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W.P.No.6886 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.6886 of 2018

and

W.M.P.No.8529 of 2018

The Managing Director,
Tamil Nadu State Marketing Corporation Limited,
Thalamuthu Natarajan Maligai,
Gandhi Irwin Road,
Egmore, Chennai – 600 008.

... Petitioner

Vs.

1.The Presiding Officer,
II Additional Labour Court,
Chennai.

- 2.B.Gopi
- 3.R.Ravikumar
- 4.V.Chandrasekar
- 5.K.Shanmugam
- 6.B.Vinodkumar
- 7.T.Manikandan
- 8.V.P.Rajavel
- 9.E.Joseph
- 10.R.Saravanamoorthy
- 11.P.Kanagaraj
- 12.B.Devaraj
- 13.B.Mahalingam
- 14.K.Aruldas
- 15.C.T.Subashkumar
- 16.R.Rajaprakash



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- 17.S.Payasraj
- 18.V.Jeevanantham
- 19.S.Nagamani
- 20.S.Samy
- 21.P.Gurupandi
- 22.R.Marimuthu
- 23.S.Vaikundraj
- 24.R.Balakrishnan
- 25.V.Kaliappan
- 26.H.J.Ahmad Singh
- 27.G.Krishnakumar
- 28.C.Murugan
- 29.N.Ganesan
- 30.C.V.Sajithkumar
- 31.R.Krishnan
- 32.A.Kalaiarasu
- 33.K.Sivayogachandran
- 34.R.Nareshbabu
- 35.J.J.Murugan
- 36.V.Sajeesh
- 37.K.Sivarajan
- 38.D.Iyyappan
- 39.S. Selvakumar
- 40.B.Subashkannan
- 41.K.L.Sivakumar
- 42.B.Sridhar
- 43.B.Mahesh
- 44.B.Ashokkumar
- 45.M.Subramani
- 46.B.Nagaraj
- 47.B.Iyyappan
- 48.E.Raman
- 49.M.Nagarajan
- 50.A.Bhoopalan
- 51.V.Senthoorpandi
- 52.V.Ramasamy
- 53.G.Senthilkumar
- 54.A.Muthukrishnan
- 55.G.Robert kennedy



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- 56.C.Vijayaraj
57.M.Essakivelraj
58.A.Thirulogasundar
59.R.Kalaivanan
60.M.Muthukrishnan
61.P.Aarumiuganainar
62.K.Aarumugam
63.K.Muthukamatchi
64.P.Jeyakumar
65.C.Nagarajan
66.E.Thangaraj
67.S.Issacraj
68.P.Thiyagarajan
69.V.Anandaraj
70.I.Karthikesavan
71.C.Kalyanasundaram
72.P.Thangapandi
73.B.Muthukumar
74.M.Balakrishnan
75.M.Balamurugan
76.M.Iyyannar
77.S.Mariappan
78.N.Thangamani
79.C.Muthamizhselvan
80.S.Ramesh
81.J.Thomas
82.S.Ganesan
83.V.Selvaraj
84.S.Govindaraj
85.M.Essakiappan
86.P.Thangapandian
87.M.Manoharan
88.B.Vinayakaraja
89.A.Kumar
90.A.Mayakrishnan
91.M.Selvam
92.R.Sivakumar
93.P.Saravanan
94.G.Devadas



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- 95.M.Murugan
96.P.Karuppaiya
97.L.Karupusamy
98.R.Vilvalingam
99.R.Chandrasekaran
100.S.Kaliraj
101.C.Chakravathyraja
102.P.Millas
103.M.Krishnamurthy
104.K.Kumar
105.P.Solairaj
106.A.Bhoominathan
107.C.Arulmani
108.K.C.Balaraj
109.M.Arvidan
110.V.Vijayakumar
111.N.Uthirapathi
112.C.Muthukumarasamy
113.M.Ravikumar
114.M.Kaliraj
115.U.Gnanasekaran
116.A.Elangovan
117.A.Kathiresan
118.J.Jose Amen Felix
119.C.Mariasuresh
120.E.Vaikundaraman
121.G.Vasudevan
122.R.Manoharan
123.C.Mariappan
124.P.karupasamy
125.Bijujohn
126.K.N.Kumar
127.S.Sugenthirapathi
128.B.Sasikumar
129.R.Rajalingam
130.K.Rajalingam
131.S.Srinivasan
132.D.Munieswaran
133.T.Kumaraiyya



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- 134.C.Padmakumar
135.T.Kumar
136.V.Narayanasamy
137.C.Sivalingam
138.S.Vincent Murugadas
139.M.Murugan
140.L.Sastha Manikandan
141.B.Iyyappan
142.R.Dhanushkumar
143.B.B.Sivaraman
144.D.Dhanapal
145.C.Raju
146.P.Aachuthamenon
147.T.Bhaskar
148.P.Venkatachalam
149.G.Pathinettu
150.R.Justin
151.M.Murugan
152.T.Vijay Anand
153.C.Uruvadi
154.M.Karuppasamy
155.S.Nagaraj
156.A.Senthilkumaran
157.P.Senthilkumar
158.C.K.Jegannivash
159.K.Justin Jebakumar
160.P.Sundararaj
161.I.Saravanmuthu
162.P.Panchanthan
163.K.Palanisamy
164.M.Santhanam
165.K.Velu
166.L.Manikandan
167.S.Selvadas
168.M.Sudalai
169.V.Palanisamy
170.T.Murugan
171.A.Muthuramalingam
172.K.Chandrasekaran



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- 173.P.Katturaja
174.T.Rathinakumar
175.M.Sabarisan
176.M.Marisamy
177.S.Ramakrishnan
178.T.Kumar
179.E.Arulraj
180.C.Thalapathi
181.P.Somasundram
182.S.Murthy
183.N.Sivasubramanian
184.C.Shankar
185.M.Murugan
186.K.Mohanasundram
187.P.Ganesan
188.T.Thirunavakarasu
189.K.Dhanapalan
190.C.Samydurai
191.R.Bharathidasan
192.M.Ramachandran
193.S.Bhoopathiraja
194.Y.Xavier
195.V.Dhanapal
196.M.Thangamani
197.C.Suresh
198.S.Thavasu
199.S.Alaguraj
200.R.Veerakumar
201.G.Arumaidurai
202.I.Pandy
203.K.Murugesan
204.J.Ramu
205.N.V.Murugan
206.P.Natarajan
207.U.Ramesh
208.S.Dhayalan
209.K.Rajendran
210.M.Janardhanan
211.P.A.Saravanan



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- 212.P.Vedhachalam
213.J.Palani
214.P.Pandian
215.B.Elumalai
216.A.S.Venkatesan
217.J.Ravi
218.R.Shanmugam
219.S.Manikandan
220.G.Suresh
221.K.MOhan
222.K.Babu
223.M.C.Sekar
224.S.Naresh
225.R.Prakash
226.S.N.Dillidhamotharan
227.S.Vasu
228.K.C.Kumaran
229.K.Gopinathan
230.H.Princly
231.M.Saravanan
232.P.M.Ethiraaj
233.K.D.Karthikeyan
234.T.Bhoopalan
235.C.Kaliyappan
236.B.Balasubramani
237.K.Saravanan
238.V.Govindaraju
239.M.Kumar
240.M.S.Sekar
241.A.Madhanmohan
242.M.Loganathan
243.S.Suresh
244.M.S.Dhamodharan
245.M.Iyyappan
246.M.Mohan
247.K.Kuppan
248.G.Munirathinam
249.M.Lakshmanan
250.M.Thanuvel



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251.C.Shanmugam
252.G.Velayudham
253.C.Stalin
254.G.M.Kumar
255.E.Babu
256.K.Raja
257.S.Annamalai
258.B.Ramu
259.A.Sundaram
260.P.Thangamani
261.D.Purushothaman

C/o.Tasmac Uzhiyer Maanila Sammelanam (CITU),
Nallasivan Memorial,
No.27, Mosque St,
Chepauk, Chennai – 600 005.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the order dated 22.09.2017 passed in claim petition Nos.1645 of 2011 to 1854 of 2011, 405 of 2014 to 419 of 2014, 421 to 431, 434, 435, 436, 439 to 441, 443, 444, 446, 447, 449 to 455, 460, 463 to 468 of 2014 on the file of the first respondent, II Additional Labour Court, Chennai and quash the same.

For Petitioner : Mr.Sanjoy Mohan, SC
for M/s.K.Sathish Kumar
For Respondents : Labour Court [R1]
No appearance [R2 to R261]

ORDER

This Writ Petition has been filed seeking to quash the order dated 22.09.2017 passed in claim petition Nos.1645 of 2011 to 1854 of 2011, 405 of



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2014 to 419 of 2014, 421 to 431, 434, 435, 436, 439 to 441, 443, 444, 446, 447,

449 to 455, 460, 463 to 468 of 2014 on the file of the first respondent, II

Additional Labour Court, Chennai.

2. The case of the petitioner Corporation/TASMAC is that, it is a Government Company registered under the provisions of the Companies Act and is wholly owned by the Government of Tamil Nadu. It is a marketing company and its main business is dealing in retail trade of Indian made Foreign Liquor. The private respondents/workmen have filed claim petitions under Section 33 C(2) of the Industrial Disputes Act, 1947 (in short 'the ID Act') before the first respondent/Labour Court claiming (i) difference amount between the actual pay paid to them and the minimum wages payable to them as fixed by the Government under the Minimum Wages Act, 1948 (in short 'MW Act') (ii) overtime wages for the work allegedly done by them for more than 8 hours per day and 48 hours per week in weekly days under the provisions of Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1953 and (iii) double wages for the work allegedly done on National and Festival holidays under the provisions of Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1953 for the periods from January, 2004 to December, 2009. However, the Labour Court passed the



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impugned order as against the petitioner Corporation. Challenging the same,

the petitioner Corporation filed the above writ petition.

3. The learned Senior Counsel appearing for the petitioner Corporation submitted that, the petitioner Corporation is wholly owned by the State Government and hence, the provisions of the Tamil Nadu Shops and Establishment Act, 1947 is not applicable as per Section 4(1) of the said Act and also the provisions of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 is not applicable as per Section 10 (1)(c). However, the Labour Court awarded the minimum wages in favour of the private respondents/workmen, even though the MW Act is not applicable to the petitioner Corporation, which is not sustainable. If at all the private respondents/workmen wants to claim minimum wages, they have to approach the authority under Section 20 of the the MW Act, since the Labour Court has no jurisdiction to decide the issue. Without approaching the competent authority under the MW Act, filing claim petition under Section 33C(2) of the ID Act is not sustainable. However, the Labour Court inadvertently granted relief in favour of the workmen, which is not sustainable.



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4. Further, he submitted that the claim petition can be filed under Section 33C(2) of the I.D. Act based on the existing rights. However, in the present, there is no existing right for claiming minimum wages, since the petitioner Corporation specifically took a plea before the Labour Court that the MW Act is not applicable to them. Even assuming that MW Act is applicable to the petitioner Corporation, however, the Industrial Tribunal have no jurisdiction to decide the issue and it is for the authority under the MW Act to take decision with regard to awarding minimum wages. In the present case, the first respondent, without jurisdiction decided the minimum wages in favour of the private respondents/workmen, which is not sustainable. In support of his contention, he relied upon the order passed by the Madurai Bench of this Court in W.P.(MD).No.17607 of 2015, dated 14.12.2018. Accordingly, he prays for allowing the writ petition.

5. Though respondents 2 to 261 was served and their names were printed in the cause list, none appeared on behalf of them. Hence, this Court is left with no other option except to proceed further based on the available records.

6. Admittedly, the private respondents/workmen filed claim petitions under Section 33 (C)(2) of the ID Act before the first respondent/Labour Court.



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The claim petitions filed by the workmen is maintainable before the Labour

Court only if there is any existing rights between the petitioner Corporation and the workmen. Based on the right, they are entitled to file claim petitions before the Labour Court. In the present case, the petitioner Corporation specifically claimed that, the petitioner Corporation is quasi government owned by the Government of Tamil Nadu, the Government of Tamil Nadu did not pay minimum wages, since they pay wages on different form over and above the MW Act. If there is a difference amount as claimed by the workmen on par with MW Act, they have to workout the remedy before the authority under Section 20 of the MW Act and not before the first respondent/Labour Court under Section 33(C)(2) of the ID Act. However, the workmen filed claim petitions under Section 33(C)(2) of the ID Act, which is not sustainable.

7. Further, the petitioner Corporation is owned by the State Government, thereby, if the workmen are entitled for any claim, they have to approach the authority under the MW Act, however, the Labour Court have no jurisdiction to decide the issue in terms of Section 33(C)(2) of the Act. Hence, the claim made by the workmen is not maintainable. Therefore, the impugned order passed by the Labour Court is liable to be set aside.



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8. Accordingly, these writ petitions are allowed and the impugned order dated 22.09.2017 passed by the first respondent, II Additional Labour Court, Chennai in Claim Petition Nos.1645 of 2011 to 1854 of 2011, 405 of 2014 to 419 of 2014, 421 to 431, 434, 435, 436, 439 to 441, 443, 444, 446, 447, 449 to 455, 460, 463 to 468 of 201 is set aside. However, liberty is granted to the private respondents/workmen to file appropriate petition before the authority under Section 20 of the Minimum Wages Act, 1948, within a period of four (4) weeks from the date of receipt of a copy of this order. If such petition is filed, the authority under the Minimum Wages Act is directed to decide the issue within a period of twelve (12) weeks thereafter. Further, liberty is granted to the private respondents/workmen to raise claim before the authority under the industrial disputes Act for claiming overtime wages and National and Festival holidays wages under the relevant provisions and the period pending before the Labour Court as well as this Court is excluded for the purpose of limitation. No costs. Consequently, the connected miscellaneous petition is closed.

07.08.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.,

sp

To

The Presiding Officer,
II Additional Labour Court,
Chennai.

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