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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3693/2024**

EAGLE HUNTER SOLUTIONS LIMITED Petitioner

Through: Mr. Ram Prakash Sharma, Advocate.

versus

NATIONAL INSTITUTE OF PLANT GENOME RESEARCH

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

13.03.2024

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1. The instant petition under Article 226 read with Articles 14 and 16 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“i) Issue the writ of mandamus or any other appropriate writ , order, direction under article 226 of the Constitution of India thereby declaring the respondent/National Institute of Plant Genome Research liable for payment of minimum wages as per the notification of central Government to the petitioner/contractor and the 204 workers who worked for respondent institute for the period 01.10.2018 to 30.06.2023 with direction to pay the difference of wages less paid for that period to the workers directly or through the petitioner/contractor.

ii) Pass such order or to grant any other relief which this Hon’ble Court may deem fit and proper in the circumstances of the case explained above in the interest of justice. ”



2. Learned counsel for the petitioner submitted that the petitioner is an agency which supplies security staff to various organisations. The petitioner entered into an agreement on 1st October 2018 with the respondent/National Institute of Plant Genome Research for deploying security staff with the respondent w.e.f. 1st October 2018 to 30th June 2023.

3. It is submitted that as per the terms of Clause 16 of the above said agreement, the workers deployed with the respondent who were engaged through the petitioner were being paid wages and other benefits in accordance with the Minimum Wages Act, 1948.

4. It is submitted that some of the employees deployed with the respondent filed their complaints before the Regional Labour Commissioner (Central) for payment of difference of minimum wages paid less than that of the notification and in case titled as ***Vipin Kumar vs. NIGPR & Anr.***, filed by one of the workman, the Regional Labour Commissioner (Central), i.e., the concerned Authority has already passed orders directing the respondent management to pay the difference of minimum wages less paid than that of the notification for payment of minimum wages issued by the Central Government.

5. It is contended that the petitioner had made several oral/ verbal/e-mail representations to the respondent seeking payment of difference in the minimum wages as per the notification issued by the Central Government for all the workers employed therein for the period 1st October 2018 to 30th June 2023.

6. It is further contended that with regard to the above, the petitioner sent a legal notice dated 11th December 2023 to the respondent along with the calculation chart showing names and particulars of difference of



minimum wages paid less than as stipulated by the notification of the Central Government however, no reply was made by the respondent.

7. Aggrieved by the fact that there was no reply to the petitioners' legal notice as well as to the representation, the petitioner has filed the instant petition.

8. Heard the learned counsel for the petitioner as well as perused the pleadings on record.

9. It is the case of the petitioner that its employees who are working with the respondent are being paid minimum wages lesser than the amount notified vide the Notification dated 28th September 2018 issued by the Central Government.

10. The dispute which falls for adjudication before this Court is whether this Court can issue a writ of mandamus by directing the respondent to pay the wages to the workers who worked for respondent for the period 1st October 2018 to 30th June 2023 as per the above said notification.

11. This Court is of the *prima facie* view that the instant petition raises questions pertaining to the maintainability of the dispute *qua* the issue of *locus standi* and the petitioner has not exhausted the alternative remedy before filing the instant petition.

12. This Court will adjudicate upon the issue, by firstly deciding upon the *locus standi* of the petitioner in approaching this Court for grant of writ of mandamus under Article 226.

13. Mandamus is one of the prerogative writs issued by the High Court or the Hon'ble Supreme Court in the manner of command to any authority that falls under the definition of "State" as per Article 12 of the Constitution of India for the purpose of fulfilling their constitutional/ statutory/ public duty.



It is used as a last resort in cases where the Court is satisfied that without its intervention there will be a denial of justice to the party invoking such a writ.

14. The quintessential elements for issuing a writ of mandamus are *firstly*, the petitioner has claimed relief by invoking such a writ has a legal right, *secondly*, the authority against whom the writ is sought to be enforced has a legal duty towards such petitioner but has refused relief to petitioner, *thirdly*, such relief is claimed with a *bona fide* intention and *lastly*, the petitioner has no alternative remedy.

15. The Court has to be hyper vigilant while issuing a writ of mandamus since the said writ is an extraordinary remedy which is to be invoked only upon special occasions and in exceptional circumstances. It is invoked to supplement the deficiency in law, if any, and cannot be invoked as an appellate mechanism against the decision of any Court, Tribunal, or Authority which is exercising statutory power. The writ of mandamus is an invincible weapon in cases, where there is a failure of justice or exercise of power in an illegal way or arbitrary manner. Mandamus can be issued in cases where there is a legal right and the authority against which mandamus is sought has a legal duty.

16. With regard to the facts of the instant matter, this Court is of the view that claiming of minimum wages is not a right vested with the petitioner instead it is the workers of the petitioner who have a legal right in claiming the minimum wages as per the notification of the Central Government. Moreover, the respondent does owe a legal duty to the petitioner's workman and not the petitioner for payment of minimum wages as per the notification of the Central Government.



17. The petitioner is the employer of the workman (**men**) who is alleged to be aggrieved by the non- payment of minimum wages. It is pertinent to note that instead of the workmen the petitioner has approached this Court, moreover, the workmen are not even a party to the instant writ petition nor there is any averment made on behalf of the petitioner that they are representing the workmen.

18. This Court is of the considered view that a writ petition has to be filed by a party who is aggrieved by the action/ inaction of another party, and in the instant case, the petitioner does not have any *locus standi* to file the captioned writ petition since there is no violation of the legal rights of the petitioner.

19. Alternatively, if this Court does not take into account the fact that the petitioner lacks the *locus standi* to file the instant petition, this Court further opines that the petitioner has approached this Court without exhausting alternative remedy i.e., approaching the Regional Labour Commissioner, available to the workmen.

20. Hence, the workmen shall first approach the Regional Labour Commissioner who shall investigate whether the workmen are entitled to minimum wages as alleged by the petitioner and accordingly, pass an order in accordance with law.

21. It is further pertinent to note that the petitioner herein is alleging that the workmen are not being paid wages as per the notification of Central Government, and the same is a disputed question of fact. This Court under writ jurisdiction cannot adjudicate upon the same since under Article 226, the Court shall limit itself to the judicial review of law and cannot intervene by way of writ in cases where there is a disputed question of fact.



22. A prerogative writ, like, a mandamus cannot be demanded *ex debito justitiae*, instead it may be issued by the Court's discretion. The law states that the Courts under Article 226 must refrain from issuing a writ of mandamus in cases where there is no such illegality in the functioning of the statutory authorities against which the writ has been preferred.

23. The Court should exercise its power under Article 226 very cautiously and sparingly, and in exceptional circumstances only; in a given case where it is demonstrated that there is something palpably erroneous in the process of recruitment by the statutory authority.

24. In view of the aforesaid discussions of facts and law, this Court does not find any cogent reasons to allow the instant petition.

25. Accordingly, the instant petition is dismissed. Pending applications, if any, also stand dismissed.

CHANDRA DHARI SINGH, J

MARCH 13, 2024

rk/db/ryp

Click here to check corrigendum, if any