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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.11877 of 2014

1. The Chief Conservator of Forests,
Chennai.

2. The Regional Conservator of Forests,
Villupuram.

3. The District Forest Officer,
Interface Forestry Division,
Villupuram. ... Petitioners

Vs.

1. P.Pachayapillai

2. The Tribunal constituted under the provisions
of the Minimum Wages Act, Chennai
(Deputy Commissioner of Labour – II,
Chennai -6) ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records in M.W.No.23 of 2008, dated 18.01.2013 on the file of the Tribunal constituted under the provisions of Minimum Wages Act, Chennai, the 2nd Respondent herein, and quash the same.

For Petitioners : Mr.L.S.M.Hasan Fizal,
Government Advocate

For 1st Respondent : Mr.R.Marudhachalamurthy

R2 : No Appearance

O R D E R

Petitioner has come up with this Writ Petition challenging the order dated 18.01.2013 passed by the 2nd Respondent/Authority constituted under the provisions of the Minimum Wages Act, 1948. The Authority has determined a sum of Rs.35,258/- to be payable by the Petitioner/Forest Department to the 1st Respondent/employee from 01.04.1998 to 28.01.2003.

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2. Learned counsel for the Petitioner/Forest Department contended that, an Application should have been filed by the 1st Respondent/employee within six months from the date, the amount became due. The said contention is without prejudice to the submission that, the 1st Respondent herein was employed as a Social Forestry Worker and that, G.O.Ms.No.82, Labour & Employment (J1) Department, dated 27.09.2002 is not applicable to the facts of this case, as the Petitioner/Forest Department has been paying wages to the 1st Respondent in terms of G.O.Ms.No.2292, Labour and Employment Department, dated 17.10.1988. Hence, according to the learned counsel for the Petitioner/Forest Department, the Writ Petition has to be allowed.

3. On the other hand, learned counsel appearing for the 1st Respondent/employee contended that, the Petitioner/Forest Department has extracted work from the 1st Respondent/employee in the guise of Social Forestry worker. He submitted that, the Authority, after going through the records, came to the conclusion that, minimum wages have to be extended to the 1st Respondent/employee in terms of G.O.Ms.No.82, as mentioned supra and that, no document has been produced by the Petitioner/Forest Department to show that, the 1st Respondent/employee was working as a Social Forestry Worker. He further submitted that, after condoning the delay in M.W.No.23 of 2008, the main Application was taken up for hearing and that, the Authority having condoned the delay, has gone into the merits of the matter and rendered a finding in favour of the 1st Respondent/employee in Minimum Wages Claim Petition No.23 of 2008.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. The fact that, the 1st Respondent herein was employed under the Petitioner/Forest Department is not in dispute. It is also not in dispute that, he was paid wages in terms of G.O.Ms.No.2292, dated 17.10.1988. The contention of the Petitioner/Forest Department that, without condonation of delay, the main Application has been taken up for hearing, cannot be accepted, as minimum records have been produced by the Petitioner/Forest Department.

6. Though, the Petitioner/Forest Department has taken a plea in the Affidavit that, without condoning the delay, the main Application cannot be taken up for hearing, there is no whisper about the same in the impugned order dated 18.01.2013 passed in M.W.No.23 of 2008. Even assuming for the sake of argument that, the said contention has to be accepted, the Petitioner/Forest Department being a 'State' within the meaning

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of Article 12 of the Constitution of India, is expected to adhere to the provisions of the Minimum Wages Act, 1948, if it is applicable.

7. In the case on hand, there is not even an averment in M.W.No.23 of 2008 and even in the counter filed in the said Claim Petition that, the 1st Respondent herein was employed as a Social Forestry Worker. Mere designation is not sufficient. The nature of work alone will determine whether to exclude a person from the purview of the Act. There is a finding of fact by the Authority that, even though a plea has been taken by the Petitioner/Forest Department, they have not produced any records to show that, the 1st Respondent was employed only as a Social Forestry Worker. The Authority ought to have referred to the order about the condonation of delay by passing final orders in the Minimum Wages case. But, in the absence of the same, it cannot be said that, the order itself is bad and that, there was no condonation of delay.

8. Even assuming for the sake of argument that, this Court is going to accept the contention of the Petitioner/Forest Department, the argument that, the delay was not condoned, cannot be a bar for the 1st Respondent/employee to approach and claim wages by filing a Petition under Section 33(c)(2) of the Industrial Disputes Act, 1947.

9. In the case of Town Municipal Council, Athani vs. Presiding Officer, Labour Court, Hubli reported in (1969) II LLJ 651, the Apex Court has held that, delay is immaterial while computing wages due to the employee under Section 33(c)(2) of the Act.

10. In this case, as the Authority has rendered a finding of fact and as the amount involved is only Rs.35,258/- and the impugned order has been passed as early as in 2013, and that, eight years have gone by, and also that, no penalty or interest has been awarded by the Authority under the Minimum Wages Act, the Authority is empowered to direct the Petitioner/Forest Department to pay ten times the minimum wages due to the employee concerned.

11. Though, two views are possible, this Court is not inclined to interfere with the order of the Authority, as it is a finding of fact and that, the Petitioner/Forest Department has not established that, the 1st Respondent/employee was a Social Forestry Worker. Hence, the Petitioner/Forest Department is expected to release the funds due to the 1st Respondent/employee, if not already deposited within a period of two months from the date of receipt of a copy of this order. If any amount is lying in deposit, it can be withdrawn by the 1st Respondent/employee

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and the balance amount, if any payable, shall also be released within the time stipulated supra.

12. Before parting with the order, this Court would like to emphasize that, the Authority dealing with Minimum Wages Claim must refer to the preliminary order in the final order to avoid confusion at a later point of time.

This Writ Petition is ordered accordingly. No costs. Consequently, connected M.P.No.1 of 2014 is closed.

s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

(aeb)

To:

The Deputy Commissioner of Labour – II , Chennai-6
The Tribunal constituted under the provisions
of the Minimum Wages Act, Chennai

+1 CC to Mr.R.Marudhachalamurthy, Advocate sr 31246.

W.P.No.11877 of 2014

CA(CO)
SP(19/08/2021)

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