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W.P.No.6344 of 2013 etc.,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2023

PRONOUNCED ON : 29.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.6344, 6345, 11168 to 11171,
11548, 12257, 12456, 12814 of 2013 and
M.P.No.1 of 2013 (10 Nos.) & M.P.No.2 of 2013 (7 Nos.)

W.P.No.6344 of 2013 :-

1. The Executive Director,
Food Corporation of India,
Zonal Office (South),
No.2, Haddows Road,
Chennai – 600 006.
2. The General Manager (Regional)
Food Corporation of India,
Regional Office (Tamilnadu)
124, Greams Road,
Chennai – 600 006.
3. The Area Manager,
Food Corporation of India,
District Office,
No.40, Iummanuel Complex,
Thayumanavar Street,
Thirunagar, Vellore.

...Petitioners

-Vs-



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1. The Regional Labour Commissioner (Central) and
The Authority under the Minimum Wages Act,
5th Floor, Shastri Bhavan,
Haddows Road, Chennai – 600 006.

2. S.Srinivasan
3. S.Shanmugam
4. C.Annamalai
5. M.Kavan
6. D.Padmanaban
7. K.Sardar
8. K.Jayaraj
9. C.Pandian
10. L.Jayaraj
11. A.Jayaraman
12. M.Eswaran
13. D.Raman
14. E.Muthu
15. G.Sureshkumar
16. E.Baskaran
17. D.Nadaraj
18. S.Ramadass
19. E.John
20. R.Jaishankar
21. A.Raghukumar
22. D.Mathivanan
23. A.Ramesh
24. N.Sabasteen



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25. D.Arumugam
26. A.Ponnurangam
27. S.Jayakumar
28. K.Mohan
29. A.Vijayaragavan
30. M.Sundar
31. E.Sagayam
32. K.Parithasan
33. S.Babu
34. L.Paulraj
35. S.Ponnaian
36. J.Shanthi
37. K.Soundar
38. V.Jothi
39. R.Kalaiselvi
40. S.Baby
41. S.Krishnaveni
42. L.Deivanai
43. A.Manickkammal
44. P.Valliammal
45. R.Muniammal
46. A.Mari
47. V.Kasthuri
48. M.Malarvizhi
49. M.Kamalanathan
50. S.Kannammal



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51. M.Ponnammal

52. K.Balammal

53. K.Radha

54. Kamsala

55. S.Amaravathy

56. S.Padma

2 to 56 are working at
Food Corporation of India,
FSD Sevoor,
Vellore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent relating to order dated 29.02.2012 made in claim Application Nos.283 to 294 of 2011 under the Minimum Wages Act and to quash the same.

For Petitioners
in all W.Ps. : Mr.M.Imthias

For Respondents in W.P.No.6344 of 2013

R1 : No appearance
For R2 to 56 : Mr.V.Ajoy Khose

For Respondents in W.P.No.6345 of 2013

R1 : No appearance
For R2 to 67 : Mr.V.Ajoy Khose

For Respondents in W.P.No.11168 of 2013

For Respondents 3, 5 to 22,
24 to 39, 41 to 44, 46 to 50,
52 to 70, 72 to 76, 78 to 81,
83 to 109, 111 to 117, 119 to
137, 176, 177, 179 to 184 : Mr.V.Ajoy Khose



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For Respondents 1, 2, 4, 23,
40, 77, 101, 143, 185 : No appearance
For Respondents 51, 71, 82
118, 138, 153, 174, 175, 178 : Not ready in notice

For Respondents in W.P.No.11169 of 2013

For Respondents 2, 3, 5 to 10,
12 to 20, 22 to 31, 34 to 50,
52 to 54, 56 to 60, 62 to 74
76 to 85 : Mr.V.Ajoy Khose
For Respondents 1, 4, 11, 21
32, 33, 51, 55, 61, 75, 86, 87 : No appearance

For Respondents in W.P.No.11170 of 2013

For Respondents 2, 3, 5 to 13,
15, 16, 18 to 20, 23 to 27, 29
to 37, 39 to 53, 55 to 57,
60 to 64 : Mr.V.Ajoy Khose
For Respondents 21, 22, 28, 38 : No appearance
For Respondents 4 & 14 : Died (Steps due)
For Respondents 17, 54, 58, 59 : Not ready in notice

For Respondents in W.P.No.11171 of 2013

For Respondents 2 to 12, 14 to
24, 26, 27, 31 : Mr.V.Ajoy Khose
For Respondents 1, 13, 25, 28
29, 30 : No appearance

For Respondents in W.P.No.11548 of 2013

For Respondents 2 to 25, 27 to 49,
51, 56 to 61, 63 to 68, 70 to 73,
76 to 93, 95 to 110, 102 to 113,
115 to 126, 128 to 134, 136 to 139,
141 to 143, 145, 147 to 153, 155
to 178, 180 to 184, 186 to 207,
209 to 213, 215 to 219, 221 to
234, 236 to 248 : Mr.V.Ajoy Khose

For Respondents 1, 101, 154,



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235, 249 : No appearance
For Respondents 26, 50, 52 to
55, 62, 69, 74, 75, 94, 114,
127, 135, 140, 146, 179, 185,
208, 214, 220 : Not ready in notice

For Respondents in W.P.No.12257 of 2013

For Respondents 2 to 13, 15 to 35,
37, 38, 40 to 44, 46 to 54, 57 to 74,
77 to 96, 98 to 104, 106 to 109,
111 to 126, 128, 129, 131 to 136,
138, 140, 142 to 151, 153 to 186,
188 to 195, 200, 201, 203 to 203 : Mr.V.Ajoy Khose
For Respondent 1 : No appearance
For Respondents 14, 39, 55,
56, 75, 105, 110, 130, 137,
152, 187, 196 to 199, 202 : Not ready in notice

For Respondents in W.P.No.12456 of 2013

For Respondents 2 to 26,
28 to 72, 74 to 80, 82 to 109,
111 to 121, 123 to 127, 129
to 136, 138 to 152, 154 to 191 : Mr.V.Ajoy Khose
For Respondent 1 : No appearance
For Respondents 27, 73, 81,
110, 122, 128, 136, 137, 153 : Not ready in notice

For Respondents in W.P.No.12814 of 2013

For Respondents 2 to 22, 24, 26
to 36, 39 to 65, 67 to 73, 76 to
86, 88 to 90, 92 to 118, 120 to
145, 147 to 212, 215 to 241 : Mr.V.Ajoy Khose
For Respondent 1 : No appearance
For Respondents 23, 25, 37,
38, 66, 74, 75, 87, 91, 119,
146, 213, 214 : Not ready in notice



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COMMON ORDER

These writ petitions have been filed challenging the orders passed by the first respondent dated 29.02.2012 & 28.02.2012 in the claim Applications Nos.259 to 306 of 2011 & 73 to 92, 97 to 144 of 2012, respectively, thereby ordered to pay the overtime wages to other respondents.

2. The petitioners are the Food Corporation of India (herein after called as “the Corporation”) and the Corporation is a Central Government undertaking and they have engaged the respondents 2 to 56 (herein after called as "the workmen"), under the direct payment system as per the settlement signed by their Union. The main work was collection of spillages of food grains, sweeping/winnowing and helping the quality control work such as spraying/fumigation etc. As per the agreement, their wages are under minimum guaranteed based on schedule of rates and additional schedule of rates. It is being revised from time to time for the period of two years.



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3. The corporation, in the year 2004, changed the working hours for the workmen, who were earlier working eight hours for a day, were brought to only seven hours for a day at par with the department officials. In view of that, the over time wages at the rate of 1.25 time of minimum guaranteed wages was revised to 1.10 times. It was challenged by the workmen before the National Industrial Tribunal at Mumbai.

4. The Corporation issued circular thereby informing the workers about the implementation of the Minimum Wages Act, on the basis of the notification of the Central Government. Accordingly, the minimum wages fixed for the workers as Rs.149/-(Basic+VDA) and sum of Rs.163/- was fixed for direct payment system workers as guaranteed wages and Rs.50/- as interim relief, as per the interim order of the National Industrial Tribunal, Mumbai. The workmen are getting minimum guaranteed wages of Rs.163/- and also getting Rs.50/- as interim relief as per the interim order of the National Industrial Tribunal, Mumbai.



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5. Insofar as the Vellore District is concerned, as per the notification, the minimum wages payable to the ancillary workers is Rs.149/-. Therefore, the respondents/workmen raised dispute for non payment of overtime wages on the basis of the Minimum Wages Act at two time instead of 1.1 time paid to them, before the authority viz., the first respondent herein under the Minimum Wages Act. The first respondent allowed the claim petitions as against which the Corporation filed the present writ petitions.

6. The learned counsel appearing for the petitioners/Corporation submitted that the workmen are getting minimum guaranteed wages as per the settlement and they are getting more than the prescribed wages under the Minimum Wages Act. Normal working hours of the workmen is less than the prescribed under Rule 25(a) of the Minimum Wages (Central Rules) 1950 and the wages fixed to the workmen is also more than the minimum wages prescribed to those workers under the Act. In fact, the issue in this regard is still pending before the National Industrial Tribunal, Mumbai, as such the first respondent ought not to have entertained the claim petitions filed by the workmen.



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7. The learned counsel appearing for the workmen submitted that the working hours for both the loading and unloading workers as well as ancillary workers is 6½ hours per day excluding the ½ an hour lunch time. It is between 10 a.m., to 5 p.m. However, it was increased to 7 ½ hours per day including the lunch time of ½ an hour. Whenever the load came at any time, the loads are unloaded and stacked as such, the work of the workmen will continue beyond the daily working hours of 7½ hours. Therefore, the first respondent rightly allowed the claim application and prayed for dismissal of the present writ petitions. In support of his contention, he relied upon the following judgments:-

(i) (1972) 2 SCC 108 – Y.A.Mamarde and Nine others and Ghanshyam and eight others Vs. Authority under the Minimum Wages Act, Nagpur & anr.

(ii) Order passed by the High Court of Delhi, New Delhi in W.P.(C).No.5727 of 2021 dated 02.06.2021 – Food Corporation of India Vs. Food Corporation of India Workers Union & anr.

8. Heard Mr.M.Imthias, learned counsel appearing for the petitioners/Corporation and Mr.V.Ajoy Khose, learned counsel appearing



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for the respondents.

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9. It is true that the workmen are getting wages in terms of the settlement as revised from time to time. By the circular dated 16.06.1994 and the memorandum of understanding dated 13.06.1994, between the workmen and the petitioners, the workmen were paid overtime wages at the rate of 1.25 of the hourly rate of wages for the working hours beyond 6½ hours up to 8 hours and at the rate of overtime wages as prescribed under the Shops and Establishments Act in the respective States. However, it was unilaterally reduced from 1.25 to 1.1 in the year 2004. Therefore, the Union raised industrial dispute before the National Industrial Tribunal, Mumbai, in N.T.B.No.1 of 2005 and the said Tribunal by an award dated 07.09.2012 hold that the reduction of overtime allowance/wages from 1.25 time of the normal hourly rate of wages to 1.1 time of the normal hourly rate of wages was unjustified and restored the overtime allowances as prescribed in the circular dated 16.06.1994 and the memorandum of understanding dated 13.06.1994.

10. Further the employment in loading and unloading in railways, goodsheds and docks and ports is a scheduled employment



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notified under Part-1 of the schedule to the Minimum Wages Act, 1948.

Therefore, the provisions of the Minimum Wages Act are applicable to the employees who are employed in the above scheduled employment. That apart, the Government of India issued an amendment notification dated 25.01.2006 and included the employment in loading and unloading work in the following industry/undertakings:-

- (i) Goodsheds, Parcel Offices of Railways
- (ii) Other goodsheds, Godowns, Warehouses, etc.,
- (iii) Docks and Ports.

11. In fact, the petitioners/Corporation issued a circular in No.9 of 2010 dated 15.07.2010, thereby adopting the above said notification and provisions of the Minimum Wages Act, were made applicable to the employees. The workmen have been working more than 7 ½ hours in a day, they are entitled to double the normal rate of wages for the over time work. However, they had been paying the overtime wages only at the rate of 1.1 times of the normal rate of wages. It is contrary to the provisions of Section 14 of the Minimum Wages Act.

12. Therefore, the workmen submitted their applications before



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the first respondent under Section 20 of the Minimum Wages Act, claiming the difference in wages for the overtime work for the period from 01.04.2010 to 31.03.2011. The first respondent by the orders dated 28.02.2012 & 29.02.2012, allowed all the claim applications filed by the workmen. Therefore, once the provisions of Minimum Wages Act are made applicable to the workmen, the petitioners are bound to pay the doubled the normal rate of wages for the overtime work beyond the working hours fixed for a day. Though the workmen were receiving wages higher than the minimum wages fixed under the Minimum Wages Act, they cannot denied the overtime wages as prescribed under the Minimum Wages Act.

13. Unless overtime wages payable to the workmen, either by way of contract or settlement or otherwise is either equal or more than the overtime wages prescribed under the Act, the petitioners cannot take a stand that over time wages are fixed by the circular and memorandum of understanding reached between them and workmen as such, no need to pay the overtime wages fixed under the Minimum Wages Act. Therefore, the circular and memorandum of understanding cannot over ride the provisions of the Minimum Wages Act, in respect of the payment of



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overtime wages, when the overtime wages being paid by the petitioners/Corporation is less than the minimum rate of overtime wages fixed under the Minimum Wages Act.

14. Even according to the petitioners/Corporation, they have paid double the normal rate of actual wages paid to the workmen, where the provisions of the Shops and Establishment Act, is applicable to them and if no exemption was granted to them under the Shops and Establishment Act, irrespective of the rate fixed in the circulars and the memorandum of understanding. When the provisions of Minimum Wages Act is made applicable to them, the petitioners are bound to pay the overtime wages double the rate of normal wages actually paid to the workmen for the working hours beyond the normal working hours per day and the normal working hours per week.

15. In this regard, the learned counsel appearing for the workmen relied upon the judgment reported in **(1972) 2 SCC 108** in the case of ***Y.A.Mamarde and Nine others and Ghanshyam and eight others Vs. Authority under the Minimum Wages Act, Nagpur & anr.***, in which the Hon'ble Supreme Court of India held that the object of the



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Minimum Wages Act as stated in the preamble is to provide for fixing minimum rate of wages in certain employments and this seems to us to be clearly directed against exploitation of the ignorant, less organised and less privileged member of the society by the capitalist class.

16. Further held that by using the phrase “double the ordinary rate of wages” the rule making authority seems to have intended that the worker should be the recipient of double the remuneration which he, in fact, ordinarily receives and not double the rate of minimum wages fixed for him under the Act. Had it been intended to provide for merely double the minimum rate of wages fixed under the Act, the rule-making authority could have so expressed its intention in clear and explicit words like “double the minimum rate of wages fixed under the Act”.

17. Therefore, the Hon'ble Supreme Court of India concluded that the Rule 25 of the Minimum Wages Act contemplates for overtime work double the rate of wages which the worker actually receives, including the causal requisites and other advantages mentioned in the explanation. This rate is intended to be the minimum rate for wages for overtime work. The extra strain on the health of the worker for doing



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overtime work may well have weighed with the rule-making authority to assure to the worker as minimum wages double the ordinary wage received by him so as to enable the worker to maintain proper standard of health and stamina. Nothing rational or convincing was said at the bar why fixing the minimum wages for overtime work at double the rate of wages actually received by the workmen should be considered to be outside the purpose and object of the Act.

18. Keeping in view the overall purpose and object of the Act and viewing it harmoniously with the general scheme of industrial legislation in the country in the background of the directive principles contained in our Constitution, the minimum rates of wages for overtime work need not as a matter of law be confined to double the minimum wages fixed but may justly be fixed at double the wages ordinarily received by the workmen as a fact.

19. That apart, before the first respondent, the workmen were examined and there was no cross-examination on the side of the petitioners/Corporation. Once the provisions of Minimum Wages Act made applicable to the workmen, the petitioners are bound to pay the



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doubled the normal rate of wages for the overtime work beyond the working hours fixed for a day. Considering the above legal provisions, the first respondent rightly allowed the claim made by the workmen and this Court finds no infirmity or illegality in the order passed by the first respondent and all the writ petitions are liable to be dismissed.

20. Accordingly, all the Writ Petitions are dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to cost.

29.08.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
rts



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G.K.ILANTHIRAIYAN. J.

rts

To

1. The Regional Labour Commissioner (Central) and
The Authority under the Minimum Wages Act,
5th Floor, Shastri Bhavan,
Haddows Road, Chennai – 600 006.

COMMON ORDER IN

W.P.Nos.6344, 6345, 11168 to 11171,
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