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WP No. 32105 of 2014



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-02-2025

CORAM

THE HONOURABLE MR JUSTICE M.DHANDAPANI

WP No. 32105 of 2014

and

M.P.No.1 of 2014

1. The Principal Chief
Conservator of Forests, No.1, Jeenis
Road, Saidapet, Chennai-15.
2. The Regional Conservator of
Forests, Fort, Vellore-4.
3. The Divisional Forest Officer,
Social Forestry Division, Collectorate
Building, Vellore-9.

Petitioner(s)

Vs

1. G.Moorthy,
- 2.The Deputy Commissioner of
Labour-1, Chennai and Authority under
the Minimum Wages Act, Chennai-6.

Respondent(s)



PRAYER

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records in M.W.No.37 of 11, dated 26.8.2013, on the file of the 2nd Respondent herein and quash the same.

For Petitioner(s): Mr.S. Rajesh

For Respondent(s): R-1 - No Appearance
Mr. K. Surendran, AGP For R2

ORDER

The petitioners impugned an order passed by the second respondent herein directing the petitioners to pay to the first respondent herein the difference amount of wages as payable under the Minimum Wages Act, 1948.

2. The issue is no longer res-integra in view of the order passed by the learned Single Judge of this Court vide order dated 08.08.2011 in W.P.No.24601 of 2005 etc. and batch. In the said order the learned Single Judge has rejected the similar contentions raised by the petitioners therein. The said order was taken on appeal.

3. The learned first Bench vide its order dated 17.10.2012 in



W.A.No.2183 of 2012 etc and batch confirmed the order passed by the learned

Single Judge and dismissed the writ appeals. The relevant paragraphs are

extracted hereunder:

“7. It is seen that the primary ground on which the challenge to the fixation of minimum wages was on the ground that the authority under the Act condoned the enormous delay in filing such applications. The learned Single Judge after referring to the earlier decision of this Court rightly held that the objection as regards the delay was not sustainable and has no merits. The learned Single Judge after referring to the decision of the Supreme Court in Chandra Bhavan Boarding and Lodging, Bangalore vs. The State of Mysore and another, 1970 2 LLJ 408, held that the main object of the Act is to prevent sweated labour as well as exploitation of unorganised labour and it is the duty of the State to see that at least minimum wages are paid to the employees irrespective of the capacity of the industry or unit to pay the same. Therefore, the learned Single Judge held that there is no distinction between private employer and the Government employer in the matter of payment of minimum wages.

8. The other contention that the workmen having been paid consolidated wages, cannot claim anything extra was also rightly rejected by the learned Single Judge. In the batch of writ petitions filed challenging the award of the Labour Court which was regarding



the non-employment of social forestry workers, the learned Single Judge after taking note of the findings recorded by the Labour Court in paragraph 15 of the award, in which findings of fact were recorded held that the workmen were terminated from their services and the conditions precedent under Section 25F of the I.D. Act were not followed before sending them out of the service, upheld the award.

9. As regards the contention that the appellants were discharging sovereign function and therefore, were excluded from the purview of the I.D. Act, the learned Single Judge rightly rejected the said contention as the earlier award was implemented by the Government. At this stage, we may refer to certain findings recorded by the learned Single Judge, while dismissing the writ petitions:-

40.If workmen were employed and their services were no longer required by the employer and it was transferred to an another employer, then unless and until their employment is continued on the same terms and conditions by the new employer, there is no obligation for the workmen to go for a new employer. In such circumstance, the old employer will have to retrench such unwilling workers by following the procedure under Section 25F of the I.D. Act and must pay retrenchment compensation. This is the essence of Section 25FF A of the ID Act. In the present circumstances, the petitioners cannot leave the workmen in lurch by stating that they should get employment with Rural Development Department and they were no way responsible about the happenings in the Rural development Department after all the



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Government is the same entity and for the sake of convenience, it is functioning under two different ministries and departments. Therefore, the fact that the workmen's services were deemed to have been terminated by the petitioners department has to be accepted without any contradiction.

*43. Therefore, in the light of these facts, it must be held that the workmen were terminated from their services and the condition precedent under Section 25F of the I.D. Act was not followed before sending them out of services. If the condition under Section 25F was not followed, the legal consequences have been set out by the Supreme Court vide judgment in **Anoop Sharma v. Executive Engineer, Public Health Division No. 1, Panipat (Haryana)** reported in (2010) 5 SCC 497. In paragraphs 16 to 22, it was observed as follows:*

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Sections 25-F(a) and (b) of the Act are mandatory and non-compliance therewith renders the retrenchment of an employee nullity—State of Bombay v. Hospital



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Mazdoor Sabha¹⁴, Bombay Union of Journalists v. State of Bombay¹⁵, SBI v. N. Sundara Money¹⁶, Santosh Gupta v. State Bank of Patiala¹⁷, Mohan Lal v. Bharat Electronics Ltd.¹⁸, L. Robert D'Souza v. Southern Railway¹⁹, Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court²⁰, Gammon India Ltd. v. Niranjana Dass²¹, Gurmail Singh v. State of Punjab²² and Pramod Jha v. State of Bihar²³.

18. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

19. The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of clauses (a) and (b) of Section 25-F must accompany the letter of termination of service by way of retrenchment or is it sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to



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the workman before he is asked to go was considered in National Iron and Steel Co. Ltd. v. State of W.B.²⁴ The facts of that case were that the workman was given notice dated 15-11-1958 for termination of his service with effect from 17-11-1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20-11-1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance with Section 25-F was rejected by this Court by making the following observations: (AIR p. 1210, para 9)

“9. The third point raised by the Additional Solicitor General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman, etc. Learned counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25-F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date 15-11-1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on 20-11-1958 or thereafter during the



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working hours. Manifestly, Section 25-F had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25-F, we need not consider the other points raised by the learned counsel.”

20. *In SBI v. N. Sundara Money¹⁶ the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(b).*

21. *The legal position has been beautifully summed up in Pramod Jha v. State of Bihar²³ in the following words: (SCC pp. 624-25, para 10)*

“10. ... The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker



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along with one month's notice; on the contrary, clause (b)  expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment."

(emphasis in original)

22. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance with clauses (a) and (b) of Section 25-F of the Act.

45.6. Pursuant to the said notification, the Government had also fixed minimum wages for various employments under the Forest Department by including for the posts of Plot Watchers and Social Forestry Workers from time to time. It had also provided dearness allowance linked to the consumer price index on variable basis. Further it is only by G.O.(2D)No.82, Labour and Employment Department, dated 27.09.2002 by exercise of power under Section 26(2), the State Government had excluded the social forestry workers of the Forest Department employed in the employment of forestry from the provisions of the Minimum Wages Act. The reason for exclusion was given that the social forestry workers were likely to be absorbed in regular posts of the Forest Watcher in the Forest Department on the basis of seniority. By the notification, only the social forestry workers alone were excluded, whereas the



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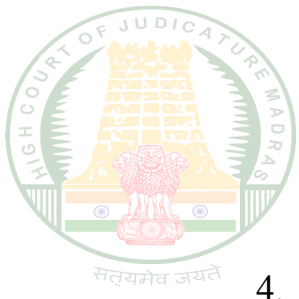


other employment in the Forest were retained. It is well known fact that the minimum wage can be notified only for scheduled employment and the beneficiary of such notified minimum wages must be an employee within the meaning of Section 2(i) of the Minimum Wages Act. The said definition of employee under Section 2(i) of the Minimum Wages Act had only excluded the Armed Forces of the Union. The said definition of employee is more or less in parameteria with the main part of the definition of the term "workmen" defined under Section 2(s) of the I.D. Act.

*47. The next substantive contention raised by the department was that no relief can be given to the workmen in view of an inordinate delay in raising the disputes and in such circumstances, no backwages can be granted. Even this question is no longer res integra. The Supreme Court in **GM, Haryana Roadways v. Pawan Kumar** reported in (2005) 12 SCC 459 in paragraph 6 had held as follows:*

"6. It will appear from the facts stated above that though the respondent was prevented from working by the appellant Roadways after December 1991 he did not raise a dispute till 14-10-1995. It is settled law that the mere factum of delay in raising a dispute by itself does not bring the dispute to an end. The delay in raising the dispute, however, may be taken into account in the matter of grant of relief."

10. In view of the cogent reasons recorded by the learned Single Judge, confirming the order passed by the authority under the Act as well as the award of the Labour Court, we find no grounds to interfere with the concurrent findings so recorded. "



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4. Notwithstanding defeat both before the Writ Court and Appellate Court, the petitioners herein approached the Hon'ble Supreme Court via Special Leave Petition. The said Special Leave Petition were also dismissed vide order dated 30.06.2014 Therefore, the dictum laid down by the learned Single Judge has become final.

5. Following the same, the present writ petition deserves to be dismissed and it is accordingly, dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

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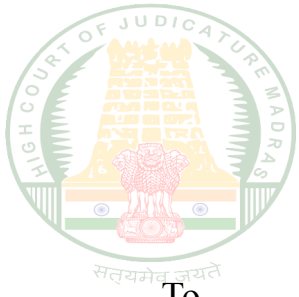
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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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To
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The Deputy Commissioner of
Labour-1, Chennai and Authority under
the Minimum Wages Act, Chennai-6.



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M.DHANDAPANI J.

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