

IN THE H IGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P.No.30866 of 2016

- 1 E.Ganapathy
S/o.Ethirajulu Vedanthagal Village Ippedu
Post Arakonam Taluk Vellore District
- 2 R.Chinnadurai
S/o.Rose Udayar Street ParANJI Village &
Post Arakonam Taluk Vellore District
- 3 K.Megaraj
S/o.Kollapurai 10 Vinayagar Koil Street
Thallikal Village & Post Arakonam Taluk
Vellore District
- 4 Babu
Balaji Street Koodalur Village & Post
Minnal Via Arakonam Taluk Vellore District
- 5 P.Vinayagam
S/o.Ponnusamy Tiruttani Road Ayyaneri
Village and Road Via. Sholingar
- 6 C.Manikandan
S/o.chinnaiah Arakkonam Road Koodalur
Colony Village & Post Arakkonam Taluk
Vellore District
- 7 V.Desan S/o.Veerasingam
Manndiri Periya Street Padma Village
Sanur Mallavaram Post Pallipattu Taluk
Thiruvallur District
- 8 V.Veeramani
S/o.Velayudam Koil Street Koodalur Post
Vanniam Mottur Village Arakonam Taluk
Vellore District
- 9 S.Anandan S/o.Subramani
No.89 Karumariamman Koil Street Thalikkal
Village & Post Arakonam Taluk Vellore
District

- 10 S.Babu S/o.Subramani
28 Pillayar Koil Street Edapalayam Village
Ippedu Post Arakonam Taluk Vellore District
- 11 N.Raja S/o.Narasimmah Reddy
No.2 Big Street Padmapuram Village & Post
Pallipattu Post Thiruvallur District
- 12 K.Ganesan S/o.Kuppan
Koil Street Vanniamottur Village Koodalur
Post Arakonam Taluk Vellore District
- 13 N.Shankar
S/o.Narasimman 173 Kariya Street
Somasundaram Village & Post Walaja Taluk
- 14 A.Sundaravelu
S/o.Annamalai Bajanai Koil Stret Vengupatu
Village Vengapattu Post Arakonam Taluk
Vellore District
- 15 P.Subramani
S/o.Palayathamman No.74 Bajanai Koil
Street Vanniamottur Village Koodalur Post
Arakonam Taluk Vellore District
- 16 N.Saravanan
S/o.Natarajan Koodalur Village & Post
Arakonam Taluk Vellore District
- 17 K.Vijayan
S/o.Kannan Edapalayam Village Iyyambedu
Post Arakonam Taluk Vellore District
- 18 A.Srinivasan
S/o.Anandan Koodalur Village & Post
Arakonam Taluk Vellore District
- 19 E.Subakaran
S/o.Elumalai Koddalur Post Vannia Mottur
Village Arakonam Taluk Vellore District
- 20 R.Krishnamoorthy
S/o.Rajagopal Ayyaneri Village Tiruttani
Road Veeranathur Post Pallipattur Taluk
Thiruvallur District

- 21 S.Kumar S/o.Subramani
2/274 Vinayagar Koil Street Enkapuram
Village Ammayarkuppam Via Thiyaapuram
Post Pallipattur Taluk Thiruvallur District
- 22 A.Kumaresan
S/o.Aranganathan Veeranathur Village & Post
P.K.Pet (Via) Pallipattu Taluk
Thiruvallur District
- 23 P.Anandan
S/o.Ponnurangam No.5 Kulakkarai Street
Thalikkal Village & Post Arakonam Taluk
Vellore District
- 24 D.Nataraj
S/o.Dhanapal Vengupattu Village & Post
Arakonam Taluk Vellore District
- 25 S.Sekar S/o.Subramani
Koil Street Koodalur Post Vanniam Mottur
Village Arakonam Taluk Vellore District
- 26 D.Perumal
Karikantangal Village Mettukollai Street
Iyapedu Post Arakonam Taluk Vellore
District
- 27 M.Sethuraman
S/o.Muthu Koodalur Village & Post Arakonam
Taluk Vellore District
- 28 S.Srinivasan S/o.Subramani
No.24-A Bajanai Koil Street Thalikkal
Village & Post Arakonam Taluk Vellore
District
- 29 A.Venkatesan
Vilambadi Village Koodalur Minnal Via
Arakonam Taluk Vellore District
- 30 P.Sabapathy
S/o.Periyasamy Vanniar Mottur Village
Koodalur Post Arakonam Taluk Vellore
District

- 31 G.Narasimman
S/o.Govindasamy residing at Bajanai Koil
Street Padmapuram Sanur Mallavaram Post
Pallipattu Taluk Tiruvallur District
- 32 K.Sugumar S/o.Kalan
No.81 Karumariamman Koil Sstreet Thalikkal
Village & Post Arakonam Taluk Vellore
District
- 33 M.Koti
S/o.Munusamy Senguntha Street Paranj
Village Arakonam Taluk Vellore District
- 34 S.Murthy S/o.Subramani
Koil Street Koodalur Post Vanniam Mottur
Village Arakonam Taluk Vellore District
- 35 M.Vijayakumarr
S/o.Mani Koil Stret Koodalur Post Vanniam
Mottur Village Arakonam Taluk Vellore
District
- 36 D.Nellakalaiselvam
S/o.Duraisamy No.39 Vinayagar Koil Street
Thalikkal Village & Post Arakonam Taluk
Vellore District
- 37 V.Kothandan
S/o.Varathappa Naidu Bajanai Koil Street
Ayyaneri Village Veeranathur Post
Pallipattu Taluk
- 38 V.Ramesh
S/o.Veerasamy Polipakkam Village & Post
Namavaram Via Arakonam Taluk Vellore
District
- 39 T.Loganathan
S/o.Thangavel Chinnaparaji Village Paranj
Post Arakonam Taluk Vellore District
- 40 Saloman S/o.Doss
No.1 Elizabeth Nagar Thalikkal Post
Arakonam Taluk Vellore District
- 41 P.Ramadoss
S/o.Perumal Koil Street Cuddalore Colony &
Post Arakonam Taluk Vellore District

- 42 M.Parasuraman
S/o.Munusamy NO.422 Bajanai Koil Street
Srivilasapuram Village Vengapattur Post
Pallipattu Post Pallipattu Taluk
Thiruvallur District
- 43 R.Babu
S/o.Rathinan No.124 Pillayar Koil Street
Thalikkal Village & Post Arakonam Taluk
Vellore District
- 44 S.Harikrishnan S/o.Sampath
60/8 Mudaliyar Street Paranjil Village &
Post Arakonam Taluk Vellore District
- 45 R.Ramesh S/o.Rangasamy
Koil Street Koodalur Post Vanniam Mottur
Village Arakonam Taluk Vellore District
- 46 K.Anandan
S/o.Kumaresan Chinna Kaderi Kuppan Village
Paranjil Post Arakonam Taluk Vellore
District
- 47 K.Narasimman S/o.Kanniayan
Othavadai Street Kadari Kuppan Village
Paranjil Post Arakonam Taluk Vellore
District
- 48 C.Dasaradan
S/o.Chinnaiyan No.235 Anna Nagar First
Street Paranchi Village & Post Arakonam
Taluk Vellore District
- 49 N.Radhu S/o.Narayanadasamy
Edapalayam Village Iyapedu Post Arakonam
Taluk Vellore District
- 50 M.Kumar S/o.Mani
Koil Street Koodalur Post Vannaim Mottur
Village Arakonam Taluk Vellore District
- 51 M.Dhandapani
S/o.Masilamani No.213 South Street Periya
Kadambur Village Segavarajapet Post
Tirutani Taluk Thiruvallur District

- 52 R.Thirthagiri S/o.Masilamani
No.213 South Stret Periya Kadambur Village
Segavarajapet Post Tirutani Taluk
Thiruvallur District
- 53 C.Dillibabu
S/o.chinnappa Arakkonam Road Koodalur Post
Arakonam Taluk Vellore District
- 54 G.Mohan S/o.Gopal
Karumariamman Koil Street Thalikkal Village
& Post Arakonam Taluk Vellore District
- 55 P.Palayathan
S/o.Periyasamy No.2/20 Vanniamottur
Koodalur Post Arakonam Taluk Vellore
District ... Petitioners
- Vs.
- 1.The Presiding Officer,
Principal Labour Court,
Vellore.
- 2.The Management of Sri Munipachaiappan,
Textiles Private Limited,
Ippedu Villgae, Sholingur,
Vellor District. ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records in connection with the common award in I.D.No.139 of 2011 to I.D.No.157 of 2011, I.D.No.159 of 2011 to 178 of 2011 and I.D.No.180 of 2011 to I.D.193 of 2011 and I.D.No.195 of 2011 and I.D.No.16 of 2012, dated 28.04.2015 and quash insofar as the said awards directs the payment of less than minimum wages viz. the payment of Rs.5500/- per month and made reinstatement subject to certain other legal proceedings.

For Petitioner : Mr.V.Prakash, SC
for M/s.K.Sudalaikannu
For R2 : Mr.M.R.Dharanichander

ORDER

The present writ petition is directed against the impugned award passed by the first respondent / the Presiding Officer, Principal Labour Court, Vellore, in I.D.No.139 of 2011 to I.D.No.157 of 2011, I.D.No.159 of 2011 to 178 of 2011 and I.D.No.180 of 2011 to I.D.193 of 2011 and I.D.No.195 of 2011 and I.D.No.16 of 2012, dated 28.04.2015, in and by which, the second respondent management was directed to reinstate the petitioners

into the service subject to the outcome of the disputes referred to in the Industrial Tribunal as per Ex.W70/Government Order regarding fairness of action on the part of the employer in connection with non-employment.

2. The learned Principal Labour Court, Vellore, has framed the following four issues:

1. Whether the 31 petitioners shown in Table 2 below are trainees and whether they are not entitled to file this industrial disputes, by claiming themselves as workers?

2. Whether the petitioners have abandoned their services with the respondents?

3. Whether the petitioners are entitled to the reliefs of reinstatement, backwages and all other attendant benefits as prayed for?

4. To what relief if any?

While answering the third issue, the learned Principal Labour Court, by observing that the petitioners are entitled to get reinstatement into the services of the second respondent management subject to the rights of the employer to continue the disciplinary action, if any, for continued absence to work, directed the second respondent management to fix a sum of Rs.5,500/- as monthly wages, though the second respondent management has agreed to give Rs.5900/- as monthly wages during the negotiation made in the Lok-Adalat proceedings. However, the said sum was fixed subject to the right of the petitioners to agitate and get appropriate remedy regarding the quantum of wages by taking appropriate proceedings before the appropriate authorities, subsequent to the findings of the Industrial Tribunal.

3. In view of the direction to consider in fixing a sum of Rs.5,500/- as monthly wages to the petitioners, pursuant to their reinstatement, the petitioners have come to this Court taking a stand that fixing of Rs.5,500/- as monthly wages is not only arbitrary, but also below the minimum wages fixed by the State Government in G.O.(2D).No.44, Labour and Employment (JI) Department, dated 05.08.2013.

4. Mr.V.Prakash, learned Senior counsel appearing for the petitioners submitted that although the petitioners are all working in the second respondent management, they are not in a position to eke out their livelihood with the monthly income of Rs.5,500/- and the said sum fixed by the Labour Court is not in consonance with the G.O.(2D) No.44, Labour and Employment (JI) Department, dated 05.08.2013, issued by the State Government under the Minimum Wages Act, 1948, revising the minimum rates of wages payable to the apprentices for employment in Text Mills

including Composite Mills, Spinning Mills, Weaving Mills, Open Ended Mills and the various processes in the above said mills like blow room carding, drawing, fly frames, spinning, winding, doubling, reeling, packing, warping-sizing and other process in the textile mills, whether carried out singly or together in the State of Tamil Nadu. In the said G.O., a sum of Rs.10,206.60/- has been fixed as minimum wages. Thus, it is contended, when the above said G.O. had fixed minimum wages even to apprentices working in the textile mills at Rs.10,206.60/-, a direction given by the learned Principal Labour Court to the management of the second respondent to pay a sum of Rs.5,500/- as monthly wages to the workmen, is wholly unfair and unjustifiable, especially when they themselves have agreed to pay a sum of Rs.5,900/- during the Lok-Adalat proceedings.

5. Referring to the judgment of the Hon'ble Apex Court in the case of Workmen v. Management of Reptakos Brett. And Co. Ltd. and another [1992 SCC (1) 290], whereby it is held that the employees are entitled to the minimum wages under all circumstances and an employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry, learned Senior submitted that the issue of minimum wages has been settled by the Hon'ble Apex Court by holding that a worker's wage is no longer a contract between employer and employee and it has the force of collective bargaining under the labour laws, therefore, keeping in view the socio-economic aspect of the wage structure, it has become necessary to follow the payment of minimum wages. Under these circumstances, when the State Government have issued the above said G.O. fixing minimum wages, the learned Labour Court ought not to have abbreviated the said G.O. and directed the respondent to a pay a sum of Rs.5,500/- as monthly wages to the workmen.

6. Again, by referring to the another judgment of the Hon'ble Apex Court in People's Union for Democratic Rights and others v. Union of India and others [1982 (3) SCC 235], learned Senior counsel submitted that the Apex Court, in the said judgment in an effort to avoid the forced labour under Article 23 of the Constitution of India, observed that where a person provides labour or services to another for remuneration, which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23 and such a person is entitled to come to the Court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Article 23 is remedied. Citing the said judgment, it is further argued that when the minimum wage was not paid to all the petitioners, it is the constitutional obligation of the

State to take necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual, who is transgressing the same. Accordingly, learned Senior counsel prayed for modification of the award passed by the Labour Court by giving a direction to the second respondent to pay the minimum wages as per G.O.(2D). No.44, Labour and Employment (JI) Department, dated 05.08.2013.

7. Mr.M.R.Dharanichander, learned counsel appearing for the second respondent, by filing a detailed counter affidavit, submitted that during the March, 2004, some of the workers were involved in some misconducts, therefore, the second respondent management, by initiating disciplinary proceedings, dismissed them from their services. Subsequently, some of the resigned employees and dismissed employees joined together created industrial unrest by obstructing the workers who are willing to work. Suddenly, the ULF Union members had also gone on illegal strike since 02.01.2005 without complying Section 22 of the ID Act, therefore, the second respondent, after giving a police complaint, filed a civil suit before the Sub-Court, Ranipet and got injunction against the erstwhile employees obstructing the workers, those who are willing to work. However, in spite of the said order, the erstwhile workers had continued such illegal activities, therefore, the second respondent management filed a criminal O.P.No.5452/05 and W.P.No.8526/05 before this Court, whereby, by orders dated 11.03.2005 and 15.03.2015, this Court restrained the erstwhile workers and the petitioner ULF union members against obstructing the workers those who are willing to report for work. In the meanwhile, the second respondent management gave a complaint on 29.01.2005 before the Labour Officer, Vellore, stating that the petitioner, along with other erstwhile workers, were creating industrial unrest and also preventing the workers, those who are willing to work. Thereafter, although the Labour Officer, Vellore, issued a conciliation notice to ULF Union, the same was met with failure.

8. It is further stated that, after experiencing several unruly activities from the workmen, the second respondent declared lock-out, therefore, the Labour Officer once again issued a conciliation notice for the illegal strike conducted by the ULF Union. During the pendency of conciliation, some of the members of the ULF Union, by realizing their mistake, requested the management to lift the lock-out and they have also given an assurance that they would maintain the discipline as per the undertaking given by the Senior Advocate of ULF Union in W.P.No.21709 of 2006. Subsequently, the management lifted the lock-out on 24.07.2006 and thereby, most of the employees have turned up for work, however, it is stated, only the petitioners and other employees refused to turn up for work even after lifting the lock-out. Therefore, second

respondent management terminated the training of the petitioners for voluntarily abandoning the training. Aggrieved by the same, when the conciliation proceeding was initiated, the same was ended in failure. After the failure report, a dispute under the ID Act was raised before the Principal Labour Court, Vellore, whereby, the Labour Court, considering the fact that the services of the petitioners were not terminated as per the law, set aside the termination order with a direction to the second respondent to reinstate their services with the payment of Rs.5,500/- as monthly wages. Even after the order of reinstatement, he stated, the petitioners did not report for duty, as a result, the second respondent management is not able to run the Mill, therefore, at this juncture, the petitioners, without reporting for duty, cannot come to this Court seeking for higher salary.

9. Assailing the argument of the learned Senior counsel that in terms of G.O.(2D).No.44, dated 05.08.2013, the petitioner should be paid with the minimum wages, namely Rs.10,206.60/-, learned counsel for the second respondent, by filing a memo of calculation dated 27.03.2017 for payment of Rs.8,379.8/-, submitted that since the petitioners are not able to achieve the production target fixed by the management, they cannot demand exorbitant amount under the guise of minimum wages, however, if they are willing to achieve the target, the second respondent management is ready to give minimum wages of Rs.8,379.8/-, namely, Basic Pay Rs.126.5 x 26 days + DA Rs.195.8 x 26 days = Rs.8379.8/-. It is further stated that since the South Indian Mills Association (SIMA) also have finally fixed minimum wages at Rs.8978/- as monthly wages, their claim of seeking applicability of G.O.(2D).No.44, dated 05.08.2013, fixing a sum of Rs.10,206.60/- as monthly wages, is not practically possible.

10. Heard the learned counsel appearing on either side and perused the materials available before this Court.

11. In the impugned award, the learned Principal Labour Court, by holding that the removal of some of the petitioners from the services of the second respondent as illegal, directed the second respondent management to grant a sum of Rs.5,500/- as monthly wages. It is also not in dispute that while fixing the said sum, the learned Labour Court took note of the fact that during the Lok-Adalat proceedings, the second respondent management has agreed to pay a sum of Rs.5,900/-. Therefore, such an award passed by the learned Principal Labour Court has given a raise to file the present writ petition by the petitioners, on the ground that the State Government have already issued G.O.(2D).No.44, Labour and Employment (JI) Department, dated 05.08.2013, revising the minimum wages payable

to the apprentices for employment in Textile Mills including Composite Mills, Spinning Mills, Weaving Mills, Open Ended Mills and the various processes in the above said mills like blow room carding, drawing, fly frames, spinning, winding, doubling, reeling, packing, warping-sizing and other processes in the Textile Mills.

12. In this context, it is pertinent to refer to the relevant portion of the appendix of the said G.O. and also the calculation arrived at by them for fixing the minimum wages:

"In exercise of the powers conferred by clause (b) of sub-section (1) of sub-section 3 and sub-section (2) of section 5 of the Minimum Wages Act, 1948 (Central Act XI of 1948) and in supersession of the Labour and Employment Department Notification No.II (2)/(LE)5269f/2008, published at pages 1 and 2 of Part II - Section 2 of the Tamil Nadu Government Gazette, Extraordinary, dated 7th November, 2008, the Governor of Tamil Nadu after consultation with the Advisory Board, hereby revises the minimum rate of wages payable to the category of apprentices engaged in the employment in Textile Mills, including Composite Mills, Spinning Mills, Weaving Mills, Open Ended Mills and the various processes in the above said mills like blow room, carding, drawing, fly frames, spinning, winding, doubling, reeling, packing, warping-sizing, and other processes in the textile mills, whether carried out singly or together in the State of Tamil Nadu, as Rs.126.50 (Rupees one hundred and twenty six and fifty paise only) per day, the draft of the same having been previously published as required by clause (b) of sub-section (1) of section 5 of the said Act.

2. This Notification shall come into force with effect on and from the date of its publication in the Tamil Nadu Government Gazette.

Explanations:--

1) In addition to the minimum rate of basic wages fixed above, the apprentices shall be paid dearness allowance as specified below:-

(i) The dearness allowance is linked to the average of Chennai City Consumer Price Index for the year 2000 that is, 475 point with base 1982 = 100, and for every rise of

one point over and above 475 points, an increase of 26 paise (Twenty six paise only) shall be paid as dearness allowance per day.

(ii) The dearness allowance shall be calculated every year on the first April on the basis of the average of the indices of the preceding twelve months, that is from January to December.

(iii) The first calculation shall be effective from the date of publication of this Notification in the Tamil Nadu Government Gazette based on the Average Consumer Price Index number for the previous year.

(2) Where the nature of work is the same, no distinction in the payment of wages shall be made as between men and women apprentices.

(3) To arrive at monthly wages, the daily wages shall be multiplied by 30.

(4) Wherever the existing wages are higher than the minimum wages fixed therein, the same shall be continued to be paid.

Calculation for Variable Dearness Allowance

Calculation as per G.O.No.(2D) 44, dated 05.08.2013,
Labour & Employment

Chennai Consumer Price Index for the year	2000
Base year	1982 = 100
Base points	475
Calculation Per point is	0.26/- paise
Total points as per May 2016 is	1297 points
(Total Points - Base Points) = Calculation Points	1297-475 = 822
Calculation points X fixing price per points = VDA Price per day	822 x 0.26 paise = Rs.213.72/- per day
VDA Per Day x days = Amount per month	Rs.213.72 x 30 days = Rs.6411.60/-
Wage per day x days = Wages per month	Rs.126.50 x 30 days = Rs.3795/-
Minimum wage = VDA + daily wage	6411.60+3795 = Rs.10,206.60/-

A mere reading of the above said G.O. depict that the State Government have issued the said G.O. by revising the minimum wages payable to the categories of apprentices in Textile Mills, including Composite Mills, Spinning Mills, Weaving Mills, Open

Ended Mills and the various processes in the above said mills like blow room carding, drawing, fly frames, spinning, winding, doubling, reeling, packing, warping-sizing and other processes in the Textile Mills, whether carried out singly or together in the State of Tamil Nadu at Rs.10,206/-, by including each category in the salary as stated in the above said breakup, therefore, the learned Principal Labour Court, in my considered opinion, has committed an error in not giving direction to pay the minimum wages to the workmen.

13. At this juncture, the second respondent management have also expressed their difficulty to pay the minimum wages to their labourers. Therefore, it is pertinent to state that the Hon'ble Apex Court in Management of Reptakos Brett's case (cited supra) held that an employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry. For better appreciation, relevant portion of the said judgment is extracted below:

"The concept of 'minimum wage' is no longer the same as it was in 1936. Even 1957 is way-behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry:--

(vi) children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25% of the total minimum wage.

The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry."

14. In yet another judgment, the Hon'ble Apex Court in People's Union for Democratic Rights' case (cited supra), held that under what circumstances, the forced labour is perpetuated and why the minimum wages should be paid to the workmen. Relevant portion of the said judgment is extracted below:

"15.....Where a person

is suffering from hunger or starvation, when he has no resources at all to fight disease or feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour.' It is not unoften that in capitalist society economic circumstance exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word 'force' must therefore be constructed to include not only physical or legal force but also force arising from the compulsion of economic circumstance which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets- what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under [Article 23](#).

Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Article 23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23."

15. In the light of the above, minimum wage includes not only the monthly salary payable to an employee, but also food, cloth&shelter, including the expenditure towards children's education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc., and therefore, keeping in view of the socio-economic aspects of the wage structure, when the Government have issued G.O.(2D).No.44, Labour and Employment (JI) Department, dated 05.08.2013, the same has to be paid without any reservation by the employer; accordingly, I have no hesitation to hold that the employees are entitled to the minimum wages at all times and under all circumstances, because, fundamental rights enshrined under Articles 17 or 23 or 24 are violated in the case on hand. Thus, it is the obligation of the State to ensure due observance of the fundamental rights by the private individual/second respondent. Besides, G.O.(2D).No.44, Labour and Employment (JI) Department, dated 05.08.2013, prescribing minimum wages of Rs.10,206.60/- has not been followed in the present case, hence, this Court hereby directs the second respondent-management to pay a sum of Rs.10,206.60/- as minimum monthly wages to the workmen. Such direction is based on the well laid principle that the employer has to necessarily pay the minimum wages, failing which, such an employer has no right to engage labour and they have no justification to run the industry. It is also further made clear that such direction of this Court is made applicable only to those persons who are presently working and not to others who are not working.

16. In fine, for the reasons stated above, the writ petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm

To

1.The Presiding Officer,
Principal Labour Court,
Vellore.

2.The Management of Sri Munipachaiappan,
Textiles Private Limited,
Ippedu Villgae, Sholingur,
Vellor District.

+1cc to Mr.K. Sudalaikannu, Advocate, S.R.No.22285

+1cc to Mr.M.R. Dharanichander, Advocate, S.R.No.21997

sks (CO)
md(21/04/2017)

W.P.No.30866 of 2016

सत्यमेव जयते

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