

(1999) 04 AHC CK 0061
In the Allahabad High Court
Case No : Writ Petition No. 5747 of 1987

Canossa Hospital Society and Another	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 12-04-1999

Acts Referred:

Minimum Wages Act, 1948 — Section 2, 2(1), 27, 3, 5

Citation : (2000) 1 LLJ 135

Hon'ble Judges : R.H. Zaidi, J; Kamal Kishore, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.H. Zaidi and Kamal Kishore, JJ.—Heard learned counsel for the petitioner, standing counsel and also perused the record.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioners pray for issuance of a writ, order or direction in the nature of certiorari for quashing the impugned notification No. 4190/XXXVI-3-21 (M.W.)-83 dated Lucknow, December 1, 1984 issued by the State of U.P. Labour Department.

3. In exercise of the powers under Minimum Wages Act, 1948 read with Section 21 of the General Clauses Act, 1897 and after considering objections and suggestions received in respect of proposals published with Government Notification No. 4491/XXXVI-3/21 (M.W.)-83 dated January 19, 1984, the Governor fixed the minimum rates of wages for employees employed in Private Coaching Classes, Private Schools including Nursery Schools and Private Technical Institutions in Uttar Pradesh with effect from the date of publication of Notification in the Gazette i.e. on December 1, 1984. The minimum rates of wages payable to adult employees were as follows:

Sl. No

Category of Workers

Minimum rates of wages

1

2

3

1.

Fourth class Peon, cleaner and other unskilled workers

299.00

2.

Rickshaw Chalak/Daftary

325.00

3.

Bus/Truck/Driver

364.00

4.

Clerk/Typist

425.00

5.

Head clerk,

490.00

(B)

1.

Untrained teacher (High School/Inter)

325.00

2.

Trained Teacher and Junior Basic Teacher (High School and Inter)

385.00

3.

Untrained Teacher (B.A./B.Com/B.Sc.)

425.00

4.

Trained Teacher (B.A./B.Com./B.Sc./B.Ed./L.T. and Technical Instructor)

475.00

5.

Untrained teacher (M.A./M.Com/M.Sc.)

450.00

6.

Trained Teacher (M.A./M.Com/M.Sc./B.Ed./L.T.)

575.00

4. The aforesaid rates are applicable with certain terms and conditions mentioned in the said Notification. The petitioners, Canossa Hospital Society, St. Francis Convent, Civil Lines, Pratapgarh, and Manager, St. Francis Convent School, Civil Lines, Near Bus Stand, Pratapgarh, have challenged the abovenoted Notification on the ground that no notice/proposal as contemplated u/s 5 of the Minimum Wages Act was ever issued and the petitioners were not afforded an opportunity to file their objections to the proposed Notification. The other ground of attack is that normal working hours as prescribed under the Minimum Wages Act are 7 hours per day; while in institutions in question employees work only 4 1/2 hours per day, therefore provisions of the Act will have no application in the present case. It has also been urged that employees/teachers of the petitioners' Institution did not come within the definition of workman.

5. We have considered the submissions made by learned counsel for the petitioners and also perused the record.

6. So far as question of issuance of notice is concerned, it is a question of fact. Section 5 of the Act simply provides that the proposal of Notification shall be published in the official Gazette for general notice, so that the persons likely to be affected by the proposed notification, may file their objections. In the impugned notification itself it has been stated that it was on January 19, 1984 that a proposal was published vide Government Notification No. 4491/XXXVI-3-21 (M.W.)-83. Correctness of said statement made in the impugned notification has not been challenged by the petitioner. Facts stated in paragraph 20 of the writ petition have been verified on the advice of the counsel, therefore no reliance can be placed upon the same. In view of the said facts, submission made by learned counsel for the petitioner to the contrary cannot be accepted.

7. So far as working hours are concerned, nothing has been brought on record to show that the employees in the Institution in question work only for 4 1/2 hours. Contents of paragraph No. 10 of writ petition have been verified on the basis of record and no record has been placed before this Court to substantiate the allegations made in the writ petition. Therefore, we are not inclined to accept the

statement of facts made in the writ petition that working hours in the institutions in question are only 41/2 hours.

8. So far as the question, as to whether employees of the Institutions in question come within the definition of workmen or not, is concerned, in the Act or in the impugned notification there is no reference of the term "workmen". The Minimum Wages Act provides for fixing minimum rates of wages of the employees employed in "schedule employment" specified in Part-1 or Part-2 of the Schedule and in an employment added to either part by notification u/s 27 of the Act. Clause(g) of Section 2 defines the term "schedule employment" as under:

(g) Schedule Employment means an employment specified in the Schedule or any process or branch of work forming part of such employment.

9. Section 3 of the Act reads as under (only relevant quoted):-

3. Fixing of minimum rates of wages:

(1) Appropriate Government shall, in the manner hereinafter provided:

(a) fix minimum rates of wages payable to the employees employed in an employment specified in Part-1 or Part-2 of the Schedule, and in an employment added to either Part by notification u/s 27.

10. In exercise of the power u/s 27 of the Act, appropriate Government may by notification in the official Gazette add to either part of the schedule any employment in respect of which it is of the opinion that the minimum rates of wages should be fixed under the said Act. The State of U.P. in exercise of the said power vide U.P. Government Gazette dated August 18, 1983 added the following entries in Part-1 of the Schedule:

"58-employment in private coaching classes, private schools including Nursery School and private technical Institutions."

"63-employment in private hospital, clinic and medical shop by whatever name called."

11. Thus, the provisions of the Act are fully applicable to the employees of the petitioner's Institution. The term "employee" has been defined in Sub-clause (h) of Clause (1) of Section 2 of the Act as under:

(i) "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, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purpose of the trade or business of that other person whether the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and

management of that other person; and also includes an employee declared to be an employee by the appropriate Government but does not include any member of the Armed Forces of the (Union).

12. The employees mentioned in the impugned notification squarely come within the definition of term "employee" noted above. We do not find any illegality in the impugned notification. Therefore, the submissions made by learned counsel for the petitioners to the contrary, cannot be accepted.

13. In view of the aforesaid discussions, no case for interference under Article 226 of the Constitution of India, is made out.

The writ petition fails and is accordingly dismissed, but without any order as to costs.