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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.08.2021

DATE OF DECISION : 23.11.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA
AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.NOS.2577 AND 2578 OF 2012

Parry Agro Industries Limited,
Paralai Estate, Iyerpadi (Via Pollachi),
Coimbatore District - 642 108.
Rep. By its Vice President

.. Appellant in both appeals

Vs

1. The Deputy Commissioner of Labour,
(Authority under Minimum Wages Act),
Coimbatore - 18.
2. The Inspector of Plantations,
Valparai,
Coimbatore District.
3. National Plantation Workers Union,
(Regd. No.769/91),
Rep. By its General Secretary
R.Chelliah.

.. Respondents in both appeals

Common Prayer : Writ Appeals have been filed under Section 15 of Letter of Patent against the common order dated dated 05.06.2012 passed in W.P.Nos.28582 and 28583 of 2008 by the learned Single Judge of this Court.

Prayer in W.P.Nos.28582 and 28583 of 2008:-

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records ending with the order of the 1st respondent in M.W.90 and 91 of 2008 respectively and quash its order dated 13.11.2008.



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For Appellant : Mr.A.L.Somayaji, SC
for Mr.Anand Gopalan
for M/s.T.S.Gopalan&Co.

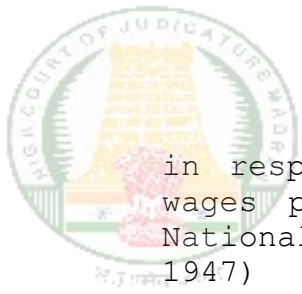
For R1 & R2 : Mr.T.Arun Kumar, GA
For R3 : Mr.M.A.Balasubramanian
for Mr.K.S.Narayanan

JUDGMENT

M/s.Parry Agro Industries Limited, Iyerpadi, Coimbatore District, have filed the present appeals challenging the impugned common order passed by the learned Single Judge in W.P.Nos.28582 and 28583 of 2008, dated 05.06.2012.

2. Mr.A.L.Somayaji, learned Senior counsel, appearing for the appellant establishment submitted that the appellant is a Tea Plantation employing more than 300 workmen and it is statutorily required to provide free housing accommodation for workers and as per the Government Order, the value of such accommodation shall be at Rs.75/- per month. Moreover, the Act also requires the employer (plantation) to provide free medical facilities to workers. This apart, there is a statutory obligation to provide and maintain a primary school and accordingly, the appellant is also providing free primary and middle school education to the children of its employees and this would cost approximately Rs.20/- per day to each worker. Whiles, a long term settlement made in the year 1991 had remained in operation till 31.12.2001. However, all of a sudden, since the plantation industry suffered an unprecedented financial crisis, it was not able to give a negotiated wage increase and therefore, in such a scenario, the members of the Planters' Association felt that the system of payment of Variable Dearness Allowance (VDA) linked to Consumer Price Index Number should be discontinued and in its place, the same should be built in, with periodical negotiated wage increase. As the Plantation Industry was included in the schedule to the Minimum Wages Act, on 23.03.1957, the first Notification fixing the minimum rate of wages for employment in plantations was issued and thereafter, subsequent Notifications were issued in the years 1976, 1985 and 1995. For the quarter ending June, 2008, the minimum wages for Plantation Industry was revised at Rs.102.16/- per day. Therefore, a settlement was reached on 02.09.2008, by which, the wage was fixed at Rs.103/- per day, besides other allowances such as, incentive, housing, medical, education, etc.

3. Referring to Section 3(2A) of the Minimum Wages Act, learned Senior counsel argued that if any proceeding is pending

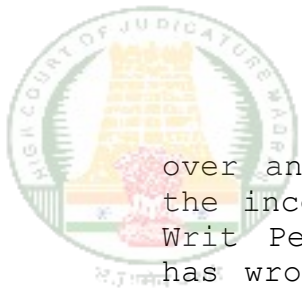


in respect of an industrial dispute relating to the rates of wages payable to any of the employees, before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947 (14 of 1947) or before any like authority under any other law for the time being in force, or an award made by any Tribunal, National Tribunal or such authority is in operation, and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award, then, notwithstanding anything contained in this Act, the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or, as the case may be. Therefore, since I.D.No.34 of 2002 relating to the wage was pending, it was argued that even if a notification was issued fixing the minimum rate of wages based on the proposals made in March, 2008, the same would not apply to the appellant establishment till the dispute pending before the Tribunal is disposed of. However, in the meanwhile, negotiation for revising the minimum wage from 01.01.2008 was in progress and finally, it was fixed at Rs.90/- per day. Whiles, on 15.06.2008, final Notification in G.O.(2D) No.34, dated 15.06.2008, was issued giving effect to the proposals made in March, 2008.

4. It is further argued that on 17.07.2008, when the second respondent came up for inspection, there was a discussion between the parties, whereby a claim was made by the industry that the concept of continuance of VDA linked to Consumer Price Index Number shall be discontinued, so that this would enable the estates to seek more concession in view of additional burden caused by the social and welfare benefits. Finally, it was agreed that there shall be no VDA linked to Consumer Price Index Number and in lieu thereof, the workmen will be considered for fixed DA at Rs.1/- for every quarter and such rate will be enhanced in every quarter thereafter. As against the minimum wages of Rs.102.16, there shall be a fixed wage of Rs.90/- as consolidated daily wage plus Rs.13/- as Terrain Allowance and Rs.1/- as fixed DA per day within an additional DA of Rs.1/- for every quarter. Accepting the said understanding, a settlement was reached on 02.09.2008 between the Unions and Annamalai Planters Association, in which, the appellant was also a Member, with the following terms and conditions:-

(1) Consolidated wage will be fixed at RS.90/- with effect from 15.06.2008.

(2) A fixed DA of Rs.1/- per day from the quarter beginning 01.10.2008 which will be enhanced at the same rate for every subsequent quarter.



over and above the wages payable to the workmen; and (d) that the incentives are not part of the wages; the appellant filed a Writ Petition No.28582 of 2008, whereby, learned Single Judge has wrongly dismissed the same on the ground that the workmen, in whose behalf claim was made and allowed by the first respondent, were not made as parties to the writ petition, ignoring the fact that the second respondent has acted on behalf of the workmen for whose benefit the claim was made, and therefore, impleading of such workmen is unnecessary.

7. Arguing further, it is contended that by virtue of language used in Section 3(2A) of the Minimum Wages Act, the Notification dated 15.06.2008 revising the minimum rate of wages for plantation would have no application to the employees of the appellant establishment in view of pendency of the proceedings in I.D.No.34 of 2002 before the Industrial Tribunal, Chennai, dealing with the same subject. However, learned Single Judge has wrongly held that Section 3(2A) would come into play only when the award is passed and the same is in operation, therefore, the same is liable to be set aside.

8. In support of his submissions, learned Senior counsel has relied on a decision of the Hon'ble Apex Court in the case of Airfreight Limited Vs. State of Karnataka and others [1999 (6) SCC 567] for a proposition that an employer paying higher wages than the prescribed rates would not be liable to pay dearness allowance in addition to minimum wages. Therefore, in the present case, since the workmen were paid various incentives apart from minimum wages, the question of non-payment of minimum wages does not arise.

9. Again, for the same proposition, learned Senior counsel adverted to a decision of the Bombay High Court in the case of Union of India Vs. B.D.Rathi [1962 SCC Online Bom 36], wherein it is held that so long as the employer pays the total minimum wages as provided by the said Act and the rules thereunder, the employer will not be liable to pay anything more, merely because the Act provides for the regulation of the hours of work.

10. Per contra, Mr.T.Arun Kumar, learned Government Advocate, appearing for the respondents 1 and 2, opposing the above said arguments, urging this Court to dismiss the appeal as it is devoid of any merit, pleaded that when the appellant is liable to pay minimum wages of Rs.102.16/-, inconsolable settlement dated 02.09.2008 fixing wages at Rs.90/- with effect from 15.06.2008, besides, granting Terrain Allowance at Rs.13/- per day and a fixed DA of Rs.1/- per day from 01.10.2008, is against the very object of the Minimum Wages Act. It is further submitted that Section 2(h) of the Minimum wages Act



specifically provides that the value of certain items is not required to be computed for finding out whether the employer pays minimum wages as prescribed under the Act, namely, (a) the value of any house, accommodation, supply of light, water, medical care, etc.; (b) any pension fund or provident fund or under any scheme of social insurance; (c) any travelling allowance or the value of any travelling concession; (d) any sum paid to any person employed to defray special expenses curtailed on him by the nature of his employment; and (e) any gratuities payable on discharge. Therefore, in the present case, insolvent settlement dated 02.09.2008 placing the poor workmen working in the plantation site under due process of losing their rights and fixing minimum wage at Rs.90/- as consolidated daily wages, besides granting Rs.13/- per day as Terrain Allowance as part of the minimum wages, is absolutely running contrary to Section 2(h) of the Minimum Wages Act. Since the first respondent has rightly held that the Terrain Allowance cannot be included in the minimum wages, the same has been rightly found before the learned Single Judge, hence, no interference is called for by this Court, he pleaded.

11. Coming to another argument that the writ petition was dismissed on the ground of non-maintainability for not impleading the necessary workmen, learned Government Advocate argued that when the Inspector of Plantation/second respondent has taken out an application in accordance with law accusing that the appellant has not paid minimum wages to the workmen who are unable to voice their concern on account of large risk of losing their job, the appellant establishment cannot make any attempt to get ex parte order before the learned Single Judge, without impleading them as necessary parties. Hence, such an oblique motive of the appellant has been rightly perceived by the learned Single Judge and therefore, the writ petition was dismissed on the ground of non-joinder of necessary parties. When the appellant establishment is having grievance against its workmen that they are not entitled to get more than Rs.90/- as minimum wages as against the fixation of Rs.102.16/- by the Government, without impleading them, the appellant establishment cannot come to this Court, he pleaded.

12. Heard the learned counsel appearing on either side and perused the materials available before this Court.

13. To answer the question whether the Inspector of Plantation/second respondent herein is having the authority to make an application before the first respondent for enforcement of the payment of minimum wages, it is necessary to extract Section 20 of the Minimum Wages Act, which is quoted hereunder:-



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20 Claims. -- (1) The appropriate Government may, by notification in the Official Gazette, appoint [any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any] other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages [or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the overtime rate under section 14] to employees employed or paid in that area.

(2) [Where an employee has any claim of the nature referred to in sub-section (1)], the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub-section (1), may apply to such Authority for a direction under sub-section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages [or other amount] became payable:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct? --

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid,



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together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees, and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.]

.....
.....
7....."

A mere reading of Section 20(2) says that where an employee has any claim of the nature referred to in sub-section (1) of Section 20, such employee or any legal practitioner or any Inspector, may apply to such Authority for a direction under sub-section (3). Therefore, the argument of the appellant that only the Inspector of Plantation/second respondent herein, nor the workmen, has made an application for enforcement of the minimum wages Notification cannot be sustained, for, in the present case, when the Notification dated 15.06.2008 prescribes the minimum wages at Rs.102.16 payable to the plantation workers, on inspection, it was found out by the Inspector of Plantation/second respondent herein that the appellant establishment have not paid minimum wages, hence, the second respondent has rightly moved an application as per Section 20(2) of the Minimum Wages Act, and therefore, the first respondent, by holding that the application is maintainable, allowed the application as per Section 20(3) of the Minimum Wages Act, and subsequently, the said order of the first respondent was rightly confirmed by the learned Single Judge. Thus, in such view of the matter, we do not find merit in the contention of the appellant that the Inspector of Plantation/second respondent has no authority to move an application before the first respondent.

14. Secondly, after the impugned order passed by the first respondent holding that the Terrain Allowance paid by the appellant establishment to its workers is to defray special expenses entailed on the workers by the nature of their employment, the appellant establishment surreptitiously cannot move the writ petition without impleading the affected workmen in whose favour the first respondent has passed the order. Therefore, the argument of the appellant that the second respondent has acted on behalf of the workmen and therefore question of impleading such workmen as necessary parties does



not arise, is far fetched.

15. As a matter of fact, when the first respondent, who is the authority under the Minimum Wages Act, has entertained an application filed by the Inspector of Plantation/second respondent accusing that the appellant has not paid the minimum wages to their workmen, while challenging the order passed by the first respondent, the appellant cannot expect the respondents 1 and 2 to defend their own order, hence, the workmen in whose favour the order has been passed by the first respondent should have been impleaded as necessary parties. However, the appellant deliberately, in order to get an order behind their back, has moved the writ petition and thus it is a clear case of non-joinder of necessary parties. Therefore, in our considered view, learned Single Judge has rightly dismissed the writ petition for not impleading the necessary parties.

16. Coming to the next question whether the Terrain Allowance can be excluded or included in the minimum wages, it is relevant to extract Section 2(h) of the Minimum Wages Act, which is quoted below:-

2 (h) "'wages'" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment [and includes house rent allowances], but does not include?

(i) the value of-----

(a) any house accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge;



A careful reading of the above said provision vividly and conspicuously tells that any sum paid to the person employed to defray special expenses entailed on him by virtue of his employment cannot be included in the minimum wages. But, in the present case, admittedly, the appellant is a Tea Estate in Iyerpadi, Pollachi, Coimbatore District, and it is a cold place and hilly area. During day and night, the people cannot live without wearing sweaters. Admittedly, when the workmen working in the appellant plantation are living their entire life in the hilly region, as per Section 2(h), they should be paid with special expenses to meet out their special expenditure warranted by the nature of their duty. Therefore, when the appellant is duty bound to pay special expenses to defray the necessary expenses entailed on them, they cannot include Terrain Allowances as part of the minimum wages.

17. Thus, for the reasons stated above, we do not find any error or illegality in the order passed by the learned Single Judge warranting interference. Accordingly, the writ appeals stand dismissed. No Costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Labour,
(Authority under Minimum Wages Act),
Coimbatore - 18.

2. The Inspector of Plantations,
Valparai,
Coimbatore District.

+2ccs to Mr.K.S.Narayanan, Advocate, S.R.No.60964

+1cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.61005

W.A.Nos.2577 and 2578 of 2012

SSD(CO)
RLP(02/12/2021)