



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.4393 of 2012

and

M.P.(MD)No.1 of 2012

The Manager,
Big Cinemas,
Ganesh Balaganesh Theatre,
52, Chairman Thangaiah Road,
Sivakasi-626 123.

... Petitioner

Vs.

1.The Deputy Commissioner of Labour,
142/1, Lake Road,
K.K.Nagar,
Madurai-625 020.

2.The Assistant Inspector of Labour,
Circle-1,
Mani Nagar,
Sivakasi-626 123.

3.James David,
Diamond Security Service,
8/28, Vellai Pillayar Kovil Street,
S.S.Colony,
Madurai-625 010.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records of the first respondent in the proceedings in M.W.No.33/2011, dated 30.12.2011 and quash the same.

For Petitioner	: Mr.C.Sankar Prakash
For Respondents	: Mr.A.Karthik
	Government Advocate
	for R.1 and R.2
	: No Appearance for R.3

* * * * *



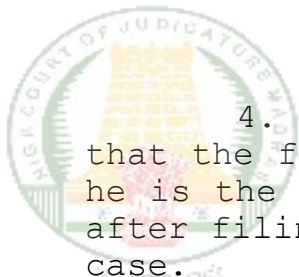
ORDER

This Writ Petition is filed seeking for issuance of a writ of Certiorari to call for the records of the first respondent in the proceedings in M.W.No.33/2011, dated 30.12.2011 and quash the same.

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2. The case of the petitioner is that the petitioner is the theatre manager of Big Cinemas, Ganesh Balaganesh Theatre at Sivakasi. The said Big Cinemas is the business name of one Division of Reliance Media Works Limited, having its registered office at Mumbai. Big Cinemas is running cinema theatres at many cities in India and one such theatre is situated at Sivakasi. The petitioner has entrusted the security service on contract basis to the third respondent establishment by name "Diamond Security Services". The third respondent establishment is rendering security service to so many other establishments on contract basis. The third respondent is having separate registration under various enactments including E.S.I., Act and E.P.F., Act. The petitioner is paying the agreed amount for such service to the third respondent. The third respondent is paying the wages to those employees. As such, the security guards deployed by the third respondent to render security service in the petitioner theatre are employees of the third respondent.

3. Under the provisions of the Minimum Wages Act, 1948, the Government is empowered to fix minimum rates of wages for the employees of various establishments which have been included in the Schedule to the Act. The second respondent is the Assistant Inspector of Labour under the Minimum Wages Act and the first respondent is the Authority under Section 20 of the Minimum Wages Act to decide any dispute with regard to minimum wages. The second respondent inspected the petitioner cinema theatre on 06.07.2011 and on the basis of the inspection, the second respondent filed an application dated 14.07.2011 before the first respondent alleging that minimum wages fixed by the Government for employment in cinema theatres were not paid to four watchmen. In the above said application, the third respondent and the petitioner were impleaded as parties. Though the second respondent claimed the minimum wages for the period from 01.07.2008 onwards, no application was filed to condone the delay. Without any condone delay application, the above said application was taken on file by the first respondent in M.W.No.33 of 2011. The petitioner and the third respondent filed their counter statements denying their liability to pay the amount claimed in the application. After taking into consideration the evidence, the first respondent passed the impugned order, dated 30.12.2011, by directing the petitioner to deposit a sum of Rs.1,27,197/- towards the arrears of minimum wages payable in respect of four watchmen. Challenging the said order, the present writ petition is filed by the petitioner.



4. Learned Counsel for the petitioner would further submit that the first Counsel on record for the petitioner passed away and he is the second counsel on record and he would further submit that after filing the writ petition, no one instructed him to conduct the case.

5. Further, the learned Counsel appearing for the petitioner would submit that as per Section 20(2) of the Minimum Wages Act, any application claiming minimum wages has to be filed within a period of six months, however, the present application is filed beyond the period of limitation, which is entertained by the original authority as well as confirmed by the appellate authority, is *non-est* in law and hence, the learned Counsel appearing for the petitioner would pray for appropriate orders.

6. Though notice was served on the third respondent, no one entered appearance on behalf of the third respondent.

7. Heard the learned Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 and 2 and perused the materials placed on record.

8. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court in a catena of decisions has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award.

9. Considering the facts and circumstances of the case, the only issue arises for consideration is that as to whether the Inspector of Labour filed an application under Section 20(2) of the Minimum Wages Act within a period of six months and the same was numbered as M.W.No.33 of 2011. In her application, she averred that she inspected the petitioner's cinema theatre on 06.07.2011 and on the basis of inspection, it would reveal that the employees who were working in the said cinema theatre were not paid minimum wages as per G.O.No.(2D) 81, Labour and Employment Department (J1), dated 07.09.2009, for the period from 01.07.2008 to 30.06.2011 and also found that the differential amount of Rs.1,28,637/- has to be paid to the employees and for the purpose of paying the minimum wages, the said application was filed. The names of the employees and the



வ.எண் .	தொழிலாளியின் பெயர்	காலம்	வழங்க வேண்டிய நிறுவனத் தொகை ரூ .
1	ஏ.பாலகிருஷ்ணன் , வாட் ச் மேன்	01.07.2008 முதல் 30.06.2011 முடிய	46,203.00
2	பா.ரவிச் சந்திரன் , வாட் ச் மேன்	01.07.2008 முதல் 30.06.2011 முடிய	46,203.00
3	எம் .மாரிமுத்து , வாட் ச் மேன்	01.10.2010 முதல் 30.06.2011 முடிய	15,873.00
4	சுந்தர் ராஜ் , வாட் ச் மேன்	01.10.2010 முதல் 30.06.2011 முடிய	20,358.00
	மொத்தம்		1,28,637.00

10. In order to prove the claim, the Assistant Inspector of Labour herself examined as P.W.1 and in her evidence, she deposed that she employed as Assistant Inspector of Labour at Sivakasi and she inspected the said Big Cinema theatre on 06.07.2011 and that the employees viz., K.Shanthi, A.Balakrishnan, Ravichandran, M.Marimuthu and L.Sundarraaj were examined and the supervisor viz., Nagarajan was also examined and on enquiry, it would reveal that they are receiving a sum of Rs.3,700/- as monthly salary, however, they are entitled to receive a sum of Rs.3,347/- + D.A. Rs.2,254 and in toto, a sum of Rs.5,601/-. However, they received only a sum of Rs.3,700/- for the above mentioned period. The said deposition of the Assistant Inspector of Labour - P.W.1 was also conformed by P.W.2 - the Deputy Inspector of Labour, Sivakasi and also marked two exhibits. However, no one was examined by the petitioner as well as by the third respondent. Based on the above said evidences and other materials available on record, the Labour Court passed an order in favour of the employees, which cannot be interfered with. This Court can exercise its power of writ jurisdiction under Article 226 of the Constitution of India to appreciate the evidences in an appeal, unless the evidences are perverse. The review by the court is of decision-making process and where the findings of the appellate authority are based on some evidence, the Court cannot re-appreciate the evidence and substitute its own finding.

11. With regard to the issue relating to the fact that whether the application filed by Assistant Inspector of Labour was within the time limit as prescribed in the Minimum Wages Act, it is relevant hereunder to extract Section 20(2) of the Minimum Wages Act:

20(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. '

12. On a perusal of the said provision, it makes it clear that every such application shall be presented within six months from the date on which the minimum wages became payable. In the present case, the Assistant Inspector of Labour inspected the petitioner premises in the year 2011 and the said application was filed on 14.07.2011, immediately after inspection. Hence, the question of delay does not arise in the present case. Hence, the contention raised by the learned Counsel for the petitioner is not acceptable.

13. For the reasons aforesaid, this writ petition is devoid of merit and, accordingly, the same is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

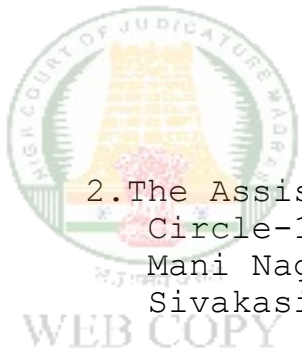
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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Deputy Commissioner of Labour,
142/1, Lake Road,
K.K.Nagar,
Madurai-625 020.

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



2.The Assistant Inspector of Labour,
Circle-1,
Mani Nagar,
Sivakasi-626 123.

+1 CC to M/s.SPL GP (SR-10937[F] dated 12/03/2021)

W.P (MD) No.4393 of 2012
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VB (26.03.2021) 6P 4C