

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.13708 OF 2006

ORDER:

This writ petition is filed challenging the initiation of the action by respondent Nos.3 and 4 under the payment of Minimum Wages Act, 1948 (for short, the Act) against the writ petitioner pursuant to their notice dated 26.07.2004 which culminated in notice dated 19.05.2006.

2. It is the case of the petitioner that it is a deemed university in pursuance of Notification No.F.6-9/2001 (CPP-I) dated 11.10.2002 of the University Grants Commission and it is imparting training and academic pursuits in technology and related courses. It does not operate any activity either on commercial lines or with a profit making motto. It is having sanctioned permanent staff both in academic and non-academic sectors. The regular employees are paid their salary and allowances in accordance with the pay structure determined and periodically revised, as a policy measure by the Central Government. The scales of pay and allowances payable to non-teaching staff sanctioned and regularly employed are also covered by regulations framed governing their conditions of service. There are temporary and adhoc employees and the petitioner is paying fair wages to them.

3. While so, respondent No. 4 has inspected the petitioner University and issued a notice dated 19.05.2006 the petitioner University for compliance of the payment of minimum wages to its

employees. It is the case of the petitioner University that it is not a schedule industry as per the provisions of the Act and that there is no notification issued by the Central Government fixing the rates of minimum wages to the employees of the petitioner University.

4. The respondents filed a counter affidavit stating that the fifth respondent issued a notification dated 26.07.2004 fixing the revised minimum wages for the employees working in the hostels and all colleges; that third respondent inspected the petitioner University on 19.05.2006 and found that there were less payment of wages to the workers engaged by the petitioner and that in those circumstances, they issued notice dated 19.05.2006 directing the petitioner to pay minimum wages to its workers.

5. It is necessary to refer sub-sections (b) and (g) of Section 2 of the Act which read as under:

“2(b) ‘appropriate Government’ means:-

- (i) in relation to any scheduled employment carried on by or under the authority of Central Govt., or a Railway Administration or in relation to a mine, oilfield or major port or any corporation established by a Central Ct, the Central Government; and
- (ii) in relation to any other scheduled employment the State Government

2(g) ‘scheduled employment’ means an employment specified in the schedule or any process or any branch of work forming part of such employment.”

6. The respondents relied on Gazette Notification No.113(E) dated 28.01.2002 of the Government of India. It reads as under:

“S.O. 113(E):- Whereas certain proposals to fix or revise the minimum rates of wages to the categories of employees employed in the scheduled employments of “Construction or maintenance of roads, runways or in the building operations including laying down underground Electric, Wireless, Radio, Television, Telephone, Telegraph, and overseas communication cables and similar other underground cabling work, Electric Lines, Water Supply Lines and Sewerage Pipelines” were published in the Gazette of India, Extraordinary Part-II Section 3, sub-section (ii) under the Notification of the Government of India, Ministry of Labour vide S.O. No.348 (E) dated 5th April, 2001, in exercise of the powers conferred under clauses (1) and (b) of the Minimum Wages Act, (11 of 1948). IN the said Notification objections and suggestions were sought from all, those likely to be affected thereby before expiry of two months from the date of publication of the Notification.

WHEREAS the objections and suggestion received on the said proposals have been considered by the Central Government;

NOW, THEREFORE, in exercise of the powers conferred under clause (1) & (b) of sub-section (1) of Section 3 read with clause (i) of sub-section (1) of Section 4 and sub-section (2) of section 5 and in supersession of the Notification of the Government of India, Ministry of Labour S.O.No.513 (E) dated 12.7.1994, the Central Government after consulting the Advisory Board, hereby revise the rates of minimum wages as specified in the schedule annexed hereto, payable to the employees employed in the scheduled employment mentioned in Para 1 above.”

7. It is seen that the scheduled employment is specified in the schedule which falls under the consideration of the Act. But, the petitioner University is not included in Part-I of the Schedule of the Act. More so, Gazette Notification No.113(E) dated 28.01.2002 of the Government of India, cannot be read independently and it has to be read in consonance with Section 2(g) of the Act and hence it cannot be independently dealt with.

8. Since the educational institutions and the universities have not been included in Part-I of the Schedule of the Act, the question of payment of minimum wages to the employees of the petitioner under the Act does not arise and the impugned notice dated 19.05.2006 and the action initiated thereunder by respondent Nos.3 and 4 is without jurisdiction and hence the writ petition is liable to be allowed.

9. Accordingly, the writ petition is allowed and the notice of respondent No.3 dated 19.05.2006 is set aside. No costs. As a sequel, the Miscellaneous Petitions pending if any shall stand closed.

Date: 29.06.2018
TJMR

T.AMARNATH GOUD, J

