



G. Vellaichamy	..1 st Respondent in WP (MD) No.20344 OF 2013
P.Krishnan	..1 st Respondent in WP (MD) No.20345 OF 2013
M.Palanichamy	..1 st Respondent in WP (MD) No.20346 OF 2013
A. Yagappan	..1 st Respondent in WP (MD) No.20347 OF 2013
A.Chinnaiah	..1 st Respondent in WP (MD) No.20348 OF 2013
D. Jayaseelan	..1 st Respondent in WP (MD) No.20349 OF 2013
T. Gunasekaran	..1 st Respondent in WP (MD) No.20350 OF 2013
K. Muthaiah	..1 st Respondent in WP (MD) No.20351 OF 2013
Kannammal	..1 st Respondent in WP (MD) No.20352 OF 2013
S. S. Shanmugavel	..1 st Respondent in WP (MD) No.20353 OF 2013
M. Thirumalaisamy	..1 st Respondent in WP (MD) No.20354 OF 2013
S. Muthukrishnan	..1 st Respondent in WP (MD) No.20355 OF 2013
C. Vetrivel	..1 st Respondent in WP (MD) No.20356 OF 2013
S. Murugesan	..1 st Respondent in WP (MD) No.20357 OF 2013
S. Periyasamy	..1 st Respondent in WP (MD) No.20358 OF 2013
R. Palanichamy	..1 st Respondent in WP (MD) No.20359 OF 2013
K. Arumugham	..1 st Respondent in WP (MD) No.20360 OF 2013

Pandiammal (Legalheir)

W/o. Thiru. (Late) Sundaraj

..1st Respondent in WP (MD) No.20361 OF 2013

V. Rajendran	..1 st Respondent in WP (MD) No.20362 OF 2013
C. Subramani	..1 st Respondent in WP (MD) No.20363 OF 2013
S. Ramasubbu	..1 st Respondent in WP (MD) No.20364 OF 2013
R. A Soosaimanikkam	..1 st Respondent in WP (MD) No.20365 OF 2013
S.P. Dhandapani	..1 st Respondent in WP (MD) No.20366 OF 2013
G. Vellaichamy	..1 st Respondent in WP (MD) No.20367 OF 2013
V. Thangapandi	..1 st Respondent in WP (MD) No.20368 OF 2013
M. Ponnuchamy	..1 st Respondent in WP (MD) No.20369 OF 2013
Ellappan	..1 st Respondent in WP (MD) No.20370 OF 2013
N. Jayaraman	..1 st Respondent in WP (MD) No.20371 OF 2013
R. Karuppanan	..1 st Respondent in WP (MD) No.20372 OF 2013
A. Renganathan	..1 st Respondent in WP (MD) No.20373 OF 2013
K. Ganeshan	..1 st Respondent in WP (MD) No.20374 OF 2013



K. Avalappan ..1st Respondent in WP (MD) No.20375 OF 2013
K. Rajendran ..1st Respondent in WP (MD) No.20376 OF 2013
A. Palanichamy ..1st Respondent in WP (MD) No.20377 OF 2013
M. Veerappan ..1st Respondent in WP (MD) No.20378 OF 2013
C. Pandi ..1st Respondent in WP (MD) No.20379 OF 2013
T. Ganeshan ..1st Respondent in WP (MD) No.20380 OF 2013
P. Murugesan ..1st Respondent in WP (MD) No.20381 OF 2013
C. Rajendran ..1st Respondent in WP (MD) No.20382 OF 2013
S. Pethanan ..1st Respondent in WP (MD) No.20383 OF 2013
A. Rajendran ..1st Respondent in WP (MD) No.20384 OF 2013
K. Rajendran ..1st Respondent in WP (MD) No.20385 OF 2013

(Late) R. Manikkam,

Legalheir Tmt. Indirani,

..1st Respondent in WP (MD) No.20386 OF 2013

M. Rathinam ..1st Respondent in WP (MD) No.20387 OF 2013
D. Veeramalai ..1st Respondent in WP (MD) No.20388 OF 2013
S. Chinnamuthu ..1st Respondent in WP (MD) No.20389 OF 2013
A. Thangaraj ..1st Respondent in WP (MD) No.20390 OF 2013
T. Nagarajan ..1st Respondent in WP (MD) No.20391 OF 2013
A. Samythevar ..1st Respondent in WP (MD) No.20392 OF 2013
A. Chinnan ..1st Respondent in WP (MD) No.20393 OF 2013

(Late) N. Lingan

Legalheir Tmt. Ariyanatchi.

..1st Respondent in WP (MD) No.20394 OF 2013

P. Subramani ..1st Respondent in WP (MD) No.20395 OF 2013
P.S.K. Swaminathan ..1st Respondent in WP (MD) No.20396 OF 2013
N. Ponnalagar ..1st Respondent in WP (MD) No.20397 OF 2013
P. Mohanraj ..1st Respondent in WP (MD) No.20398 OF 2013

B. Perumal ..1st Respondent in WP (MD) No.20399 OF 2013
V. Santhiagu ..1st Respondent in WP (MD) No.20400 OF 2013



Deputy Commissioner of Labour,
Dindigul.

..2nd Respondent in all Cases

COMMON PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the second respondent in M.W.Nos.48, 35, 96, 38, 37, 95, 58, 45, 55, 100, 90, 67, 44, 62, 50, 43, 40, 63, 31, 47, 32, 33, 51, 78, 80, 49, 86, 42, 60, 68, 36, 87, 99, 88, 59, 41, 102, 93, 75, 98, 84, 53, 56, 74, 34, 91, 73, 52, 54, 83, 77, 46, 66, 57, 70, 61, 81, 85, 65, 64, 76, 101, 82, 89, 79, 71, 97, 69, 72 and 94 of 2012, dated 17.05.2013 respectively and quash the same.

For Petitioners : Mr.M.Jeya Kumar,
(in all cases) Additional Government Pleader.

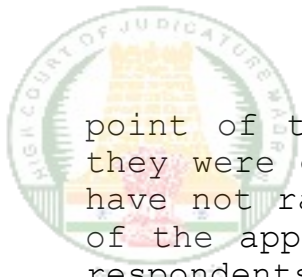
For R1 : Mr.Anand Chandrasekar,
(in all cases) For M/s.Sarvabhauman Associates.

For R2 : Mr.D.Muruganantham,
(in all cases) Additional Government Pleader.

COMMON ORDER

The orders passed by the Deputy Commissioner of Labour, Dindigul on 17.05.2013 under the Minimum Wages Act, 1948, (hereinafter referred to as 'the Act') are under challenge in the present Writ Petitions.

2.The State preferred these Writ Petitions mainly on the ground that the first respondent in all these Writ Petitions were engaged as Plot Watchers on daily wage basis during the year 1985 as per G.O.Ms.No.82, Labour and Employment Department, dated 27.09.2002. Nature of employment and the job responsibility attached to the posts of Plot Watcher are neither skilled nor semiskilled work. It is a Social Forestry Scheme and these Plot Watchers were engaged as daily wage employees under Sweedish International Development Authority (hereinafter referred to as 'SIDA'). The consolidated salary of Rs.818/- per month was paid initially. Even after the completion of the SIDA, the first respondents were permitted to work under the scheme on consolidated pay. Based on the request made by the employees working in the cadre of Plot Watchers, the Government enhanced the consolidated pay to Rs.2,126/- with effect from 01.09.2006 onwards. The employees in Social Forestry Scheme is exempted from the minimum wages under Section 12 of the Act. The first respondents / employees at no



point of time have challenged the Government Order, through which they were engaged as Plot Watchers. In view of the fact that they have not raised any objection and accepted the terms and conditions of the appointment as Plot Watchers on consolidated pay, the first respondents / employees cannot turn around and claim minimum wages under the Act.

3.The learned Additional Government Pleader appearing on behalf of the writ petitioners made a submission that the Plot Watchers and Village Social Forestry workers requested the State Government and consequently, G.O.Ms.No.222, dated 10.06.1992 and G.O.Ms.No.225, dated 11.06.1992 had been passed and subsequently, these daily wage Plot Watchers were brought under regular establishment and their services are regularised based on the availability of the vacancies. The benefit of regularisation granted to these employees by the Government itself was a concession. These Plot Watchers were not engaged by following the recruitment rules in force. Their initial appointments were irregular and they were engaged in a scheme to watch the forest area.

4.The learned Additional Government Pleader appearing on behalf of the writ petitioners narrated the nature of the job responsibility of these Plot Watchers by stating that there is no specific work allotted to them and they have to watch the forest area and mostly, local persons are engaged for this purpose, knowing the fact that they are well versed with the local situation and other aspects. Thus, the villagers, who are residing in the nearby forest area, are engaged as Plot Watchers on consolidated pay and they were just watching the forest and if any untoward incident took place, they have to inform the higher official for initiating further action in this regard. Thus, there is no specific time limit or nature of work allotted to these Plot Watchers. In the absence of any such specific allotment of works and specific job responsibilities, one can come to the conclusion that they are working throughout a day or atleast 8 hours per day. It is almost like watching the area and there is no specification or area wise jurisdiction allotted to these Plot Watchers. Some of the villagers were engaged as Plot Watchers just to watch the forest area in order to provide information regarding the deforestation or any offence committed by anybody.

5.This being the nature of appointment done, the very engagement of the first respondents cannot be brought under the definition of the full time employment. In fact, there is no order of appointment available in a lecture maintained by the Forest Department, which is now produced before this Court. In the lecture, the name, address and details of the employees alone are available and no appointment orders are available. They were engaged on daily wage basis and the salary was paid on monthly basis by way of consolidated pay. The Government subsequently, granted benefit of regularisation to all these Plot Watchers, whenever the



vacancy arises and by maintaining the statewide seniority list. In this regard, the Government issued G.O.Ms.No.95, dated 07.08.2009.

6.The writ petitioners made a submission that the Government Order issued in G.O.Ms.No.106, Environmental Forest FR II, dated 21.09.2006, fixing the terms and conditions for the first respondents / employees, is not challenged by them.

7.It is contended that the Deputy Commissioner of Labour passed an order under the Act without providing opportunity to the first respondents. The Deputy Commissioner of Labour / competent authority failed to consider the implications of G.O.Ms.No.82, Labour and Employment, dated 27.09.2002, which prescribes the nature of working time and maintain of social forestry and further, he failed to consider that the post of Plot Watchers is not coming under the category of skilled or semiskilled work.

8.This apart, the Government issued G.O.Ms.No.82, Labour and Employment, dated 27.09.2002, granting exemption for social forestry worker of Forest Department from the provisions of the Act. The Deputy Commissioner of Labour passed an order on 17.05.2013. Thus, the Deputy Commissioner of Labour had failed to take note of the fact that the Government granted exemption for social forestry workers of Forest Department from the provisions of the Act.

9.The Government Order issued in G.O.Ms.No.82, Labour and Employment, dated 27.09.2002, states as follows:-

"2.The Government have examined the request of Principal Chief Conservator of Forests carefully in consultation with the Commissioner of Labour. Considering the nature of work, performance and working hours involved in the protection of Social Forestry plantations, which cannot be termed as skilled / semiskilled work, the Government have decided not to include the Social Forestry Workers of Forests Department under the Minimum Wages Act, 1948 (Central Act XI of 1948) in view of the following reasons:-

(i)Social Forestry Workers have already been paid consolidated pay of Rs.818/- as determined by the Empowered Committee on Swedish International Development Authority (SIDA) Project.

(ii)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 given as Government to protect the Social Forestry Plantations raised under SIDA project; and



(iii) Social Forestry workers are likely to be absorbed in regular post of Plot Watchers in the Forest Department, after taking into account the seniority of these workers.

Accordingly, the Government direct that the Social Forestry Workers of Forest Department be exempted from the provisions under Section 12 of the Minimum Wages Act, 1948."

10. The learned counsel appearing on behalf of the first respondents / employees opposed the contentions by stating that all these employees were engaged as Plot Watchers under the scheme on time scale of pay. Though they were appointed under the scheme, they were performing their duties and responsibilities as assigned by the higher officials of the Forest Department. Thus, the first respondents / employees are entitled to get minimum wages under the provisions of the Act.

11. The contentions of the first respondents / employees are that payment fixed for the post of Plot Watchers is below the salary to be fixed under the provisions of the Act. Thus, the writ petitioners ought to have considered the case of the first respondents / employees for payment of the minimum wages under the provisions of the Act.

12. In this regard, the Deputy Commissioner of Labour, has decided the issue that whether the first respondents / employees are entitled to get the salary under the provisions of the Act or not, whether the salary paid to the first respondents / employees is below the admitted rate of wages under the provisions of the Act. Third issue was framed whether the first respondents / employees are eligible to get the arrears of minimum wages.

13. On a perusal of the orders passed by the Deputy Commissioner of Labour, the issue relating to the nature of the job responsibilities as well as the terms and conditions of the appointment was not adjudicated. Contrarily, the Deputy Commissioner of Labour carried away with an impression that the salary paid to these employees was below the minimum wages to be fixed under the provisions of the Act. As far as the Government Orders issued in G.O.Ms.No.82, is concerned, the Deputy Commissioner of Labour has taken note of the above Government Order and arrived at a conclusion that exemption will take effect from the date of issuance of the G.O.Ms.No.82, dated 27.09.2002 prospectively.

14. This Court is of the considered opinion that there is no infirmity in respect of the decision arrived by the Deputy Commissioner of Labour that the Government Order issued in G.O.Ms.No.82, dated 27.09.2002 is to be followed prospectively. As far as the first respondents / employees are concerned, the third claim in respect of the minimum wages to be paid prior to the



issuance of G.O.Ms.No.82, is to be considered. Taking that view, the Deputy Commissioner of Labour allowed the petitions filed by the first respondents / employees.

15.This Court is of the considered opinion that undoubtedly, the exemption from the provisions of the Act was issued by way of notification by the Government in G.O.Ms.No.82, Labour and Employment Department, dated 27.09.2002. The Deputy Commissioner of Labour granted minimum wages to these employees in respect of the period in which they are working prior to 27.09.2002. However, the Deputy Commissioner of Labour had failed to adjudicate the nature of the job responsibilities, terms and conditions of the appointment, and other criteria to be considered for the purpose of granting minimum wages under the provisions of the Act.

16.The State Government has implemented various welfare schemes, forestry schemes and other projects. The employees / labours are engaged on daily wage basis, contract basis and consolidated pay basis. In those circumstances, the Court has to consider the nature of appointment and terms and conditions of the appointment as well as agreed terms if any between the employer and employee. All these aspects are to be considered before passing the order, granting minimum wages under the provisions of the Act.

17.In the present case on hand, the writ petitioners could able to establish that the post of Plot Watchers did not carry any specific job responsibility. There is no timing for work. There is no absolute supervision also. The villagers, who are all residing nearby forest area, are engaged as Plot Watchers on daily wage employees and they are just watching the area and informing whether any incidents take place inside the forest. Therefore, the very job responsibilities cannot be compared with other appointments or the job responsibilities. They are engaged as daily wage employees and there is no working hours for performing their duties and responsibilities. They are at liberty to work by watching the forest area at their choice and whenever required.

18.This being the nature of employment, the job responsibility and the nature of the job cannot be defined as skilled or semiskilled.

19.Section 2(e) of the Act defines that "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of Section 26-.

20.Considering the nature of the job responsibilities as well as the non-fixation of the duty hours and other responsibilities, this Court is of the considered opinion that the



first respondents / employees are not falling within the definition of Section 2(e) of the Act, so as to get the benefit of provisions of the Act. Only in the event of defining employment, working hours, job responsibilities, the employees are entitled to claim minimum wages under the provisions of the Act.

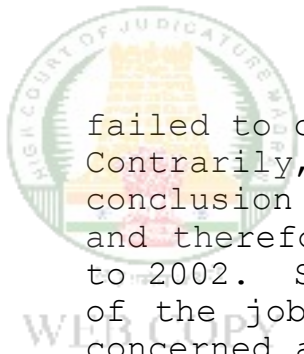
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21. This apart, such projects are implemented in the municipalities and the employees are engaged to do certain kind of works, wherein the terms and conditions are fixed by way of Government Order. In the event of not challenging the Government Order provides engagement of such employees, then the employees cannot file a petition to grant minimum wages under the provisions of the Act.

22. The very purpose and object of the scheme is to ensure proper payment and wages and avoid exploitation of the employees by the employers. In the present case, the Government is the employer and in order to implement certain projects, these employees were engaged as Plot Watchers. Therefore, the very nature of the engagement cannot be construed as an exploitation by the State Government and in fact, consolidated pay was fixed considering the nature of scheme as well as the nature of job responsibilities provided to these employees.

23. This Court is of the considered opinion that when the Government issued an order for the purpose of implementing certain projects and providing jobs to the employees on consolidated pay basis or daily wage basis or otherwise, in the absence of challenging the Government Order engaging these employees, they cannot challenge the payment of salary by approaching the competent authorities under the provisions of the Act. If at all any grievance arises, they have to challenge the Government Order through which they are engaged in a project to do certain works. In the present case, the first respondents / employees had accepted the nature of employment by accepting the Government Order in this regard. Thus, this Court cannot entertain such petitions for the purpose of fixing minimum wages even considering the nature of job responsibilities, working hours and other criteria.

24. Various Government Orders passed by the Government and the plight of these employees were subsequently, considered by the Government and they were brought under the regular establishment and benefit of regularisation was also granted. All these Plot Watchers were absorbed based on their length of service and by including their names in the statewide seniority list. All these Plot Watchers were appointed in the sanctioned post in a phased manner, based on the availability of the vacancies in the Forest Department. This apart, the benefit already extended in spite of the fact that their initial engagement was irregular and not in accordance with the recruitment rules in force. The first respondents / employees cannot claim minimum wages or arrears of minimum wages under the provisions of the Act and the Deputy Commissioner of Labour has



failed to consider all these aspects, while adjudicating the issues. Contrarily, the Deputy Commissioner of Labour had arrived at a conclusion by stating that exemption was granted in G.O.Ms.No.82, and therefore, the department is liable to pay minimum wages prior to 2002. Such an adjudication is insufficient, as far as the nature of the job responsibilities, working hours and other criteria are concerned and as per the definition of the employer in Section 2(e) of the Act, the first respondents / employees are not performing skilled work or semiskilled work.

25.This being the factum, the first respondents / employees are not entitled for any minimum wages under the provisions of the Act and therefore, the Deputy Commissioner of Labour failed to consider the criteria to be ascertained before granting benefit under the provisions of the Act.

26.This being the factum, the impugned orders are infirm. Accordingly, the Orders passed by the Deputy Commissioner of Labour, in M.W.Nos.48, 35, 96, 38, 37, 95, 58, 45, 55, 100, 90, 67, 44, 62, 50, 43, 40, 63, 31, 47, 32, 33, 51, 78, 80, 49, 86, 42, 60, 68, 36, 87, 99, 88, 59, 41, 102, 93, 75, 98, 84, 53, 56, 74, 34, 91, 73, 52, 54, 83, 77, 46, 66, 57, 70, 61, 81, 85, 65, 64, 76, 101, 82, 89, 79, 71, 97, 69, 72 and 94/2012, dated 17.05.2013 are quashed. All these Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

SD

ASSISTANT REGISTRAR (CO)

TRUE COPY

SUB ASSISTANT REGISTRAR(CS)

Myr

To

1 The Deputy Commissioner of Labour,
Dindigul.

2.The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai-600 015.

3.The Conservator of Forests,
Dindigul Circle, Dindigul.

4.District Forest Officer,
Ayyalur IFF Division,
Vevekanandha Nagar, Dindigul.

+1CC TO THE SPL GOVT PLEADER SR 75668