

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.23769 of 2014

State of Haryana and others ... Petitioners

Versus

Sh. Suresh Kumar and others ... Respondents

2. CWP No.8751 of 2016

State of Haryana and others ... Petitioners

Versus

Sh. Abbal Hasan and others ... Respondents

3. CWP No.26439 of 2015 (O&M)

State of Haryana and others ... Petitioners

Versus

Makhan Singh and others ... Respondents

4. CWP No.8697 of 2016

State of Haryana and others ... Petitioners

Versus

Noor Ahmad and others ... Respondents

5. CWP No.8696 of 2016

State of Haryana and others ... Petitioners

Versus

Sh. Shyam Lal and others ... Respondents

6. CWP No.8909 of 2015

State of Haryana and others ... Petitioners

Versus

Sh. Mohan Lal and others ... Respondents

Date of Decision: 13.01.2017

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Saurabh Girdhar, AAG, Haryana.

Mr. Ramandeep Singh, Advocate,
for respondents in CWP No.26439 of 2015.

Mr. Ishan Cooner, Advocate,
for Mr. J.S. Cooner, Advocate,
for respondents in CWP No.23769 of 2014.

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.23769 of 2014 titled *State of Haryana and others v. Sh. Suresh Kumar and others*, CWP No.8751 of 2016 titled *State of Haryana and others v. Sh. Abbal Hasan and others*, CWP No.26439 of 2015 titled *State of Haryana and others v. Makhan Singh and others*, CWP No.8697 of 2016 titled *State of Haryana and others v. Noor Ahmad and others*, CWP No.8696 of 2016 titled *State of Haryana and others v. Sh. Shyam Lal and others* & CWP No.8909 of 2015 titled *State of Haryana and others v. Sh. Mohan Lal and others*.

2. Except CWP No.26439 of 2015, the other petitions in these bunch arise from orders passed on applications filed under Section 33-C (2) of the Industrial Disputes Act, 1947 ("1947 Act") by the Presiding Officer, Labour Court, Ambala by five identical orders dated May 21, 2014 whereas

CWP No.26439 of 2015 challenges a similar order passed by the Presiding

Officer, Labour Court, Hisar in Application No.01 of 2013 decided on December 02, 2014. The issues are common and can be decided by one order. The triable issues in the awards made at Ambala and one of them at Hisar are common and can be decided by a joint order.

3. The State of Haryana through the Financial Commissioner, Education Department, Haryana and the Director Elementary Education, Haryana, Chandigarh have brought these petitions challenging the orders passed by the Presiding Officer, Labour Court, Ambala and Hisar which award in review is made the lead case [CWP 23769 of 2014] and facts taken from there for the sake of convenience.

4. The respondents in all these cases were engaged as Chowkidars in Government Middle and Primary Schools in the Haryana Elementary Education Department and deployed in different districts in Haryana. They were appointed on temporary basis on fixed salary of Rs.1000/- per month. These engagements were necessitated when EDUSAT equipment was installed in Elementary Schools at considerable expense which property lying in schools had to be guarded against theft. This job was entrusted to the respondent EDUSAT Chowkidars. The arrangement began in April 2007 and appointments followed. Government took a decision vide Memo dated April 20, 2007 for entrusting additional responsibility of ensuring security for EDUSAT equipment to the village Chowkidar with additional remuneration payable @ Rs.1000/- per mensem. However, there were a large number of villages which have more than one Government Elementary School and a single village Chowkidar could not look after the security of schools. To meet this problem, the Elementary Education Department issued

instructions vide Memo dated May 01, 2007, authorizing the Panchayats to appoint a Chowkidar from their village as an interim measure for the security of EDUSAT equipment at the honorarium of Rs.1000/- per month. The respondents are Chowkidars engaged through the Panchayats to serve in Elementary Schools in villages where there are more than one Primary or Middle school. The State Government calls it an outsourcing scheme. This created according to the Government, three separate groups of EDUSAT Chowkidars, namely, :-

“(i) Village Chowkidars of revenue department who were entrusted the duty to look after the security of EduSAT equipments additionally.

(ii) The EduSAT Chowkidars engaged by the Village-Panchayat to look after the security of EDUSAT Equipments.

(iii) EduSAT Chowkidars engaged in urban areas through outsourcing policy framed by State Government.”

5. EDUSAT is a Satellite of India exclusively devoted to meet the demands of the educational sector. It was launched on September 20, 2004 by the Indian Space Research Organization (ISRO). EDUSAT is meant for distant class room education from school level to higher education. It is Educational Satellite which gave a fillip to India's Educational Programme.

6. The present respondents were engaged in the years 2007, 2010 & 2011 respectively by the Gram Panchayats at their own discretion at the fixed honorarium paid by the Block Education Officers regularly every month as per policy statement of the department. The State says that these persons were appointed on non-sanctioned posts without undergoing regular selection process. There appears to be no controversy that it was full time employment.

7. Aggrieved by payment of a fixed honorarium of Rs.1000/- per month, they claimed payment of minimum wages fixed under the Minimum Wages Act, 1948 ("1948 Act") for Chowkidars (Watchmen). This was the issue which went to trial in proceedings under Section 33-C (2) of the 1947 Act before the Labour Courts at Ambala and Hisar. The applications have been allowed on the principle that the employer was under statutory liability to pay minimum wages with effect from the dates of engagement of each of the EDUSAT Chowkidars. The management witness RW-1 admitted in his cross-examination deposing that the workmen were entitled to minimum wages as per the instructions issued by the Director, Secondary Education, Haryana, Panchkula vide letter Ex.W4. If it is the statutory liability protected by the instructions of the Government itself then minimum wages become a legally recoverable liability as money due and the claim applications were eminently within jurisdiction of the labour courts and the Chowkidars possessed sufficient have locus standi to seek legal redress of their grievance of being paid higher wages than they were in receipt under the policy arrangement. The Labour Court granted relief holding that the workmen were entitled to the difference in minimum wages by deduction of ` 1000/- per month. Directions have been issued to pay to the respondents the minimum wages with effect from the effective dates of employment within a time bound period and in default of which the arrears of wages shall carry 9% interest till realisation.

8. The impugned orders are brief and notice the law in Bharat Earth Movers Ltd. v. Gangaramaiah by Mahmood Mirza and Ors., 2007

LLR 719. One of the questions which fell for consideration of the Karnataka

High Court in *Bharat Earth Movers* case was whether on failure of the contractor to pay the difference of wages as agreed under the contract, the principal employer is liable or not to shoulder the difference. The question arose out of proceedings under Section 33-C (2) of the 1947 Act. The Karnataka High Court held that if a contract labourer is entitled to recover the minimum wages from principal employer in terms of Section 21 (4) of the Contract Labour (Regulation & Abolition Act), 1970 then the difference is recoverable from the principal employer and such a recovery can be made as an existing right under the execution proceedings initiated through Section 33-C (2) of the 1947 Act. The ratio of the judgment is that contract labourers can maintain a claim petition under Section 33-C (2) and for this existence of direct relationship of master and servant or employer and workman is not necessary. A redress of statutory liability is maintainable against principal employer and, therefore, arrears of payment of minimum wages was a pre-existing and recoverable right. In the present case, the Labour Court has fastened the liability on the State Government even though the Chowkidars were engaged through Gram Panchayats but with duties and responsibilities in Primary and Middle schools set up in rural and urban areas in Haryana.

9. The petitioning State argues before this Court in challenge to the orders that during the proceedings before the Labour Court at Ambala the Government letter granting minimum wages to EDUSAT Chowkidars vide Memo dated July 05, 2011 was withdrawn by the Director Secondary Education, Haryana, Panchkula vide his Memo dated July 26, 2013 and this fact has erroneously not been noticed or dealt with by the Courts below,

even though the superseding memo was produced in evidence during the deposition of Chaman Lal, Deputy Superintendent but it has failed to evoke any finding. There is no gainsaying that if letter dated July 26, 2013 was produced in evidence then it was incumbent on the Labour Courts at Ambala and at Hisar to have addressed the issue. The Labour Courts may have overlooked the document but still I do not think that would affect the conclusion arrived at that the minimum wages fixed under the MWA would have to be paid as a matter of right. Otherwise, the State would be seen as exploiting labour at cheap cost. The State Government being a welfare state is to act against exploitation of manpower when the nature of duties is full time with accompanying responsibilities to safeguard EDUSAT equipment as an essential component of modern methods of teaching in schools.

10. The order passed by the Labour Court, Hisar which is challenged in CWP No.26439 of 2015 titled *State of Haryana and others v. Makhan Singh and others* is copy text in recital of facts and reasoning of the Labour Court at Ambala. Therein it is revealed that the EDUSAT Chowkidars work under the directions of Principals of the schools concerned. Their main duty is to look after EDUSAT equipment installed in schools administered by the Education Department, Haryana. Their duty starts from 2 PM to 8 AM and even on holidays they have to remain present in school throughout day and night. The applicants claimed that they were not only entitled to minimum wages but double wages for working after six days in lieu of rest on the 7th day of the week.

11. The department refuted the claim of the applicants in the lower courts on various grounds including lack of sanctioned posts of Chowkidar

(Watchman) in any Government Middle or Government Primary Schools throughout the State of Haryana; they accepted the duties of EDUSAT Chowkidars voluntarily under the village Gram Panchayat; they were never engaged by the Elementary Education Department, Haryana; the assignment has been taken over through the Gram Panchayat by the applicants voluntarily and, therefore, there is no direct master-servant relationship with the respondents. If they do not wish to work as EDUSAT Chowkidars, they may submit their refusal to the Sarpanch of Gram Panchayat and leave the job. They have no right to claim minimum wages from the department. There is no dispute that the fixed honorarium of Rs.1000/- per month was accepted voluntarily and was being paid regularly.

12. The Labour Court, Hisar appreciated the evidence on record and referred to the Government letter dated June 22, 2011 by which it had become a statutory liability to pay minimum wages to the EDUSAT Chowkidars at least with effect from the date of the letter i.e. June 22, 2011. The management witness 1 admitted in his cross-examination that the duty hours of the claimants were from 7 PM to 6 PM at the school at Hisar. He admitted that regularly appointed Chowkidars were in Class-IV pay scale. It is common ground that the workmen were appointed by Gram Panchayats and work under their supervision but are deployed in schools.

13. Counsel has drawn attention to the notification dated June 27, 2007 issued under Section 5 (2) of the 1948 Act after the Government held deliberations with the State Minimum Wages Advisory Board. The category of Chowkidar falls in semi-skilled workers in the notification Annex P-6 placed on record by the petitioner-State. The Labour Court, Hisar has also

overlooked the subsequent letter dated July 26, 2013. It reads in translation as follows:-

“From:

*Director Secondary Education Haryana,
Panchkula*

To

*All District Education Officers,
State of Haryana*

*Memo No.: 22/6-2011 HRME (5)
Dated, Panchkula 26.07.2013*

*Subject: Action Report of the Meeting Dated
16.06.2011 held in Directorate with
Office Bearers of 4th Class Govt.
Employees' Union.*

On the subject cited above.

*In the matter subjected above, the letter No.
22/6-2011 HRME (4) Dated 05.07.2011 issued by the
Directorate is withdrawn.*

-sd-

*Superintendent HRME
for Director School Education Haryana
Panchkula”*

15. This letter (Annex P-6 in CWP No.23769 of 2014) assigns no reasons why the letter dated June 22, 2011 was withdrawn. The letter dated July 05, 2011 has not been placed on the record of CWP No.8751 of 2016 or in any of the other petitions to enlighten this Court as to how the decision taken by the competent authority to pay minimum wages to EDUSAT Chowkidars was withdrawn by a mere letter. The letter dated June 22, 2011 had statutory flavour since it was issued after consultation with the Board.

16. The State has mentioned letters dated May 07, 2012, May 17, 2012 and September 09, 2014 in its pleadings in the petitions. The Memo dated September 09, 2014 (Annex P-8) in CWP No.23769 of 2014 reads as follows:-

“From:

*Director Secondary Education Haryana,
Panchkula*

To

*All District Education Officers,
State of Haryana*

*Memo No.: 22/6-2011 HRME (5)
Dated, Panchkula 09.09.2014*

*Subject: Action Report of the Meeting Dated
16.06.2011 held in Directorate with Office
Bearers of 4th Class Govt. Employees'
Union.*

On the subject cited above.

*In the matter subjected above, the letters
No. 22/6-2011 HRME (4) Dated 07.05.2012 and
17.05.2012 issued by the Directorate are withdrawn.*

-sd-

*Assistant Director ME
for Director School Education Haryana
Panchkula”*

17. It appears that the letters dated July 26, 2013 and September 09, 2014 have been issued as a result of the meeting held between the Directorate with the Office Bearers of the 4th Class Government Employees' Union. It is not projected or averred in any of the six writ petitions by the petitioning State whether the EDUSAT Chowkidars/respondents were members of the 4th Class Employees' Union. When the State denies employer-employee relationship with the EDUSAT Chowkidars then it follows a priori that they could never be members of the Union and would thus not be bound by these two letters. At any rate, they had a pre-existing right under the letter dated July 05, 2011 making their claim an existing right capable of being computed in terms of money due under Section 33-C (2) of the 1947 Act. In view of this position, the right to minimum wages for the category of EDUSAT Chowkidars is a valuable right and the labour

Courts have committed no illegality in enforcing the statutory right in proceedings under Section 33 C (2) of the Act. Call them Chowkidars or EDUSAT Chowkidars makes no difference. So long as they work for the Government but may be not under it also makes no material difference.

18. Presently, the rights of the respondents in these bunch of petitions are also governed by the law laid down by the Supreme Court in State of Punjab and others v. Jagjit Singh and others, 2016 SCC Online SC 1200; ruling-that temporarily engaged employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay-scale, alongwith dearness allowance (as revised from time to time) on account of their performing the same duties, which are discharged by those engaged on regular basis, against sanctioned posts, the Court said that the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis. The Supreme Court among the other principles enunciated inter alia observed:-

“54. There is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has

been repeatedly declared, is being reiterated by us, yet again.

55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

19. I would, therefore, not accept any of the arguments canvassed by the State in these petitions in challenge to the impugned orders as satisfactory to deny relief to the respondent-workmen and restrict the respondents to the existing honorarium as was prior to the orders of the labour courts. When the post of Chowkidar is categorized by the Haryana Government in its notification under the 1948 Act then it matters rather little that the claimants are EDUSAT Chowkidars. The resultant dispensation may be even below the minimum of the pay scale prescribed for a regular Chowkidar. Lack of existence of sanctioned posts is not material to the consideration as the respondents have not claimed permanency or regularisation of their services. The law is settled that demand for payment of minimum wages can be executed in proceedings under Section 33C (2) without resort to the machinery under the 1948 Act.

The stand of the State in these petitions does not redound to its credit as a model surrogate employer even while acting through the agencies of the

Gram Panchayats to serve its own purposes and duties of introducing information technology in Government run schools. That was a convenient cushion the State fell back on to disclaim direct relationship but they should not be permitted to disown responsibility on equitable considerations and forsake these workers to their minimum entitlements. They may be paid through Government or by the Panchayats out of public funds and that would make hardly any substantial difference. The Gram Panchayats are equally bound by the provisions of the Minimum Wages Act when employing labour directly or through the scheme introduced by the State of Haryana. A duty is cast on the Haryana Government to make proper financial arrangements or they may close down the EDUSAT scheme itself, but till it lasts, the respondents have an unequivocal right to claim minimum wages when the hours of work are the same and duties even more onerous than the regular Chowkidars as night watchmen. It is the business of the Government to safeguard its valuable property in the ways it designs in public interest.

20. I would, therefore, find nothing fundamentally wrong in the work of the Labour Courts at Ambala and Hisar in allowing the claim applications by granting to the respondent-workmen the minimum wages prescribed under the 1948 Act and to honour the Government Letter dated June 22, 2011 providing minimum wages to EDUSAT Chowkidars. The subsequent Letters dated July 26, 2013 and September 09, 2014 are held not legally binding on the rights of the respondents because they were not privy to those decisions when they applied only to the members of the 4th Class Employees Union of which they were not part. The claim applications were

founded on pre-existing benefits and rights capable of being computed in terms of money and the labour courts were within their jurisdiction to determine them in the impugned orders and recovered as provided in sub section (1) of Section 33C of the Act.

21. As a result, these petitions are dismissed and the orders of the learned Labour Courts at Ambala and Hisar are upheld in their relief-based conclusions.

13.01.2017
manju

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>