IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	30/08/2018
Orders Pronounced on	19/03/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.918 of 2017

a n d

C.M.P.No.12736 of 2017

The Management of Sri Munipachaiappan
Textiles Private Limited
Ippedu Village
Sholingur
Vellore District. ... Appellant/2nd Respondent

Vs

1. The Presiding Officer
Principal Labour Court
Vellore. ..1st Respondent /1st Respondent

2. E. Ganapathy
3. R. Chinnadurai
4. K. Megaraj
5. Babu
6. P. Vinayagam
7. C. Manikandan
8. V. Desan
9. V. Veeramani
10. S. Anandan
11. S. Babu
12. N. Raja
13. K. Ganesan
14. N. Shankar
15. A. Sundaravelu
16. P. Subramani
17. N. Saravanan
18. K. Vijayan
19. A. Srinivasan
20. E. Subakaran
21. R. Krishnamoorthy
22. S. Kumar
23. A. Kumaresan
24. P. Anandan
25. D. Nataraj
26. S. Sekar
27. D. Perumal
28. M. Sethuraman
29. S. Srinivasan

30. A. Venkatesan
31. P. Sabapathy
32. G. Narasimman
33. K. Sugumar
34. M. Koti
35. S. Murthy
36. M. Vijayakumar
37. D. Nellakalaiselvam
38. V. Kothandan
39. V. Ramesh
40. T. Loganathan
41. Saloman
42. P. Ramadoss
43. M.Parasuraman
44. R. Babu
45. S. Harikrishnan
46. R. Ramesh
47. K. Anandan
48. K. Narasimman
49. C. Dasaradan
50. N. Radhu
51. M. Kumar
52. M. Dhandapani
53. R. Thirthagiri
54. C. Dillibabu
55. G. Mohan
56. P. Palayathan ... Respondents/ Respondents

Prayer:- Appeal filed under Clause 15 of Letters Patent against the order dated 12/4/2017, made in W.P.No.30866 of 2016.

Prayer in W.P.No.30866 of 2016:

Writ Petition filed under Article 226 of the Constitution of India Praying for issue a Writ of Certiorari Calling for the records in connection with the Common Award in I.D.No. 139 of 2011 to I.D.No. 157 of 2011 I.D.No. 159 of 2011 to 178 of 2011 & I.D.No. 180 of 2011 to I.D. 193 of 2011 & I.D. No. 195 of 2011 and I.D. No. 16 of 2012 dated 28.04.2015 quash in so far as the said award directs the payment of less than Minimum wages viz the payment of Rs.5 500/- per month and made reinstatement subject to certain other legal proceedings.

For appellant ... Mr.R.S.Pandiyaraj

For respondents 2 to 56 ... Mr.V. Prakash Senior Counsel for Mr.K.Sudalaikannu

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J U D G M E N T

(Judgment of the Court was made by Subramonium Prasad,J)

Management of Sri Munipachaiappan Textiles Private Limited, Vellore, has challenged the order, dated 12/4/2017, passed in W.P.No.30866 of 2016, whereby the learned Single Judge has directed the Management, to pay a sum of Rs.10,206.60, as minimum monthly wages to the workmen.

2. Facts in brief are as under:-

Challenging in termination and seeking reinstatement and continuity of service, workmen of the appellant the respondent herein, raised disputes against the management. Conciliation Proceedings failed, resulting in I.D.Nos.139 to 157 of 2011, 159 to 195 of 2011 and 16 of 2012.

3. The issues which were considered by the Tribunal are:-

> i. Whether the petitioners/workmen are trainees and are they entitled to file an Industrial Dispute by claiming themselves as workers?
>
> ii. Whether the workmen had abandoned their services with the Management?
>
> iii. Are the workmen are entitled to the reliefs of reinstatement, backwages and all other attendant benefits.

4. The Tribunal found that the petitioners, who had raised the industrial dispute are workmen. The labour Court held that the presumption of abandonment of service, made by the Management, without giving an opportunity to the workmen is not correct. The Tribunal, concluded that workmen are entitled to reinstatement in service, subject to the rights of the employer, to continue disciplinary action, if any, for continued absence to work or the right of the employees to seek backwages.

5. On the issue as to what should be fixed as the minimum wages, the Tribunal held as under:-

> "33. Point No.4: On perusal of the pleadings and evidence of both the parties, it is found that there is disagreement between the petitioners and the respondent regarding quantum of

entitlement of wages for the petitioners. Even in the event of the resumption work by the petitioners subsequent to the award passed in these disputes, this Court has no jurisdiction to deal with the issues of wages. But in order to avoid the uncertainty in wages subsequent to this award, as an interim arrangement, it is suggested that the respondent can give the wages to the petitioners as agreed by him during the Lok Adalat Proceedings, subject to the rights of the petitioner to agitate and get appropriate remedy regarding the quantum of entitlement of wages before the Industrial Tribunal or any other appropriate authorities. It is seen from Ex.M.1341 that during negations made in Lok Adalat proceedings that the respondent has agreed to give Rs.5,900/- as monthly wages for all the petitioners. So an an interim arrangement till the proceedings before the Industrial Tribunal or any other proceedings that might be taken to fix wages before an appropriate authority gets over, the parties to this proceedings can consider to fix Rs.5,500/- as monthly wages. It is again reiterated that this arrangement regarding wages is subject to the right of the petitioners to agitate and get appropriate remedy regarding the quantum of wages by taking appropriate proceedings before the appropriate authorities, subsequent to the findings of the Industrial Tribunal. Thus point No.4 is answered accordingly."

6. Tribunal, therefore, held as under:-

"In the result, I.D.139/2011 to I.D.157/2011, I.D.159/2011 to I.D.No.195 of 2011 and I.D.16/2012 are partly allowed and the award is passed only with regard to the relief of reinstatement. The respondent is directed to reinstate all the petitioners into service, subject to the outcome of the disputes referred to Industrial Tribunal as per Ex.W.70 Government Order, regarding fairness of action on the part of the employer in connection with non-employment and also

> the outcome of the review petition filed by the petitioners' union before the High Court (Ex.W.71) to include the petitioner names also in the order passed by the high Court in Ex.W.69 and thereby get the benefit of Ex.W.70 Government Order to be extended to them also and without prejudice to the right of the employer to take disciplinary action against the petitioners for unauthorised absence or the right of the petitioners to take any appropriate action against the employer for fair wages or back wages, before the appropriate authority, depending upon the findings of the Industrial Tribunal in pursuance of Ex.W.70 Government Order. In view of the pending proceedings as mentioned above, the respondent shall not insist any letter of undertaking or any other written documents, except the joining report from the petitioners while re-instating them into service and the petitioners also shall not either by themselves or through their Union cause any unrest or commotion at the time of reporting to work. It i obligatory on the part of the petitioners to submit a written joining report to the respondent at the time of their joining. In case either party finds any difficulty in completing the process of reinstatement peacefully, it is open to them to seek the help of the labour Officer for completing the process of reinstatement of the petitioners uneventfully. No cost."

7. The workmen filed W.P.No.30866 of 2016, challenging the fixation of a sum of Rs.5,500/- as monthly wages, primarily contending that even in the labour Court proceedings, during negotiation, the Management had agreed to give Rs.5,900/-, as monthly wages According to the workmen, the order of the Tribunal, fixing Rs.5,500/-, as monthly wages, is not only arbitrary but is also against the provisions of the Minimum Wages Act, 1948. It was stated that in G.O. (2D) No.44, Labour and Employment (J1) Department, dated 5/8/2013, the State Government has fixed a sum of Rs.10,206.60 as minimum wages and that should be the amount paid. The learned Single Judge, allowed the writ petition, by fixing Rs.10,206/-, as minimum wages and the Management has been directed to pay the said amount. It

is this order which is under challenge in the instant writ appeal.

8. Heard Mr.R.S.Pandiyaraj, learned counsel for the appellant and Mr.V.Prakash, learned Senior Counsel for Mr.K.Sudalaikannu for the respondents.

9. The learned Single Judge has quoted the Appendix to G.O.(2D) No.44 Labour and Employment (J1) Department, dated 5/8/2013, and the same reads as under:-

> "In exercise of the powers conferred by clause (b) of sub-section (1) of sub-section 3 and subsection (2) of section 5 of the Minimum Wages Act, 1948 (Central Act XI of 1948) and in supersession of the Labour and Employment Department Notification No.II (2)/(LE)5269f)/2008, published at pages 1 and 2 20 of Part II - Section 2 of the Tamil Nadu Government Gazettee, Extraordinary, dated 7 th November, 2008, the Governor of Tamil Nadu after consultation with the Advisory Board, hereby revises the minimum rate of wages payable to the category of apprentices engaged in the employment in Textile Mills, including Composite Mills, Spinning Mills, Weaving Mills, Open Ended Mills and the various processes in the above said mills like blow room, carding, drawing, fly frames, spinning, winding, doubling, reeling, packing, warping-sizing, and other processes in the textile mills, whether carried out singly or together in the State of Tamil Nadu, as Rs.126.50 (Rupees one hundred and twenty six and fifty paise only) per day, the draft of the same having been previously published as required by clause (b) of sub-section (1) of section 5 of the said Act.
>
> 2. This Notification shall come into force with 21 effect on and from the date of its publication in the Tamil Nadu Government Gazette.
>
> Explanations:--
>
> 1) In addition to the minimum rate of basic wages fixed above, the apprentices shall be paid dearness allowance as specified below:-
>
> (i) The dearness allowance is linked to the average of Chennai City Consumer Price Index for the year 2000 that is, 475 point with base 1982 = 100, and for every rise of one point over and above 475 points, an

increase of 26 paise (Twenty six paise only) shall be paid as dearness allowance per day.

(ii) The dearness allowance shall be calculated every year on the first April on the basis of the average of the indices of the preceding twelve months, that is from January to December.

(iii) The first calculation shall be effective from 22 the date of publication of this Notification in the Tamil Nadu Government Gazette based on the Average Consumer Price Index number for the previous year.

(2) Where the nature of work is the same, no distinction in the payment of wages shall be made as between men and women apprentices.

(3) To arrive at monthly wages, the daily wages shall be multiplied by 30.

(4) Wherever the existing wages are higher than the minimum wages fixed therein, the same shall be continued to be paid."

10. The said G.O., has been passed under the Minimum Wages Act 1948, determining the minimum rates of wages payable to the categories of apprentices in employment of the textile mills, including Composite Mills, Spinning Mills, Weaving Mills, Open Ended Mills and the various processes in the above said mills like blow room, carding, drawing, fly frames, spinning, winding, doubling, reeling, packing, warping-sizing, and other processes in the textile mills. According to the Appendix which has been quoted above, the apprentices engaged in various mills would be paid as Rs.126.50 per day. In addition to the daily wages Rs.126.50, the workmen are also entitled to Dearness Allowance.

11. Mr.R.S.Pandiyaraj, learned counsel for the appellant would submit that the Minimum Wage Notification, dated 5/8/2013 in G.O.(2D) No.44 was only in respect of the apprentices and not for regular workmen. He would also submit that under the Shop and Establishment Act, every establishment should remain closed for one day in a week and wages has been calculated for 26 days. It is also argued that under Section 16 of the said Act, every person employed in any establishment shall be allowed a holiday of one whole day, in each week and therefore, the minimum wages should be calculated only for 26 days. He would also argue that under the settlement arrived at between the Management and workmen, under Section 18 of the Industrial Disputes

Act, it has been agreed that basic wages and dearness allowance, specified for a month of 26 working days of 8 hours each and the said amount at the rate of Rs.250/- per day for 26 days was fixed as on 1/6/1986.

12. Memo of calculation, dated 11/7/2017, filed by the appellant Management is as under:-

Minimum rate of basic wages	Rs.126.50 per day
Variable dearness allowance for the period 1/4/2016 to 31/3/2017	Rs.195.80/- per day

Basis for DA calculation Average cost of living for the calendar year 2015	1228 points
Total points-Base points = calculation points	1228 - 475 = 753 points
753 points x .26 paise	Rs.195.78 per day (rounded off to 195.80)

Basic wages for 26 days in a month	126.50 x 26 = Rs.3289/-
Dearness Allowance for 26 days in a month	195.80 x 26 = Rs.5090.80
	Total = Rs.8379.80

Basic wages for 30 days in a month	126.50 x 30 = Rs.3795/-
Dearness Allowance for 30 days in a month	195.80 x 30 = Rs.5874/-
	Total = Rs.9,669/-

13. On the other hand, Mr.V.Prakash, learned Senior Counsel appearing for the workmen submitted the memo of calculation on behalf of the respondents/workmen.

Minimum wages payable from April 2015 to March 2016 are as under:-

BASIC WAGES	126.50 per day x 30 = 3795
Dearness Allowance payable for the month of April 2015 to December 2015	
Eligible points	662.8

BASIC WAGES	126.50 per day x 30 = 3795
Dearness Allowance per point	0.26 paise per point
Dearness allowances per day	0.26 x 662.8 = 172.3
Monthly Dearness Allowance	172.3 x 30 = 5169.8
Total minimum wages for the year 2015 Basic + DA.	Rs.8964.8

Minimum wages payable from April 2016 to March 2017 are as under:-

BASIC WAGES	126.50 per day x 30 = 3795
Dearness Allowance payable for the month of April 2015 to December 2015	
Eligible points	752.9.8
Dearness Allowance per point	0.26 paise per point
Dearness allowances per day	0.26 x 752.9 = 195.7
Monthly Dearness Allowance	195.7 x 30 = 5872.7
Total minimum wages for the year 2015 Basic + DA.	Rs.9667.7

Minimum wages payable from April 2017 to July 2017 are as under:-

BASIC WAGES	126.50 per day x 30 = 3795
Dearness Allowance payable for the month of April 2015 to December 2015	
Eligible points	785.1
Dearness Allowance per point	0.26 paise per point
Dearness allowances per day	0.26 x 785.1 = 204.1

BASIC WAGES	126.50 per day x 30 = 3795
Monthly Dearness Allowance	204.1 x 30 = 6124.2
Total minimum wages for the year 2015 Basic + DA.	Rs.9919.2

14. He would also state that as per G.O.(2D) No.44 Labour and Employment (J1) Department, dated 5/8/2013, quoted supra, minimum wage for an apprentice has been fixed at Rs.126.50 per day and the said G.O., specifies that to arrive at a monthly wages, daily wages should be multiplied by 30.

15. The difference between the calculations as made by the workmen and the management is on the number of days and the number of points which is arrived at on the basis of Chennai Consumer Price Index.

16. The Hon'ble Supreme Court in Shri Digvijay Woollen Mills Ltd. Vs. Mahendra Prataprai Buch {1980 (4) SCC - 106}, the relevant paragraphs Nos.1 to 5 are observed as under:-

> "A common question arises for consideration in these two appeals relating to the mode of calculating fifteen days' wages of a monthly rated employee under section 4(2) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act). Section 4(2) provides:
>
> "For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:
>
> Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:
>
> Provided further that in the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages

for each season." "Wages" has been defined in section 2(s) of the Act as follows:

""wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."

It is not necessary to state the facts in any great detail. In both cases the respondent was a monthly-rated employee and the appellant, a public limited company, was his employer.

In Civil Appeal No. 1088 of 1976 (Shri Digvijay Woollen Mills Limited-appellant v. Shri Mahendra Prataprai Buch-respondent) the respondent ceased to be an employee on attaining the age of superannuation after completing 19 years of service. The appellant company calculated the amount of gratuity payable to him on the basis that fifteen days' wages was half of the monthly wages last drawn by him. The respondent demanded an additional sum as gratuity on the ground that his monthly wages should be taken as what he got for 26 working days, his daily wages should be ascertained on that basis and his fifteen days' wages worked out accordingly, not by just taking half of his wages for a month of 30 days or fixing his daily wages by dividing his monthly wages by 30. The Controlling Authority under the Act accepted the respondent's contention and his decision were affirmed by the appellate authority. A division bench of the High Court of Gujarat at Ahmedabad summarily dismissed the petition under Article 227 of the Constitution made by the appellant company challenging the decision of the authorities under the Act. The learned Judges however gave reasons in support of the order made. The appeal before us is by special leave.

In Civil Appeal 480 of 1977 (The Maharana Mills Limited-appellant v. Shri Gopal Das Ladhabhai Kakkad- respondent) the respondent resigned his job after a little over 22 years of service. The appellant company paid him gratuity calculating his daily wages by dividing his monthly wages by 30 and computing fifteen days' wages on that basis.

Here also the respondent claimed an additional sum as gratuity and the basis of the claim was the same as in the other appeal. The Controlling Authority accepted the respondent's contention and the appellate authority affirmed his decision following the view taken by the Gujarat High Court in the other case. In this case also the Gujarat High Court summarily rejected the petition made by the appellant company challenging the decision of the authorities under the Act. This appeal however is brought on a certificate granted by the High Court.

In dismissing the petition in Digvijay Woollen Mills case the division bench of the Gujarat High Court observed as follows:

"The employee is to be paid gratuity for every completed year of service and the only yardstick provided is that the rate of wages last drawn by an employee concerned shall be utilised and on that basis at the rate of fifteen days' wages for each year of service, the gratuity would be computed. In any factory it is well known that an employee never works and could never be permitted to work for all the 30 days of the month. He gets 52 Sundays in a year as paid holidays and, therefore, the basic wages 67 and dearness allowance are always fixed by taking into consideration this economic reality........A worker gets full month's wages not by remaining on duty for all the 30 days within a month but by remaining on work and doing duty for only 26 days. The other extra holidays may make some marginal variation into 26 working days, but all wage boards and wage fixing authorities or Tribunals in the country have always followed this pattern of fixation of wages by this method of 26 working days."

The view expressed in the extract quoted above appears to be legitimate and reasonable. Ordinarily of course a month is understood to mean 30 days, but the manner of calculating gratuity payable under the Act to the employees who work for 26 days a month followed by the Gujarat High Court cannot be called perverse. It is not necessary to consider whether another view is possible. The High Court summarily dismissed the petition of the appellant in both the appeals before us and upheld the decision of the authorities under the Act. We are not inclined to interfere with the decision of the High Court because it seems to us that the view taken by the authorities is not in any way unreasonable or perverse. Incidentally, to indicate that treating monthly wages as wages for 26 working days is not anything unique or unknown, we may refer to a passage from the judgment of this Court in Delhi Cloth and General Mills Company Ltd. v. Workmen and other etc.(1) which disposed of several appeals arising out of an award made by the Industrial Tribunal, Delhi. In the award schemes were framed relating to the payment of gratuity. The expression "average of the basic wage" occurring in the schemes was explained by this Court as follows:

> "It was also urged by Mr. Ramamurthi that the expression "average of the basic wage" in the definition of "wages" in Cl. 4 of the Schemes is likely to create complications in the implementation of the Schemes. He urged that if the wages earned by a workman during a month are divided by the total number of working days, the expression "wages" will have an artificial meaning and especially where the workman is old or disabled or incapacitated from rendering service, gratuity payable to him will be substantially reduced. We do not think that there is any cause for such apprehension. The expression "average of the basic wage" can only mean the wage earned by a workman during a month divided by the number of days for which he has worked 68 and multiplied by 26 in order to arrive at the monthly wage for the computation of gratuity payable. Counsel for the employers agree to this interpretation."

17. In Workmen Of The Bombay Port Trust vs Trustees Of Port Of Bombay AIR 1962 481, the Hon'ble Supreme Court, at paragraph Nos.3, 6, 7, 11, 12, 13 and 19, held as under:-

"3. As regards arrears of wages for Sundays on which no work was done the workmen's case is that they were entitled to receive payment for each such Sunday amounts equal to their average daily wages during the preceding week. But admittedly no payment was made for these Sundays. The respondent's case however is that on a proper interpretation of Rules 23 of the Minimum Wages (Central) Rules, 1960, the workmen were not entitled to payment for Sundays on which no work was done by them and further that in any case they have been constructively paid for the Sundays also inasmuch as the daily wages were fixed at I/26th of the monthly wage.

6. In respect of the claim for pay on Sundays during the period October 1953 to March 2, 1956, on which no work was done we have first to decide on the correct interpretation of the words "for which" in Rule 23, as it stood before it was amended by a Notification GSR 918 dated the 29th July, 1960. Tho Rule as it stood before the amendment ran thus:-

"23. Weekly Holidays-(1) Unless other wise permitted by the Central Government, no worker shall be required or allowed to work in a scheduled employment, on the first day of the week (hereinafter referred to as the said day) except when he has or will have a holiday for the whole day on one of the five days immediately before or after the said day for which he shall receive payment equal to his average daily wages during the preceding week.

Provided that the weekly holidays may be substituted by another day:

Provided further that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day." We are not concerned with cl. 2 of Rule 23.

The Explanation to the Rule is in the following words:-

Explanation-For the purpose of this rule "week" shall mean a period of seven days beginning at midnight on Saturday night.

7. The main policy underlying the rule obviously is that workmen shall have full rest at frequent intervals-ordinarily once in every 7 days but in no case at intervals of more

than 10 days. This was clearly in accordance with the principle laid down in 8. 13 of the Minimum Wages Act that the Government may provide for a day of rent for every period of 7 days even though in framing the Minimum Wages (Central) Rules 1960 (which covers many other matters other than the matters mentioned in 8.13) no reference has been made to section 13 at all. In giving effect to this policy of providing for a day of rest-ordinarily once in 7 days but in no case at intervals of more than 10 days-the rule making authority has thought fit also to make provision for making some payment in connection with this. Difficulty has however been caused by the unfortunate complexity of the sentence, in which the main provision as regards the day of rest and also the subsidiary provision for payment have been combined.

11.Our attention was drawn to the view taken by the Bombay High Court in Trustees of the Port of Bombay v. Authority under the payment of Wages Act(1) which was followed by the Madras High Court in A.C.C. v. Labour Inspector(2) that the proper construction of the word "for which" is to relate to word "holiday" preceding the word" "for the whole day". In Jaswant Sugar Mills v. Sub-Divisional Magistrate (3) the Allahabad High Court took the view that for which" refers to the weekly holiday whether it is on a Sunday or on any other days of the week as permitted under the Rules. In our opinion, the view taken by the Allahabad High Court correct.

12. On a proper construction of the rule it must, in our opinion, be held that the workmen of categories A and were entitled to receive payment equal to the average wages during the preceding week" in respect of the period October 1963 to March 2, 1956.

13. This brings us to the employer's claim that there has been constructive payment for the Sundays during this period, viz., October 1953 to March 2, 1956. The argument is that the daily wage for these workmen was fixed by dividing all the Components of the monthly scale of pay and allowances by 26 so that what, a workman receives as daily wage is really 1/26th of the wage for 30 days. Thus, it is said, the total receipts for the 26 days, if no separate payment is made for the rest days will be 26 x1/26th of 30 days wage.,

that is 30 days' wage. The fallacy in this argument is that it ignores the essential fact that once the daily wage is fixed at a certain figure it no longer retains its character of being 1/26th of the monthly wage. However arrived at, the daily wage is a daily wage and it is wrong to regard it as a certain fraction of the monthly wage. When the Central Government making in these Minimum Wages Rules made this provision for payment on a holiday it clearly intended that something in addition to what was being actually received for the six days of the week should be paid. This cannot be defeated by a statement that though in form six days wages were being paid, infact and in substance, seven days wages were being paid. By no stretch of imagination can payment for six days be equated to payment for seven days.

19. We are therefore of opinion that the workers of categories A and B are entitled to arrears of wages for the Sundays from March 3, 1956 on the basis that the guaranteed minimum wage was the daily wage."

(emphasis supplied)

18. A perusal of the above mentioned judgments would show that though the minimum wages are calculated by taking that a workman works for 26 days but he has to be paid for all 30 days as also stipulated in Clause (3) of G.O.2(D) No.44 Labour and Employment J1 Department, dated 05.08.2013 which stipulates that to arrive monthly wages, the daily wages shall be multiplied by 30.

19. The Learned Single Judge has directly taken the basic point as per May 2016 as 1297 points on the basis of the consumer price index of 2016 with base year 1982 = 100 and has come to 822 as calculation points i.e, 1297-475 (where 475 represents the base points for the year 2000). The Government order G.O.2(D0. No.44 Labour and Employment J1 Department dated 05.08.2013 stipulates that Dearness Allowance is linked to the average of Chennai City Consumer Price Index for the year 2000, i.e., 475. with base 1982 = 100 and for every raise of one point over and above 475 points an increase of .26 paise shall be paid as Dearness Allowance per day. It also stipulates that the Dearness Allowances shall be calculated every year on the first April on the basis of the average of the indices of the preceding 12 months i.e, from January

to December. The Single Judge therefore subtracted 475 from 1297 = 822. The learned Single Judge erred in taking the total points directly for May 2016 as 1297 instead of taking the average of points from January to December for the year 2015, as stipulated in G.O.2(D)No.44, Labour and Employment (J1) Department, when the average of the indices of the preceding 12 months from January to December. This figure comes to 1227.91 as calculated by the Appellant. The correct figure of wages therefore is 1227.91- 475 = 752.91 points. 752.91 X .26 = 195.75. The total Dearness Allowance would be 126.50 X 30 = 3795 + 195.75 X 30 = 5872.50/- total amount payable is Rs.9667.50/-

20. The learned Single Judge had directed the Appellants to pay a sum of Rs. 10,206.60/- instead of Rs.9667.50/-. In the memo calculation filed by the Appellant, the Appellant while calculating the Dearness Allowances and the Basic wages for 30 days has calculated the amount as Rs.9669/-. We take the same figure.

21. In the result, writ appeal is allowed in part and the monthly wages is reduced from Rs.10206.60/- to Rs.9669/-. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mvs/pkn

To

1. The Presiding Officer
Principal Labour Court
Vellore.

+1cc to Mr.R.S.Pandiyaraj , Advocate SR.No. 26121
+1cc to Mr.K.Sudalaikannu , Advocate SR.No. 26125

W.A.No.918 of 2017

A.SK(06/06/2019)