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Case Comment on Ajay Bansal vs State

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ABSTRACT

Ajay Bansal vs State is based on the concept of minimum wages and scheduled employment. This case also determines the relationship between the Minimum Wages Act and Delhi Shops and Establishment Act in relation to minimum wages. The main issue which was revolved in this case is whether the petrol pump comes under the aegis of scheduled employment and whether the meaning of “wages” is the same under the Minimum Wages Act and Delhi Shop and Establishment Act. The final judgment came in support of the employees, and it was held that minimum wages should be paid to employees, and the petrol pump comes under the ambit of scheduled employment.

I. INTRODUCTION

BENCH: Justice A Sikri

This case is based on the concept of minimum wages and scheduled employment. This case also determines the relationship between the Minimum Wages Act and Delhi Shops and Establishment Act in relation to minimum wages. The main issue which was revolved in this case is whether the petrol pump comes under the aegis of scheduled employment and whether the meaning of “wages” is the same under the Minimum Wages Act and Delhi Shop and Establishment Act.

II. FACTS

The minimum wage inspector (Assistant Labour Commissioner) filed a complaint under section 22 of the Minimum Wages Act alleging that the petitioner is not paying the minimum wage to his employees and thereby violating the provision of the above-mentioned act. The complainant, while inspecting the petrol pump, found that 10 workers who were employed by the petitioner failed to show the document which provides that he is giving the minimum wages to the workers. This entire case is since establishment; namely, the petrol pumps are not covered by the provision of the act, and therefore, the provisions of the said act are not applicable to a petrol pump. The petrol pump is not covered under the term scheduled employment, and hence the employee cannot claim minimum wages under this act.

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III. ISSUE

1. Whether the scheduled employment under section 2(g) of the Minimum Wages Act is applicable to the petrol pump?
2. Whether the Delhi Shop and Establishment Act cover all scheduled employment?

IV. LAW

1. Section 22 of the Minimum Wages³ Act pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act;
2. Section 200 Crpc⁴: A Magistrate taking cognizance of an offence on a complaint shall examine upon oath the complainant and the witnesses present if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and by the Magistrate;
3. Section 203 Crpc⁵: If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.
4. Section 204 Crpc⁶ – Issue of Process
5. Section 482 Crpc⁷-Saving of the inherent power of the high court
6. Section 2(g) of the Minimum Wages Act⁸-scheduled employment" means an employment specified in SCHEDULE, or any process or branch of work forming part of such employment;
7. Section 27 of the Minimum Wages Act⁹-The appropriate Government, after giving by notification in the Official Gazette not less than three months' notice of its intention so to do, may, by like notification, add to either Part of the Schedule any employment in respect of which

³ Minimum Wages Act, 1948

⁴ Code Of Criminal Procedure, 1973

⁵ Code Of Criminal Procedure, 1973

⁶ Code Of Criminal Procedure, 1973

⁷ Code Of Criminal Procedure, 1973

⁸ Minimum Wages Act, 1948

⁹ Minimum Wages Act, 1948

it is of the opinion that minimum rates of wages should be fixed under this Act. Thereupon the Schedule shall, in its application to the State, be deemed to be amended accordingly.

8. Section 2(h) of the Minimum Wages Act,¹⁰ wages means all remuneration, capable of being expressed in terms of money, which would if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment⁹ [and includes house rent allowance],

9. Section 2(30) of Delhi shop and Establishment Act (¹¹30) "wages" means wages as defined in section 2 of the Minimum Wages Act, 1948 (11 of 1948);

V. ANALYSIS

The court refer to the notification dated 15th Feb 1984, which elucidates the revised Minimum Wages Act. The notification clearly states that in respect of schedule Employment, all the shops and Establishments are covered by the Delhi Shop and Establishment Act. Thus, all those establishments which are covered under this act are to pay minimum wages; the court also took the reference of Delhi council for Child welfare vs Union of India, which is related to the payment of the Minimum Wages of DCCW. The objection of welfare was also related to scheduled employment, and the agreement was akin to the case. Therefore, the court dismissed the petition of the petitioner and ordered him to pay the wages to its employees on the basis that section 2(30) of the Delhi Shop and Establishment Act and 2(h) of the Minimum Wages Act are identical. The petition is devoid of any merit and hence was rejected by the court. The court also took the reference of the case Madhya Pradesh mineral industry association vs the regional labour commissioner, Jabalpur, where it was held that minimum wages should also be paid to those employees who have limited liability and in stone crushing and stone breaking operations are also covered in this act. Item 12 of the scheduled employment act also finds semi-skilled workers find mentioned in the aforesaid schedule. Along with automobile service stations, depots, and petrol pumps for the retail sale of petrol is covered in schedule 1 under the shops and establishment Act and in terms of the definition of "wages" under the shops and establishment act and therefore, petrol pump would be covered by the definition of wages under Minimum Wages Act.

VI. CONCLUSION

In conclusive parlance, the court dismissed the petition of the petitioner (employer in this case)

¹⁰ Minimum Wages Act, 1948

¹¹ Delhi Shops and Establishment Act, 1954

and declared that minimum wages should be paid to the employees. The court also held that the petrol pump comes under the domain of scheduled employment under 2(g) of the minimum wages act and, therefore, the employer is entitled to get compensation. In my opinion, the judgement decided by the court is justifiable as it upheld the right of employees to get minimum wages. In *People Union Democratic Rights vs Union of India*,¹² it was held that if an employee gets less than minimum wage it amounts to forced labour. In *Randhir Singh vs Union of India*,¹³ it was held that although “equal pay for equal work” is not expressly declared by our Constitution to be a fundamental right, it is certainly a constitutional goal under Articles 14, 16, and 39 (c) of the Constitution.¹⁴ Therefore, the court upheld the constitutional right of the employees.

¹² 1983 SCR (1) 456

¹³ 1982 SCR (3) 298

¹⁴ Indian Constitution, 1950