



W.P. No.18971 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.01.2025

Pronounced on: 29.04.2025

CORAM:

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.18971 of 2011
and W.M.P. No.1 of 2011

Dalmia Magnesite Corporation,
Salem 636 012
represented by its General Manager,
Mr. S. Veeraraghavan .. Petitioner

vs.

1. The General Secretary,
The Salem District Magnestic Labour Union,
Suramangalam, Salem -5.

2. The Presiding Officer,
Industrial Tribunal,
Chennai. .. Respondents

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for records of the 2nd respondent in I.D. No.10 of 1971 culminating in the Award dated 10.10.2008 and to quash the same.

For Petitioner : Mr. T. Poornam

For Respondents : Mr. V. Stalin for M/s. Row & Reddy,



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[for R1]

R2- Court.

ORDER

This Writ petition has been filed challenging the award passed by the Industrial Tribunal Chennai in I.D. No.10 of 1971 dated 10.10.2008.

2. The short facts necessary to dispose of the Writ petition are as follows:-

The petitioner herein is engaged in mining operations in the name of M/s. Dalmia Magnesite Corporation. The workmen of the petitioner Corporation, who are the members of this Union have raised an Industrial dispute in which they have demanded that all the workers must be paid wages for the rest day i.e, Sundays also, at the usual rates. The Management of Dalmia Magnesite Corporation is owning a big factory at Salem and there are nearly 800 workers employed directly by the Management and they raised an industrial dispute and the Government of India have referred the issue for adjudication, whether the employees of Dalmia Magnesite Corporation, Salem are entitled to payment for rest day and if so, what should be their Sunday wages. According to the workman, the Management factory at Salem is working for six days in a week and Sunday is the day of weekly rest for these workers. The workers are daily rated and their wages under daily rates

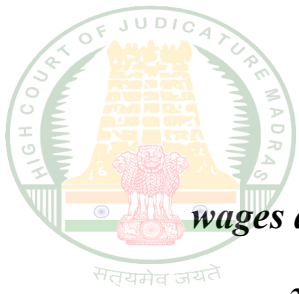


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are not fixed with reference to a month of 26 working days. From the inception of the factory, the workers are only daily rated and they are paid only for six days in a week and their monthly income is not determined on the basis of a month consisting of 26 working days. While so, the wages dispute raised by the workers of the factory was referred for adjudication. Earlier the Industrial Tribunal, Chennai passed an award in I.D. No.39 of 1966 dated 26.09.1968 and the same was challenged through a Writ Petition in W.P. No.476 of 1972 and the same was dismissed. Thereafter, a Writ Appeal in W.A. No.90 of 1976 was filed and the same was allowed on 06.07.1978 and thereafter, once again another Award was passed on 02.11.1979. The Management challenged the same through W.P. No.235 of 1980 and in that Writ petition, on the undertaking, the workers were getting their amounts. Again, the Management preferred a Writ Appeal in W.A. No.183 of 1980 and thereafter, the matter was remanded back by directing to answer the following issues:-

1. Whether the wages paid to the workmen by the Management before and after the award in I.D. No.39 of 1966 include the rest day wages as well as alleged by the Management?

2. If the wages already paid do not indirectly include the rest day wages, whether the workmen are entitled to be paid separately rest day



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wages and if so, what is the rate for the period prior to 24.02.1979?

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***3. For the period subsequent to 24.02.1979 whether the petitioner-
Management is paying wages higher than the wages notified under the
Minimum Wages Act and if so, whether the workmen are entitled to
separate payment of rest day wages in addition to their usual wages?***

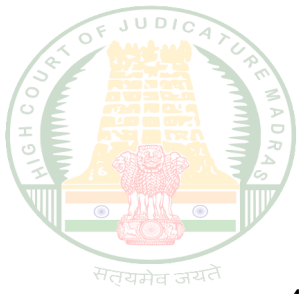
The Tribunal also passed an award through an order dated 10.10.2008 by answering the issues and the same is under challenge by the Management.

3. The learned counsel appearing for the petitioner would submit that the Tribunal failed to take note of the fact that there was no dispute at all of any kind whatsoever relating to payment of wages from 27.09.1968 to 31.03.1980 and therefore, the question of payment of any wages as "rest day wages" over and above and in addition to what was being paid and accepted without any dispute. Moreover, entitlement of the workmen to rest day wages has to be decided only after considering the relevance of the DIR Notification dated 04.12.1976 as directed by the Hon'ble Division Bench of this Court in its order dated 05.08.1980. As per the DIR notification dated 04.12.1976 under the Defence and Internal Security of India, Rules 1971 with effect from 01.04.1976, a new statutory wage structure was introduced. Pursuant to above Notification issued by the Government of India under Rule 119(4) of



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the Defence and Internal Security of India, Rules 1971, the wages under the DIR Notification were prescribed for a period of three years beginning from 01.04.1976. Thereafter, the said period was to end on 31.03.1979 only, before which date, the Minimum wages Notification came into force with effect from 24.02.1979. Prior to this, the Management and its workmen were bound by the said statutory wage structure and settlements have been arrived at between the parties pursuant to and in accordance with the said Notification issued by the Government of India. The Tribunal failed to consider all the issues that were required to be considered by it as directed by this Court in W.A. No.180 of 1980. Further, among the three points on which the 2nd respondent was required to give a specific finding, the 2nd respondent, after finding that the daily wages prior to 24.02.1979 did not include Rest Day Wages, did not consider the second issue of entitlement of the workmen to Rest Day Wages prior to 24.02.1979 and without adducing any reasons merely observed that the workers are entitled to Rest Day Wages prior to 24.02.1979. Moreover, the issues involved in this case have become infructuous in view of the fact that all the workmen concerned are no longer in the service of the petitioner's company and have upon cessation of service, received their dues from the petitioner in full and final settlement of all their claims. Therefore, the Award passed by the Tribunal is liable to be quashed.



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4. The learned counsel appearing for the 1st respondent would submit that the 1st respondent is a registered Trade Union under the Indian Trade Union Act, 1926 and the petitioner Management is engaged in elaborate mining operations and producing Dead burnt Magnesite in the District of Salem. There are more than 800 workers directly involved and the Management factory is working for 6 days in a week and Sunday is the day of weekly rest for the workers. The workers are daily rated and their wages are not fixed with reference to a month of 26 working days. Therefore, they have raised dispute and the same was referred for adjudication by the Industrial Dispute, Madras in I.D. No.39 of 1966 and an Award dated 26.09.1968 was passed and the same was challenged by the Management through a Writ petition in W.P. No.476 of 1972 and the same was dismissed and thereafter, the Management preferred a Writ Appeal in W.A. No.90 of 1976 and the same was allowed and once again an Award was passed on 02.11.1979. Thereafter, the Management filed a Writ petition in W.P. No.235 of 1980 and the same was dismissed. Against the orders passed in the said Writ petition, the Management filed a Writ Appeal No.183 of 1980 and the same was allowed with direction to remand back the case to the Tribunal and the Tribunal also passed an order after elaborate discussion and answered all the



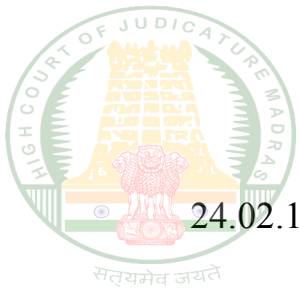
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4.1. So far as issues 1 and 2 are concerned, the Tribunal held that minimum wages paid to the workmen by the Management did not include the Rest Day wages and therefore, the workers are entitled for Rest Day Wages prior to 24.02.1979. Thereafter, minimum wages Act was passed and it has been complied by the respondent, thereby, subsequent to 1979, the question of leave wages does not arise. Therefore, the Tribunal has passed a reasoned order and the present Writ petition is liable to be dismissed.

5. This Court heard both sides and perused all the materials available on record.

6. There is no dispute in respect of the relationship between the parties as 'Workmen' and 'Management'. The workmen raised a dispute in respect of Rest Day Wages and the same was referred to the Tribunal for adjudication and the Tribunal also adjudicated and decided that the workers are entitled to Rest Day Wages prior to 24.02.1979 through the Award dated 27.09.1968. Thereafter, Minimum Wages Act was passed and it had been complied by the Management. Therefore, the workmen are entitled to Rest Day Wages till



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24.02.1979.

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7. It is an admitted fact that earlier, the Tribunal passed an Award in I.D. No.39 of 1966 dated 26.09.1968 and the same was challenged by the Management through a Writ petition in W.P. No.476 of 1972 and the same was dismissed. Thereafter, the Management preferred an Appeal in W.A. No.90 of 1976. The Hon'ble Division Bench of this Court in W.A. No.183 of 1980 remanded back the matter by directing the Tribunal to answer the following issues:-

1. *Whether the wages paid to the workmen by the Management before and after the award in I.D. No.39 of 1966 include the rest day wages as well as alleged by the Management?*

2. *If the wages already paid do not indirectly include the rest day wages, whether the workmen are entitled to be paid separately rest day wages and if so, what is the rate for the period prior to 24.02.1979?*

3. *For the period subsequent to 24.02.1979 whether the petitioner-Management is paying wages higher than the wages notified under the Minimum Wages Act and if so, whether the workmen are entitled to separate payment of rest day wages in addition to their usual wages?*



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8. After remand, the Tribunal answered the issues and held that the workmen are entitled to Rest Day Wages upto 24.02.1979 as noted in Ex.M.62 in I.D. No.39 of 1966 and 71 of 1966 dated 27.09.1968. The Award passed by the Tribunal in I.D. No.39 of 1966 and 71 of 1966 were already set aside by this Court in W.A. No.90 of 1976. While so, the Tribunal ought to have fixed the rate for the Rest Day wages, but not fixed the wages and particularly, the Hon'ble Division Bench of this Court directed the Tribunal to consider the Circular in DIR notification dated 04.12.1976 under the Defence and Internal Security of India, Rules 1971, but the Tribunal has not considered the same. Moreover, after remand of the case by the Hon'ble Division Bench of this Court, no evidence was adduced on the side of the workmen.

9. Moreover, the petition was filed in the year 1966 and according to the Management, already the matter has been settled between the parties and the workmen were paid the entire amount. Most of the workmen were retired from service and their retirement benefits were also settled to them. Most of the employees are no more. Therefore, the petition become infructuous. While so, there is no records to substantiate the contention of the learned counsel appearing for the petitioner in respect of the availability of workmen,



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who worked during the relevant period. Since the Tribunal has not considered the DIR Notification dated 04.12.1976 as directed by the Hon'ble Division Bench of this Court and not answered the 2nd issue by fixing the rate for Rest Day wages and referred the earlier order which was set aside by this Court, it is appropriate to remand the case back once again to the Tribunal.

10. In view of the same, the Writ Petition is allowed and the order passed by the Tribunal in I.D. No.10 of 1971 dated 10.10.2008 is set aside and the Tribunal is hereby directed to consider the DIR Notification dated 04.12.1976 as directed by the Hon'ble Division Bench of this Court in its order dated 05.08.1980 and to answer all the issues raised by the Hon'ble Division Bench of this Court. The parties are at liberty to adduce evidence, if necessary. Further, the Tribunal is directed to dispose of the petition within **3 months** from the date of receipt of a copy of this order.

11. With the above directions, the Writ Petition is allowed. Consequently, the connected miscellaneous petition is closed.

29.04.2025



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Index : Yes/No

Speaking order/non-speaking order

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To

1. The General Secretary,
The Salem District Magneistic Labour Union,
Suramangalam, Salem -5.

2. The Presiding Officer,
Industrial Tribunal,
Chennai.

P. DHANABAL, J.,

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Pre-delivery judgment in
W.P. No.18971 of 2011
and W.M.P. No.1 of 2011

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