



W.P.(MD)No.24510 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.& 24510 of 2018

and

W.M.P(MD)No.22219 of 2018

Boat Building Center,
Unit of K.S.S.S, Muttam-629 202
Kanyakumari District.

Represented by its Executive Director. Petitioner

Vs.

1. The Authority under the
Minimum Wages Act, 1948,
(Deputy Commissioner of Labour),
Tirunelveli.

2. T.Subramanian Asari Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of *Certiorari*, calling for the records relating to the impugned order, dated 23.10.2018 passed by the 1st respondent in M.W.No.65 of 2016 and quash the same as illegal.



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For Petitioner : Mr.M.Jerin Mathew, for
Mr.M.E.Ilango
For R-1 : Mr.P.Thambidurai,
Government Advocate (Civil side)
For R-2 : M/s.Royce Immanuel

ORDER

This Writ Petition has been filed for issuance of *Certiorari*, to quash the impugned order, dated 23.10.2018 passed by the 1st respondent in M.W.No.65 of 2016.

2. The brief facts as stated in the affidavit is that the 2nd respondent was engaged by the petitioner Center in the year 1998. The 2nd respondent alleges that the petitioner denied employment to him from 03.05.2010 and hence, he has raised an industrial dispute in I.D.No.15 of 2010 before the Labour Court, Tirunelveli and the same was partly allowed, directing the petitioner/employer to reinstate with continuity of service, but, without back wages. In compliance of the said award, the 2nd respondent was reinstated back into service from



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10.07.2012. Thereafter, the 2nd respondent worked until 2012. The 2nd respondent has filed a claim petition under Section 33(c)(2) of the Industrial Dispute Act, 1947, in C.P.No.1 of 2014, alleging that he was not paid minimum wages, as notified by the State Government and had claimed difference in wages and the said CP was dismissed by the Labour Court, vide order, dated 04.12.2014. Subsequently, the 2nd respondent again filed M.W.No.1 of 2015, claiming minimum wages and the same was dismissed on 11.06.2015 on the ground that the petitioner was not a scheduled/notified industry under the Minimum Wages Act. Subsequently, the 2nd respondent has filed a claim petition before the Labour Court in C.P.No.9 of 2016, and the same was also dismissed by an order, dated 06.09.2016. The 2nd respondent once again filed an application before the first respondent in M.W.No.65 of 2016 claiming difference in wages amounting Rs.76,511/-for the period from 12.05.2010 to 09.08.2012 along with a compensation of Rs.7,65,110/-.

3. The contention of the petitioner is that, according to the 2nd respondent he was out of employment from 03.05.2010, which is subject matter



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of I.D.No.52 of 2010 in that I.D., admittedly, the 2nd respondent was reinstated back into service only from 10.07.2012, in pursuance of the award dated 08.06.2012. In the said I.D., the Labour Court has denied the back wages to the 2nd respondent. Therefore, he cannot claim any back wages for the period from 03.05.2010 to 10.07.2012. The 2nd respondent challenged the said award by way of filing another Writ Petition in W.P(MD)No.9015 of 2013 and there is an interim order.

4. The contention of the petitioner is that the difference in wages for a period up to 10.07.2012 cannot be claimed, because, the Labour Court in I.D. has not granted any back wages to the 2nd respondent. Moreover, the provisions of Minimum Wages Act, is not applicable to the petitioner's concern. The 2nd respondent was not given any employment up to 10.07.2012. Hence, the impugned order is liable to be set aside. Hence, the instant Writ Petition is filed.

5. The learned counsel appearing for the 2nd respondent submitted that the 2nd respondent reported duty as per the I.D. award and he was working



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for a month, thereafter he could not continue his work and hence, he is entitled to the payment from 2010 to 2012. Moreover, the learned counsel appearing for the 2nd respondent has also relied on the Minimum Wages authorities order, wherein, it has been clearly stated that the G.O.(21) No.15, dated 05.04.2010 Labour and Employment Department, is applicable to the petitioner. The said order was passed based on the said Government Order and the Government has increased the minimum wages for the profession of Carpenter through the said Government Order. Accordingly, the 2nd respondent is entitled for the difference in the minimum wages. Hence, he prayed to dismiss the writ petition.

6. The learned counsel appearing for the 2nd respondent further submitted that the 2nd respondent was not allowed to work during the disputed period and it is not a mistake of the 2nd respondent. The petitioner/employer has refused to grant duty. Therefore, the 2nd respondent is entitled to the minimum wages.



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7. The contention of the petitioner is that the Minimum Wages Act, itself is not applicable to the petitioner. The learned counsel appearing for the 2nd respondent has not denied the said finding that the Minimum Wages Act is not applicable to the petitioner's union. In fact, earlier occasion when the claim petition in C.P.No.9 of 2016 was heard by the Labour Court, the Labour Court has categorically held that the said Act is not applicable to the petitioner's union. When the 2nd respondent had suffered an order, but the 2nd respondent has not preferred any appeal to set aside that portion of the order and hence, the findings of the order has attained finality. Therefore, this Court is inclined to grant relief to the Petitioner.

8. Accordingly, this Writ Petition is allowed. The impugned order, dated 23.10.2018 passed by the 1st respondent in M.W.No.65 of 2016, is hereby set aside.



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9. No Costs. Consequently, connected miscellaneous petition is also closed.

Index : Yes / No
Internet : Yes
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To

The Authority under the
Minimum Wages Act, 1948,
(Deputy Commissioner of Labour),
Tirunelveli.



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S.SRIMATHY, J

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**Order in
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