

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.28839 to 28867 of 2014

&

M.P.Nos.1,
1,1,1,1,1,1,1 of 2014

3

M.P.Nos.1,
1,1,1,1,1,1,1 of 2015

1. The Regional Forest Conservator Coimbatore.
2. The Division Forest Officer Coimbatore. ..Petitioners in all Writ Petitions

-VS-

K.Ammanalingam	..1 st	Respondent	in WP No.28839/2014
R.Paramasivam	..1 st	Respondent	in WP No.28840/2014
M.Vellingiri	..1 st	Respondent	in WP No.28841/2014
S.Gopalakrishnasamy	..1 st	Respondent	in WP No.28842/2014
S.Venkatachalam	..1 st	Respondent	in WP No.28843/2014
N.Rajasekar	..1 st	Respondent	in WP No.28844/2014
S.Rajamanickam	..1 st	Respondent	in WP No.28845/2014
B.Narayanan	..1 st	Respondent	in WP No.28846/2014
V.Kurinchivendan	..1 st	Respondent	in WP No.28847/2014
P.Jamunarani	..1 st	Respondent	in WP No.28848/2014
L.Thannasi	..1 st	Respondent	in WP No.28849/2014
V.Angamuthu	..1 st	Respondent	in WP No.28850/2014
K.P.Thangaraj	..1 st	Respondent	in WP No.28851/2014
R.Kanagaraj	..1 st	Respondent	in WP No.28852/2014
M.Mahalingam	..1 st	Respondent	in WP No.28853/2014
R.Charles	..1 st	Respondent	in WP No.28854/2014
C.Natarajan	..1 st	Respondent	in WP No.28855/2014
P.Pandiaraj	..1 st	Respondent	in WP No.28856/2014
S.Girija	..1 st	Respondent	in WP No.28857/2014
B.Mohankumar	..1 st	Respondent	in WP No.28858/2014
R.Natarajan	..1 st	Respondent	in WP No.28859/2014
M.Palanisamy	..1 st	Respondent	in WP No.28860/2014
T.Kamatchi	..1 st	Respondent	in WP No.28861/2014
P.Ganesan	..1 st	Respondent	in WP No.28862/2014
T.Shanmugavel	..1 st	Respondent	in WP No.28863/2014
A.Sheriff	..1 st	Respondent	in WP No.28864/2014

V.Thirumoorthy .. 1st Respondent in WP No.28865/2014
S.C.Duraian .. 1st Respondent in WP No.28866/2014
M.Krishnasamy .. 1st Respondent in WP No.28867/2014

The Presiding Officer
Labour Court, Coimbatore. ..2nd Respondent in all the Writ
Petitions.

Common Prayer in WP No.28839 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in C.P.Nos.257/2008, 258/2008, 259/2008, 260/2008, 262/2008, 263/2008, 264/2008, 265/2008, 266/2008, 267/2008, 270/2008, 268/2008, 269/2008, 271/2008, 272/2008, 273/2008, 275/2008, 276/2008, 277/2008, 279/2008, 280/2008, 281/2008, 282/2008, 283/2008, 284/2008, 285/2008, 286/2008, 287/2008, 288/2008 dated 28.03.2013 on the file of 2nd respondent and quash the same

For Petitioner : Ms.Thangavadhana Balakrishnan,
in all W.Ps Additional Government Pleader(F)

For Respondent
in all W.Ps : Mr.C.K.Chandrasekar for R1
R2 - Labour Court

C O M M O N O R D E R

The order dated 28.03.2013 passed in C.P.Nos.257 to 260, 262 to 273, 275 to 277 & 279 to 288 of 2008 is under challenge in the present writ petitions.

2.The writ petitioners are the Regional Forest Conservator and the Division Forest Officer of the Forest Department of the Government of Tamil Nadu. The contention of the writ petitioners is that the Government in G.O.Ms.No.222, Environment and Forests Department dated 10.06.1992 have ordered that all the eligible Plot Watchers and Social Forestry Workers employed both in territorial as well as Social Forestry Divisions who were appointed after 08.07.1980 without reference to the employment exchanges, shall be considered for regular appointment in vacancies which may arise in posts like Forest Watchers, Malis, Office Assistant etc., who are otherwise fully qualified for the post and within their age limits on the date of first appointment as Plot Watcher or Social Forestry Worker as the case may be.

3.In G.O.Ms.No.25, Environment Forest Department dated 11.06.1992 Government has regularized the services of certain persons who were appointed temporarily as Forest Watchers from 1980 to 1983. In G.O.Ms.No.297, Environment and Forest

Department dated 28.01.1994, Government have issued amendment to rule 5 of Tamil Nadu Forest Subordinate Service rules fixing "Minimum general education qualification for the direct recruitment for the post of Forest Watchers instead of the qualification "ability to read and write in Tamil". In G.O.Ms.No.332, Environment and Forests(FR-VI) Department dated 22.14.1994 Government have ordered the Plot Watchers/Villages Social Forestry workers be appointed as Office Assistant and Watchman in existing and future vacancies in Forest Department in relaxation of rule No.3(a) of Special Rules for Tamil Nadu Basic Service relating to mode of recruitment.

4. Thereafter there was protracted litigation by the different groups of village Social Forestry workers and Plot Watchers regarding the educational qualification etc., Considering the number of demands submitted by Social Forestry Workers and Plot Watchers Association and various agitation conducted by the Association for the said demands and to sort out the differences in the qualifications, the Government in G.O.Ms.No.64 Environment and Forests(FR-II) Department dated 08.03.1999 have taken a policy decision that there are number of Plot Watchers working from 1961 onwards and that village Social Forestry Workers working from 1980 onwards and they could not be considered for appointment as Forest Watcher and Mali according to their state seniority in view of the fact that most of them do not possess the educational qualification in SSLC.

5. Therefore, the Government have directed that state wide seniority list of Village Social Forestry Workers/Plot Watchers who are employed under daily wages/consolidated pay be prepared and those who are able to read and write in Tamil be appointed as Forest Watcher and Mali in the existing and future vacancies according to their seniority relaxing recruitment and age rules. As per instructions contained in the above G.O., the state wide seniority list of Plot Watchers/Village Social Forestry Workers was drawn up. The total number of persons in the state seniority list comes to 5442 Nos. Out of which, about 1821 persons were appointed as Forest Watchers and Malis according to their physical qualifications upto 2006-2007.

6. Regarding the payment of wages to the Social Forestry Workers/Plot Watchers under Minimum Wages Act, it is submitted that the Government in G.O.Ms.No.82, Labour and Employment(J1) Department dated 27.09.2002 have ordered that the Government have examined the request of Principal Chief Conservator of Forests and granted exemption from the provisions of the Minimum Wages Act. It is further stated that the exemption was granted mainly on the ground that the Social Forestry plantations cannot be termed as skilled/semi-skilled work and therefore, the exemption was granted. The Social Forestry workers have been

paid consolidated pay of Rs.818/- as determined by the empowered committee on Swedish International Development Authority(SIDA) Project. Even though the Swedish International Development Authority Project has been closed, these forestry workers were allowed to continue in Forest Department to avoid any hardship to them and were given the assignment to protect the social forestry plantations raised under SIDA project.

7.The learned Additional Government Pleader(Forest) appearing on behalf of the writ petitioners mainly contended that the Social Forestry Workers as well as Plot Watchers do not come under the provisions of the Minimum Wages Act and they have been paid as per the Government Orders and consolidated monthly salary was paid. The counter filed by the Department before the Labour Court reveals that though wages were paid to the respondent employees under the Minimum Wages Act for a certain period, subsequently, all these employees were paid consolidated pay salary as the nature of work is neither skilled nor unskilled and the hours of working is also less. Without considering all these aspects, the Labour Court allowed the computation petitions.

8.It is mainly contended that when consolidated pay salary is paid to a Government Department employee, is he entitled to get the differential wages under the provisions of the Minimum Wages Act or not. Number of Government Orders are referred to by the writ petitioners. The counter affidavit filed by the respondent employees in the computation petitions also reveals that the respondent employees were paid consolidated pay salary during the relevant point of time and they were not performing skilled/unskilled work. Therefore, they cannot be considered as an employee under the provisions of the Minimum Wages Act and accordingly, the Award of the Labour Court is liable to be scrapped.

9.The learned counsel appearing on behalf of the respondents/employees opposed the contention by stating that it is not a case of regularization or permanent absorption. Admittedly, all these respondents/employees were regularly absorbed and now they are the permanent employees of the Forest Department. It is a case where the Minimum Wages as applicable under the provisions of the Minimum Wages Act had not been paid to the respondents/ employees. Further, the Labour Court granted Award for the period during which the Minimum Wages were paid to the respondents. In other words, the differential wages alone is computed and paid by the Labour Court and there is no illegality or otherwise in respect of the order passed by the Labour Court.

10.The learned counsel for the respondents/employees vehemently contended that the Minimum Wages is a basic right of

an employee and therefore, the Minimum Wages as applicable under the provisions of the Minimum Wages Act cannot be denied. The Labour Court in its order considered all these aspects and arrived at a conclusion that the respondents/employees are entitled for the differential amount. This being the factum, the writ petitions are liable to be dismissed.

11.Considering the facts and circumstances, this Court would like to consider the findings of the Labour Court which states that the respondents/employees have claimed the differential amount with reference to the Minimum Wages to be paid under the provisions of the Minimum Wages Act. Their claim was to pay the Minimum Wages for a particular period. The differential amount was sought for the period from 1983 to 1992 and during the relevant point of time, the minimum wages were not paid to the respondent employees. In fact the consolidated pay salary was paid till 31.08.2006. Therefore, the respondent employees are entitled for the differential wages.

12.The learned counsel for the respondent employees also made a submission that the exemption was granted by the Government in G.O.Ms.No.82, dated 27.09.2002 and therefore, the said exemption is to be applied prospectively and not with reference to the period in which the Minimum Wages was not paid to the employees prior to the grant of exemption.

13.This Court is of the considered opinion that admittedly the respondents/employees were appointed by the Authority of the Forest Department of the Government of Tamil Nadu. Consolidated pay salary was paid and they were not appointed by following the procedures contemplated. Subsequently, the Government granted exemption for the Forest Department from the provisions of the Minimum Wages Act. This apart, the respondents/employees were not performing skilled/unskilled work in the Forest Department and there is no fixed working hours for this employees. They were allotted with the duty to protect the Forest Plantations and other reserved forests. Therefore, there is no fixed work which is neither skilled nor unskilled and there is no working hours for these employees. The term Employee is defined in Section 2(i) of the Minimum Wages Act, which is extracted hereunder:

"employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that

other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union."

14. This Apart, the Government granted exemption from the provisions of the Minimum Wages Act in the year 1982. Further, the fact that consolidated pay salary was paid by the Forest Department to its employees pursuant to the Government Orders, was also not denied. These are the disputed issues. When the entitlement is itself disputed, then the parties must adjudicate the issues in an Industrial dispute and the computation petitions cannot be entertained.

15. Only in the event of establishing a free existing right or entitlement, a computation petition can be entertained. The disputed issues cannot be adjudicated under Section 33C(2) of the Industrial Disputes Act. When the entitlement is disputed by the Forest Department on various grounds, then the Labour Court ought not to have adjudicated the issues on merits so as to allow the computation petitions filed under Section 33C(2) of the Industrial Disputes Act. Pre-existing right is a prerequisite under Section 33 C(2) of the Industrial Disputes Act. This Court also elaborately discussed the scope of Section 33C(2) of the Industrial Disputes Act in an order passed in W.P.No.1611 of 2015, dated 09.09.2019 and the relevant paragraphs are extracted hereunder;

"6. In respect of maintainability of the computation petition before the Labour Court under Section 33C(2) of the Industrial Disputes Act, 1947, the same is to be construed as a preliminary issue in the present writ petition. Learned counsel for the writ petitioner-Corporation contended that the other points raised in the impugned CP order cannot be taken into consideration in view of the fact that there was no pre-existing right for the purpose of filing the CP before the Labour Court under Section 33C(2) of the Industrial Disputes Act. The entire adjudication of the merits cannot be undertaken in the petition filed under Section 33C(2) of the Industrial Disputes Act. The very section stipulates that "where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided

by such Labour Court as may be specified in this behalf by the appropriate Government”.

7. Thus, there must be an entitlement before entertaining a petition under Section 33C(2) of the Industrial Disputes Act. In other words, there must be a pre-existing right which is a precondition for entertaining a petition under Section 33C(2) of the Industrial Disputes Act. In the absence of any such right or entitlement, no petition can be entertained for the purpose of computing the monetary value or benefits.

8. It is further to be construed that by way of fresh adjudication, monetary benefits cannot be computed. The merits and the demerits of the issues raised cannot be adjudicated in a petition filed under Section 33C(2) of the Industrial Disputes Act. All such adjudications are to be done in the manner prescribed before the Competent Court of Law and only if the rights and entitlements are crystallised, then alone a petition under Section 33C(2) can be entertained and not otherwise. The petition under Section 33C(2) is more or less like an execution petition and therefore, the petition under Section 33C(2) of the Act cannot be entertained for the purpose of complete adjudication of the issues. The very scheme of the Industrial Disputes Act is constituted in such a manner that there must be an adjudication, which resulted in establishing a right and only after establishing the right or entitlement, a petition can be filed for computation or claiming the benefits. When the initial Sections of the Act enumerates for adjudication of the issues, then the adjudication of the disputed issues are to be undertaken at the first instance and only thereafter, a petition for claim or computation can be filed.

10. In this regard, it is relevant to cite a judgment of the three Judges Bench of the Hon'ble Supreme Court of India in the case of State of U.P and Another vs. Brijpal Singh [2005-III-LLJ 1003]. The relevant paragraphs-10 and 12 of the judgment cited supra are extracted as under:

“10. It is well settled that the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not

justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages (P) Ltd. v. Suresh Chand [(1978) 2 SCC 144 : 1978 SCC (L&S) 165] held that a proceeding under Section 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows: (SCC p. 150, para 4)

"It is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the Act."

In the case of Municipal Corpn. of Delhiv. Ganesh Razak [(1995) 1 SCC 235 : 1995 SCC (L&S) 296 : (1995) 29 ATC 93] this Court held as under: (SCC pp. 241-42, paras 12-13)

"12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the

dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the executing court's power to interpret the decree for the purpose of its execution.

13. In these matters, the claim of the respondent workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of 'equal pay for equal work' being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar

claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents."

12. Thus, it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding before a forum to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the ID Act. Therefore, the Labour Court had no jurisdiction to adjudicate the claim made by the respondent herein under Section 33-C(2) of the ID Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent workman cannot ask the Labour Court in an application under Section 33-C(2) of the

ID Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs Shyamla Pappu that the respondent workman can file application under Section 33-C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28-10-1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33-C(2) of the ID Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33-C(2) of the ID Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23-8-1995 and the order dated 9-1-2002 passed by the High Court in CMWP No. 36406 of 1995 as illegal and uncalled for. We do so accordingly."

11. In the case of Tara and Others vs. Director, Social Welfare and Others [(1998) 8 SCC 671], the Hon'ble Supreme Court observed as follows:-

"2. There is no infirmity in the conclusion reached by the Labour Court on the basis of the decision of this Court in Ganesh Razak [(1995) 1 SCC 235 : 1995 SCC (L&S) 296 : (1995) 29 ATC 93] that the claim made by the appellants is not maintainable under Section 33-C(2) of the Act. This is obvious from the fact that the status and nature of employment of the appellants is itself disputed and unless there is a prior adjudication on merits of

the status which is the foundation for making the claim for wages at the specified rates, the question of moving an application under Section 33-C(2) for computation of the wages does not arise. We find that the Labour Court has recorded some findings which may be relevant for the disputed status of the appellants as anganwadi workers/helpers even though it has rightly reached the conclusion that the applications do not lie under Section 33-C(2) of the Act. It is clear that the question of maintainability of the applications under Section 33-C(2) was required to be determined at the threshold and the question of examining the appellants' claim on merits relating to their status could have been gone into thereafter if the applications were held to be maintainable under Section 33-C(2). In view of the conclusion rightly reached by the Labour Court that the applications were not maintainable under Section 33-C(2), its other findings relating to the status and nature of employment of the anganwadi workers/helpers were wholly uncalled for. All such findings are, therefore, not to be construed as deciding any point relating to the status of the appellants."

16. Considering the above legal principles, this Court is of the opinion that various Government Orders are cited by the petitioner Forest Department denying the entitlement of the employees as well as that the Act itself cannot not be applied to the Social Forestry Workers and plot watchers. The nature of work, whether skilled/unskilled, hours of working, the Government Orders in force are to be adjudicated by way of an dispute and such an adjudication is impermissible in an application filed under Section 33C(2) of the Industrial Disputes Act. The Labour Court had adjudicated the entitlement of the employees in the Computation Petitions, which is impermissible and under these circumstances, the respondents/employees are bound to establish their right and entitlement under the provisions of the Act or under the Government Orders, then alone a Computation Petition filed under Section 33C(2) of Industrial Disputes Act can be entertained by the Labour Court and not otherwise.

17. This being the legal principle, the Labour Court has committed an error in adjudicating the disputed issues in the

Computation Petitions. Thus, the order dated 28.03.2013 passed in C.P.Nos.257 to 260, 262 to 273, 275 to 277, 279 to 288 of 2008 is quashed. The writ petitions stand allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

The Presiding Officer,
Labour Court,
Coimbatore.

+1 CC to Mr.C.K. Chandrasekar, Advocate sr 99088 & 99089
+1 CC to The Special Government Pleader sr 98812.

W.P.Nos.28839 to 28867 of 2014

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