

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.11.2019
CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.12344 of 2019
and
W.M.P.No.12642 of 2019

Dr.Ambedkar Sumai Etruvor Erakuvoor Thozhilalar Sangam,
Rep., by its President, Mr.Pon Vadivel,
No.61, Semathamman Nagar 2nd Sector,
Koyambedu, Chennai-600 092.

.. Petitioner

-vs-

- 1.The Government of Tamilnadu,
Rep., by its Secretary,
Department of Labour and Employment,
Fort St. George, Chennai-600 009.
- 2.Chennai Metropolitan Development Authority,
Rep., by its Member Secretary,
Egmore, Chennai-600 008.
- 3.The Principal Administrative Officer,
Market Administrative Committee,
Koyembedu Wholesale Market,
Koyembedu, Chennai-600 092.
- 4.Periyar Kaikari Market Vyaparigal Membattu Sangam,
Rep., by its President,
E-112, Thanthai Periyar Kaikani Angadi,
Koyembedu, Chennai-600 092.
- 5.Koyembedu Kaikani Malar Angadi Vyaparigal Sangam,
Rep., by its President,
M-117, Thanthai Periyar Kaikani Angadi,
Koyembedu, Chennai-600 092.
- 6.Koyembedu Vaniga Valaga Motha Keerai Vyaparigal Sangam,
Rep., by its President,
IG-5, Thanthai Periyar Kaikani Angadi,
Koyembedu, Chennai-600 092.
- 7.Chennai Mavatta Puthina Kothamallli Vyaparigal Sangam,
Rep., by its President,
C-49, Thanthai Periyar Kaikani Angadi,
Koyembedu, Chennai-600 092.

- 8.Chennai Koyembedu Vengaiya Vyaparigal Sangam,
Rep., by its President,
K-90, Thanthai Periyar Kaikani Angadi,
Koyembedu, Chennai-600 092.
- 9.Koyembedu Uralaikizhangu Motha Vyaparigal Sangam,
Rep., by its President,
E-95, Thanthai Periyar Kaikani Angadi,
Koyembedu, Chennai-600 092.
- 10.Periyar Market MMC Urimam Petra Vyaparigal Sangam,
Rep., by its President,
E-113, Thanthai Periyar Kaikani Angadi,
Koyembedu, Chennai-600 092.
- 11.Thengaai Viyabarigal Sangam,
Rep., by its President,
A-87, Thanthai Periyar Kaikani Angadi,
Koyembedu, Chennai-600 092.
- 12.Thandhai Periyar Thakkalli Vyaparigal Sangam,
Rep., by its President,
L-1, Thanthai Periyar Kaikani Angadi,
Koyembedu, Chennai-600 092.
- 13.Koyembedu Motha Kaikani Vyaparigal Sangam,
Rep., by its President,
C-88/8, Thanthai Periyar Kaikani Angadi,
Koyembedu, Chennai-600 092.
- 14.Vazhai Illai Vyaparigal Sangam,
Rep., by its President,
A-37, Thanthai Periyar Kaikani Angadi,
Koyembedu, Chennai-600 092.
- 15.Anna Pazha Vyaparigal Sangam,
Rep., by its President,
TD-95, Anna Pazha Angadi
Koyembedu, Chennai-600 092.
- 16.Poo Vyaparigal Sangam,
Rep., by its President,
F/A-29, Kamarajar Malar Angadi,
Koyembedu, Chennai-600 092.

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents herein to formally declare May Day, that is, 1st of May, 2019 as holiday with wages for the workers employed in the wholesale market at Koyembedu administered by the Principal

Administrative Officer, Market administrative Committee at Koyembedu, the 3rd respondent herein and for every following year.

For Petitioner : Ms.M.Karthikeyani

For Respondents : R1 - Mr.J.Ramesh,
Additional Government Pleader

: RR 6, 9, 10, 12 & 14 - Mr.K.C.Gandhi

: RR 4, 5, 7, 8 & 11 - Mr.M.Rajasekar

ORDER

The relief sought for in the present writ petition is to direct the respondents to formally declare May Day, that is, 1st of May 2019 as holiday with wages for the workers employed in the wholesale market at Koyembedu administered by the Principal Administrative Officer, Market Administrative Committee, Koyembedu, the 3rd respondent and for every following year.

2.In respect of the very same relief, the very same writ petitioner Association, viz., Dr.Ambedkar Sumai Etruvor Erakuvor Thozhilalar Sangam, filed a writ petition in W.P.No.9887 of 2017. With reference to the very same relief, this Court passed an order on 27.04.2018. For better appreciation, the operative portions are as follows:-

"3.This Court is of an opinion that 1st May of every year is declared as National Holiday and undoubtedly, all the labourers are entitled to avail the Holiday and get salary for that day.

4.Let us now look into the provisions of the "the Act". "The Act" was enacted for the grant of National and Festival holidays to persons in Industrial Establishment in the State of Tamil Nadu. Section 2(e) of "the Act" defines "Industrial Establishment". Section(3) of "the Act" denotes "Grant of National and Festival holidays, which states that "Every employee shall be allowed in each calendar year a holiday of one whole day on [the 26th January, the first May, the 15th August and the 2nd October] and five other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any industrial establishment.

5. Accordingly, nine(9) days are declared as holidays for the benefit of these labourers falling within the meaning of the employee under "the Act".

6. Section(5) of "the Act" stipulates that "Notwithstanding anything contained in Section 3, any employee may be required by the employer to work on any holiday allowed under that section if the employer has, not less than twenty-four hours before such holiday,- (i) served in the prescribed manner on the employee a notice in writing requiring him to work as aforesaid; and

(ii) sent to the Inspector having jurisdiction over the area in which the industrial establishment is situated and displayed in the premises of the industrial establishment a copy of such notice. (b) Where an employee works on any holiday allowed under Section 3, he shall, at his option, be entitled to -

(i) twice the wages; or

(ii) wages for such day and to avail himself of a substituted holiday with wages [on one of the three days immediately before or after the day on which he so works].

7. Section (5) of "the Act" categorically enumerates and providing an option to an employer to engage an employee on a holiday, the procedures contemplated under the Section is to be followed. However, in case, the employee is willing to work at his choice, then he can be permitted to work in view of the fundamental rights ensured to him under Article 19(1) (g) of the Constitution of India.

8. "Powers of Inspectors" are enumerated in Section (7) of "the Act". Section (8) of "the Act" speaks about "Penalties", which states that "Any employer who contravenes any of the provisions of Section 3 or 5 shall be punishable with fine which, for the first offence, shall not be less than five hundred rupees but which may extend to one thousand rupees and for the second and subsequent offences, shall not be less than one thousand rupees but which may extend to two thousand and five hundred rupees". Section (11) of "the Act" denotes "Rights and Privileges under other laws etc., not affected". It is pertinent to note that Section (11) of "the Act" states that "Nothing contained in this Act shall affect any rights or privileges which any employee is entitled to, on the date on which this Act comes into force under any other law, contract, custom or usage, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

9. Thus, it is unambiguous that the labourers are entitled to avail the National Holidays with full wages under the provisions of "the Act" and the competent authorities under the provisions of "the Act" are empowered to regulate the same and to implement the Act in its real letter and spirit. 10. The learned Senior Counsel for the petitioner made a submission that though the authorities competent are declaring 1st May as a Holiday, the same has not been implemented in its letter and spirit. There is an exploitation on the part of the employers, who all are the traders, having shops in Koyembedu Market.

11. However, the learned counsel appearing on behalf of the respondents Association opposed the contention of the learned senior counsel for the petitioner by stating that there is no such exploitation and some of the traders are not engaging these labourers directly.

12. This Court is of an opinion that these factors are to be ascertained by the competent authorities under the provisions of "the Act". However, it is the duty of the authorities under "the Act" to ensure that the holiday declared under the provisions of "the Act" is maintained and the labourers are paid wages as stipulated under "the Act" itself.

13. There is no doubt in respect of the grant of National Holidays to the Labourers and payment of full wages on that day. However, taking another view of the matter, this Court is of an opinion that if any employee/labourer is willing to work on that day, at his own choice, then such labourers cannot not be prevented. If any labourer is willing to avail the holiday, then the employers are liable to pay full wages for such labourers.

14. It is relevant to cite Article 19(1)(g) of the Constitution of India, which provides right to practise any profession, or to carry on any occupation, trade or business. The Constitution guarantees Right to carry any Occupation. Thus, it is a fundamental right of a citizen to work in a particular day of his choice. In order to ensure the fundamental rights guaranteed under the Constitution of India, this Court is of an opinion that the fundamental rights will prevail over all other restrictions imposed under the provisions of any enactment. Thus, there cannot be any forcible declaration of holiday for a citizen of this Country. Any citizen, who is willing to work must be

allowed to work at his choice, so long as he performs his works or carry out his business in a lawful manner, though the enactment declares 1st May as a Holiday with full wages.

15.This Court is of an opinion that the choice must be provided to the employees/labourers to avail the holiday or to work on that particular day. The right of occupation, business, trade being a fundamental right, ensured under the Constitution of India, no citizen can be deprived of working on a particular day or during particular hours.

16.This being the fundamental rights ensured, this Court is of an opinion that there cannot be any compulsion on either side to avail the holiday or not. In the event of availing the holiday by the labourer, then the employers are liable to pay the wages under the provisions of "the Act".

17.In this view of the matter, it is clarified that the authorities competent are bound to maintain the law and order in the premises especially during these National Holidays and it is the duty of the appropriate authorities to provide sufficient protection for all concerned.

18.With these observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed."

3.In view of the order already passed, cited supra, with reference to the similar relief in a writ petition filed by the very same writ petitioner, the respondents are directed to follow the earlier order of this Court dated 27.04.2018 passed in W.P.No.9887 of 2017. It is made clear that the writ petitioner need not be driven to Court by filing writ petitions on every year. The directions issued by this Court in W.P.No.9887 of 2017 dated 27.04.2018, shall be followed even in succeeding years.

4.With the above directions, this writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
The Government of Tamilnadu,
Department of Labour and Employment,
Fort St. George, Chennai-600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-600 008.
- 3.The Principal Administrative Officer,
Market Administrative Committee,
Koyembedu Wholesale Market,
Koyembedu, Chennai-600 092.

+1cc to Mr.K.Sudalaikannu, Advocate, SR.No.96157.
+2cc to Mr.KC.Gandhi, Advocate, SR.No.94821.
+1cc to Mr.M.Rajasekhar, Advocate, SR.No.95392.
+1cc to Government Pleader, SR.No.96066.

W.P.No.12344 of 2019

MP (CO)
CSR(20/12/2019)



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