(1955) 09 AP CK 0011

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 235 of 1952

State of Madras (Andhra) APPELLANT

Vs

P.V. Ramachandra Rao and Others RESPONDENT

Date of Decision : 21-09-1955

Acts Referred:
Minimum Wages Act, 1948 — Section 22, 3, 4, 4(1)

Citation : AIR 1957 AP 565 : (1956) ALT 558

Hon'ble Judges : Viswanatha Sastri, J;Bhimasankaram, J

Bench : Division Bench

Advocate : M. Seshachalapathi, Govt. Pleader, for the Appellant; K. Ramachandra Rao, for the Respondent

Final Decision : Dismissed

Judgement

Viswanatha Sastri, J.—This is an appeal against the judgment of Subba Rao, J., (as he then was) quashing a notification of the State of Madras, published as Notification No. 117, G.O.M. No. 5257 (Development Department) in Part I of the Fort St. George Gazette dated 8th January, 1951. The Appellant before us is the State of Madras (now the States of Andhra) represented by the Commissioner of Labour. The contesting Respondents are either the owners or contractors of Beedi factories at Kalahasti, Chitoor District.

2. The Minimum Wages Act (Act XI of 1948) hereinafter referred to as ''the Act'' was passed by the Central Legislature in order to fix the minimum rates of wages for certain employments. It is unnecessary to reproduce the several provisions of the Act which have been extracted in the judgment of the learned Judge. Suffice it to say that Act empowers the Government to issue a notification fixing the minimum rate of wages in respect of any of the employments specified in the schedule to the Act after considering the advice of committees appointed for the purpose. The minimum rate of wages fixed by the Government under the Act consists of two component parts, (a) the basic rate of wages and (b) the costs of living allowance. The costs of living allowance depends upon and varies with the

costs of living index notified by an authority designated as "the competent authority" by the Act "in respect of the scheduled employments." u/s 4 of the Act, the Government has to fix the minimum rate of wages consisting of the basic rate and special allowance at a rate to be adjusted at such intervals and in such manner as the Government may direct, to accord as nearly as practicable with the variation in the costs of living index number applicable to the particular employees or workmen. By Notification No. 117 dated 8th January 1951, the Government fixed the minimum wages of workers in Beedi factories; the notification was to come into force on 1st March, 1951. Under the said notification, the minimum wages fixed, for employees of Beedi factories consisted of (a) a basic wage of Rs. 1-2-0 per 1.000 beedies rolled and (b) a minimum costs of living allowance in addition to the basic rate of wages at rates depending upon and varying with the costs of living index. The validity of this notification hap, been assailed in this appeal.

3. The Government issued a notification No, 1186 dated 21st December 1948 authorizing the Economic Adviser to fix the cost of living indices for workers in respect of the employments specified in the schedule annexed to the Act. The Economic Adviser was publishing every month the cost of living indices numbers for low paid employees at the different muffasil urban centers lithe State of Madras. On 4th December, 1951, he issued a notification under the Act declaring the cost of living index numbers applicable to employees engaged in the employments specified in the Act in different muffasil centers for the month of October, 1951. On 24th December, 1951, the "Economic Adviser issued a statistical supplement published in the Port St. George Gazette declaring that the costs of living index numbers for low paid employees at different muffasil urban centers in the Madras State for the months of March, 1051 to November, 1951 (both inclusive) published in the Fort St. George Gazette, shall be deemed to have been ascertained and declared by him under the Act and shall be applicable to the employees in the employments referred to in the schedule to the Act. It may be inferred from this notification dated 24th December, 1951, that there was no prior notification declaring the cost of living index numbers for the months of March, 1951 to October, 1951, in conformity with the provisions of the Act. It was apparently to fill up the omission that the aforesaid notification dated 24th December, 1951, was issued giving it retrospective operation. On the strength of this notification, the workers claimed enhanced wages and this claim were resisted by the owners or contractors of beedi factories.

4. Two points were urged before us and before the learned Judge: (1) The notification fixing the cost of living allowance without prescribing the manner of adjustment is not in conformity with the provisions of Section 4 (1) of the Act and has therefore no legal effect whatever. (2) The notification of the Economic Adviser to the Government dated 24th December, 1951, fixing the costs of living allowance depending upon the cost of living index number could not be enforced during the period from 1st March to 31st August, 1951, because the said index was not fixed by "competent authority" under the Act and also because the

notification could not be made to operate with retrospective effect. The learned Judge upheld both these objections of the owners and contractors of bead factories to the validity of the notification.

5. Section 4 (1) of the Act, in so far as it is relevant runs as follows:

Section 4 (1) Any minimum rates of wages fixed or revised by the appropriate Government in respect of scheduled employments u/s 3 may consist of-

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the costs of living index number applicable to such workers (hereinafter referred to as the ''cost of living allowance'').

6. The notification of the Government No. 117 dated 8th January, 1951, does not specify in what manner and at what interval the special allowance contemplated as payable by the notification should be adjusted. Merely fixing a rate vary-tag with the living index number without at the same time specifying the manner of adjustment or the intervals at which the adjustment has to be made is not a sufficient compliance with the terms of Section 4 (1) of the Act. If the index numbers for several months are fixed retrospectively without being published month by month, it is incumbent upon the Government to specify in what manner the adjustments necessitated by the belated fixing of the index numbers should be made and at what intervals of time such adjustments should be made. The notification whose validity Is impugned, does not state which month''s living index should be taken as the basis for fixing the allowance in case the living index is fixed for a number of months retrospectively. The notification does not state how the additional payments necessitated by the fixing of the living index should be made, whether they should be made in a lump sum or in installments. The notification does not also specify the time within which the additional payments should be made. These are serious defects and omissions in the notification when it is remembered that u/s 22 of the Act any employer who pays to any employee less than the minimum rates of wages fixed for the employee''s class of work, or less than the amount due to him under the provisions of the Act, is punishable with imprisonment or fine or with both. For the reasons, we are of opinion that the notification in question is vitiated by an error of law apparent on the face of the record.

7. In this view, we do not consider it necessary to decide whether the living index for a month cannot be fixed retrospectively in a later month.

8. The result is that this Letters Patent Appeal is dismissed with costs, Advocate''s fee Rs. 100.

