

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.31 to 40, 436 to 447 of 2002 and
W.P.M.P.Nos.678, 680, 682, 684, 686, 688, 690, 692, 694, 696,
698, 700, 50, 52, 54, 56, 58, 60, 62, 64, 66 and 68 of 2002

1. The Management of Chennai Metropolitan Water Supply
and Sewerage Board, represented by its
Managing Director, 1
Pumping Station Road, Chennai-2.
 2. Well Field Engineer Chennai Metropolitan Water Supply
and Sewerage Board
Thiruvallore Road
Red Hills, Chennai-52.
- ... Petitioners
in all the Writ Petitions
- Vs.
1. The Presiding Officer
Second Additional Labour Court
Chennai. ... 1st Respondent Common in all WPs
 2. M.Subramani ... 2nd Respondents in WP.No.31 of 2002
L.Dilliraj Sarma ... 2nd Respondents in WP.No.32 of 2002
A.Subramani ... 2nd Respondents in WP.No.33 of 2002
K.Arumugam ... 2nd Respondents in WP.No.34 of 2002
S.Srinivasan ... 2nd Respondents in WP.No.35 of 2002
C.Balasubramaniam ... 2nd Respondents in WP.No.36 of 2002
R.Subramani ... 2nd Respondents in WP.No.37 of 2002
Syed Hussain ... 2nd Respondents in WP.No.38 of 2002
R.Sundaram ... 2nd Respondents in WP.No.39 of 2002
N.Sankar ... 2nd Respondents in WP.No.40 of 2002

G.Nathamuni ...2nd Respondents in WP.No.436 of 2002
M.Ekambaram ...2nd Respondents in WP.No.437 of 2002
K.Subramani ...2nd Respondents in WP.No.438 of 2002
M.Chandrasekar ...2nd Respondents in WP.No.439 of 2002
G.Alagesan ...2nd Respondents in WP.No.440 of 2002
R.Hariprasad ...2nd Respondents in WP.No.441 of 2002
K.Selvaraj ...2nd Respondents in WP.No.442 of 2002
G.Easwari Prasad ...2nd Respondents in WP.No.443 of 2002
M.P.V.SambandhaReddy ...2nd Respondents in WP.No.444 of 2002
N.Munivel ...2nd Respondents in WP.No.445 of 2002
K.Ramalingam ...2nd Respondents in WP.No.446 of 2002
J.Rajagopal ...2nd Respondents in WP.No.447 of 2002

Common Prayer:-

Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for records on the file of the Labour Court, Chennai, the 1st respondent herein pertaining to C.P.Nos.231, 337, 233, 232, 240, 228, 225, 238, 237, 339, 239, 336, 236, 242, 226, 338, 241, 340, 243, 227, 229 and 230 of 1993, quash the order passed therein dated 21.01.1999.

In all the writ petitions

For Petitioners : Mr.M.R.Raghavan

For R2 : Mr.K.S.Duraipandi

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COMMON ORDER

Writ Petitions are filed challenging the common award of the 1st respondent dated 21.01.1999 made in C.P.Nos.231, 337, 233, 232, 240, 228, 225, 238, 237, 339, 239, 336, 236, 242, 226, 338, 241, 340, 243, 227, 229 and 230 of 1993.

2.The petitioners and the 1st respondent and the issues involved in all the writ petitions are one and the same and therefore, all the writ petitions are disposed of by this common order.

3.The 2nd respondents in all the writ petitions are working as watchmen in the petitioners Board. They filed the above claim petitions claiming overtime wages for the period from January 1981 to March 1983, January 1981 to March 1987, April 1981 to February 1987, January 1981 to April 1982, January 1981 to January 1988, April 1980 to October 1992, April 1980 to May 1990, April 1980 to May 1990, January 1981 to June 1988, August 1982 to May 1990, January 1981 to April 1998, November 1981 to July 1988, January 1981 to October 1987, January 1981 to March 1988, January 1981 to February 1982, January 1982 to November 1991, April 1981 to March 1982, January 1981 to April 1988, January 1981 to March 1982, January 1981 to March 1988, January 1981 to May 1988, January 1981 to November 1991 respectively.

4.The petitioners in the counter statement have stated that there are three shifts i.e., 6.00 a.m. to 2.00 p.m., 2.00 p.m. to 10.00 p.m. and 10.00 p.m. to 6.00 a.m. The petitioners have denied that there are only two shifts for watchmen and that the 2nd respondents in all the writ petitions are working from 5.00 p.m. to 8.00 a.m. next day. The petitioners further contended that the 2nd respondents in all the writ petitions were absorbed from Public Works Department and they are governed by Service Rules applicable to the Tamil Nadu Government servants. They are not workmen and the provisions of the Industrial Disputes Act are not applicable to the 2nd respondents in all the writ petitions. The claim petitions filed by the 2nd respondents in all the writ petitions under Section 33-C(2) of the Industrial Disputes Act are not maintainable and prayed for dismissal of all the claim petitions.

5.Before the Labour Court/1st respondent herein, both the learned counsel appearing for the petitioners as well as the 2nd respondents in all the writ petitions filed joint memo stating that common oral and documentary evidence can be let in, in all the claim petitions and based on the said endorsement, the 1st respondent recorded the evidence in C.P.No.233 of 1993 and one A.Subramani/2nd respondent in W.P.No.33 of 2002, who filed the said claim petition, was examined as W.W.1 in all the claim petitions and marked five documents as Exs.W1 to W5. A statement showing the period and particulars made by the 2nd respondents in all the writ petitions were filed along with the claim petitions. The petitioners did not let in oral evidence, but marked 22 documents as Exs.M1 to M22.

6.The 1st respondent considering the pleadings, oral and documentary evidence let in by the 2nd respondents in all the writ petitions as well as the documentary evidence let in by the petitioners, held that there were only two shifts in the petitioners Board and the 2nd respondents in all the writ petitions have worked overtime in night shift and allowed the claim petitions, except three claim petitions in C.P.Nos.224, 234 and 235 of 1993, wherein workers viz., S.Babu, S.M.Veeraraghavan and E.Thirumalai died and their legal heirs were not brought on record. Against the common award dated 21.01.1999, the petitioners have come out with the above 22 writ petitions.

7.The learned counsel appearing for the petitioners contended that the 2nd respondents in all the writ petitions did not let in evidence, only one witness was examined on behalf of all the workmen in all the claim petitions. In the absence of evidence let in by all the workmen/claimants, the 1st respondent ought to have rejected their claim. The 1st respondent failed to consider that there was enormous delay in approaching the Labour Court. The 1st respondent failed to consider the documents filed by the petitioners. The workmen of the petitioners are governed by separate statute and appended rules framed by the Board and hence, they are not entitled to make claims under Section 33-C(2) of the Industrial Disputes Act. The memo of calculation filed by the 2nd respondents in all the writ petitions are not correct and the 1st respondent erroneously accepted the same. The 2nd respondents in all the writ petitions were asked to work only in one shift, they did not do any overtime and they are not entitled to overtime wages. The 1st respondent failed to consider all the above facts and hence, the award of the 1st respondent is liable to be set aside and prayed for allowing all the writ petitions.

8.Per contra, the learned counsel appearing for the 2nd respondents in all the writ petitions contended that there were only two shifts in the petitioners Board and there is no three shifts as alleged by the petitioners. The 2nd respondents in all the writ petitions have marked evidence of petitioners' witness in earlier C.P.Nos.857 of 1982, 858 of 1982, 254 of 1983 and 270 of 1983, copy of the order passed by the Deputy Commissioner dated 15.11.1983 made in W.C.No.19 of 1983, the counter filed by the petitioners in W.C.No.19 of 1983 and evidence given by the petitioners' witness in W.C.No.19 of 1983 as Exs.W1 to W5. The 2nd respondents in all the writ petitions filed Exs.W1 to W5 to prove their claim that there are only two shifts and they did overtime. The petitioners did not let in any oral and documentary evidence to deny the contention of the 2nd

respondents in all the writ petitions that there were only two shifts from 8.00 a.m. to 5.00 p.m. and 5.00 p.m. to 8.00 a.m. the next day. The 2nd respondents in all the writ petitions have filed memo of calculation furnishing details to substantiate their claim for overtime wages and that there were only two shifts from 8.00 a.m. to 5.00 p.m. and 5.00 p.m. to 8.00 a.m. the next day. The petitioners have not disputed the said statement. The 1st respondent considering the above materials in proper perspective, ordered claim petitions by giving valid reasons and prayed for dismissal of all the writ petitions.

9. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the 2nd respondents and perused the materials available on record.

10. The 2nd respondents in all the writ petitions were working as watchmen in the petitioners Board. According to them, there are only two shifts, one is from 8.00 a.m. to 5.00 p.m. and another one is from 5.00 p.m. to 8.00 a.m. the next day morning. The 2nd respondents in all the writ petitions claimed that they worked in the shift from 5.00 p.m. to 8.00 a.m. for 15 hours and they are entitled to overtime wages for 7 hours. Based on the above averments, the 2nd respondents in all the writ petitions filed the above said claim petitions claiming wages for overtime for various period as mentioned above. To substantiate their claim, they marked Exs.W1 to W5. Exs.W1 and W2 are the orders passed by the Labour Court in C.P.Nos.857 of 1982, 858 of 1982, 254 of 1983 and 270 of 1983 in the earlier period filed by some of the persons, the 2nd respondents as well as other watchmen. In those claim petitions, the Labour Court held that there are only two shifts, watchmen worked for 15 hours and ordered all the claim petitions for overtime wages. The petitioners have not produced any material to show that they challenged the said order. The petitioners herein in all those claim petitions have contended that there are three shifts and the watchmen were asked to work only for 8 hours in any one of the shifts. The petitioners have not let in either oral or documentary evidence to substantiate this contention. The exhibits marked by the petitioners do not support their case. On the other hand, the 2nd respondents in all the writ petitions have marked Ex.W3/xerox copy of the order passed by the Assistant Labour Commissioner, dated 15.11.1983 made in W.C.No.19 of 1983, Ex.W4/ counter filed in the said W.C. and Ex.W5/evidence given by the workmen of the petitioners examined on behalf of the petitioners. In Ex.W4, the petitioners had admitted that while the watchman was working in the shift from 5.00 p.m. to 8.00 a.m., he met with an accident at 6.30 a.m. and died. Similarly, in Ex.W5, witness examined on behalf of the

petitioners admitted that watchman worked in the shift for 5.00 p.m. to 8.00 a.m. The petitioners have not produced any material contra to the above exhibits. Exs.W1 to W5 clearly proved that there are only two shifts for watchman in the petitioners Board and not three shifts as claimed by the petitioners. The 1st respondent considering all the above materials placed before it, had allowed the claim petitions filed by the 2nd respondents in all the writ petitions by giving cogent and valid reason.

11.The contention of the learned counsel appearing for the petitioners that the 2nd respondents in all the writ petitions ought to have let in oral evidence separately to prove their case, is without merits. It was agreed by the petitioners that common evidence could be let in in all the claim petitions and a joint memo was filed by both the petitioners as well as the 2nd respondents in all the claim petitions. Based on the said joint memo, common evidence was let in in C.P.No.233 of 1993. One A.Subramani/2nd respondent in W.P.No.33 of 2002, who filed the said claim petition, was examined as W.W.1. Now it is not open to the petitioners to contend that the 2nd respondents in all the writ petitions ought to have let in oral evidence to separately prove their claim.

12.The 2nd respondents in all the writ petitions have filed memo of calculation in all the claim petitions. Before the 1st respondent, the petitioners did not dispute the total amount claimed by the 2nd respondents in all the writ petitions. They have failed to do so. The contention of the learned counsel appearing for the petitioners that memo of calculation filed by the 2nd respondents is not correct, is not acceptable. Before the 1st respondent, the petitioners contended that the claim petitions filed under Section 33-C(2) of the Industrial Disputes Act are not maintainable as the 2nd respondents in all the writ petitions are Government servants and they are governed by Tamil Nadu Government Rules and the provisions of the Industrial Disputes Act are not applicable. Before this Court, the learned counsel appearing for the petitioners contended that the 2nd respondents in all the writ petitions are governed by Regulation of the petitioners Board and the claim petitions filed under Section 33-C(2) are not maintainable. The petitioners have not filed any material before the 1st respondent that the 2nd respondents in all the writ petitions are Government servants and not produced any Regulation to prove that the provisions of the Industrial Disputes Act are not applicable to the 2nd respondents in all the writ petitions. All the 2nd respondents are working as watchmen and they are workers as defined in the Industrial Disputes Act.

13.For the above reason, all the writ petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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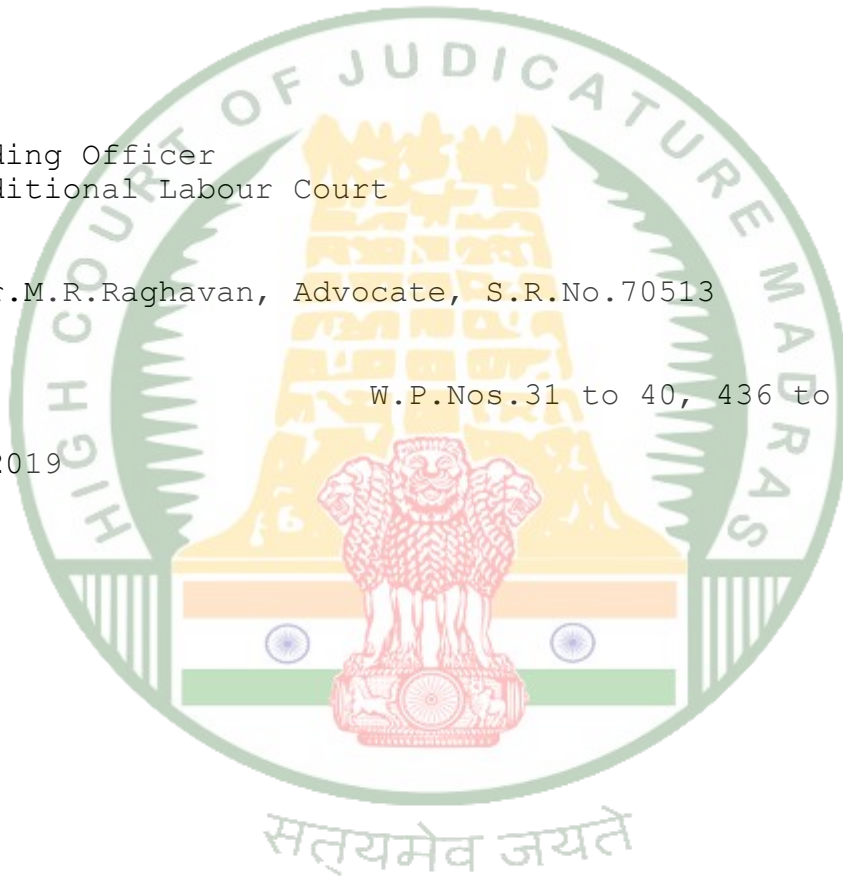
To

The Presiding Officer
Second Additional Labour Court
Chennai.

+1cc to Mr.M.R.Raghavan, Advocate, S.R.No.70513

W.P.Nos.31 to 40, 436 to 447 of 2002

RP (CO)
CS/18/12/2019



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