

IN THE HIGH COURT OF JUDICATURE AT MADRAS

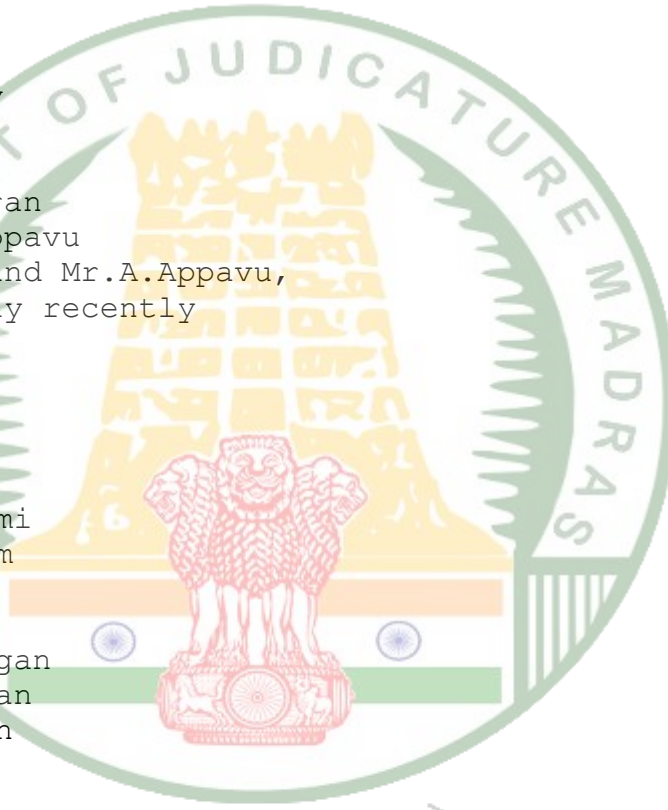
DATED : 18.02.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.19346 of 2012

- 1) A.Nallaiyan
- 2) S.Duraikannu
- 3) C.Ravi
- 4) A.John Kennady
- 5) A.Anthonysamy
- 6) V.Subramanian
- 7) C.Chandrasekaran
- 8) Chellapappa Appavu
rep. his husband Mr.A.Appavu,
who passed away recently
- 9) R.Archunan
- 10) V.Rajendran
- 11) J.Mohanavalli
- 12) D.Lakshmi
- 13) V.Kathammal
- 14) R.Vijayalakshmi
- 15) V.Rajamanikkam
- 16) K.Rajendran
- 17) R.Nagarajan
- 18) S.Kasthurirangan
- 19) M.Muruganandhan
- 20) D.Ravichandran
- 21) N.Karnan
- 22) M.Thanraj
- 23) D.Esther Rani
- 24) P.Thandayuthapani
- 25) P.Kanakaraj
- 26) C.Prabakaran
- 27) R.Kanagaraj
- 28) K.Neelamegam
- 29) A.Raja Moorthy
- 30) B.Sakthivel
- 31) S.Arumugam
- 32) T.Vellayammal
- 33) S.Karunanithi
- 34) A.Karuppan
- 35) R.Ashok



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... Petitioners

Vs.

1. The Assistant Director,
Tamil Nadu Khadi and Village Industries,
Thanjavur.
2. The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam, Chennai.
3. The Deputy Commissioner of Labour
(Authority under Minimum Wages Act)
Thiruchirappalli District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the third respondent to invoke the Revenue Recovery Act against the first and second respondents, which would enable the petitioners to obtain the arrears amount payable as specified in the calculation sheet appended with the orders of the third respondent, dated 13.06.2005, passed in M.W.No.22 of 2003, which is inclusive of the Minimum Wages, as already notified by the Government of Tamil Nadu to the workers of the Handmade Paper Unit as also in the light of the representation, dated 07.04.2012, made to the third respondent by the petitioners.

For Petitioner : Mr.R.Ramachandran

For Respondents 1 & 2 : Mr.S.K.Bose

For Respondent-3 : Mr.R.Rajeswaran
Special Government Pleader

ORDER

The petitioners are employees of the Tamil Nadu Khadi and Village Industries Board, and they have filed this Writ Petition, praying for a direction upon the third respondent, viz., the Authority, under the Minimum Wages Act, to initiate revenue recovery proceedings against the first and second respondents, which would enable the petitioners to realize the amount, which was directed to be paid to them as minimum wages, as per the order passed by the third respondent in M.W.No.22 of 2003, dated 13.06.2005.

2. Heard the learned counsel appearing for the respective parties.

3. The petitioners went before the third respondent/Authority for computation and payment of minimum of wages, by filing Minimum Wages Claim Application, being M.W.No.22 of 2003, wherein, an order came to be passed in their favour on 13.06.2005. Challenging the said order, the second respondent/Chief Executive Engineer filed a Writ Petition before this Court, being W.P.No.26924 of 2005. The said Writ Petition was dismissed by the Court, by order, dated 28.09.2005, on the ground that the second respondent cannot be permitted to raise the points, which were never raised before the third respondent/Authority. Questioning the same, the second respondent preferred an Appeal before the Hon'ble Division Bench, being Writ Appeal No.1 of 2008, and the Hon'ble Division Bench, by judgment, dated 01.02.2008, taking into consideration the fact that the appellant (second respondent herein) is pursuing his remedy before this Court since 2005, allowed the Writ Appeal, by permitting the appellant/second respondent to prefer an Appeal, and directed the Appellate Authority to consider the Appeal, if the same is preferred by the second respondent within a month's time along with an application for condonation of delay and to pass orders on merits after issuing notice to the parties.

4. Thus, it appears that, before the Hon'ble Division Bench, it was submitted by the second respondent herein that the order passed by the third respondent/Authority, dated 13.06.2005, is an Appealable order. However, this statute does not provide for any such Appeal. The second respondent did not seek for any clarification, or modification of the said order, but, he went before the third respondent, by way of filing an Interlocutory Application, viz., M.W.I.A.No.2 of 2009, requesting for recalling, or modifying the order, dated 13.06.2005. The third respondent/Authority dismissed the said Interlocutory Application, by order, dated 26.06.2009, stating that the same authority cannot wince over and reconsider the matter, or review the earlier order.

5. Thereafter, it appears that no steps have been taken by the second respondent to pursue any other remedies, which may be available to them. Therefore, at this point of time, the first and second respondents are precluded from contesting on the merits of the case, or raising any contention as regards the correctness, or validity of the order passed by the third respondent/Authority, dated 13.06.2005. Hence, the order, dated 13.06.2005, passed by the third respondent/Authority has to be complied with by the first and second respondents. This leaves us with a only issue, as to what would be the nature of the relief that the petitioners would be entitled to, since the

first and second respondents are not in a mood to comply with the order passed by the third respondent/Authority. Section 20 of the Minimum Wages Act, 1948 (hereinafter, referred to as 'the Act') deals with the claims of the employees. In this connection, this Court is of the view that, it would be apposite to quote sub section 5 of Section 20 of the Act, as it would succour this Court for the effective disposal of the Writ Petition, which reads as follows :-

"(5) Any amount directed to be paid under this section may be recovered :-

a) If the Authority is a Magistrate, by any Authority, as if it were a fine imposed by the Authority as a Magistrate, or
b) If the Authority is not a Magistrate, by any Magistrate to whom the Authority makes the application in this behalf, as if it were a fine imposed by such Magistrate."

6. In terms of the above, the recovery mechanism provided under the Act is for the Authority under the Minimum Wages Act, (third respondent in this case) to invoke the jurisdiction of the Magistrate, and the Magistrate is entitled to recover the amount, as if, it were a fine imposed by the Authority.

7. In the counter affidavit filed by the third respondent, it has been stated that the third respondent is proceeding to take steps to launch prosecution against the first and second respondents, and particulars have been collected in this regard. The third respondent further stated that they are awaiting remarks from the respondents 1 and 2, and on getting remarks, the third respondent would proceed to initiate prosecution against the first and second respondents for recovery of the amount awarded by him, by order dated 13.06.2005, by filing appropriate Petition before the Judicial Magistrate, Thanjavur, as envisaged under Section 20 (5) of the Act.

8. The counter affidavit filed by the third respondent, is dated 01.07.2013. Nearly, three years have been elapsed, even till now, nothing has happened. Therefore, there will be a direction to the third respondent/Authority to abide by the statement made by him in the counter affidavit, and proceed to initiate prosecution against the first and second respondents by filing appropriate application before the Judicial Magistrate, Thanjavur District, for recovery of the amount, as ordered in M.W.22 of 2003, dated 13.06.2005, within a period of three months from the date of receipt of a copy of this order.

9. In the result, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sd

To

1. The Assistant Director,
Tamil Nadu Khadi and Village Industries,
Thanjavur.
2. The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam, Chennai.
3. The Deputy Commissioner of Labour
(Authority under Minimum Wages Act)
Thiruchirappalli District.

+1cc to Mr.R.Ramachandran, Advocate, S.R.No.10442
+1cc to the Government Pleader, S.R.No.10605

Writ Petition No.19346 of 2012

SNS (CO)
CA(02/03/2016)

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