



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(MD)Nos.1645 to 1653 of 2019

and

CMP(MD)Nos.8579 to 8587 of 2019

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M/s.Venus Home Appliances (P) Ltd.,
Represented through Factory Manager,
K.Murugesan,
5/54A, Senthilampennai Village,
Thoothukudi.

... Petitioner/Respondent/Respondent
in all cases

Vs

S.Rajagopal

...Respondent/Petitioner/Petitioner in
CRP (MD) No.1645/2019

P.M.Joyal

...Respondent/Petitioner/Petitioner in
CRP (MD) No.1646/2019

C.Shanmuga Sundaram

...Respondent/Petitioner/Petitioner in
CRP (MD) No.1647/2019

A.Thiraviaraja

...Respondent/Petitioner/Petitioner in
CRP (MD) No.1648/2019

S.Rajalingam

...Respondent/Petitioner/Petitioner in
CRP (MD) No.1649/2019

S.Ayyankani

...Respondent/Petitioner/Petitioner in
CRP (MD) No.1650/2019

M.Udhayakumar

...Respondent/Petitioner/Petitioner in
CRP (MD) No.1651/2019

M.Subrmanian

...Respondent/Petitioner/Petitioner in
CRP (MD) No.1652/2019

S.Suresh

...Respondent/Petitioner/Petitioner in
CRP (MD) No.1653/2019

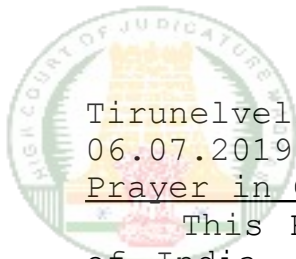
Prayer in CRP(MD)No.1645 of 2019

This Revision Petition filed under Article 227 of Constitution of India, against the order of the Deputy Commissioner of Labour, Tirunelveli in I.A.No.5 of 2019 in P.W.No.10 of 2018, dated 06.07.2019.

Prayer in CRP(MD)No.1646 of 2019

This Revision Petition filed under Article 227 of Constitution of India, against the order of the Deputy Commissioner of Labour,

<https://hcservices.ecourts.gov.in/hcservices/>



Tirunelveli in I.A.No.6 of 2019 in P.W.No.12 of 2018, dated 06.07.2019.

Prayer in CRP(MD)No.1647 of 2019

This Revision Petition filed under Article 227 of Constitution of India, against the order of the Deputy Commissioner of Labour, Tirunelveli in I.A.No.7 of 2019 in P.W.No.13 of 2018, dated 06.07.2019.

Prayer in CRP(MD)No.1648 of 2019

This Revision Petition filed under Article 227 of Constitution of India, against the order of the Deputy Commissioner of Labour, Tirunelveli in I.A.No.5 of 2019 in P.W.No.10 of 2018, dated 06.07.2019.

Prayer in CRP(MD)No.1649 of 2019

This Revision Petition filed under Article 227 of Constitution of India, against the order of the Deputy Commissioner of Labour, Tirunelveli in I.A.No.9 of 2019 in P.W.No.15 of 2018, dated 06.07.2019.

Prayer in CRP(MD)No.1650 of 2019

This Revision Petition filed under Article 227 of Constitution of India, against the order of the Deputy Commissioner of Labour, Tirunelveli in I.A.No.10 of 2019 in P.W.No.16 of 2018, dated 06.07.2019.

Prayer in CRP(MD)No.1651 of 2019

This Revision Petition filed under Article 227 of Constitution of India, against the order of the Deputy Commissioner of Labour, Tirunelveli in I.A.No.11 of 2019 in P.W.No.17 of 2018, dated 06.07.2019.

Prayer in CRP(MD)No.1652 of 2019

This Revision Petition filed under Article 227 of Constitution of India, against the order of the Deputy Commissioner of Labour, Tirunelveli in I.A.No.12 of 2019 in P.W.No.19 of 2018, dated 06.07.2019.

Prayer in CRP(MD)No.1653 of 2019

This Revision Petition filed under Article 227 of Constitution of India, against the order of the Deputy Commissioner of Labour, Tirunelveli in I.A.No.13 of 2019 in P.W.No.20 of 2018, dated 06.07.2019.

For Petitioner :Mr.D.Shanmugaraja Sethupathi
for Mr.G.Manivannan in all cases
For Respondent : Mr.Jerin Mathew in all cases.

COMMON ORDER

All Civil Revision Petitions have been filed against the Common Order, dated 06.07.2019, passed by the Deputy Commissioner Labour, Tirunelveli, wherein, the Deputy Commissioner directed the revision

<https://hcservices.courts.gov.in/hcservices/> produce (i) Overtime Register; (ii) Computer Thumb



Impression of the employees/workers and (iii) Wage Slip for the period from July 2015 to October 2015. Challenging the said order, the revision petitioner is before this Court.

2. The learned counsel appearing for the revision petitioner contended that the authority below, without application of its mind, passed an order directing the revision petitioner to produce the Overtime Register, Computer Thumb Impression, Wage Slip for the period from July 2015 to October 2015. According to revision petitioner, the authority below cannot pass such an order for the reason that as per Rule 28-A of the Minimum Wages (Tamil Nadu) Rules, 1953, the abovesaid registers could be maintained only for a period of one year. In the present case, the revision petitioner was directed to produce the abovesaid records for the period from July 2015 to October 2015, whereas, the respondents herein filed their claim petition before the authority below in the year 2018 and 2019 respectively, i.e. after the period of three years.

2.1. The learned counsel further contended that all the registers be made available only for one year. Therefore, the authority below cannot pass such an order to produce the said records, after the period of three years.

2.2. However, the learned counsel for the revision petitioner fairly submitted that though three records were directed to be produced, the revision petitioner is ready to produce wage slips for the period from July 2015 to October 2015, which are readily available with the revision petitioner. In the said wage slips, all particulars are available with regard to the payment of wages and overtime wages.

2.3. The learned counsel appearing for the revision petitioner further submitted that the order to produce Overtime register and Computer thumb impression is beyond the scope of Rule 28A of the Minimum Wages (Tamil Nadu) Rules 1953.

3. The learned counsel appearing for the respondents referred to Rule 78-B of the Factories Act, which reads as follows:

"78-B Overtime Slips - Period of overtime work shall be entered in the overtime slip in duplicate and a copy of the slip signed by the Manager or by a person authorised by him shall be given to the worker immediately after the completion of the overtime work:

Provided that the Chief Inspector may by order in writing exempt any factory or class of factories from the provisions of this rule, subject to such conditions as he may impose, if he is satisfied that any alternative system followed therein, is adequate to meet the requirements of this rule."



By referring above Rule, the learned counsel for the respondents submitted that as per the said Rule, the revision petitioner is supposed to have maintained the duplicate copy of overtime slip and originals should have been given to the claimants. But, in the present case, the revision petitioner failed to prove the same.

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4. However, the learned counsel appearing for the revision petitioner contended that the workers have worked for overtime, for which, they have been given slips for overtime. Therefore, it is for the claimants to produce the same before the authority below. If they have not worked for overtime, no slip is given to the claimants. In this case, the claimants have not produced such slip, therefore, the claimants have not worked for overtime. If the claimants claimed that they have worked overtime, it is their duty to prove the same by letting appropriate evidence. In these circumstances, the order impugned directing the revision petitioner to produce the overtime register is unsustainable in law.

5. The learned counsel appearing for the revision petitioner also referred Rule 5 of the Tamil Nadu Payment of Wages Rules, 1937, which reads as follows:

"5. Register of Wages - A Register of Wages shall be maintained by every paymaster in such form as he finds convenient but which shall include the following particulars:

(a) Details of the persons employed;

(b) The work performed by the employed persons;

(c) The gross wages earned by each person employed for each wage-period;

(d) The total of all deductions made from these wages;

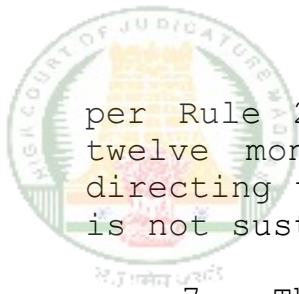
(e) The wages actually paid to each person employed for each wage-period;

(f) The date of payment and

(g) The signature or left thumb-impression of the person employed in token of having received the payment."

By referring the said provisions, the learned counsel for the revision petitioner submitted that as per the said provisions, the revision petitioner has maintained the wage slip and he has also produced a wage slip of an employee to that effect. Based on the wage slip, the authority below can determine whether the workers have worked for overtime or not.

6. The learned counsel appearing for the revision petitioner, by referring Rule 9 of the Minimum Wages (Tamil Nadu) Rules 1953, submitted that Register showing overtime payment in Form IV and as



per Rule 28-A, that register shall be preserved for a period of twelve months. As per the said provision, the order impugned directing the revision petitioner to produce the abovesaid registers is not sustainable.

7. The learned counsel appearing for the respondent submitted that the provisions of the Minimum Wages (Tamil Nadu) Rules, 1953 will not be applicable to the present case on hand, since the applications have been filed under the Payment of Wages Act.

8. Originally, the respondent/claimants, before the authority below, have claimed for payment of overtime wages for the month from July 2015 to October 2015. However, while admitting the matter, since the respondents herein have not produced any document relating to their contentions that they have worked for overtime, they have filed applications for a direction to direct the revision petitioner to produce the overtime register, computer thumb impression for the claimants/respondents and wage slips. After hearing both sides, the authority below also directed the revision petitioner to produce all the above documents.

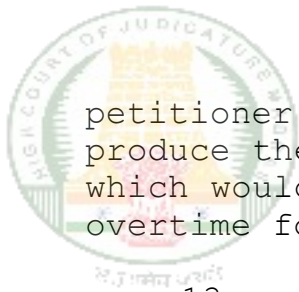
9. On perusal of Rule 28A of the Minimum Wages (Tamil Nadu) Rules 1953, it appears that the registers, records and notices required to be maintained by the employer under the provisions of these rules shall be preserved for a period of twelve months from the date of the last entry noted on them and shall always be readily available in the establishment for inspection at all reasonable hours by an Inspector having jurisdiction over the establishment.

10. However, the learned counsel appearing for the revision petitioner fairly submitted that the revision petitioner is ready to produce wage slips before the Court below.

11. Admittedly, in the present case, the claim petitions have been filed by the respondents in the year 2018 and 2019, i.e. after a period of three years. When that being the case, the order passed by the authority below is not in accordance with Rule 28A of the Minimum wages (Tamil Nadu) Rules 1953. Particularly, under Rule 28A of the Rules, the revision petitioner is supposed to maintain the register only for a period of one year. Therefore, the authority below cannot pass any such order directing the revision petitioner to produce overtime register, computer thumb impression, wage slip, which are relevant beyond one year period.

12. According to the revision petitioner, they maintained the abovesaid registers only for a period of one year. Since the claim petitions have been filed after the period of three years, the revision petitioner was unable to produce the said registers, that are not available with them. Therefore, it is not necessary for the authority below to direct the revision petitioner to produce the

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petitioner submitted that the revision petitioner is ready to produce the wage slips for the month from July 2015 to October 2015, which would be sufficient to find out that the claimants have worked overtime for the said period or not.

13. In the wage slip, which was produced by the learned counsel appearing for the revision petitioner before this Court, all the particulars regarding work hours of the claimant and overtime work are also available. So, this Court is of the view that the said wage slip would be sufficient to find out as to whether the wages for overtime has been paid or not. Therefore, the order of the Adjudicating Officer is liable to be set aside.

14. Accordingly, the Civil Revision Petitions are allowed. Since the revision petitioner is ready to produce wage slips for the month from July 2015 to October 2015, this Court directs the revision petitioner to produce the wage slips before the Adjudicating Officer within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the authority below shall dispose of the claim of the claimants/respondents on the basis of the wage slips as produced by the revision petitioner herein, within a period of two months thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar(CS)

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To
The Deputy Commissioner of Labour,
Tirunelveli.

Copy to: The Section Officer, V.R.Section, 2 copies
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.M.JERIN MATHEW, Advocate (SR-100742[F]

CRP(MD)Nos.1645 to 1653 of 2019

21.11.2019

SMA/05/02/2020/6P/5C