A PALI DEVI AND ORS.

v.

CHAIRMAN MANAGING COMMITTEE AND ANR.

FEBRUARY 15, 1996

B [M.M. PUNCHHI AND K.S. PARIPOORNAN, JJ.]

Minimum Wages Act, 1948 :

Ss.2(i), 20(2), 30—Employees of Army School—Grievance before the C *authority that the School had not paid them the minimum wages fixed by the State Government from time to time—Authority allowing the application—High Court setting aside that order on the ground that past employees are not included in the definition 'employee'—On appeal, held, these two provisions read with the Rules and Form VI lean in favour of the view that both past and present employees are entitled to move in the matter.*

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Municipal Committee, Raikot **v.** *Sham Lal Kaura & Ors.* **Vol. 28 (1965-66);** *Mahiya* **v.** *State of Haryana & Ors.*, **(1982) 1 SLR 26 and** *Wakefield Estate* **v.** *P.L. Perumal,* **(1958) 16 FJR, disapproved.**

E *Murugan Transports* **v.** *P Rathakrinshnan & Ors.*, **(1960) 19 FJR 355;** *Chacko* **v.** *Varkey and Ors.*, **(1961) 21 FJR 493;** *Labour Enforcement Officer (Central)* **v.** *Presiding Officer, Labour Court and Authority under the Minimum Wages Act, Patna and Ors.*, **(1976) ILR—Pat. Series, 318 and** *Athni Municipality* **v.** *Shetteppa Laxman Pattan and Ors.*, **(1965) Vol. 2 LLJ 307, approved.**

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3841-43 of 1996.

From the Judgment and Order dated 15.11.94 of the Punjab & Haryana High Court in C.W.P. Nos. 5691, 92/94 and 5877 of 1994.

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Aman Hingorani for M/s. Hingorani & Associates for the Appellants.

Gurdeep Singh and Prem Malhotra, for the Respondents.

H The following Order of the Court was delivered :

The High Court of Punjab and Haryana allowed the writ petition of the respondent Managing Committee of the Army School, Jalandhar, upsetting the orders of the Authority under the Minimum Wages Act, 1948, on the premise that the appellants seeking relief were its ex-employees and not existing ones, and hence dis-entitled to move a petition under Section 20(2) of the Act for appropriate relief.

The employees voiced grievance before the Authority that the Army School had not paid them the minimum wages fixed by the State Government from time to time, as per details given in the application, and therefore they are entitled to reliefs enumerated under Section 20(2) of the above said Act. The said provision reads as under :

> 20(2) Where an employee has any claim of the nature referred to in sub-section (1), the employee himself, or any legal practitioner trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub- section (1), may apply to such Authority for a direction under sub-section (3) :
>
> Provided that every such application shall be presented within six months from the date on which the minimum wages (or other amount) became payable :
>
> Provided further that any application may be admitted after the said period of six months when the applicant satisfied the Authority that he had sufficient cause for not making the application within such period.

The word 'employee' as defined in Section 2(i) of the Act is as follows :

> In this Act unless there is anything repugnant in the subject or content :
>
> "2(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 out-worker 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 processes for sale for the purposes of the

A trade or business of that other person where 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)."

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The High Court relying on an earlier Division Bench decision of the Punjab High Court in *Municipal Committee, Raikot* v. *Sham Lal Kaura & Ors.*, [Volume 28 (1965-66). Indian factories Journal 472] took the view that the word 'employee', defined in Section 2(1) of the Act did not include an C ex- employee. It was held in the said case that a person who is not in the actual employment of the employer at the time of making an application under section 20(2) of the Act, was not entitled to seek relief. Another Single Bench decision of the Punjab and Haryana High Court in *Mahiya* v. *State of Haryana & Ors.*, (1982) 1 Service Law Reporter 26) in line with the decision of *M.C. Raikot's* case was taken in aid, to conclude that in the D presence of these binding precedents the writ petition merited acceptance and on that basis the orders of the Authority was set aside. This has given rise to these special leave petitions.

We grant special leave and dispose of the appeal simultaneously.

E Section 30 of the Act confer on the appropriate government power to make rules. The Minimum Wages (Central) Rules, 1950 framed by the Central Government prescribe Forms wherein particulars to be mentioned in the application for seeking relief are provided. Form VI for the purpose of Section 20(2), so far relevant provides :

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"The applicant above-named states as follows :

(1) The applicant was/has been employed from ..... to ..... as .....(Category) in .....(establishment) of Shri/Messrs..... engaged in ..... (nature of work) which is G a scheduled employment within the meaning of Section 2(g) of the Minimum Wages Act.

(2) The opponent(s) is/are the employer(s) within the meaning of section 2(a) of Minimum Wages Act.

H (3) (a) The applicant has been paid wages at less than the minimum

rate of wages fixed for his category of employment under the Act by Rs..... per day for the period from ..... to .....; A

(b) The applicant has not been paid wages at Rs..... per day for weekly days of rest from ..... to .....;

(c) The applicant has not been paid wages at the overtime rate for the period from ..... to .....;" B

It is plain that paragraph one of the Form equates the past and the present as an alternative. It obviously establishes the right of an ex-employee to move a petition under Section 20(2) of the Act. This Form was introduced in the Rules by Notification No. GSR 1301 dated 28.10.1960. The statutory language employed in the Form is a good hint to discern the true scope of Section 20(2) to determine whether a past employee can invoke the provisions of the Act or not. C

In *Wakefield Estate* v. *P.L. Perumal*, [1958] 16 FJR 1 a learned Single Judge of the Madras High Court took the view that since Section 20 of the Act speaks only of employees and does not speak of past employees and since the word 'employee' is defined as a person who is employed, it must be held that the summary remedy provided by Section 20 is not available to past employees. This was the literal construction of Section 20(2) of the Act. Another learned Single Judge of the same High Court in Murugan Transports v. *P. Rathakrishnan & Ors.*, (1960) 19 FJR 355 differed from the earlier view and held that in order to give full effect to the intendment of the Act, it would be necessary to bring within its fold, not merely the present, but also the past employee,who at one time being employee had earned the minimum wages. The latter view of the Madras High Court in *Murugan Transport's* case was followed by the Kerala High Court in *Chacko* v. *Varkey and Others*, (1961) 21 FJR 493 holding that even an ex employee or employees would be competent to file an application claiming relief under section 20 of the Act. D E F

In *Raikot'* case, the Punjab High Court however preferred the earlier view of the Madras High Court in *Wakefield' Estate's* case opting for the literal construction. Had the existence of the Rules and Form VI been brought to the notice of the Division Bench, perhaps the interpretation would have been different. *M.C. Raikot's* case arose after retrenchment of an employee with effect from April 7, 1961 and on his filing an application G H

A under Section 20(2) of the Act, when the Rules and Form VI had become operative with effect from 28.10.1960. The language of the form, covering the cases of past and existing employees, was in accord not only with the latter view of the Madras High Court and the Kerala High Court but also with the view of the Patna High Court in *Labour Enforcement Officer (Central)* v. *Presiding Officer, Labour Court and Authority under the Minimum wages Act, Patna and Others*, (1976) ILR - Patna Series, 318, and the High Court of Mysore at Bangalore in *Athni Municipality* v. *Shetteppa Laxman Pattan and Others*, (1965) Volume 2 LLJ 307. Thus on account of the preponderance of authority, Sections 20(2) and 2(i) had to be read alongwith the Rules and Form VI to lean in favour of the view that both C past and present employees were entitled to move in the matter. Such would be a purposive approach, which would carry out the necessary intendment of the Statute, for which the rules and the Form lend a hand to carry out the objectives of the Act. The language employed therein, even though executive voiced, is more often than not, demonstrative of the D legislative purpose. So viewed, the intendment of the statute is furthered if in ex-employee too is held entitled to seek relief under Section 20(2) of the Act.

Thus on the afore-analysis, we allow these appeals, set aside the impugned order of the High Court and remit the matters back to it for E decision on other points, which allegedly arose in the matter, as asserted by learned counsel for the respondent Army school. We have otherwise no doubt that other points did arise in these matters because the writ petitions were virtually First Appeals in disguise, since the orders of the Authority under the Minimum Wages Act were neither appealable nor revisable in any other fora. The High Court should now dispose of these remitted F matters most expeditiously. Any interim orders which prevailed in the High Court during the pendency of the writ petitions would automatically stand revived.

Ordered accordingly. There shall be no order as to costs.

G G.N. Appeals allowed.