

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4453 OF 1999

STATE OF RAJASTHAN & ANR

Appellant (s)

VERSUS

VIDYA DEVI

Respondent(s)

(With office report )

Date: 10/08/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant(s)

Mr. Aruneshwar Gupta, Adv.

Mr. Naveen Kumar Singh, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

(Shashi Sareen)

(Vijay Aggarw

al)

Court Master

Court Master

(Reportable signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4453 OF 1999

STATE OF RAJASTHAN & ANR.  
Appellant(s)

... Appe

Versus

VIDYA DEVI  
Respondent(s)

... Resp

O R D E R

ARIJIT PASAYAT, J.

In spite of notice, respondent has not appeared.

In this appeal, challenge is to the legality of the judgments rendered by

learned Single Judge of the Rajasthan High Court as affirmed by the  
Division

Bench by its order dated 12.11.1998. The dispute was whether the respondent is

entitled to the benefits available under the Minimum Wages Act, 1948 (in short the

"Act").

The respondent was engaged as a part-time cook by the  
Mess

Committee of the Scheduled Tribes Hostel, Sapaiu, Dholpur under the Social

Welfare Department for the period from 1.8.1993 to 31.1.1995. She was paid @

Rs. 350/-

p.m.. Thereafter from 1.2.1995 to 30.9.1997 she was paid @ Rs. 600/- p.m.

A

claim was lodged by the respondent

before the Competent Authority, Minimum Wages, Dholpur claiming that she is

entitled to minimum wages fixed by the State Government which was Rs. 522/-

p.m. for the years 1993 and 1994 and Rs.832/- p.m. for the year 1997. Appellant

questioned legality of the claim inter alia on the ground that the respondent was not

employed as a full time employee, but was working as a part-time cook for about

two years daily and therefore she was not entitled to any benefit. The Act had no

application to the facts of the case as the Social Welfare Department was not  
a

scheduled industry to be covered by the Act. The Authority under the Act allowed

the claim holding that the said Scheduled Tribes hostel under the supervision of

the present appellant is a scheduled industry under the Act and therefore the Act

is applicable to this hostel. Accordingly, directions were given. Question  
ing

correctness of the adjudication, writ petition was filed which was disposed of by a

learned Single Judge holding that provisions of the Act were attracted. No definite

finding was recorded as to why learned Single Judge treated that the hostel in

question was a scheduled

industry. The matter was challenged before the Division Bench which by the

impugned order held that there was no challenge raised before the authorised officer on

the question as to whether the department falls within the ambit of the Act and therefore the objection cannot be permitted to be raised in the writ petition.

Mr. Aruneshwar Gupta, learned counsel for the appellant submitted that not only was the dispute raised, but also was adjudicated by the competent authority and learned Single Judge who had concluded that the Social Welfare Department was a scheduled industry. That being so, the conclusion of Division Bench cannot be maintained.

We find that specific pleas were taken to the effect that the Act has no application as the hostel under the supervision of the Social Welfare Department was not a scheduled industry. The plea was turned down and it was held that the Act was applicable and as a scheduled industry, minimum wages were payable by the Department. The object of the Act is to provide for fixing minimum wages in certain employments. Under Section 2(g) "Scheduled employment" means an employment specified in the schedule or any branch of work forming part of such employment. The Act has application only to scheduled employment as a reading of Sections 5 and 12 would go to show. So it has to be factually established by the claimant that he/she was working in a "Scheduled employment". Unfortunately that factual aspect has neither

been established or adjudicated. The Division Bench clearly, therefore, came to erroneous conclusion that a plea was not raised. On that ground alone the appeal succeeds. We set aside the order of the Division Bench and remit the matter to the High Court for fresh disposal in accordance with law taking into account all relevant aspects. The Division Bench in CSA 881/1999 is restored to the High Court for disposal. We make it clear that we have not expressed any opinion about acceptability of the stand raised by the parties.

The appeal is, therefore, allowed without any order as to costs.

.....J.

(ARIJIT PASAYAT)

.....J.

(H.K.SEMA)

New Delhi,

August 10, 2005.