“25. Contracting out.- Any contract or agreement, whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.”

18. As such, in the event, any contract or agreement whether made before or after the commencement of the Act, whereby an employee relinquishes or reduces his right to a minimum rate of wages below

the rates prescribed by this Act, shall be null and void as it purports to reduce the minimum rates of wages fixed under the Act.

19. The issue, therefore, is as to whether the petitioner was making the payments to the employees as was defined under the Act of 1948. It is contended by Mr. Patil that when the total sum of payments is higher than the minimum rates of wages fixed under the Act, it is inconsequential and insignificant as to whether the amount of basic wages, special allowance / dearness allowance and the HRA under the settlement is in consonance with those prescribed under the Act of 1948.

20. He has relied upon the Airfreight Limited judgment (supra).

Paragraph Nos. 12, 16, 17, 18, 23 and 24 read as under :-

“12. Mr. Cama, learned counsel for the appellant relied upon the decision in the case of [Municipal Council, Hatta v. Bhagat Singh and Ors.](#), [1998] 2 SCC 443 for contending that where employees are getting better wages under the contract, the provisions of the [Minimum Wages Act](#) would not be applicable. In our view, the aforesaid decision is based upon the interpretation of [Section 14](#) of the Act wherein the Court has observed that overtime under [Section 14](#) is payable to those employees who are getting minimum rate of wage as prescribed under the [Minimum Wages Act](#) and does not apply to those

getting better wages under other statutory rules. Payment of wages at the minimum rates is the lowest limit and to pay the same is a statutory obligation. But, it does not prevent employer in paying 'fair' or 'living' wages. It would also depend upon other statutory or contractual obligations. In view of the aforesaid discussion, in our view, the contention of the learned counsel for the appellant that the Notification dated 19th August, 1987 would not be applicable to the appellant-company is without any substance.

16. Thereafter, various groups are mentioned. For illustration, Group No. 3 Item No. 12 reads as under:

1	2	3	4	5	6
Skilled worker for	+				
establishing Opto.	+	495-45	482-50	469-70	450-25

17. It further provides as under:-

"The rates shown in this Notification are inclusive of the rates of dearness allowance as per the State's Average Consumer Price Index 1960+100 which is payable over and above 700 points. For every increase of points over and above 700 in the cost of Price Index number on the basis of State Average the following dearness allowance is payable:-

Classification of + Employees	Rates of Cost of + Living Allowance
1.	----
2.	----

3. Employees getting more than per day and 3
Rs. 15 per day and per day per point ps.
& above Rs. 450 per month.

18. The Dearness Allowance shall be calculated every year on the 1st of April on the basis of the average of the indices preceding 12 months i.e. January to December. In addition the Dearness Allowance will be calculated on a sliding basis higher or lower depending on the Cost of Living."

23. [Section 3](#), inter-alia, provides that appropriate Government shall in the manner provided, fix the minimum rates of wages payable to the employees employed in any employment specified in Part I or in Part II of the Schedule and in an employment added to other party by the Notification under [Section 27](#) and said minimum wages are required to be reviewed at such intervals as the appropriate Government may think fit, but it is required to be reviewed and revised within 5 years. [Section 4](#) which provides that minimum wage may consist of basic rate of wages and special allowance reads as under:-

"4. Minimum rate of wages (1) Any minimum rate of wages fixed or revised by the appropriate government in respect of schedule employments under [Section 3](#) may consist of-

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of

living allowance"); or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of suppliers of essential commodities at concession rates, where so authorised; or

(iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate government."

24. As stated above minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker and so it must also provide for some measure of education, medical requirements and amenities of himself and his family. While fixing the minimum wages, the capacity of the employer to pay is treated as irrelevant and the Act contemplates that rates of minimum wage should be fixed in schedule industries with a dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker. So it is required to take into consideration cost of bare subsistence of life and preservation of efficiency of the workers and for some measure of education, medical requirements and amenities. This cost is likely to vary depending upon the cost prevailing in the market of various items. If there are inflationary conditions prevailing in the

country, then minimum wages fixed at a particular point of time would not serve the purpose. Therefore, [Section 4](#) contemplates that minimum wages fixed at a particular point of time should be revised from time to time. [Section 4](#) postulates that minimum wages fixed or revised by the appropriate Government under [Section 3](#) may consist of basic rates of wages and special allowance at a rate to be adjusted at such intervals in such manner as the appropriate Government may direct to accord as nearly as practicable with a variation in the cost of living index number applicable to such workers; alternatively, it permits the fixation of basic rate of wages with or without cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates where so authorised; or in the alternative, it permits an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of concessions, if any. The purpose of [Section 4](#) is to see that minimum wage can be linked with increase in cost of living so that increase in cost of living can be neutralised or all inclusive rates of minimum wages can be fixed. But, from the aforesaid [Sections 3 & 4](#), it is apparent that what is fixed is total remuneration which should be paid to the employees covered by the Schedule and not for payment of costs of different components which are taken into consideration for fixation of minimum rates of wages. It is thus clear that the concept of minimum wages does take in the factor of prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wage in the light of cost of living at a particular juncture of time and of neutralising the rising prices

of essential commodities by linking up scales of minimum wages with the cost of living index is provided for in [Section 4](#) but V.D.A. is part and parcel of wages. Once rates of minimum wages are prescribed under the Act, whether as all inclusive under [Section 4\(1\)\(iii\)](#) or by combining basic plus dearness allowance under [Section 4\(1\)\(i\)](#) are not amenable to split up. It is one pay package. Neither the scheme nor any provision of the Act provides that the rates of minimum wages are to be split up on the basis of the cost of each necessities taken into consideration for fixing the same. Hence, in cases where employer is paying total sum which is higher than minimum rates of wages fixed under the Act including the cost of living index (VDA), he is not required to pay VDA separately. However, that higher wages should be calculated as defined in [Section 2\(h\)](#) of the Act. [Section 2\(h\)](#) specifically provides that value of the following items are not required to be computed for finding out whether employer pays minimum wages as prescribed under the Act:-

- (i) the value of any house, accommodation, supply of light, water, medical care, or any other amenity or any service excluded by general or special order of the appropriate Government.
- (ii) any pension fund or provident fund or under any scheme of social insurance
- (iii) any travelling allowance or the value of any travelling concession
- (iv) any sum paid to any person employed to defray special expenses curtailed on him by the nature of his employment or

(v) any gratuities payable on discharge.”

21. It is, therefore, apparent that while calculating the minimum rates of wages, the total of the basic and dearness allowance has to be in consonance with the said component being paid by the employer.

22. In the Sunrise Industries judgment (supra), the Karnataka High Court considered the submissions of the parties in paragraph No.9, 10, 13, 14, which read as under :-

*“9. A Charter of Demand was placed by the Association before management under which several demands were raised and during the conciliation proceedings before the Assistant Labour Commissioner, **Bangalore**, the parties arrived at an amicable settlement on 24.7.2000, under which there was revision of wages agreed to be paid by the management to workmen by increasing the wages by Rs. 6/-, 7/- and 8/- under three categories. The said settlement was agreed to be in force for a period of one year from 1.4.2000 to 31.3.2001. One of the demands raised by the workmen was with regard to payment of Dearness Allowance. This issue remained unsettled in view of the judgment of the Hon'ble Apex Court in the case of **Airfreight India Ltd., Vs. State of Karnataka and others reported in 1999(2) LJ 705 : (AIR 1999 SC 2459)**. In the settlement arrived at, it was agreed between the management*

and the workmen on the issue of DA as follows :

“The workmen agree that the dispute regarding wages and increment is settled. However, the issue of payment of Dearness Allowances remains unsettled and open for conciliation/adjudication etc., in view of the different perception by the management and workmen, in view of the latest supreme court decision the case of Airfreight India. Hence, the Industrial dispute pertaining to Dearness Allowance subsists till the matter is finally decided.

The Association and the workmen hereby agree that they shall not raise any demand on the Management during the period of operation of this settlement. All the demands of the workmen raised in their letter dated 9.3.2000, except Dearness Allowance are deemed to have been settled/withdrawn by virtue of the settlement.

*On account of non payment of DA to the workmen with effect from 1.4.2000 as per the DA fixed by the Government under the Minimum Wages Notification applicable to the Engineering **Industry**, the workmen raised a dispute and appropriate government referred the dispute for adjudication by the Industrial Tribunal.*

*10. Learned counsel for management has contended that Industrial Tribunal, **Bangalore** has traveled beyond the scope of reference and it should not have extended the scope of reference by proceeding to decide as to whether fair wages was*

being paid by the management and thereby enlarging the scope of reference. The law on this aspect is settled by catena of judgments and in the case of **Pottery Mazdoor Panchayat Vs. Perfect Pottery Company Ltd., and another reported in 1979(1) LLN 336 : (AIR 1979 SC 1356)** it has been held that Industrial Tribunal has no jurisdiction to go beyond the terms of reference and to enquire into the question which is not involved in a reference. If the Tribunal travels beyond the terms of the reference, the award is nullity and would not confer any right upon the party. There cannot be any dispute with regard to this proposition of law. As to whether factually the Industrial Tribunal in the instant case has traveled beyond the scope of reference or not, is required to be examined by referring to the point of dispute referred to by the appropriate government to the industrial Tribunal for its adjudication and its finding thereon. The reference dated 2.2.2001 made by the appropriate Government reads as under :

(Vernacular matter omitted.....Ed.)

13. In order to consider the arguments advanced by the learned advocates, it would be of benefit to give the following illustrations which would reflect some amount of light on the contentions, in the back drop of the law laid down by the Hon'ble Apex Court in Airfreight's case.

Illustration No. 1:

In case the minimum wage is Rs. 75/- and VDA fixed under the said notification (issued under the Minimum Wages Act) is Rs.

25/- the total component of wages would be Rs. 100/-. If a workmen say for example is paid Minimum wages @ Rs. 75/- as fixed under notification but VDA @ Rs. 15/- is only paid, the total component would be Rs. 90/- and in such circumstances workmen can claim the minimum VDA fixed under the notification which is Rs. 25/- to make the total component at Rs. 100/- since there is a shortfall in the component of VDA. In such circumstances, the workmen can contend that VDA paid to him is less and seek for payment of the balance amount of Rs. 10/- in accordance with the notification.

Illustration No. 2:

In case the minimum wage is Rs. 75/- and VDA is fixed under the said notification (issued under the Minimum Wages Act) is Rs. 25/- the total component would be Rs. 100/-. If a workmen say for example is paid Minimum wages @ Rs. 90/- as fixed under notification (much more than the amount fixed under the notification) and VDA @ Rs. 15/- is paid, the total component would be Rs. 105/- and as such, the workmen would be receiving more than Minimum Wages than fixed under the notification namely he would be receiving the Minimum Wages @ Rs. 105/- as against Rs. 100/- fixed under the notification. In such circumstances, the workmen cannot contend that VDA component fixed under the Minimum Wages Notification being Rs. 25/- the management is required to pay the balance amount of Rs. 10/-. In such circumstances, if the plea of the workmen is accepted, the total component would become Rs. 125/- which would be Rs. 25/- more than the Minimum wages fixed under

the notification.

14. It is this anomaly which is explained by the Hon'ble Apex Court in Airfreight's case and it has been held that when employer pays minimum wages more than fixed under Notification such employer need not pay Dearness Allowance component separately since it is inbuilt in the component of Minimum Wages itself, to this background the facts on hand are required to be examined."

23. It was, therefore, concluded that if the total of the basic and dearness allowance paid by the employer under a settlement is higher than the basic and dearness allowance prescribed by the Act of 1948, there would be no anomaly as the VDA is then not required to be paid separately.

24. In the Krishna Flour Mills case (supra), the Division Bench of the Karnataka High Court has held in paragraph Nos.14, 15, 16 and 17 as under :-

"14. The appellants submit that what they are paying is a gross pay packet to the worker which exceeds from what is fixed by the Government as minimum wages both basic and other allowances put together. It is further argued that, though they have not paid separately "cost of living allowance", since the total emolument paid to the worker is much more than what

they are entitled to receive in terms of minimum wages notified, they have not violated any provision of the Act.

15. We are afraid, this contention, though appears to be attractive, cannot fulfill the mandatory requirements of law.

(Emphasis supplied).

Section [4](#) of the Act states that minimum rate of wages to be fixed by the Government in respect of the scheduled employment may consist of (1) basic rate of wages and (2) special allowances at a rate to be adjusted at such intervals and in such a manner as the Government may direct as nearly as practicable with a variation in the cost of living index number applicable to such worker which is termed as cost of living allowance or DA in common parlance. Hence, it is clear that the minimum wages consists of 2 parts, i.e., (1) basic rate of wages and (2) special allowance like cost of living allowance and other allowances such as house rent allowance, travelling allowance, etc. Under Section [5](#) of the Act a procedure has been laid for fixing and revising minimum wages. Under Section [5\(2\)](#) of the Act the appropriate Government, after considering the advice of the committee appointed under clause (a) of sub-section (1) or all representations received by it shall, by notification in the Official Gazette, fix the rate of wages in respect of each scheduled employment and unless such notification otherwise provides, it shall come into force on the expiry of 3 months from the date of its issue. In the present case, by a notification dated 14-2-1986 the State Government

has fixed the minimum rate of wages. In the notification published by the State, the State Government has fixed the minimum rate of wages payable to the employee and further it is stated that in addition to the basic wages mentioned in the schedule the employees shall be paid the "cost of living allowances" at the rate prescribed following thereof. It is also to be noted that sub-clause (3) of clause (ii) of the notification states that wherever the prevailing rate of wages is higher, the higher rate of wages shall be continued to be paid.

16. Thus, it is clear that under the notification the State has fixed 2 separate categories of minimum rates of wages to be paid to the employees -- one basic and the other 'other allowance' i.e., DA. It is to be noted that the appellants have not challenged the validity of these notifications and as such the notifications have been accepted by them. As such, the mandatory requirement of the Act is that the appellants must pay under the two different categories. The argument of the appellants that they are paying to the employees a gross pay packet which incidentally is higher than the minimum rate of wages fixed by the State and, hence, they are not liable to pay the cost of living allowance may not be a sound proposition. Merely because the appellants are able to pay higher rate of wages it does not absolve them from paying separately the "cost of living allowances". As sub-clause (3) of clause (ii) of the notification clearly indicates, even if the appellants are paying higher rate of wages, they shall continue to pay. In other words,

they have to continue to pay the "wages" now being paid and in addition to that the minimum rate of "cost of living allowance" is to be paid by them separately as per the notification. (Emphasis supplied)

17. In our opinion, the ratio in the decision referred to by the learned Counsel for the appellants are not applicable to the present case. In the Municipal Borough's case, supra, the question was, when the wages actually paid exceed the minimum fixed inclusive of overtime payable, whether the employee is entitled for the same and this Court held that though the employee has a statutory right to receive wages at the rate not lower than the notified minimum rate, no employee, if it is found that wages paid by the employer are more than what the employee would have got on the basis of the minimum rate of wages for the normal working days plus the wages for the overtime work. It is to be noted that the case was for consideration of payment of overtime work undertaken by the employee. In the present case, it is cost of living allowance which is to be considered. The cost of living allowances is a variable factor. The cost of living goes on changing. It depends on rise or change in the day-to-day living index and inflation. As such, as the cost of living allowance is a variable factor, it cannot be said that the pay packet fixed once for all by the employer would be inclusive of the living wages. Hence, the decision referred to above by the learned Counsel for the appellants is not applicable to the present case."

25. On the issue of compensation, the Kerala High Court in the case of Ponnambalan (supra) has held in paragraph Nos.5 and 5A as under :-

“5. Regarding the direction for payment of compensation of Rs. 3,235/- to the employee, I do not find any infirmity in the order of the Authority. The only point stressed before me by learned counsel for the employer is that in as much as he has expressed his willingness to pay minimum wages as per Ext.P3 counter statement, the Authority ought not have passed any order directing the employer to pay any compensation at all to the employee. I do not find any merit in this contention. Liability for payment of compensation is attracted whenever wages paid by the employer is found to be less than the minimum rates of wages in which case the authority is given jurisdiction to pass appropriate orders directing compensation to the employee not exceeding 10 times the amount of such excess. So, the liability for payment of compensation is not relatable to the factum of the consent on the part of the employer. The fact that the employer has consented to pay the minimum rates of wages as per Ext.P3 statement will not absolve him from the liability to pay compensation to the employee. The liability of the employer to pay minimum wages to the employee does not depend upon the employer's consent. Viewed in this light, I do not find any merit in the contention. Simply because he was willing to pay minimum wages as per Ext.P3 statement, it does not follow that the employee is not entitled to receive any compensation as

directed by the Authority.

5 A. Next, it was contended by learned counsel for the employer that even assuming that he can be made liable to pay compensation, such compensation shall in no case exceed the amount claimed by the employee. Admittedly, in the instant case, the amount which was claimed by the employee is only Rs. 500/- as can be seen from Ext. P1. The question to be considered is whether the Authority has jurisdiction to award compensation which is in excess of the amount claimed by the employee, but within the limit prescribed by the Act. In considering this question, one has to bear in mind that we are construing a benevolent social security legislation which is intended to secure social justice and being so, must receive a liberal interpretation consistent with the interpretation applicable to benevolent legislation. An employee cannot be denied the benefit contemplated under the legislation simply for the reason that in his application he has shown the amount much below what he is entitled to under the Act. In other words, the employee cannot be pinned down to his application nor he can be cribbed, cabined or confined within the four walls of the application. In the matter of compensation even in cases where the claim made by the employee is less than the amount he is entitled to under the Act, it is open for the Authority under the Act to step in and to award an amount which is in excess of the amount so claimed by the employee, but within the limit prescribed under the Act. Viewed in this light, I have no hesitation in coming to the conclusion that the direction issued

by the Authority in Ext. P6 directing the employer to pay to the employee a sum of Rs. 3,235/- as compensation is perfectly justified and does not call for interference in the instant writ petition. (See in this connection K.P. Kurian v. Managing Partner, Hindustan Shipping Company 1974 KLT 659 and Mohammed Koya v. Balan 1987 (1) KLT 18 DB.”

26. In the case in hand, the basic pay + special allowance prescribed by the Act of 1948, has been mentioned in the third column (A) in Exhibit 1 to the impugned order. In comparison thereto, the basic pay actually paid by the petitioner is set out in column 4(B) and the special allowance as paid by the petitioner is set out in column 5(C). The total of both these components (B +C) is almost half of the amount of minimum wages prescribed by the Act. The personal pay paid by the petitioner is set out in column 6(D). Even by the addition of this amount to the basic and special allowance paid by the petitioner, leaves a difference of more than Rs.2,000/- on an average payable to the employees. In some cases, the difference is even upto Rs.4,000/-. The competent authority has, therefore, rightly concluded that the difference in the minimum wages was required to be paid by the petitioner to the employees.

27. I find from the impugned judgment that the competent

authority has rightly excluded the washing allowance, child education allowance and hostel allowance as well as bonus while considering the pay package made available by the petitioner under its settlement. The said conclusion of the competent authority is in tune with the exclusion clause under section 2(h) of the Act of 1948, which defines the wages payable to the employees.

28. The competent authority, in the light of the judgment of the Apex Court in Airfreight limited (supra) and the definition of wages, has rightly assessed that the basic wages, special allowance and the personal pay paid by the petitioner needs to be computed while calculating the difference in the minimum wages applicable to the Zone II employees. The compensation imposed by it as penalty is also justified in view of the ratio laid down in Poonambalan case (supra).

29. The petitioner has canvassed that the pending reference (IT) No.5/2013 pertaining to the charter of demands put forth by the Union would preclude the Union from claiming difference in minimum wages from the competent authority under the Act of 1948.

30. The petitioner has taken me through demand No.5 set out in the charter of demands January 2013. The said demand is by way

of a claim made by the Union seeking fixation of the basic wages at Rs.5,700/- per month. It is, therefore, contended that when the demand for rise in basic wages is pending before the Industrial Tribunal, the impugned claim before the competent authority under the Act of 1948 was unsustainable.

31. I am not impressed by the submissions of the learned Advocate for the petitioner for the reason that the claim before the competent authority decided by the impugned judgment, is in relation to the difference of pay for July 2013 to 31/10/2013 (4 months) based on the existing minimum wages prescribed by the concerned notification dated 20/07/2010 under the Act of 1948.

32. In the charter of demands, the Union is at liberty to put forth any demand over and above the prescription of Law since such demands are to be justified before the Tribunal by considering the “region cum industry” and “comparable industries” formula. The Tribunal is then to decide whether the claim deserves to be accepted or not. It is not an anathema to demand through a charter of demands, a wage rise or a hike in minimum wages. Such demands are not linked with the prescription under the Act of 1948 since the amount prescribed by the Act is a mandate of Law and requires no

negotiation. Section 25 of the Act of 1948 prohibits fixation of minimum rates of wages below the prescribed rate under the Act. I, therefore, conclude that the pendency of Reference (IT) No.5/2013 cannot be an embargo for the tenability of the claim before the competent authority under the Act of 1948 as both are not inter-linked.

33. The competent authority has calculated the difference / short fall and the compensation amount payable to the claimant workers by considering that they fall under category skilled 'A', in Exhibit 1 annexed to the impugned order dated 28/01/2015. It is conceded by the respondent Union that the claimants fall in skilled 'B' category in Zone II. The petitioner shall, therefore, recalculate the amounts by deducting the difference between skilled 'A' and skilled 'B' category. Similarly, the petitioner shall reduce the compensation amount proportionately between skilled 'A' and skilled 'B'. After recalculating these amounts in the light of Exh.1, the petitioners shall pay the said amounts to the claimant workers.

34. In the light of the above, the petitioner shall prepare its chart of recalculations on the lines of Exh.1 considering the difference as noted above and supply the said chart to the respondent No.2 Union

within 2 (two) weeks from today. It shall pay the amounts over and above the deposit of Rs.8,00,000/- within a period of 6 (six) weeks thereafter.

35. Needless to state, the amount of Rs.8,00,000/- deposited in this Court by the petitioner vide DD No.020711 dated 24/06/2015, shall be payable to the claimant workers, who shall withdraw their shares based on the recalculations. They shall produce tangible evidence / proof of identity to the satisfaction of the Registrar, Judicial while withdrawing the said amounts.

36. As such, this petition is partly allowed by modifying the impugned order dated 28/01/2015 to the extent of the recalculations in the difference of minimum wages and compensation amount in the statement Exhibit 1.

37. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)