BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.11.2016

Pronounced on : 01.12.2016

CORAM :

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.(MD)No.21436 of 2016
& W.M.P.(MD) No.15322 of 2016

Arasu Pokkuvarathu Madurai Thozhilalar Sangam,
Rep. by its General Secretary,
R.Vasudevan, S/o. Late Ramamoorthy,
No.217/18 Malligai Street, Soorya Nagar,
K.Pudhur, Madurai 625 007 ... Petitioner

vs.

1. The Tamil Nadu State Transport Corporation
(Madurai) Limited,
Rep. by its Managing Director,
Bye-pass Road, Madurai 625 016
2. The General Manager,
The Tamil Nadu State Transport Corporation
(Madurai) Limited,
Madurai Region, Madurai
3. The Inspector of Labour, TNHB,
Ellis Nagar, Madurai 625 011 ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the first respondent to pay temporary workers (Driver, conductor and non-ITI Helper/ Junior Tradesmen including daily paid and reserve crew employees) working in the first respondent corporation at rates not below what has been prescribed in G.O.(2D) No.91, Labour and Employment Department, dated 12.12.2013 r/w the statement bearing Z3/9329/2016 dated 24.03.2016 issued by the Commissioner of Labour, Chennai - 6, together with the arrears payable from 01.04.2016.

For Petitioner : Mr. A.Rahul
For Respondent : Mr. A.P.Muthupandian

O R D E R

“I thought in this country, the best social program was a job. Yet minimum wage jobs aren't paying enough to keep families out of poverty” - Barbara Mikulski.

2. This is a writ of mandamus seeking direction to the first respondent ***to pay the temporary workers as well as the arrears from 01.04.2016*** (driver, conductor and Non-ITI helper/Junior Tradesmen, including daily paid and reserve crew employees) working in the first respondent Corporation ***at rates not below which has been prescribed in G.O.(2D) No.91***, Labour and Employment (J-1) Department, dated 12.12.2013 read with the statement bearing Z3/9329/2016 dated 24.03.2016 issued by the Commissioner of Labour, Chennai – 6.

3. The writ petition has been filed by the Arasu Pokkuvarathu Madurai Thozhilalar Sangam, Represented by its General Secretary, which is a registered Trade Union. The union was formed to espouse the cause of workers working in the first respondent Corporation. There are about 1,500 temporary drivers, conductors and technical workers employed by the first respondent. They are called as Daily Paid and Reserve Crew. As all of them have the common cause, hence, joining together, this writ petition is filed.

4. The Payment of Minimum Wages Act, 1948 (hereinafter will be referred to "the Act") was promulgated to fix minimum rate of wages payable to the employees employed in various Departments. The expression 'employee' would include temporary employee also. ***Section 12 of the Act mandates that an employer shall pay to every employee engaged in a scheduled employment under him, wages, at a rate not less than the minimum rate of wages fixed in the notification issued under Section 5 of the Act.*** The Act also laid down an endorsement machinery and mechanism. The third respondent / Inspector of Labour is expected to take up the cause of the aggrieved workman.

5. The Government of Tamil Nadu issued G.O.(2D) No.91, Labour and Employment (J-1) Department, dated 12.12.2013, laid down the minimum rate of wages for the employment in public motor transport. The schedule contains as many as 65 categories of employees. The writ petition covers the cases of categories: (a) driver (Sl.No.2); (b) conductor (Sl.No.8) and other technical categories. ***The Government Order also stipulates that in addition to minimum rate of basic wages, the employees shall be paid Dearness Allowance.*** The formula for calculating Dearness Allowance is also set-out in the Government Order. The Government issued letter periodically shows the details of the Dearness Allowance payable. The Transport Department of the Government of Tamil Nadu issued G.O.(D) No.41, dated 16.03.2007, fixes the norms for appointment of Drivers / Conductors in the Transport Corporation owned by the State of Tamil Nadu. It has been ordered that the Reserved Drivers and Conductors are permitted to be engaged by selecting them through Employment Exchange. Minimum wages have to be paid when their services are utilized.

6. The temporary workers under the first respondent are paid below the minimum rate of wages. According to the calculation, a driver has to be paid Rs.425/- per day, a conductor Rs.419/- per day and the technical workers should be paid at Rs.419/- per day. But, contrary to these statutory promise, as on date, the drivers are paid Rs.305/- per day, temporary conductors / technical workers are paid Rs.300/- per day. The reserve driver and reserve conductor are paid even less, i.e., Rs.285/- and Rs.280/- respectively.

7. The first respondent, being a State Government undertaking, who is suppose to be the model employer, did not comply with the mandate issued in G.O.(2D) No.91, dated 12.12.2013. Hence, this writ petition has been filed.

8. The learned counsel for the petitioner relied upon G.O.(2D) No.91, dated 12.12.2013 as well as a decision of the Hon'ble Supreme Court in **Civil Appeal No.213 of 2013 (State of Punjab v. Jagjit Singh and Others)** and contended that the temporary employees, in this writ petition, would be entitled to pay parity (on the principle that equal pay for equal work), i.e., at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post. The relevant observation reads thus:-

> “57. Having traversed the legal parameters with reference to the application of the principle of ‘equal pay for equal work’, in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of ‘equal pay for equal work’ summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was

assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post."

9. At this juncture, it is necessary to consider the parameters which are taken into account, while fixing the minimum wage rates and the process of fixing the minimum wage rates.

9.1. Minimum wage rates in India are fixed under the Minimum Wages Act, 1948.

9.2. Since labour is a concurrent subject under the Indian Constitution, minimum wage rates are determined both by the Central Government and the Provincial Governments. Minimum wage rates in India are declared at the national, state and sectoral levels as well as skill / occupational levels. Minimum wage rates may be established for any region, occupation and sector. Also, minimum wage is established for trainees, youth and piece-rate workers. ***Minimum wage is determined by considering the cost of living.***

9.3. ***Minimum rate of wages may consist of a basic rate of wages and a cost of living allowance***; or a basic rate of wages, with or without the cost of living allowance, and the cash value of concessions in respect of the supply of essential commodities at concession rates (if authorized); or an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions (if any).

9.4. While fixing or revising minimum rates of wages, different minimum rates of wages may be fixed for different scheduled employments; different classes of work in the same scheduled employment; adults, adolescents, children and apprentices; and different localities. ***The minimum wage rates may be fixed by hour, day, month or any such other larger wage period as may be prescribed.***

9.5. Under the Minimum Wages Act, both the Central and State Governments may notify the scheduled employments and fix/revise minimum wage rates for these scheduled employments. The scheduled employments include both the agricultural and non-agricultural employments. Both the Central and State Governments are empowered to notify any employment (industry/sector) in the schedule where the number of employees is 1000 or more and fix the rates of minimum wages in respect of the employees employed therein.

9.6. Minimum wage is announced for 45 scheduled employments in the Central Sphere while the State level minimum wage is determined by every state keeping in view the sectors more dominant in the State. ***Minimum wage is revised while considering the following five elements: three consumption units per earner; minimum food requirement of 2700 calories per average adult; cloth requirement of 72 yards per annum per family; house rent corresponding to the minimum area provided under the Government's Industrial Housing Scheme; fuel, lighting and other miscellaneous items of expenditure to constitute 20% of the total minimum wage; and children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriage etc. should further constitute 25% of the total minimum wage (the last component added by the Supreme Court in Reptakos Brett Vs Workmen case in 1991).*** Minimum wages may be reviewed at different intervals however such intervals cannot exceed five years.

9.7. The Minimum Wages Act provides for two methods of fixation / revision of minimum wages. Under the Committee Method, committees and sub-committees are set up by the Government to hold inquiries and make recommendations with regard to fixation and revision of minimum wages. Under the Notification method, government proposals are published in the Official Gazette for information of the persons likely to be affected and specify a date (not less than two months from the date of the notification) on which the proposals will be taken into consideration.

10. The learned counsel for the petitioner contended that even though the members of the petitioner sangam are entitled to ask for rate of wages, on par with regular employees holding the same post, the members of the petitioner sangam are not claiming to that extent and what is claimed in the writ petition is only the minimum rate of wages, as guaranteed under G.O.(2D) No.91, dated 12.12.2013.

11. Considering the claim of the members of the petitioner sangam, in the light of the decision of the Supreme Court, reported in **State of Punjab's case, cited supra**, and also in the light of G.O.(2D) No.91, dated 12.12.2013, cited supra, it is clear that the members of the petitioner sangam are entitled to the basic rate of wages and dearness allowance as mentioned in the said G.O.(2D) No.91. Accordingly, the first respondent Corporation is directed to disburse the minimum rate of wages as payable under G.O.(2D) No.91, dated 12.12.2013, as detailed in the notification, appended to G.O.(2D) No.91, regularly, and also to pay arrears, if any, within a period of four weeks from the date of receipt of a copy of this order.

12. The writ petition stands disposed of. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

+1 CC to Mr.A.RAHUL, Advocate, SR No.75076

Order in
W.P.(MD)No.21436 of 2016
& W.M.P.(MD) No.15322 of 2016
01.12.2016

srk
SH/KM:16.12.2016:6P/2C