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W.P.Nos.9797 to 9799 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.9797 to 9799 of 2011
and M.P.No.2 of 2011 (3 Nos.)

1. The Commissioner,
Minjur Panchayat Union,
Minjur, Ponneri Taluk,
Thiruvallur District.

2. The President,
Aladu Panchayat,
Aladu, Minjur Block,
Ponneri Taluk,
Thiruvallur District.

...Petitioners in
all W.Ps.

-Vs-

1. The Presiding Officer,
II Additional Labour Court,
Chennai – 600 104.

... 1st Respondent in
all W.Ps.

2. D. Kumar
C/o. The General Secretary,
Chennai Ooratchi Ontriya Visai
Pump Iyakkunargal Sangam, AITUC,
25, Kavoor Vaithiyanathan Street,
Chindadripet,
Chennai – 600 002.

... 2nd Respondent in
W.P.No.9797/2011



W.P.Nos.9797 to 9799 of 2011

2. R.Elumalai,
C/o. The General Secretary,
Chennai Ooratchi Ontriya Visai
Pump Iyakkunargal Sangam, AITUC,
25, Kavoor Vaithiyanathan Street,
Chindadripet,
Chennai – 600 002.

... 2nd Respondent in
W.P.No.9798/2011

2. S.Govindan,
C/o. The General Secretary,
Chennai Ooratchi Ontriya Visai
Pump Iyakkunargal Sangam, AITUC,
25, Kavoor Vaithiyanathan Street,
Chindadripet,
Chennai – 600 002.

... 2nd Respondent in
W.P.No.9799/2011

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari, to call for the records of the first respondent pertaining to his orders dated 21.01.2002 passed in C.P.Nos.547, 549 & 546 of 1996 respectively, and quash the same.

In all W.Ps.

For Petitioners : Mr.S.Rajendiran

For Respondents

R1 : Court

For R2 : No appearance



W.P.Nos.9797 to 9799 of 2011

COMMON ORDER

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These writ petitions have been filed challenging the order dated 21.01.2002, passed by the first respondent in C.P.Nos.547, 549 & 546 of 1996, thereby ordered to pay minimum wages to the second respondent in all the writ petitions.

2. The second respondent in all the writ petitions (hereinafter called as “the workmen”) were working as casual labour on part time basis as overhead tank pump operator in the second petitioner panchayat. The nature of work was to switch-on and switch-off the motor that too in the gap of one hour in the morning and in the evening. While being so, the workmen filed computation petition under Section 33(C)(2) of the Industrial Dispute Act, 1947, for balance minimum wages due as per the provision of the Minimum Wages Act, 1948, for the period from 01.07.1977 to 31.03.1993. The first respondent ordered minimum wages in favour of the workmen and directed the petitioners to pay the balance minimum wages. Aggrieved by the said orders, the petitioners filed the present writ petitions with the above said prayer.



W.P.Nos.9797 to 9799 of 2011

3. Heard the learned counsel appearing for the petitioner.

Though notices served on the second respondent/workman and also printed the name in the cause list, no one is appearing before this Court in person or through pleader.

4. It is seen that the claim petitions were filed by the workmen with enormous delay of 19 years. The first respondent ordered to pay the minimum wages to the tune of Rs.38,460.40, in an adjudication without deciding the question of entitlement of the workmen. The first respondent has no jurisdiction to order the computation petition without any prior adjudication as to the entitlement of the second respondent. There is no scope in Section 33(C)(2) of the Industrial Dispute Act, with regard to decide the question of entitlement. The Labour Court cannot determine the dispute of entitlement on the basis of the claim in the absence of prior adjudication under Section 33(C)(2) of the Industrial Dispute Act.

5. It is relevant to extract the provisions of Section 33(C) (1) & (2) of Industrial Disputes Act hereunder :-



WEB COPY



W.P.Nos.9797 to 9799 of 2011

“33C. Recovery of money due from an employer:-

(1) *Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.*

(2) *Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.”*

Thus it is clear that where any money is due to the workmen from an employer under settlement or award or under the provisions of Chapter



W.P.Nos.9797 to 9799 of 2011

V–A or Chapter V–B, the workmen can very well make claim for recovery of the said money due.

6. Further the minimum wages is governed by the special enactment called the Minimum Wages Act, 1948 (hereinafter called as “the Act”) and the Act is self-contained code with regard to a fixation, revision and payment of minimum wages to the employees governed by the Act. The procedure for recovery of minimum wages, if any, payable to the employee, is contained in Section 20 of Act. It contemplates that every application for a recovery of minimum wages has to be made within six months from the date on which such wages become due and payable. Further it never contemplates recovery of minimum wages after a period of 19 years. Therefore, it is barred by limitation under proviso (2) sub Section (2) of Section 20 of the Act.

7. Further, the workmen were engaged to operate motor pump in the village panchayat. They are unskilled labour and their clause and category of employment have not been taken place under the caption of unskilled employment in G.O.Ms.No.449 dated 06.06.1977, which was



W.P.Nos.9797 to 9799 of 2011

relied upon by the workmen for their claim. In fact, already this Court by an order dated 09.09.1997 in W.P.No.18100 of 1992 held that the G.O.Ms.No.449 is not applicable to the persons similar to the workmen. Therefore, the order passed by the second respondent is perverse and it is liable to be set aside.

8. In view of the above discussions, the orders dated 21.01.2002, passed by the first respondent in C.P.Nos.547, 549 & 546 of 1996 are hereby set aside and all the Writ Petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to cost.

08.09.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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W.P.Nos.9797 to 9799 of 2011

G.K.ILANTHIRAIYAN. J.

rts

To

1. The Presiding Officer,
II Additional Labour Court,
Chennai – 600 104.

W.P.Nos.9797 to 9799 of 2011
and M.P.No.2 of 2011 (3 Nos.)

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