

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
W.P.No.40037 of 2002

Erode Mavata Anaithu Arasu Velanmai
Pannaith Thozhilalar Sangam
(Regn.No.302/ERD)
Pungar
Bhavanisagar 638 451
Erode District, Rep by
Its General Secretary, P.Kasi VishwanathanPetitioner

-Vs-

1. State of TamilNadu
represented by its Secretary to Government,
Labour and Employment Department,
Fort St.George,
Chennai - 600 009.
2. The Registrar,
Tamilnadu Agricultural University,
Coimbatore - 641 003.
3. The Professor & Head
Tamilnadu Agricultural Research Centre,
Bhavanisagar 638 451.
Erode District. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ, Order or Direction, in the nature of a Writ of Certiorarified Mandamus calling for the entire records connected with the order of the 2nd respondent in No.A6/5127/99 dated 29.08.2002 signed on 02.09.2002 and quash the same and consequently direct the respondents 2 & 3 to strictly comply with G.O (2D) No.107 dated 28.10.1999 passed by the 1st respondent, which is a notification issued under the Minimum Wages Act 1948 and to award cost.

For petitioner : Mr.S. Sathia Chandran
For Respondents: Mr. K.Ravikumar, Additional
Government Pleader for R1
Mr.S.Jayaraman for R2 and R3

O R D E R

The prayer sought for in this writ petition is for a writ of Certiorarified Mandamus to quash the order of the 2nd respondent in No.A6/5127/99 dated 29.08.2002 signed on 02.09.2002 with a consequential prayer to direct the respondents 2 & 3 to strictly comply with G.O (2D) No.107 dated 28.10.1999 passed by the 1st respondent, which is a notification issued under the Minimum Wages Act 1948 and to award costs.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows:-

The petitioner Sangam is registered under the Trade Union Act, 1926, with registration No.302/ERD and most of the members of the petitioner-Sangam are the farm workers / employees of the second respondent University. The members of the petitioner Trade Union having been engaged by the University to do various farm work, most of the time their work is being extracted for the purpose of completion of various research work being undertaken by the University.

3.Each of such farm worker, being employed at the University as a farm worker, would be paid daily wages as per Minimum Wages Act per day and accordingly, they would be pressed into service. When that being so, in the year 1999, the second respondent University by proceedings dated 31.12.1999 had fixed the wages for men as Rs.54/- per day and for women Rs.45/- per day. It seems that, previously the farm workers had pressed into service for 8 hours per day and subsequently the same has been reduced to lesser hours i.e., 6 hours or 5 hours as the case may be for men and women workers respectively. The said working hours per day had been prescribed by the State Government from time to time. Like that, the minimum wages payable to the workers including farm workers are also being fixed from time to time by the State Government under the Minimum Wages Act.

4.While that being so, the second respondent University issued a proceedings dated 29.08.2002, wherein the university had stated that, there had been more than 126 research projects going on at the University which are being funded by the State Government, ICAR under various schemes like NATP,AICRP etc. It is further stated that, the proceedings for the farm / field workers related to the research projects are to be completed in a time bound schedule to get the good experimental results. In the context, according to the University, it has to be noted that, the farm workers Union had already made a demand to the University for revival of 8 hours working per day for

getting more wages as the minimum wage is being prescribed on hour basis.

5. Accordingly, the said proceedings dated 29.08.2002 was issued by the University, by which, the working hours of the casual labours for both men and women was fixed at 8 hours per day and the wage per hour was fixed at Rs.9/- for both men and women which means they would get Rs.72/- per day for 8 hours working and 10% extra wages would be paid to the casual labourers working in the research stations functioning in the hill stations with Corporation Limited. The working hours also has been fixed as between morning 6.30 A.M to 11.30 A.M, i.e. 5 hours with half an hour break between 7.30 A.M to 8.00 A.M and evening 2.00 P.M to 5.30 P.M that is 3½ hours, totally 8 hours per day.

6. The petitioner Trade Union seems to have been aggrieved by the said proceedings issued by the university dated 29.08.2002, with regard to the increasing of working hours from 6 to 8 hours or that 5 to 8 hours as the case may be, for men and women respectively. Therefore they filed this Writ Petition challenging the said proceedings issued by the University with the aforesaid prayer.

7.Mr. S. Sathia Chandran, the learned counsel appearing for the petitioner would submit that, the State Government has fixed the working hours per day under the Minimum Wages Act and the same cannot be increased unilaterally by the respondent University, unless such permission is given to the University by the State Government.

8.In this regard the learned counsel would submit that, a permission/clarification was sought for by the university from the Government to increase or restore the working hours as 8 hours per day. However, the Government in the letter dated 12.09.2000, has rejected the said proposals to revive or increase the working hours from 5 to 8 hours or 6 to 8 hours. The relevant portion of the letter dated 12.09.2000 which the learned counsel for the petitioner relied upon, is extracted here under:-

“பார்வை 2ல் காரும் அரசாணையின்படி, ஏற்கனவே அறிவிக்கை செய்யப்பட்டுள்ள வேளாண் தொழிலாளர்களுக்கான குறைக்கப்பட்ட வேலை நேரத்தில் (அதாவது ஆண் தொழிலாளர்களுக்கு நாளொன்றுக்கு 6 மணி நேரம் மற்றும் பெண் தொழிலாளர்களுக்கு நாளொன்றுக்கு 5 மணி நேரம்) மாற்றம் தேவையில்லை என அரசு முடிவு செய்துள்ளது என்பதைத் தங்களுக்குத் தெரிவிக்கப் பணிக்கப்பட்டுள்ளேன்.”.

தங்கள் உண்மையுள்ள,
அரசுச் செயலாளருக்காக

9. By relying upon this communication given by the Government, the learned counsel for the petitioner would submit that, since the proposals sent by the University to increase the working hours as 8 hours has been rejected, the present impugned proceeding dated 29.08.2002 enhancing the working hours from 6 hours to 8 hours ought not to have been passed by the University. The learned counsel would further submit that, the Government of Tamil Nadu from time to time, have been fixing the minimum wages as well as the working hours per day under the Minimum Wages Act and the same shall not, at any point of time, be modified by any employer in violation of the statutory prescription made by the State Government under the said Act.

10. In this regard, the learned counsel for the petitioner would further submit that, since the impugned order enabling the increasing of working hours as 8 hours per day which is beyond what has been prescribed by the State Government as working hours per day i.e. 5 or 6 hours, the said enhancement of working hours shall not be permitted and therefore, to that extent the impugned communication is to be interfered with by this court.

11. Per contra, Mr.S. Jayaraman, the learned Standing Counsel appearing for the second respondent University would submit that, no doubt, the State Government is empowered to prescribe the minimum wages as well as the working hours per day under the Act and has prescribed the minimum working hours, wages as well as the working hours per day, from time to time, it has prescribed the working hours per day insofar as the farm workers are concerned, with 6 hours for men and 5 hours for women. Though such prescription has been made, the same can be made applicable only the minimum wages prescribed for a day. In other words, if a minimum wages is prescribed per day, that wage shall be paid for 6 hours to a farm worker (men) and 5 hours to a farm worker (women). Suppose, if the employee wants to do some more work up to 8 hours, of course on extra payment for the extra hours worked by the employee/farm workers, that kind of extra work for extra payment cannot be construed as a violation of the prescription made by the State Government under the Minimum Wages Act. In support of his contention, the learned counsel for the second respondent university would rely upon Section 14 of the Minimum Wages Act which reads thus:-

"Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage period as may be prescribed works on any day in excess of the number of hours constituting a normal working

day, the employer shall pay him for every hour or for part of an hour so worked in excess at the over time rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

2) Nothing in this Act, shall prejudice the operation of the provisions of [Section 59 of the factories Act, 1948 (63 of 1948)] in any case where those provisions are applicable."

12. By relying upon the said provision, the learned counsel for the second respondent University would submit that, under Section 14 of the Act, works on any day in excess number of hours can be construed as normal work and the employer should pay him for every hour or part of an hour, at the rate of over time wage fixed under the Act.

13. The learned counsel for the second respondent University would further submit that, in view of the said provisions, the employer can extract work beyond the normal working day/ hours already prescribed and in that case the employee/worker shall be entitled to get more wages for an hour basis for every extra work or part of an hour, he or she works, beyond the normal working hours. Therefore, the learned counsel for the University would submit that the prescription made by enhancing the working hours into 8 hours is not a violation of any provisions of the Minimum Wages Act and is in consonance with Section 14 of the Act.

14. The learned counsel for the second respondent University also produced a circular dated 24.08.2017 issued by the University, whereby the minimum rate for a Mazdoor i.e. Farm workers have been prescribed as Rs.360/- per day with effect from 28.08.2017. For better appreciation the extract of the said circular is reproduce here under:-

"The revised District Collector's rate of wages for the year 2017-2018 in Coimbatore District is communicated as detailed below.

Item No.	Category	Rate fixed for the year 2017-2018
2	Mazdoor I	Rs.360 per day

Hence, it is requested that the above rate of wages may be followed to the casual labourers (who are already being paid with the wages at the rate of Rs.300/- per day)

with 8 hours duty working in the TNAU, Coimbatore district with effect from 28.08.2017.

/By order of the Vice Chancellor/

Sd/- C.R.Anandakumar

Registrar i/c

15. The learned standing counsel for the University would further submit that, wage at the rate of Rs.360/- per day fixed has been paid for 8 hours work, which means per hour Rs.45/- is being paid for farm workers and therefore, if any one wants to work for 8 hours, he/she would be paid entire Rs.360/- and based on this prescription of the wages in respect of the farm worker being engaged, the respondent University are undertaking 8 hours working per day and are being paid full wages for 8 hours i.e. Rs.360/-. Therefore, the learned counsel for the University would submit that by enhancing the working hours from 5 to 6 hours or 6 to 8 hours it no way affect the workers and in fact, the workers are wanting such enhancement of working hours as they can earn more wages for their betterment.

16. Mr.K.Ravikumar, the learned Additional Government Pleader appearing for the first respondent has produced the instruction given by the Commissioner of Labour and Employment Department, dated 27.08.2018 are reads thus:-

"1. After G.O.(2D) No. 107, Labour and Employment Department dated 28.10.1999, the following Government Orders were issued revising the minimum rates of wages for the employment in Agriculture and Works allied to agriculture.(Copy of G.Os enclosed)

(i) G.O. (2D) No.24, Labour and Employment Department dated 08.07.2005.

(ii) G.O. (2D) No.88, Labour and Employment Department dated 01.10.2009.

(iii) G.O. (2D) No.3, Labour and Employment Department dated 23.01.2015.

2.(i) As per the above G.Os, (i) & (ii) the time scale of work for men workers is 6 hours and for women workers 5 hours except those engaged in ploughing and as per above G.O. Dated 23.01.2015 the time scale of work for men and women workers are 6 hours.

(ii) Further, the notification under section 13(1) of the Minimum Wages

Act, 1948 had been issued by fixing the number of hours of work per day in Agriculture vide G.O. (2D) No.24, Labour and Employment Department dated 08.07.2005, wherein it had been fixed for men workers is 6 hours and for female workers is 5 hours. (Copy enclosed)

(iii) The time scale of work for employment in Agricultural and works ancillary to Agricultural Farm Workers in Agricultural University, Coimbatore is not available in this department.

3. As per G.O. (2D) No.3, Labour and Employment Department dated 23.01.2015 with effect from 18.03.2015 the following minimum wages had been fixed for the workers employed in employment in agriculture and works ancillary to agriculture.

Serial Number (1)	Classes of employees (2)	Minimum rates of wages per day (3)
(1)	Employees engaged in ploughing with bullocks and ploughs supplied by him	Rs.325/-
(2)	Employees engaged in ploughing with bullocks not supplied by him	Rs.146/-
(3)	Employees engaged in harvest of paddy reaping, carrying to threshing floor, threshing, winnowing, measuring and bagging.	Rs.146/- per day, who do the work for six hours or in kind to the extent of $\frac{1}{8}^{\text{th}}$ of the gross yield of produce which ever is higher, per day.
(4)	Employees engaged in harvest of crops other than paddy	Rs.146/- per day, who do the work for six hours.

Serial Number (1)	Classes of employees (2)	Minimum rates of wages per day (3)
(5)	Employees engaged in sowing, plucking of seeding, re-planting of seedling or weeding operations.	Rs.146/- per day, who do the work for six hours.
(6)	Employees engaged in other agricultural operations, namely trimming bunds and fields, bee-keeping, poultry farming, dairy farming and climbing trees.	Rs.146/- per day, who do the work for six hours.

4. The time scale of work for employment in Agricultural and works ancillary to Agricultural Farm Workers in Agricultural University, Coimbatore is not available in this department."

17. By relying upon these instructions as well as the relevant Government Orders mentioned therein, the learned Additional Government Pleader would submit that, the State Government under the power vest in them under the provisions of the Minimum Wages Act, has fixed the minimum wage for workers from time to time including the working hours per day. As per the said prescription which has been made in latest Government Order i.e G.O(2D) No.3, Labour and Employment Department dated 23.01.2015, the minimum wage for Agricultural/Farm workers was Rs.146/- per day. Suppose if the worker engaged in ploughing with bullocks and ploughs supplied by him, he would be entitled to get Rs.325/- per day. For all other work including ploughing with bullocks and ploughs not supplied by the worker himself, all other farm works he or she shall be entitled to get Rs.146/- per day, which means per day wages prescribed in the latest Government Order for farm workers is for 6 hours work per day.

18. I have considered the submissions made by the learned counsel appearing for the petitioner as well as the

respondents and have perused the materials placed before this court.

19. It seems to be the grievance of the petitioners Association/ Trade Union that, they have no grievance with regard to the minimum wages prescribed by the State Government from time to time and the minimum wages being paid by the respondent University to the farm workers like the members of the other Trade Unions from time to time. However, their only grievance, according to the learned counsel appearing for the petitioner is that, the enhancement of working hours as 8 hours per day from 6 hours for men and 5 hours for women per day as prescribed by the State Government, which, according to the learned counsel for the petitioner, is in direct violation of the prescription made by the State Government under the power vesting with them under the provision of the Minimum Wages Act.

20. The learned counsel for the petitioner would vehemently contend that, when the university sought for permission from the State Government to revive 8 hours per day and to increase the working hours from 6 or 5 hours respectively to 8 hours and the same was rejected by the Government letter dated 12.09.2000. When that being so, the impugned order dated 29.08.2002 enhancing or restoring the working to 8 hours is in direct conflict with the decision taken by the Government, of course under the power vest with them under the provisions of the Minimum Wages Act.

21. However, it is the submissions of the learned counsel appearing for the second respondent University that, the University by enhancing the working hours upto 8 hours or restoring to 8 hours work per day, has not violated any provisions of the Minimum Wages Act nor it is in violation of any prescription made in this regard by the State Government. It is the stand of the respondent University that, no doubt the Government has prescribed minimum wages as well as the working hours per day. Accordingly 6 hours per day and 5 hours per day have been prescribed as working hours for men and women. Accordingly the minimum wages also has been prescribed by the Government. For instance, as per latest prescription, Rs.146/- has been prescribed for wage per day which means, the said wage would be paid for men workers for 6 hours work and women workers for 5 hours work. If the same is calculated for men Rs.24/- would be payable per hour work and Rs.29/- would be payable for women per hour work.

22. However, as per the wage prescribed and being paid by the University as per Circular dated 24.08.2017 which has

been already extracted above, Rs.360/- has been prescribed per day i.e., for 8 hours. It means that per hour Rs.45/- has been prescribed and is being paid by the University to a farm worker. This prescription of Rs.45 is almost 80% higher than what has been prescribed by the State Government. Therefore, we cannot find fault with the prescription of minimum wages made by the University as it is higher than what has been prescribed as minimum wages by the Government.

23. In so far as the enhancement of working hours is concerned, in the impugned communication it has been, no doubt, stated that, the working hours of the casual labourers, both men and women shall be fixed at 8 hours per day. It means, compulsorily every farm worker, whether men or women, have to work for 8 hours per day at the University and of course, they would be entitled to get full wages i.e., Rs.360/- per day as of now. Only in this context, it is the grievance of the petitioners that if at all the University wants to enhance the working hours based on which if they pay more for extra working hours, it shall be only on voluntarily basis of the employee/labour /worker and not by compulsion.

24. This court feels that there are some force in the argument advanced by the learned counsel for the petitioner that, the compulsory working hours at 8 hours per day if it is allowed to be continued, it would directly conflict with the working hours per day fixed by the Government under the relevant Government Orders, of course, pursuant to the power vested in them by the provisions of the Minimum Wages Act.

25. At the same time, if an employee wants to work more than 6 hours or 5 hours as the case may be and for which if extra wage is being paid by the employer, then the prescription of working hours per day shall not stand in the way as there is no element of compulsion is attached with such voluntary offering of extra time for extra wages.

26. As, in fact, has been permitted under Section 14 of the Act, where a employee is pressed in service beyond the normal working hours, he or she, shall be paid for every such extra hour or part of an hour. It means that, if an employee has worked for 6 hours that is normal working hours as prescribed by the Government per day, he or she shall be entitled to get full wages for 6 hours. Suppose if the employee would be willing to work for beyond 6 hours, then the extra hour shall be treated as only as overtime work and in that case, the employee shall be entitled to get the overtime wage to be fixed in this regard.

27. It is to be noted that, there is no overtime wage has been prescribed insofar as this kind of farm labourers by the Government and therefore, this court is of the view that, till such fixation is made, whatever to be paid per hour wage fixed and being given by the University, can very well to be given to such overtime work on hour basis and part of an hour basis.

28. Illustratively, if the University is prescribed Rs.45/- per hour and if the worker is working more than 6 hours in the case of men, and more than 5 hours for women, then every such extra hour work will carry further Rs.45/- as extra wage and if a employee works for half an hour extra work, the employee shall be entitled to get Rs.22.50p. for the extra half an hour work. Like that the extra work can be extracted against the payment of extra wages as prescribed and being paid by the University and this arrangement can be continued till the extra time wage is prescribed by the appropriate authority.

29. Suppose a worker wants to confine with his working hours as 6 hours for men and 5 hours for women and beyond that working hours if the employee does not willing to work, then, such employee cannot be compelled by the employer i.e. a University, to work beyond 6 hours. However, such employee would confine to 6 hours or 5 hours as the case may be, he or she shall be entitled to get only relevant wages for 6 hours and 5 hours by taking into account each hour wage as Rs.45/- as of now as has been prescribed by the University.

30. This kind of working arrangement would be beneficial to both the workers as well as respondent University.

31. In the result, this Writ Petition is disposed of, with the following orders:-

i) That the impugned order cannot be said to be unlawful and illegal in nature ;

ii) However, the prescription of compulsory working hours per day as 8 hours in Clause -I (4) of the impugned communication shall not be compulsorily inflicted on every worker and it shall be on voluntary basis by each of the worker who is willing to work more than 6 hours or 5 hours as the case may be up to 8 hours.

iii) An employee/farm worker confined to work per day with working hour of 6 hours for men and 5 hours for women, he or she shall be entitled to get the salary at the rate of Rs.45/- per hour as of now till further revision is made by

the university.

iv) If an employee wants to work beyond 6 hours or 5 hours as the case he or she shall be entitled to get further wages at the rate of Rs.45/- per hour and Rs.22.50p. for half an hour. Therefore, the working hours beyond 6 hours or 5 hours as the case may be can be decided by the employer and the employee concerned on voluntary basis against the extra payment as indicated above and in this regard, the prescription made by the State Government as 6 hours and 5 hours work per day including the farm labourers like the members of the petitioner association or any other similarly placed persons shall no way stand.

32. With these observations and directions, this Writ Petition is disposed of. No order as to costs.

Sd/-/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

mp/ssb

To

1. State of TamilNadu
represented by its Secretary to Government,
Labour and Employment Department,
Fort St.George,Chennai - 600 009.
2. The Registrar,
Tamilnadu Agricultural University,Coimbatore - 641 003.
3. The Professor & Head
Tamilnadu Agricultural Research Centre,
Bhavanisagar 638 451.Erode District.

+1cc to Mr.S. Sathia Chandran , Advocate SR.No. 59924

+1 cc to Government Pleader SR.NO. 59829

+1cc to Mr. S.Jayaraman , Advocate SR.No. 58698

W.P.No.40037 of 2002

A.SK(12/04/2019)

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