

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.5007 of 2002

Between:

Annavastra Vaidya Vidyadana Samajam, Eluru, rep.by its
Person-in-Management, Near Head Post Office, Eluru, West
Godavari District.

.. Petitioner

and

The Authority under Minimum Wages Act & Deputy Commissioner of
Labour, Ashok Nagar, Eluru and three others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 30.7.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.5007 of 2002

ORDER:

This writ petition is filed seeking to issue a writ of Prohibition declaring the action of respondent Nos.1 and 2 in entertaining the case filed by respondent Nos.3 and 4 herein vide M.W.Case No.M.P.No.1 of 2002 under the Minimum Wages Act, 1948 (for short, "the Act") as illegal and totally without jurisdiction, as the said Act has no application to the petitioner charitable Institution, and consequently, to prohibit respondent Nos.1 and 2 from proceeding with M.W.Case No.M.P.No.1 of 2002.

2. The brief facts that are necessary for disposal of the present writ petition may be stated as follows:

Respondent Nos.3 and 4 worked as part-time cook and part-time sweeper in the petitioner Institution. The petitioner Institution was notified under Section 6(b) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 and it is governed by the Endowments Act. The Commissioner of Endowments earlier appointed the Executive Officer to the petitioner Institution and prior to filing of the writ petition, the petitioner was appointed as Person-in-Management to discharge the functions of the Executive Officer. The service conditions of the employees working in the Institution are governed by the Rules made under the Old Endowment Act i.e., Act 17 of 1966 and the Government of Andhra Pradesh issued the Rules in G.O.Ms.No.1478, dated 17.11.1986. Recently, the Government of Andhra Pradesh issued Rules in G.O.Ms.No.888, dated 6.12.2000, for the purpose of the new Endowments Act, 1987. As per Section 57 of the Endowments Act i.e., Act 30 of 1987, the establishment charges should not exceed 30%

of the assessable income of the Institution. It is mandatory provision and any violation with regard to this section attracts the surcharge proceedings. The petitioner Institution is an old one established in the year 1913 by the trustees and they constructed a building and shops. It has Ac.2.13 cents of wet land. The objects of the Institution are to provide food for the poor people, accommodation to poor students, medical aid and clothes to the needy persons. Apart from respondent Nos.3 and 4, a Junior Assistant (full time) also worked in the Institution. The Institution used to feed nine persons daily in the morning time only and it has only one hall. Remaining building was leased out to shops. Respondent No.4 used to work for half an hour in the morning to clean the hall of the Samajam. Respondent No.3 used to cook for nine persons and used to spend two hours for this purpose. Both respondent Nos.3 and 4 are husband and wife respectively and they used to stay in the Samajam building and were also provided food facility. The petitioner Institution does not involve in any commercial or industrial activities except doing the charitable activity of feeding the nine poor persons per day free of cost and providing accommodation to the poor students free of cost. It carries out the charitable activity with the limited funds. Since respondent Nos.3 and 4 were part-time employees, the Act has no application and respondent No.1 or respondent No.2 has no jurisdiction to enquire into the matter, as the Act has no application to a cook and sweeper like respondent Nos.3 and 4, and the petitioner charitable Institution is not governed by the Act. The Act is applicable only to the workers working in the Establishments notified in the Schedule only. If a particular Establishment is not found in the Schedule or if the establishment is not added to the Schedule, the authorities under the Act have no jurisdiction to act on a complaint/petition seeking minimum wages and therefore, respondent No.1 or respondent No.2 has no jurisdiction to entertain the claims of anybody. The Charitable Institutions like the petitioner Institution do not find place in the Schedule till this date and

hence, the action of respondent Nos.1 and 2 in entertaining the claims of respondent Nos.3 and 4 and issuing notices to the petitioner Institution is wholly without jurisdiction and unwarranted. Even if there is jurisdiction, respondent No.1 ought not have entertained the claim of respondent Nos.3 and 4 without issuing the notice in the delay condone petition filed by respondent Nos.3 and 4 to condone the delay of 3 years 6 months. Aggrieved by the action of respondent Nos.1 and 2 in entertaining the case filed by respondent Nos.3 and 4 vide M.W.Case No.M.P.No.1 of 2002 under the Act, petitioner filed the present writ petition.

3. Counter-affidavit is filed by respondent Nos.3 and 4. It is stated in the counter-affidavit that petitioner Institution is being supervised by one B.Somaiah, who is the person-in-management. Respondent Nos.3 and 4 filed case before the Authority under the Minimum Wages Act and the Deputy Commissioner of Labour, Eluru, which was numbered as M.W.Case No.M.P.No.1 of 2002. The petitioner failed to appear before the Authority under Minimum Wages Act & Deputy Commissioner of Labour, Eluru in the month of January, 2002. A statement was filed showing the difference between the wages to be payable as per G.O. and wages actually paid to the applicants for the period from 01.4.1998 to 30.9.2001 in pursuance of G.O.Ms.No.89, dated 25.5.1991, and also G.O.Rt.No.23/3/98 i.e., an amount of Rs.75,020.55 ps for respondent No.3 and Rs.1,35,876.60 ps for respondent No.4. The Institution is having plenty of funds and running successfully. The intention of the petitioner is to avoid the payment, which is directed as minimum wages at Court, and hence, sought for dismissal of the writ petition.

4. Though the petitioner Institution claims to be registered under Section 6(b) of the Endowments Act, no documents are produced before the Court. Be that as it may, when once the case of the petitioner is that the petitioner Institution is not declared as one of the

institutions under Schedule to the Minimum Wages Act, the provisions of the Minimum Wages Act has no application. Other aspect of the petitioner is that the petitioner Institution is not involved in any commercial activities. No provision of the Act is brought to my notice to show that the petitioner Institution is exempted under the provisions of the Act or that the institutions even registered under the Endowments Act are exempted from the provisions of the Minimum Wages Act.

5. Learned counsel for respondent Nos.3 and 4 submits that employment in any residential hotel, restaurant or eating house is also declared by the State Government to be included in the Schedule attached to the Act. As such, the petitioner Institution is covered under the provisions of the Act. One of the contentions of the petitioner Institution is that respondent Nos.3 and 4 are part-time employees. Section 2(i) of the Act reads as under:

“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.”

A reading of the above provision *prima facie* shows that there is no distinction between part time and full time employment. In this case, the petitioner has not brought to my notice any provision of law to show that respondent Nos.1 and 2 have no jurisdiction to entertain the case of respondent Nos.3 and 4. A reading of the Schedule goes to show that *prima facie*, it covers the activity of the petitioner. As such, this is

not a case of inherent lack of jurisdiction. It also requires evidence to be let in.

6. In view of the same, I do not see any merit in this Writ Petition. However, it is open for the petitioner to appear before respondent Nos.1 and 2 and raise all his objections including the one raised herein and respondent Nos.1 and 2 authority shall consider the same and decide M.W.Case No.M.P.No.1 of 2002 filed by respondent Nos.3 and 4 in accordance with law without being influenced by any of the observations made herein.

7. With the above observation, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.RAJASHEKER REDDY

Date: 30.7.2015
AMD

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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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