



W.P.No.454 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.454 of 2016

and

WMP.No.295 of 2016

Pondicherry Catholic Educational Association,
Rep. by its Secretary,
No.206, Archbishop's House,
Cathedral Street, Pondicherry – 605 001.

...Petitioner

Vs.

1. The State of Puducherry,
Rep. by its Under Secretary to Government,
Labour and Employment Department,
Puducherry.
2. The Authority under Minimum Wages Act,
Labour Department Complex,
II Floor, Vazhadavur Road,
Gandhi Nagar, Puducherry – 605 009.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in G.O.Ms.No.40/LAB/AIL /G/2013 Labour Department, Government of Puducherry, dated 18.10.2013 on the file of the 1st respondent, fixing Minimum wages for various categories of persons employed in the member institutions of the petitioner, annexed herewith in the Writ Petition and quash the same.



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For Petitioner : Mr.Fr.A.Xavier Arulraj

For Respondents : Mr.A.Tamilvanan, AGP(Pondicherry)

ORDER

This Writ petition has been filed seeking quashment of the order of the 1st respondent in G.O.Ms.No.40/LAB/AIL/G/2013 Labour Department, Government of Puducherry, dated 18.10.2013, fixing Minimum wages for various categories of persons employed in the member institutions of the petitioner, annexed herewith in the Writ Petition.

2. The case of the petitioner is that the petitioner association is the umbrella organization of all the educational agencies and educational institutions, established and administered by the catholic Church in the Union Territory of Pondicherry and is a society registered under Societies Registration Act XXI of 1860. While so, the 1st respondent, vide Government order dated 14.03.2013 issued a preliminary notification bringing the Private Educational Institutions under the purview of the Minimum Wages Act, 1948 and confirmed the said preliminary notification, vide present impugned Government order bearing G.O.Ms.No.40/LAB/AIL



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/G/2013 Labour Department, Government of Puducherry, dated 18.10.2013

and fixed the rate of minimum wages in the schedule of the said Government order, without differentiating the aided, partly aided and unaided schools. Pursuant to the impugned government order, the 2nd respondent issued a notice dated 03.09.2015, summoning some of the member institutions of the petitioner association to appear and produce all the witnesses and documents in respect of an application filed by some of the employees working in some of the member institutions of the petitioner. Hence, challenging the said government order dated 18.10.2013, the petitioner association has come up with this Writ petition.

3. Though very many grounds have been raised, learned Senior counsel for the petitioner association submitted that, insofar as the minimum wages is concerned, it is not applicable to the teachers, and the same is applicable only to non-teaching staffs and the said issue was elaborately discussed by the Hon'ble Apex court in the case of ***Sundarambal Vs. Govt. of Goa, Daman & Diu and others*** reported in (1989) 1 LLJ 31, wherein, the Apex Court held that, the teachers working in the Educational institutions are not workman, though the school was an industry in view of



the definition of workman. For better appreciation, the relevant portion is extracted hereunder:

“7. In order to be a workman, a person should be one who satisfies the following conditions: (i) he should be a person employed in an industry for hire or reward; (ii) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and (iii) he should not be a person falling under any of the four clauses, i.e., (i) to (iv) mentioned in the definition of 'workman' in section 2(s) of the Act. The definition also provides that a workman employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, an industrial dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

*8. We are concerned in this case primarily with the meaning of the words 'skilled or unskilled manual, supervisory, technical or clerical work'. If an employee in an industry is not a person engaged in doing work falling in any of these categories, he would not be a workman at all even though he is employed in an industry. The question for consideration before us is whether a teacher in a school falls under any of the four categories, namely, a person doing any skilled or unskilled manual work, supervisory work, technical work or clerical work. If he does not satisfy any one of the above descriptions he would not be workman even though he is an employee of an industry as settled by this Court in *May and Baker (India) Ltd. v. Their Workmen.*, [1961] (II) L.L.J. 94. In that case this Court had to consider the question whether a person employed by a pharmaceutical firm as a representative (for canvassing orders) whose duties consisted mainly of canvassing orders and any clerical or manual work that he had to do was only incidental to his main work of canvassing could be considered*



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as a workman as defined in the Act. Dealing with the said question Wanchoo, J. (as he then was) observed thus:

"As 'workman' was then defined as any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Therefore, doing manual or clerical work was necessary before a person could be called a workman. This definition came for consideration before industrial tribunals and it was consistently held that the designation of the employee was not of great moment and what was of importance was the nature of his duties. If the nature of the duties is manual or clerical, then the person must be held to be a workman. On the other hand if manual or clerical work is only a small part of the duties of the person concerned and incidental to his main work which is not manual or clerical, then such a person would not be a workman. It has, therefore, to be seen in each case from the nature of the duties whether a person employed is a workman or not, under the definition of that work as it existed before the amendment of 1956. The nature of the duties of Mukerjee is not in dispute in this case and the only question therefore is whether looking to the nature of the duties it can be said that Mukerjee was a workman within the meaning of S. 2(s) as it stood at the relevant time. We find from the nature of the duties assigned to Mukerjee that his main work was that of canvassing and any clerical or manual work that he had to do was incidental to his main work of canvassing and could not take more than a small fraction of the time for which he had to work. In the circumstances the tribunal's conclusion that Mukerjee was a workman is incorrect. The tribunal seems to have been led away by the fact that Mukerjee had no supervisory duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukerjee's duties were mainly manual or clerical. From what the tribunal itself has found it is clear that Mukerjee's duties were mainly neither clerical nor



manual. Therefore, as Mukerjee was not a workman, his case would not be covered by the Industrial Disputes Act and the tribunal would have no jurisdiction to order his reinstatement. We, therefore, set aside the order of the tribunal directing reinstatement of Mukerjee along with other reliefs."

9. The Court held that the employee Mukerjee involved in that case was not a workman under section 2(s) of the Act because he was not mainly employed to do any skilled or unskilled manual or clerical work for hire or reward, which were the only two classes of employees who qualified for being treated as 'workman' under the definition of the expression 'workman' in the Act, as it stood then. As a result of the above decision, in order to give protection regarding security of employment and other benefits to sales representatives, parliament passed separate law entitled the Sales Promotion Employees (Conditions of Service) Act, 1976. It is no doubt true that after the events leading to the above decision took place section 2(s) of the Act was amended by including persons doing technical work as well as supervisory work. The question for consideration is whether even after the inclusion of the above two classes of employees in the definition of the expression 'workman' in the Act a teacher in a school can be called a workman. We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post graduate education cannot be called as 'workmen' within the meaning of section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching.



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*We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as 'workmen' as defined under the Act. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words 'to do any skilled or unskilled manual, supervisory, technical or clerical work' meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in *May and Baker (India) Ltd. v. Their Workmen*, (supra) precludes us from taking such a view. We, therefore, hold that the High Court was right in holding that the appellant was not a 'workman' though the school was an industry in view of the definition of 'workman' as it now stands."*

He further submitted that, similarly, this Court has also in

W.P.Nos.4353 of 2003 etc., batch of cases held that, Minimum Wages Act

is not applicable to the teachers working in the Education institutions and

the relevant portion of the said order is as follows:-

"10. No doubt, the case of the petitioners has to be allowed only in respect of the applicability of the provisions of the Minimum Wages Act against the educational institutions in respect of non-teaching staff only. But, in respect of teachers, as the ratio laid down by various Judgments of the Apex Court, clearly laid down that the provisions of the Minimum Wages Act cannot be applied to bring the petitioners under the provisions of the Act, I am of the view that both these Government Orders can be held partly valid, only in respect of non-teaching staff, but not against the teachers working in the schools.

11. It is also relevant to mention one another argument



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advanced by the learned Additional Advocate General that the purpose and the object for which these two Government Orders have been introduced is only to safeguard the teachers at the hands of the employers of the private educational institutions, therefore, when Section 5 of the Minimum Wages Act, 1948 gives enormous power to the appropriate Government, these two Government Orders viz. G.O.No.1533, Labour dated 20.7.1988 and G.O.(2D) No.34, Labour & Employment, dated 5.5.2003, have been issued. Though the Government Order No.1533 was issued in the year 1985, the subsequent notification could not be issued in view of not following the procedure under Section 5 of the Minimum Wages Act, 1948 to enable the Government to go into the question of minimum wages or salary given to the teachers and non-teaching staff working in the educational institutions. Subsequently, the State Government was not in a position to issue proper notification in the Official Gazette so as to effect the said Government Order. However, when the second Government Order was issued, nothing affected by G.O.(2D) No.34, Labour & Employment, dated 5.5.2003, the petitioners have challenged not only G.O.(2D) No.34, Labour & Employment, dated 5.5.2003 but they have also challenged the original Government Order in G.O.No.1533, Labour dated 20.7.1988.

12. During these period from 1988 till the consequential G.O.(2D) No.34, Labour & Employment, dated 5.5.2003 was issued on 5.5.2003, since the petitioners schools have not been put to any prejudice, this Court cannot find fault with the petitioners in not challenging the first G.O.No.1533, Labour dated 20.7.1988.

13. Therefore, the question of delay in filing the writ petitions cannot be held against the petitioners. In any event, as rightly submitted by the learned counsel appearing for the petitioner, since the issue has been made clear by the Apex Court in the Judgments mentioned above, as I mentioned



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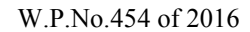
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earlier, the Judgment laid down by the Apex Court under Article 141 of the Constitution of India declaring the law, has got binding force, hence the question raised in all the writ petitions is answered against the latches, as the delay in filing writ petition cannot postpone the implementation of the Judgments by the Apex Court.

He also brought to the notice of this Court the decision of the Hon'ble Apex court in the case of ***Haryana Unrecognised Schools' Association Vs. State of Haryana*** reported in ***(1996) 4 SCC 225***, wherein, the Apex Court held as hereunder:-

“8. There cannot be any dispute with the proposition that while construing the provisions of a statute like Minimum Wages Act a beneficial interpretation has to be preferred which advances the object of the Act. But nevertheless it has to be borne in mind that the beneficial interpretation should relate only to those employments which are intended to be covered by the Act and not to others. Section J of the Act provides that the appropriate Government shall, in the manner hereinafter provided fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27. The expression 'employee' has been defined in Section 2(i) of the Act thus:

" 'employee' means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed, and includes an outworker to whom any articles or materials are given out by another person to be made up, cleaned, washed,



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any skilled or unskilled or manual or clerical work and therefore could not be held to be an employee under Section 2(i) of the Act it is beyond the competence of the State Government to bring them under the purview of the Act by adding the employment in educational institution in the Schedule in exercise of power under Section 27 of the Act. This Court while examining the question whether the teachers employed in a school is workmen under Industrial Disputes Act had observed in Miss A. Sundarambal v. Government of Goa, Daman & Diu and others (1988 (4) SCC 42) :

“We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as workmen within the meaning of Section 2(s) of the Act. Imparting of education which is the main junction of teachers cannot be construed as skilled or unskilled manual work or clerical work. Imparting of education is an the nature of a mission or a noble vocation. A teacher educates children he moulds their character, builds up their personality and makes them fit become responsible citizens. Children grow under care of teachers. The clerical work, if any they may do, is only incidental to their principal of teaching.”

11. Applying the aforesaid dictum to the definition of employee under Section 2(i) of the Act it may be held that a teacher should not come within the said definition. In the aforesaid premises we are of the considered opinion that the teachers of an educational institution cannot be brought within the purview of the Act and the State Government in exercise of powers under the Act is not entitled to fix the minimum wage of such teachers. The impugned notifications so far as the teachers of the educational institution are



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*concerned are accordingly quashed. This appeal is allowed.
Writ petition filed succeeds to the extent mentioned above.
There will be no order as to costs."*

4. On the above said contentions, heard learned Additional Government Pleader (Pondicherry) appearing for the respondents and perused the materials available on record.

5. A perusal of the material documents placed on record, particularly the order of this Court dated 07.09.2011 made in W.P.No.4353 of 2003 (*stated supra*) reveals that, the teachers who are working in the Education institutions would not come within the definition of workman as defined under the Section 2 (s) of the Industrial Disputes Act. Such being the case, the application of Minimum Wages Act could not be made applicable to the said persons, who are not workman within the meaning of the ID Act. In the case on hand, the teachers would not fall within the definition of workman as defined under the ID Act.

6. Following the above decisions of both the Apex Court and the Co-ordinate bench of this Court, this Court, is inclined to allow this Writ petition by setting aside the impugned Government order only in respect of



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fixing minimum wages to the teachers who are working in the member educational institutions of the petitioner association.

7. Accordingly, this Writ Petition stands allowed with the aforesaid directions. No costs. Consequently, connected miscellaneous petition is closed.

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(1/2)

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NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

1. The State of Puducherry,
Rep. by its Under Secretary to Government,
Labour and Employment Department,
Puducherry.
2. The Authority under Minimum Wages Act,
Labour Department Complex,
II Floor, Vazhadavur Road,
Gandhi Nagar, Puducherry – 605 009.

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M.DHANDAPANI., J.

Dispensed with for the present.

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