

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
CAV ON:10.01.2013
DATED:04.03.2014**

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THE HONOURABLE MR.JUSTICE C.S.KARNAN

**W.P.No.25133 of 2002
and
W.P.M.P.No.34502 of 2002**

Puduvai Manila Pattali Thozhir Sangam,
rep. by its General Secretary
No.53-A, Kamban Street,
Major Saravanan Nagar, Karuvadikuppam,
Pondicherry 605 008.

... Petitioner

Vs.

1.Government of Pondicherry
Rep. by Secretary to Government,
Labour Department,
Pondicherry-1.

2.The Commissioner of Labour,
Pondicherry-1.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent in G.O.Ms.No.35/Lab/G/2001 dated 26.12.2001, quash the same and consequently forbear the Respondents from taking any further proceedings for fixation of

minimum wages in respect of employment in leather goods manufacturing industry unit in the Union Territory of Pondicherry .

For Petitioner : Mr.R.Parthiban
For Respondents : Mr.R.Sridhar
Government Advocate (Pondy)

ORDER

The writ petitioner submit that he is the General Secretary of the Petitioner Union. The fixation of minimum wages for the various categories of workmen is governed by the provisions of the Minimum Wages Act, 1948. Under the provisions of the Act, the minimum wages can be fixed by following two different procedures. One of the procedures contemplated is to appoint a Committee or Sub-Committee to hold enquiries and to advise the Government in respect of fixation of minimum wages and thereafter by considering the advise of the Committee, the Government has the power to notify the minimum wages in the official gazette. The other procedure which can be followed by the Government is to publish the proposals for the information of persons likely to be effected by a notification in the official gazette and to consider the representations received in

response to this notification and thereafter fix the minimum rates of wages. As far as the leather goods industry is concerned, no minimum wages have been fixed by a notification insofar as the Union Territory of Pondicherry is concerned by G.O.Ms.No.35, Labour Department dated 26.12.2001, in exercise of powers conferred by Sec.5(1)(a) of the Minimum Wages Act, the Lt. Governor of Pondicherry was pleased to appoint a Committee to hold enquiries and to advise the Government in the matter of fixation of minimum wages in respect of employment in leather goods manufacturing industry in the Union Territory of Pondicherry. This Committee consisted of the 2nd Respondent as the Chairman, 3 persons representing the employers and 3 persons representing the employees.

2. Out of 3 persons representing the employees 2 members are Advocates belonging to the Congress Party and the 3rd person Thiru.Pandian is an active Youth Congress Worker again belonging to the Congress Party. None of three persons are true representatives of the employees and that do not have any practical knowledge of the working conditions and problems faced by the workmen employed in the leather goods manufacturing industry.

3. The composition of the Committee is governed by Section 9 of the Act which reads as follows:-

“9. Composition of committees, etc.

Each of the committees, sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate government representing employers and employees in the scheduled employments, who shall be equal in number and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate government.” Thus, it is seen that the persons to be nominated should represent the employers and the employees in the scheduled employment and they should be equal in number. As stated earlier, persons appointed to represent the employees do not really represent the employees.

4. The petitioner made a representation on 08.01.2002 for inclusion in the Committee, but there was no reply to this representation. The first meeting of the Committee was held on 16.01.2002 and it was attended by all the six members of the Committee as well as the 2nd Respondent. The next meeting of the

Committee was held only on 21.05.2002 and curiously on this occasion, two more persons representing the employers were inducted into the Committee as special invitees. This was done by the 2nd Respondent on his own without seeking any amendment to the notification issued by the 1st Respondent on 26.12.2001 or without even consulting the 1st Respondent. Both the special invitees represent Hidesign and in fact one of them is the Managing Director of Hidesign and the other is the Vice President – Commercial. The result of this illegal inclusion of the 2 persons is that if the committee has become imbalanced as far as representatives from employers and employees side is concerned. There is a clear violation of Section 9 of the Act. In the 2nd meeting both the special invitees participated and in the 3rd and 4th meeting one of the special invitees has participated. In the 5th Meeting which is to be held on 10.07.2002, both the special invitees have been invited. The inclusion of two additional persons who represent the employers has lead to a violation of Section 9 of the Act and is likely to have adverse consequences as far as the workmen are concerned. The petitioner has taken legal advice and has been advised that the entire proceedings commencing with the constitution of the Committee is highly arbitrary and illegal.

5. The very competent counsel Mr.R.Parthiban, appearing for the petitioner submits that the fixation of minimum wages for the various categories of workmen is governed by the provisions of the minimum wages Act. The minimum wages can be fixed by following two different procedures namely:

(i) To appoint a committee or Sub-Committee to hold enquires and to advice the Government in respect of fixation of minimum wages and thereafter consider the advise of the committee, the Government has the power to notify the minimum wages in the official gazette;

(ii) The procedure which can be followed by the Government is to publish the proposals for the information of persons likely to be affected by a notification in the official gazette and to consider the representations received in response to this notification and thereafter fix the minimum rates of wages. Therefore, the Government Order issued by the 1st respondent is not valid since the procedures had not been adopted by the 1st respondent. As far as the leather goods industry is concerned, no minimum wages had been fixed by a notification insofar as the Union Territory of Pondicherry is concerned. Therefore, the two procedures are not applicable in the instant case.

Further, the committee consisting of six persons and out of them two members are Advocates belonging to a political party. Therefore, the Committee Members are all fully qualified to decide the minimum wages to the employees, who are working with the leather goods industry. Further, the learned Advocates could not have possessed knowledge about the leather goods. Hence, the Government Order issued by the 1st respondent and appointment of committee is not appropriate and it is not suitable for execution.

6. The highly competent counsel Mr.R.Sridhar, Government Advocate, appearing for the respondents submits that as per the minimum wages Act, there is two procedures to fix the minimum wages to the Workmen. Accordingly, for fixing the minimum wages to the workmen, a committee had been constituted. Consisting of seven members, out of them, two legal jurists have been appointed in the said committee. Besides, three Employer/Management have been appointed. The committee, after getting opinion from the various industry and after receiving representation from the industry, the minimum wages will be fixed. Further, the minimum wages have to be fixed periodically, once in five years. Therefore, the 1st respondent had issued in Government Order and appointed a

committee to fix the minimum wages to the workmen. The petitioner Industry is also covered under the workmens Act. As such minimum wages Act is also applicable to the petitioner industry. Therefore, the Government Order issued by the 1st respondent is fit to be operated upon further.

7. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court does not find any discrepancy in G.O.Ms.No.35, dated 26.12.2001, issued by the 1st respondent for appointing a committee as per the minimum wages Act. Therefore, the above writ petition is not maintainable. Hence, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.03.2014

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Index: Yes/No
Internet: Yes/No

To

1. Government of Pondicherry
Rep. by Secretary to Government,
Labour Department,
Pondicherry-1.
2. The Commissioner of Labour,
Pondicherry-1.

C.S.KARNAN, J.

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**PRE-DELIVERY ORDER MADE IN
W.P.No.25133 of 2002
and
W.P.M.P.No.34502 of 2002**

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