

**292 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-26265-2017(O&M)
Date of decision-25.07.2019**

Ram Jaspal and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. H.C. Arora, Advocate
for the petitioner(s).

Ms. Bhavna Gupta, D.A.G., Punjab.

JITENDRA CHAUHAN, J.

Prayer in the present petition is for issuance of a writ of certiorari for quashing Circular letter dated 28.08.2017 (Annexure P-8) to the extent it directs that petitioners (Attendant-cum-Sweepers) shall be paid monthly salary of Rs.4000/- per month.

Learned counsel for the petitioners contends that the Service Providers in the Veterinary Hospitals were transferred to Zila Parishads, who advertised for the Service Provider in those hospitals. The service providers were required to engage the services of qualified Veterinary Pharmacist and Helper/Class IV employees (Attendant-cum-Sweeper) who were paid salaries at the DC rates as notified by the concerned Deputy Commissioners.

The petitioners are Class IV employees working against the posts of Safai Karamcharis in the Animal Husbandry Department and their services are extended from time to time and vide circular letter dated 28.08.2017 (Annexure P-8), the services were extended for a period of one year and it was stated in the said letter that the salary of Class IV employees (Attendant-cum-Sweeper) would be increased from ₹3,000/- to ₹4,000/- w.e.f. 01.07.2017. He further submitted that the salary of the petitioners has always been less than even the minimum wages, envisaged under the Minimum Wages Act, 1926, despite the provisions contained in the contract (Annexure P-2) and the petitioners have been representing through their Unions, by submitting representations and demand notices. Cites judgment dated 02.11.2017 (Annexure P-17) passed in '**W.P. (C)17474 of 2004 titled as Central Secretariat Club Vs. Geetam Singh**' by the High Court of Delhi at New Delhi, relevant portion of which is as under:-

“14. The *raison d'etre* of fixing wage structures, for amelioration of the working class even while factoring the concerns of the industry, was first underscored, by the Supreme Court, in '**Crown Aluminium Works v Workmen, AIR 1958 SC 30**', in the following words:

9. In dealing with this question, it is essential to bear in mind the main objectives which industrial adjudication in a modern democratic welfare state inevitably keeps in view in fixing wage structures. “It is well known”, observes Sir Frank Tillyard, “that English common law still regards the wage bargain as a contract between an individual employer and an individual worker, and that the general policy of the law has been and is to leave to the two contracting parties a general liberty of bargaining, so long as there are no terms against public policy [“The Worker and the State” By Sir Frank Tillyard, 3rd Ed. p. 37] . In India as well as in England and other democratic welfare States great inroad has been made on this view of the common law by labour welfare legislation such as

the Minimum Wages' Act and the Industrial Disputes Act. With the emergence of the concept of a welfare state, collective bargaining between trade unions and capital has come into its own and has received statutory recognition; the State is no longer content to play the part of a passive onlooker in an industrial dispute. The old principle of the absolute freedom of contract and the doctrine of laissez faire have yielded place to new principles of social welfare and common good. Labour naturally looks upon the constitution of wage structures as affording "a bulwark against the dangers of a depression, safeguard against unfair methods of competition between employers and a guaranty of wages necessary for the minimum requirements of employees ["Wage Hour Law" Coverage -- By Herman A. Wecht, p. 2]". There can be no doubt that in fixing wage structures in different industries, industrial adjudication attempts, gradually and by stages though it may be, to attain the principal objective of a welfare state, to secure "to all citizens justice social and economic". To the attainment of this ideal the Indian Constitution has given a place of pride and that is the basis of the new guiding principles of social welfare and common good to which we have just referred.

10. Though social and economic justice is the ultimate ideal of industrial adjudication, its immediate objective in an industrial dispute as to the wage structure is to settle the dispute by constituting such a wage structure as would do justice to the interests of both labour and capital, would establish harmony between them and lead to their genuine and wholehearted cooperation in the task of production. It is obvious that cooperation between capital and labour would lead to more production and that naturally helps national economy and, progress. In achieving this immediate objective, industrial adjudication takes into account several principles such as, for instance, the principle of comparable wages, productivity of the trade or industry, cost of living and ability of the industry to pay. The application of these and other relevant principles leads to the constitution of different categories of wage structures. These categories are sometimes described as living wage, fair wage and minimum wage. These terms, or their variants, the comfort or decency level, the subsistence level and the poverty or the floor level, cannot and do not mean the same thing in all countries

nor even in different industries in the same country. It is very difficult to define or even to describe accurately the content of these different concepts. ... There is, however, one principle which admits of no exceptions. No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage. It is quite likely that in under-developed countries, where unemployment prevails on a very large scale, unorganised labour may be available on starvation wages; but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare state. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms.”

It is instructive to note that this decision referred to a “bare minimum wage” or a “subsistence wage”. As later decisions (to which reference would be made hereinafter) went on to clarify, a distinction came to be drawn, in time, between a “bare minimum” wage and a “minimum” wage.

It is further submitted that despite such strongly worded judgments, the respondents are still paying to the petitioners at the rate which is less than the minimum wages.”

On the other hand learned State counsel submits that as per the service contract (Annexure P-2) signed between petitioner No.1 and Zila Parishad, the petitioners are bound to accept the conditions of the contract. As per the condition of the agreement, class IV (Attendant-cum-Sweeper) shall be paid ₹3000/- per calendar month and in case of dispute, the matter shall be referred to an Arbitrator appointed by Director, Rural Development and Panchayat(s), Punjab whose decision shall be final and shall not be challengeable in any Court of law. In Clause 13 of the said contract, it is mentioned that the Class IV employees undertake that the present

assignment is purely a stop gap arrangement and no one will claim any continuation or other service benefits.

Heard.

The Court feels that minimum wages are the primary and basic entitlement of a workman/employee and denial of the same is no less than promoting slavery and bonded labour.

In view of the above, this Court is, therefore, constrained to observe that any reluctance on the part of an employer to award minimum wages to a workman for the period during which he had admittedly worked, is not only illegal and immoral but also invites criminal liability. Such an attitude erodes the very foundation of a socialist society which the preamble of our Constitution professes to be, and belies the promises held out to every citizen by the Constitution of India.

The present petition is hereby allowed.

Accordingly, the State is directed to pay the salary to the petitioners as per the Deputy Commissioner rates and difference between the deputy Commissioner rates at the various stages of time be calculated and the payment from the date of appointment of the petitioners be made within three months from the date of receipt of certified copy of the judgment.

25.07.2019

ps-I

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes No

Whether Reportable : Yes No