



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2016

CORAM:

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THE HONOURABLE MR.JUSTICE M. GOVINDARAJW.P.(MD) Nos.3726 and 3727 of 2011

K. Anbalagan,
General Secretary,
Tamil Nadu Samoogavana Uliyar Matrum
Thotta Kaavalar Sangam,
TANTEA Stall Backside,
Opp.C2, Police Station,
Vasanth Nagar, Madurai - 625 003

: Petitioner in
both W.Ps.

Vs.

1. The Deputy Commissioner of Labour,
Authority under the Minimum Wages Act,
142/1, Sundaram Theatre Road, K.K.Nagar,
Madurai - 625 020.

2. The Principal Chief Conservator of Forests,
No.I, Jeens Road, Saidapet, Chennai - 15.

3.The Regional Conservator of Forests,
Collectorate Complex,
Virudhunagar.

4. The District Forest Officer,
Social Forestry Division, Sivagangai.

: Respondents in
both W.Ps.

Prayer in both W.Ps.: These Writ Petitions are filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order dated 06.10.2010 made in M.W.Nos.20 and 21 of 2008 respectively on the file of the first respondent herein, quash the same and consequently direct the respondents 2 to 4 herein to pay the difference of wages as claimed in M.W.Nos.20 and 21 of 2008 respectively on the file of the 1st respondent herein.

For Petitioner

: Mr. T. Murugamanickam
petitioner in both W.Ps.

For Respondents 1 to 4

: Ms. S. Bharathi,
Government Advocate in both W.Ps.

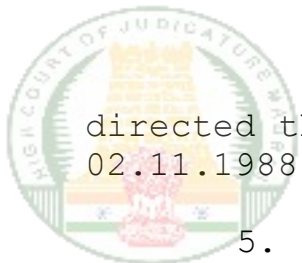
COMMON ORDER

These Writ Petitions are filed to call for the records relating to the order, dated 06.10.2010 made in M.W.Nos.20 and 21 of 2008 respectively on the file of the first respondent herein, quash the same and consequently direct the respondents 2 to 4 herein to pay the difference of wages as claimed in M.W.Nos.20 and 21 of 2008 respectively on the file of the 1st respondent herein.

2. The members of the writ Petitioners' Sangam who are all appointed as Social Forestry Workers under the second respondent were paid meagre wages. The State Government had included in the schedule of employments the various employments in the Forest Department under the caption "Employment in Forestry" vide G.O.Ms.No.2094, Labour and Employment, dated 06.09.1980. The said entry was introduced by including into the scheduled employment and the Government has been fixing rates of minimum wages from time to time.

3. When a preliminary notification for issuance of the said GO was made on 09.03.1988 calling for the objections, the Department had raised objections that by fixing the minimum wages, there will be huge loss to the Government. Notwithstanding, their objections, the State Government had confirmed the minimum wages notification by G.O.Ms.No.2292, Labour and Employment Department, dated 17.10.1988. Pursuant to the fixation of wages, representations were sent to the Department for implementing the minimum wages. But, instead of implementing the order, the State Government in G.O.Ms.No.46, Environment and Forest Department, dated 12.01.1990 had fixed minimum wages Rs.350/- per month. In effect, they had taken note of basic pay of Rs.14/- as the basis and calculating the monthly rate by multiplying into 25 days, they had fixed Rs.350/-. Since dearness allowance was not calculated, a Forestry Workers Association had filed O.A.Nos.3873 and 2388 of 1990 before the Tribunal for a direction to the respondents to fix dearness allowance.

4. In the meanwhile, the State Government by an order in G.O.Ms.No.382, Finance (Allowance) dated 04.05.1994 had fixed Dearness allowance in respect of persons who are drawing consolidated pay, by taking note of the minimum rate of wages fixed by the Labour Department. Process of fixing the minimum wages had undergone several changes by way of Government orders. Finally the State Government had issued G.O.Ms.No.61, Environment and Forest Department, dated 01.03.1996 for grant of minimum wages in respect of Plot Watchers and Social Forestry workers. In the said Government order, arrears for dearness allowance for the period from 01.01.1988 to 31.12.1994 was allowed. Thereafter, by way of G.O.Ms.No.469, Environment and Forest Department dated 04.12.1977, cancelled earlier G.O.Ms.No.61 dated 01.03.1996 and



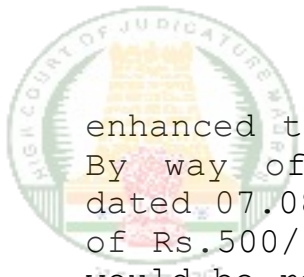
directed the payment of dearness allowance for 6124 persons from 02.11.1988 to 31.12.1994.

5. In fact the Forest Department was attempting to get over fixation of dearness allowance by passing different orders. In the meanwhile the time for revision of the previous rate of minimum wages came up for consideration before the Government. Therefore, a preliminary notification was issued by State Government by G.O.Ms.(2D).No.103, Labour and Employment Department dated 29.09.1999 calling for objections. The second respondent sent a letter dated 22.02.2000 asking the Government to take a decision on the adoption of minimum wages for the village Social Forestry Workers engaged by the Forest Department. The State thereafter had accepted the views of the Commissioner of Labour and had issued a notification in G.O.(2D).No.82, Labour and Employment, dated 27.09.2002 exempting Social Forestry Workers of the Forest Department from the purview of the minimum wages Act. The reason given by the Government is that the Social Forestry Workers had given consolidated pay of Rs.818/- as fixed by the empowered committee on Swedish International Development Authority Project (SIDA Project). Though the project was closed, the forestry workers were allowed to continue the Forest Department to avoid any hardship and given assignment to protect the social forestry plantations raised under SIDA project. The Social Forestry workers were allowed to be absorbed in regular post of Forestry Watchers in the Forest Department after taking into account the seniority of those workers.

6. At this juncture crucial point regarding the claim of the petitioners in respect of their entitlements for minimum wages till the date of regular absorption had arisen. The writ petitioner have raised a claim before the first respondent under Section 20(2) of the Minimum Wages Act against the concerned respondents. The petitioners' claimed award of compensation of Rs.39,92,478/- and Rs.12,34,030/- respectively as minimum wages payable from 01.04.1998 to till date of their regularization in the Government Service. The authorities below have dismissed the claim of the members of the petitioners' Association on the ground that the minimum wages Act is not applicable to them. The rejection order is under Challenge in these writ petitions.

7. The fourth respondent has filed counter denying all the averments made in the writ petition.

8. The contention of the fourth respondent is that all the members of the petitioners' association were taken only regular establishment and they were paid the salary. In G.O.Ms.No.82 Labour and Employment Department dated 27.09.2002 orders were issued exempting Social Forestry Workers and Forest Department were exempted from the provision under Section 12 of the minimum wages Act, 1948. By way of subsequent Gos, the rate of payment was



enhanced to Rs.2,126/- from Rs.818/- with effect from 01.09.2006. By way of G.O.Ms.No.95, Environmental and Forest Department, dated 07.08.2009, they were paying Rs.2,500 - 5000 with grade pay of Rs.500/-. Those who have rendered a service more than 10 years would be regularised from the date of issuance of that order.

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9. The fourth respondent has also taken an objection on the issue of limitation that the application under Section 22 of the Minimum Wages Act 1948 should be preferred within a period of six months from the date on which the minimum wages become payable. Therefore, there is an inordinate delay i.e more than 3279 days in filing, that too without showing sufficient cause. Therefore, the Writ petition is liable to be dismissed.

10. In so far as the entitlement of minimum wages in view of G.O.Ms.No.82, Labour and Employment, dated 27.09.2002 is concerned it is submitted that the exemption of Social Forestry Workers of Forest Department from the purview of Minimum Wages Act is held to be bad in an identical situation dealing with the case is of Social Forestry Workers under the control of the official respondent.

11. This Court in batch of writ petitions W.P(MD).No. 24601 of 2005, by its order dated 08.08.2011 declared that the Plot Watchers and Social Forestry Workers are entitled to minimum wages up to the date of regularization in Government Service. The said judgment has elaborately discussed the factual background of the issue and has dealt with various government orders and considered the various orders passed by quasi judicial and judicial forum. After considering all these points elaborately, this Court had come to the conclusion that the claim of the workers for minimum wages is rightful. The learned Judge has further observed that the State Government which is taking steps to brake the rights of workmen for paying minimum wages. In consonance, there is no distinction between private employment and Government Employment in the matter of payment of wages. Therefore, it is held that the Government shall make payment to the workers by implementing the minimum wages.

12. The present case on hand is also identical to the case dealt with by this Court in W.P(MD).No.24601 of 2005 dated 08.08.2011 and therefore, I find that the decision of this Court in the above said Writ Petition is squarely applicable to the facts of the present case.

13. In view of the above said findings, the impugned orders are set aside and the Writ Petitions are allowed. No costs.

Sd/-

Assistant Registrar(CSII)

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To

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1. The Deputy Commissioner of Labour,
Authority under the Minimum Wages Act,
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2. The Principal Chief Conservator of Forests,
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3. The Regional Conservator of Forests,
Collectorate Complex,
Virudhunagar.
4. The District Forest Officer,
Social Forestry Division, Sivagangai.

+2 ccs to Mr.K.K.Ramakrishnan, Advocate, SR.No.69528

trp/tk

RL/7C/5P/MMS/SAR4/11.5.2017

W.P. (MD) Nos.3726 and 3727 of 2011

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