

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5821 of 2020

and

W.M.P(MD)No.5072 of 2020

0.1980 Thevarkulam Primary Agriculture
Co-operative Society Limited,
Represented by its President,
Thevarkulam – 627 951,
Tirunelveli.

... Petitioner

Vs

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

2.The Deputy Inspector of Labour,
3rd Circle,
Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in M.W.121/2017 dated 23.01.2020 and quash the same as illegal.

For Petitioner : Mr.M.Jerin Mathew
For Respondents : Mr.K.Balasubramani
Special Government Pleader for R.1

Mr.K.Yasat Arafath
Legal-Aid-Counsel for R.2

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Legal-Aid-Counsel appearing for the second respondent.

2.The petitioner is a Co-operative Society. Though there are five persons on its rolls, the second respondent herein filed a petition before the first respondent seeking payment of minimum wages for Computer Operator and Jewel Appraiser. The second respondent wanted the emoluments to the aforesaid two persons to be paid in terms of the circular dated 27.03.2017. The matter was enquired into and after hearing the writ petitioner, the impugned order came to be passed by the first respondent allowing the petition filed by the second respondent. Challenging the order dated 23.01.2020, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner raised two contentions:

- a)The petitioner is exempt from the operation of the Minimum Wages Act, 1948;
- b)The circular issued by the Commissioner of Labour, Chennai cannot be applied to determine the minimum wages.

The learned counsel appearing for the petitioner reiterated all the other contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and allow the writ petition as prayed for.

4.The learned counsel appearing for the second respondent drew my attention to the order dated 08.02.2010 made in W.P.No.17073 of 2000 (*Secretary Vs The Deputy Commissioner of Labour & another*). A learned Judge of this Court while dealing with a similar contention, held as follows:

“13.With reference to the first objection with non-application of the Act is concerned, the Minimum Wages Act in the Schedule-, the employment in printing press, "shops" and "commercial establishments" and cinemas were specifically included by G.O.Ms.No.201, Labour and Employment Department, dated 25.03.1974. Though the Act did not define the term shop or commercial establishment, the activities carried on by the petitioner in running a store and fair price shop it is only a shop. Failing which it is a commercial establishment. The term commercial establishment is defined

under Section 2(3) of the Tamil Nadu Shops and Commercial Establishments Act, 1947. The Co-operative Societies are undoubtedly covered by the said definition.”

He also referred to the decision reported in ***CDJ 2011 MHC 6344 (The Management of Kancheepuram Murugan Silk Weavers Co-operative Production and Sales Society Limited Vs The Presiding Officer & another)***.

In the said decision, it was held that a person employed on part time basis in a Co-operative Society is not entitled to invoke the provisions of the Minimum Wages Act, 1948. The contention of the learned counsel is that from this one can infer that a full-time employee is entitled to invoke the provisions of the said Act. I find the stand of the counsel for the respondents to be acceptable. I have to necessarily reject the first contention of the learned counsel appearing for the petitioner and hold that the provisions of the Minimum Wages Act, 1948, are also applicable to Co-operative Societies.

5.The second contention advanced by the learned counsel appearing for the petitioner is having greater force and weight. Section 5 of the Minimum Wages Act, 1948, sets out the procedure for fixing and revising minimum wages. It can be seen therefrom that it is only by virtue of Government Order, minimum wages can be fixed. Section 5 of the Minimum Wages Act, 1948, does not contemplate fixing minimum wages through the circular of the

Commissioner of Labour. The first respondent failed to note that the circular in question cannot be preceded to service against the petitioner.

6.In this view of the matter, the order impugned in this writ petition is set aside. This writ petition is allowed. The petitioner is bound to comply with any Government Order that may be issued by the Government under Section 5 of the Act in future. I place on record my appreciation for the manner in which Mr.K.Yasat Arafath, Legal-Aid-Counsel appearing for the second respondent conducted this case. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

07.03.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

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G.R.SWAMINATHAN, J.

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