
(2009) 04 SHI CK 0052
In the High Court Of Himachal Pradesh

Smt. Kala Devi

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2009) 123 FLR 1028 : (2010) 1 LLJ 434 : (2009) 2 ShimLC 172

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—The petitioner was engaged as "School Mother" with the respondent. It is her grievance that even though she was employed on temporary basis she was entitled to the wages payable to class-IV employees of the State.

2. That the petitioner was engaged as "School Mother" is not in dispute. Her selection is in compliance of all formalities, in accordance with the rules has also not been disputed by the respondents in the return. The respondents in their reply have also admitted that initially she was appointed at a fixed payment of Rs. 30/- per month which was later enhanced to Rs. 75/- and Rs. 110/- in the year 1983.

AIR 3. Undisputedly the State of Himachal Pradesh has issued various circulars/ notifications under the Minimum Wages Act fixing the wages payable to the workers employed by the State. The petitioner is admitted to have worked on part time basis for atleast 3 to 4 hours in a day. Even though the petitioner was working for the same time/duration as the regularly appointed employees, but however she was not given the same scale of salary for which she was working. Keeping in view the various circulars issued by the State her wages ought to have been enhanced with the passage of time. Regretfully same was not done, perhaps for the reason that in the State of Himachal Pradesh there were only 66 posts of "School Mothers" which even according to the respondent was a dying cadre on fixed pay. The said post was created in the schools on fixed pay.

4. The petitioner could not have sustained herself on meagre payment of Rs. 110/- per month. It is the mandate of Article 21 of the Constitution of India, that no person is to be deprived of his life or personal liberty except in accordance with the procedure established by law. Right to live is something more as mere survival or animal existence. It definitely includes the right to live with human dignity. The employee is definitely entitled to minimum wages or wages which are fair, just and reasonable. It is not the petitioner's fundamental right to have periodical revision of wages but definitely it is petitioner's legal right to have such wages which are considered to be minimum wage as fixed by the respondents in terms of its various circulars. Rs. 110/- per month is too inadequate for a person to live life with human dignity. The petitioner was assigned with the duty of taking care of young children. She played a major role in the overall development, mental and physical of the future generation who ultimately have to take over the reigns of the nation. I am conscious of the fact that fixation of pay scale/salary depends upon various factors and attending circumstances and it is solely the prerogative of the government but however the present case is a rare exception in which judicial interference is warranted due to lackadaisical approach adopted by the respondent/State. The State may not have adopted unfair labour practice but definitely has not shown concern for enhancing the wages so as to make a person sustain himself. The apathy on the part of the State is appalling. Compassion and empathy ought to have been shown in this regard.

5. The Constitutional Bench of the Apex Court in *Bhikusa Yamasa Kahatriya Vs. Sangamner Akola Taluka Bidi Kamgar Union*, has held as under:

The object of the Act is to prevent exploitation of the workers, and for that purpose it aims at fixation of minimum wages which the employers must pay. The Legislature undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganized labour or absence of machinery for regulation of wages, the wages paid to workers were, in the light of the general level of wages, and subsistence level, inadequate.

Further, power to fix minimum rates of wages does not by itself invest the appropriate Government with authority to make unlawful discrimination between employers in different industries.

Further in *Madhya Pradesh Mineral Industry Association Vs. The Regional Labour Commissioner Jabalpur and Others*, has held as under:

It is true that the provisions of the Minimum Wages Act are intended to achieve the object of doing social justice to workmen employed in the scheduled employments by prescribing minimum rates of wages for them, and so, in construing the said provisions, the Court should adopt what is sometimes described as a beneficent rule of construction.

6. As to whether the Civil Court would have jurisdiction to entertain the suit challenging the order passed under the Minimum Wages Act, 1948 or not stands

settled by the Apex Court in *The Pabbojan Tea Co. Ltd., etc. Vs. The Deputy Commissioner, Lakhimpur, etc.*, wherein it was held that the Civil Court did have jurisdiction to entertain the suit.

7. In *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, and *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, the Apex Court has held that casual labourers/workers temporarily employed by the contractors in connection with construction work were entitled for benefit of relevant Labour and Industrial laws, including Minimum Wages Act. While dealing with the issue of maintainability of the petition under Article 32 of the Constitution of India with regard to enforceability of relevant Labour/Industrial Laws the Court held as under:

The essential requirement for maintaining the petition under Article 32 for breach of any fundamental right may be provided by the breach of the statutory laws. Non-enforcement of Equal Remuneration Act amounts to denial of equality under Article 14. So also the non-observance of the Contract Labour (Regulation of Employment and Conditions of Service) Act, 1979 amounts to violation of Article 21 inasmuch as these Acts are clearly intended to ensure basic human dignity to the workmen and the State cannot deprive anyone of this precious and invaluable right because no procedure by which such deprivation may be effected can ever be regarded as reasonable, fair and just. The non-payment of minimum wage is a breach of the fundamental right under Article 23.

8. The Apex Court in *Mukesh Advani Vs. State of M.P.*, directed the release of benefits to the bonded labour in Raisen Mine in Madhya Pradesh as envisaged in Minimum Wages Act.

9. Further in *Special Works and Research center through Sanjit Roy and Others Vs. State of Rajasthan*, the provisions of the Minimum Wages Act were also made applicable to workers engaged in drought relief operation.

10. Where the temporary daily waged employees were claiming parity and equal pay scale with regularly employed employees, the Apex Court in *Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others*, held that even though the petitioners were not entitled for the parity in pay scale with regularly appointed employees, but, however, a direction was issued that the temporary daily waged employees be given minimum wages fixed under the Minimum Wages Act, 1948 as would be prevalent in the locality.

11. Even later on in *State of Orissa and Others Vs. Balaram Sahu and Others*, etc. etc., the Apex Court directed payment under the Minimum Wages Act to daily waged employees who were seeking parity with regularly appointed employees.

12. The Apex Court in *Airfreight Ltd. Vs. State of Karnataka and Others*, has held that what the Act purports to achieve is to prevent exploitation of labour and for that purpose authorizes the appropriate Government to take steps to prescribe

minimum rates of wages in the scheduled industries. So, in prescribing the minimum wage rates the capacity of the employer need not be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour. Since the capacity of the employer to pay is treated as irrelevant it is but right that no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage, but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker. The Act contemplates that minimum wage rates should be fixed in the scheduled industries with the dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker.

13. In *Chandra Bhawan Boarding and Lodging Bangalore v. The State of Mysore and Anr.* (1996) 3 SCC 84, the Apex Court upheld the legislative power of the Government to fix minimum wages.

14. In *Sanjit Roy Vs. State of Rajasthan*, the Apex Court held as under:

Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Article 23 and ask the Court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated.

This Court has not gone into the question of applicability of the Minimum Wages Act but has only applied the principles and the benefits under the Act.

15. Under these circumstances it is directed that the respondents shall pay to the petitioner wages in proportion to the hours of her service on rates fixed under the notification/circulars issued by the Government under the Minimum Wages Act, for such period she rendered her services with the respondent/State. The petitioner has retired. The arrears shall be disbursed within a period of three months from today, failing which, thereafter she shall be entitled to interest at the rate of 9%.

She shall also be entitled to costs quantified Rs. 11,000/- (Rupees eleven thousand only).

Petition is disposed of.