* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved On: 27th October, 2017
Pronounced on: 2nd November, 2017

\+ W.P (C) No. 17474/2004 and CM APPL No. 13101/2004

CENTRAL SECRETARIAT CLUB .... Petitioner
Through: Mr. Satya Narayan Vashishth and Ms. Meena Kumar, Advocates

versus

GEETAM SINGH ..... Respondent
Through: Mr. Anuj Aggarwal, Advocate

And

\+ W.P (C) No. 19106/2005

GEETAM SINGH ..... Petitioner

Through: Mr. Anuj Aggarwal, Advocate
versus

CENTRAL SECRETARIAT CLUB .... Respondent
Through: Mr. Satya Narayan Vashishth and Ms. Meena Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

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1. Under challenge, in the present writ petition, is an award, dated 16th July, 2004, whereby the Labour Court No. VII (hereinafter

referred to as "the Labour Court") has directed payment, by the Central Secretariat Club (hereinafter referred to as "The Club") of Rs.15,240/-, to the workman Geetam Singh, for the period October, 1992 to September, 1995.

2. The aforementioned award has been assailed, before this Court, by Geetam Singh as well as by the Club, vide W.P (C) 19106/2005 and W.P (C) 17474/2004 respectively.

3. The facts are brief Geetam Singh, the applicant, who was undisputedly employed by the Club registered a claim, under Section 33C (2) of the Industrial Disputes Act, 1947, for the difference in wages between the amount paid to him by the management of the club and the minimum wages payable to him under the Minimum Wages Act, 1948 for the period during which he worked with the Club i.e.13th September 1989 till 30th September 1995. The management of the Club contested the claim of Geetam Singh, before the Labour Court, by urging that (i) the club was not an "industry" as its membership was confined to employees of the Central Secretariat and (ii) the claim of Geetam Singh was belated, as he had filed his claim petition only in 1995 claiming difference of wages from 1989. The Labour Court rejected the preliminary submission, of the Club, to the effect that it was not an "industry", by placing reliance on the classic pronouncement of Krishna Iyer, J., speaking for the Constitution Bench of the Supreme Court in

Bangalore Water Supply and Sewerage Board v. R. Rajappa, (1978) 3 SCC 297 which categorically held that clubs were also industries. A reading of the said judgment makes it clear that the applicability of the Act was exempted only in a case in which the enterprise was clearly charitable in nature, without any financial transaction being involved. Mr. Satya Narayan Vashisht, appearing for the petitioner candidly admitted the fact that his client did in fact, charge subscription from its members. As such, no error can be discerned, in the finding of the Labour Court, to the effect that the club was an "industry" within the meaning of the Act.

4. The second contention, of limitation/delay and latches was accepted, in part, by the Labour Court. Placing reliance on a judgment of this Court ***M/s. M. S. Shoes East Ltd. v. M.R.T.P 2003 VIII AD (Delhi),*** the Labour Court held that, even though no period of limitation was specified in Section 33 C (2) of the Industrial Disputes Act, 1947, all claims thereunder had to be filed within a reasonable time, which was determined, in the said decision, to be three years.

5. Following on the above reasoning, the Labour Court directed the management, to pay to Geetam Singh, the difference in wages for the period October 1992 to September 1995.

6. Mr. Satya Narayan Vashisht, appearing on behalf of the petitioner, submits that his client is willing to pay the amount awarded by the Tribunal, of Rs. 15,240/-, representing the difference between the wages paid to Geetam Singh and the minimum wages payable to him, for the period October, 1992 to September, 1995.

7. Such magnanimity appears, however, to have dawned, on the petitioner, too late in the day, as, despite not obtaining any stay from this Court, it is admitted that no payment in accordance with the impugned award has been made to Geetam Singh, and all that has been paid to him, by the Club, are litigation expenses, pursuant to the direction of this Court.

8. Mr. Anuj Aggarwal, learned counsel appearing for the respondent, submits that his client is entitled to be paid difference in wages for entire period 13th September 1989 to 30th September, 1995 and that, therefore, the Labour Court materially erred in limiting the award of differential wages only to the period October 1992 to September, 1995. The finding, of the Labour Court, that claims under Section 33C of the Act could be awarded only up to 3 years prior to the date of the claim, it is submitted, flies in the teeth of the judgment of the Supreme Court in ***Ajaib Singh v. The Sirhind Co-operative Marketing Cum-Processing Service Society Limited, (1999) 6 SCC 82***. Particular attention has been drawn to paras 8 to 11 of

the said judgment, wherein the Supreme Court has held that the provisions of Article 137 of the schedule to the Limitation Act, 1963, were not applicable to claims under Section 33C (2) of the Act. The following words in para 11 of the judgment are of particular significance:

> "It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. *The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone.* Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant *back wages* to the workman till the date he raised *the demand regarding his illegal retrenchment/termination or dismissal*. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages".
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> (Emphasis supplied).

9. The Supreme Court went on to refer to a judgment of the High Court of Punjab & Haryana in ***Ram Chancier Morya v. State of Haryana, (1999) 1 SCT 141.*** In that case, in the context of the time for making of a reference by the appropriate government, the High Court had held that, as no period of limitation had been prescribed therefor, action was required to be taken within a reasonable time, which the High Court held would be five years. The Supreme Court disapproved of the said approach of the High Court, holding that such fixation of time *de hors* any provision in the Act permitting/authorizing the same, was

unsustainable. The Supreme Court observed, in this context, that Courts interpret law and do not make laws, and that judges could not legislate or seek to fill in gaps which appeared to have been left by the legislature. The following aphorism, from ***C.C.E. v Raghuvar (India) Ltd, (2000) 5 SCC 299***, is much to the same effect, albeit in another context entirely:

> "*Any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence of creation and destruction of rights and, therefore, must be specifically enacted and prescribed therefor. It is not for the courts to import any specific period of limitation by implication, where there is really none*, though courts may always hold when any such exercise of power had the effect of disturbing rights of a citizen that it should be exercised within a reasonable period."
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> (Emphasis supplied)

10. What is of significance is that, after the said discussion in ***Ajaib Singh (supra)***, the Supreme Court ultimately awarded 60% back wages to the petitioner workman in that case. Mr. Aggarwal, appearing for the respondent, has correctly drawn my attention to a significant distinction between the facts obtaining in the case of ***Ajaib Singh (Supra)*** and those obtaining in the present case. Unlike the claim of the respondent, the claim of the petitioner, in ***Ajaib Singh (supra),*** was for back wages for *a period during which he had not rendered service. Per contra*, Mr. Aggawal submits, the claim of his client was only for payment of minimum wages for the period during which, he had admittedly worked with the

petitioner. If 60% back wages could be awarded by the Supreme Court for a period during which, the workman had not worked, Mr.Aggarwal submits that there would be no justification for not awarding the entire differential payment, between the amount payable under the Minimum Wages Act, 1948 and the wages actually paid to his client, during the period his client had, in fact, worked with the petitioner.

11. I am of the view that there is considerable merit in the submission of Mr. Aggarwal. The fixation, by the Labour Court, of 3 years, as the period for which relief could be granted by it, is obviously unsustainable in view of the judgments of the Supreme Court in ***Ajaib Singh*** (***supra***) and ***Raghuvar (India) Ltd (supra)***, which hold, unambiguously, that it is not open to this Court to read, into the statute, any supposed period of limitation where none is expressly stipulated therein.

12. This court is not a legislator. Neither can it dispense justice in a rule-of-thumb manner. Each case has to be decided on its own facts, keeping in mind, the hollowed principles of equity, justice and good conscience. In ***Ajaib Singh*** (***supra***), the Supreme Court awarded 60% back wages, which amount to 60% of wages for a period during which, the workman never discharged his duties. The claim, in the present case, is, on the other hand, only for the statutorily prescribed minimum wages for a period during which Geetam Singh admittedly by worked for the Club.

13. It is necessary to examine, at this point, the concept of "minimum wage" in some detail.

14. The *raison d'etre* of fixing wage structures, for amelioration of the working class even while factoring the concerns of the industry, was first underscored, by the Supreme Court, in ***Crown Aluminium Works v Workmen, AIR 1958 SC 30***, in the following words:

> "9. In dealing with this question, it is essential to bear in mind the main objectives which industrial adjudication in a modern democratic welfare state inevitably keeps in view in fixing wage structures. "It is well known", observes Sir Frank Tillyard, "that English common law still regards the wage bargain as a contract between an individual employer and an individual worker, and that the general policy of the law has been and is to leave to the two contracting parties a general liberty of bargaining, so long as there are no terms against public policy ["*The Worker and the State*" By Sir Frank Tillyard, 3rd Ed. p. 37] . In India as well as in England and other democratic welfare States great inroad has been made on this view of the common law by labour welfare legislation such as the Minimum Wages' Act and the Industrial Disputes Act. With the emergence of the concept of a welfare state, collective bargaining between trade unions and capital has come into its own and has received statutory recognition; the state is no longer content to play the part of a passive onlooker in an industrial dispute. *The old principle of the absolute freedom of contract and the doctrine of laissez faire have yielded place to new principles of social welfare and common good. Labour naturally looks upon the constitution of wage structures as affording "a bulwark against the dangers of a*

depression, safeguard against unfair methods of competition between employers and a guaranty of wages necessary for the minimum requirements of employees ["*Wage Hour Law*" Coverage — By Herman A. Wecht, p. 2] ". *There can be no doubt that in fixing wage structures in different industries, industrial adjudication attempts, gradually and by stages though it may be, to attain the principal objective of a welfare state, to secure "to all citizens justice social and economic".* To the attainment of this ideal the Indian Constitution has given a place of pride and that is the basis of the new guiding principles of social welfare and common good to which we have just referred.

10. *Though social and economic justice is the ultimate ideal of industrial adjudication, its immediate objective in an industrial dispute as to the wage structure is to settle the dispute by constituting such a wage structure as would do justice to the interests of both labour and capital, would establish harmony between them and lead to their genuine and wholehearted cooperation in the task of production. It is obvious that cooperation between capital and labour would lead to more production and that naturally helps national economy and, progress. In achieving this immediate objective, industrial adjudication takes into account several principles such as, for instance, the principle of comparable wages, productivity of the trade or industry, cost of living and ability of the industry to pay. The application of these and other relevant principles leads to the constitution of different categories of wage structures. These categories are sometimes described as living wage, fair wage and minimum wage. These terms, or their variants, the comfort or decency level, the subsistence level and the poverty or the floor level*, cannot and do not mean the same thing in all countries nor even in different industries in the same country. It is very difficult to define or even to describe accurately the content of these different concepts. … *There is, however, one principle which admits of no*

exceptions. No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage. It is quite likely that in under-developed countries, where unemployment prevails on a very large scale, unorganised labour may be available on starvation wages; but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare state. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms."

It is instructive to note that this decision referred to a "bare minimum wage" or a "subsistence wage". As later decisions (to which reference would be made hereinafter) went on to clarify, a distinction came to be drawn, in time, between a "bare minimum" wage and a "minimum" wage.

15. The first authoritative analysis of the concept of "minimum wage", vis-à-vis the associated concepts of "fair wage" and "living wage", is to be found in the judgement of the Constitution Bench in ***Express Newspapers (P) Ltd v U.O.I., 1959 SCR 12***. The concepts were explained, with great lucidity, thus, in the said report:

"49. **…** Broadly speaking, wages have been classified into three categories viz. (*1*) the living wage, (*2*) the fair wage and (*3*) the minimum wage.

The concept of the living wage

The concept of the living wage which has influenced the fixation of wages, statutorily or otherwise, in all economically advanced countries is

an old and well-established one, but most of the current definitions are of recent origin. The most expressive definition of the living wage is that of Justice Higgins of the Australian Commonwealth Court of Conciliation in the Harvester case. He defined the living wage as one appropriate for 'the normal needs of the average employee, regarded as a human being living in a civilized community'. Justice Higgins has, at other places, explained what he meant by this cryptic pronouncement. The living wage must provide not merely for absolute essentials such as food, shelter and clothing but for 'a condition of frugal comfort estimated by current human standards.' He explained himself further by saying that it was a wage 'sufficient to insure the workmen food, shelter, clothing, frugal comfort, provision for evil days, etc., as well as regard for the special skill of an artisan if he is one'. In a subsequent case he observed that 'treating marriage as the usual fate of adult men, a wage which does not allow of the matrimonial condition and the maintenance of about five persons in a home would not be treated as a living wage'. According to the South Australian Act of 1912, the living wage means 'a sum sufficient for the normal and reasonable needs of the average employee living in a locality where work under consideration is done or is to be done.' The Queensland Industrial Conciliation and Arbitration Act provides that the basic wage paid to an adult male employee shall not be less than is 'sufficient to maintain a well-conducted employee of average health, strength and competence and his wife and a family of three children in a fair and average standard of comfort, having regard to the conditions of living prevailing among employees in the calling in respect of which such basic wage is fixed, and provided that in fixing such basic wage the earnings of the children or wife of such employee shall not be taken into account'. In a Tentative Budget Inquiry conducted in the United States of America in 1919, the Commissioner of the Bureau of Labour Statistics analysed the budgets with reference to three concepts viz.

(i) the pauper and poverty level,

(ii) the minimum of subsistence level, and
(iii) the minimum of health and comfort level,
and adopted the last for the determination of the living wage. The Royal Commission on the Basic Wage for the Commonwealth of Australia approved of this course and proceeded through norms and budget enquiries to ascertain what the minimum of health and comfort level should be. The commission quoted with approval the description of the minimum of health and comfort level in the following terms:

> "This represents a slightly higher level than that of subsistence, providing not only for the material needs of food, shelter, and body covering, but also for certain comforts, such as clothing sufficient for bodily comfort, and to maintain the wearer's instinct of self-respect and decency, some insurance against the more important misfortunes — death, disability and fire — good education for the children, some amusement, and some expenditure for self-development."

Writing practically in the same language, the United Provinces Labour Enquiry Committee classified levels of living standard in four categories viz.
(i) the poverty level,
(ii) the minimum subsistence level,
(iii) the subsistence plus level and
(iv) the comfort level,
and chose the subsistence plus level as the basis of what it called the "minimum living wage". The Bombay Textile Labour Inquiry Committee 1937, considered the living wage standard at considerable length and, while accepting the concept of the living wage as described above, observed as follows:

> "…. What we have to attempt is not an exact measurement of a well-defined concept. Any definition of a standard of living is necessarily descriptive rather than logical. Any minimum, after all, is arbitrary and relative. No completely objective and absolute meaning can be attached to a term like the 'living wage standard' and it has necessarily to be judged in the light of the

> circumstances of the particular time and country".

The Committee then proceeded through the use of norms and standard budgets to lay down what the basic wage should be, so that it might approximate to the living wage standard "in the light of the circumstances of the particular time and country".

The Minimum Wage-Fixing Machinery published by the ILO has summarised these views as follows:

> "In different countries estimates have been made of the amount of a living wage, but the estimates vary according to the point of view of the investigator. Estimates may be classified into at least three groups:
>
> (1) the amount necessary for mere subsistence,
>
> (2) the amount necessary for health and decency, and
>
> (3) the amount necessary to provide a standard of comfort.
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> It will be seen from this summary of the concepts of the living wage held in various parts of the world that there is general agreement that the living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age [*Report of the Committee on Fair Wages* (1947 to 1949), pp 5-7, Paras 6 & 7] .

50. Article 43 of our Constitution has also adopted as one of the Directive Principles of State Policy that:

> "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, *a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities…."*

This is the ideal to which our social welfare State has to approximate in an attempt to ameliorate the living conditions of the workers.

The concept of the minimum wage.

The International Convention of 1928 prescribes the setting up of minimum wage-fixing machinery in industries in which 'no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low….

As a rule, though the living wage is the target, it has to be tempered, even in advanced countries, by other considerations, particularly the general level of wages in other industries and the capacity of industry to pay. This view has been accepted by the Bombay Textile Labour Inquiry Committee which says that *'the living wage basis affords an absolute external standard for the determination of the minimum'* and that 'where a living wage criterion has been used in the giving of an award or the fixing of a wage, the decision has always been tempered by other considerations of a practical character'.

In India, however, the level of the national income is so low at present that it is generally accepted that the country cannot afford to prescribe by law a minimum wage which would correspond to the concept of the living wage as described in the preceding paragraphs. *What then should be the level of minimum wage which can be sustained by the present stage of the country's economy?* Most employers and some Provincial Governments consider that the minimum wage can at present be only a bare subsistence wage. In fact, even one important All-India organisation of employees has suggested that 'a minimum wage is that wage which is sufficient to cover the bare physical needs of a worker and his family'. Many others, however … consider that a minimum wage should also provide for some other essential requirements such as a minimum of education, medical facilities and other

amenities. *We consider that a minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements, and amenities.*" [*Report of the Committee on Fair Wages*, pp 7-9, Paras 8-10]

51. This is the concept of the "minimum wage" adopted by the Committee on Fair Wages. There are, however, variations of that concept and a distinction has been drawn for instance in Australian industrial terminology between the basic wage and the minimum wage:

> "The basic wage there approximates to a bare minimum subsistence wage and no normal adult male covered by an award is permitted to work a full standard hours week at less than the assessed basic wage rate. The basic wage is expressed as the minimum at which normal adult male unskilled workers may legally be employed, differing from the amounts fixed as legal minima for skilled and semi-skilled workers, piece workers and casual workers respectively…. The minimum wage is the lowest rate at which members of a specified grade of workers may legally be employed." [*ODR Feenander Industrial Regulation in Australia* (1947) Ch. XVII p. 155]

53. It will be noticed that the "fair wage" is, thus, a mean between the living wage and the minimum wage and *even the minimum wage contemplated above is something more than the bare minimum or subsistence wage which would be sufficient to cover the bare physical needs of the worker and his family, a wage which would provide also for the preservation of the efficiency of the worker and for some measure of education, medical requirements and amenities.*

54. This concept of minimum wage is in harmony with the advance of thought in all civilised countries and *approximates to the statutory minimum wage which the State should strive to achieve having regard to*

the Directive Principle of State Policy mentioned above.

55. *The enactment of the Minimum Wages Act, 1948 (11 of 1948) affords an illustration of an attempt to provide a statutory minimum wage.* It was an Act to provide for fixing minimum rates of wages in certain employments and the appropriate Government was thereby empowered to fix different minimum rates of wages for (*i*) different scheduled employments; (*ii*) different classes of work in the same scheduled employment; (*iii*) adults, adolescents, children and apprentices; and (*iv*) different localities; and (*j*) such minimum rates of wages could be fixed by the hour, by the day or by any larger period as may be prescribed.

56. It will also be noticed that the content of the expressions "minimum wage" "fair wage" and "living wage" is not fixed and static. It varies and is bound to vary from time to time. With the growth and development of national economy, living standards would improve and so would our notions about the respective categories of wages expand and be more progressive.

57. It must, however, be remembered that whereas the bare minimum or subsistence wage would have to be fixed irrespective of the capacity of the industry to pay, *the minimum wage thus contemplated postulates the capacity of the industry to pay and no fixation of wages which ignores this essential factor of the capacity of the industry to pay could ever be supported.*"

(Emphasis supplied)

16. P.B. Gajendragadkar, J. (as the learned Chief Justice then was), who had authored ***Crown Aluminium Works (supra)*** went on to analyse the concepts of "minimum wage", "fair wage" and "living wage" in much greater detail in a later decision in ***Standard Vacuum Refining Co. Of India v Workman, AIR***

1961 SC 895. Noting, at the outset, the fact that the problem of wage structure, with which industrial adjudication was concerned in a modern democratic State involved ethical and social considerations, para 9 of the report went on to observe that "industrial adjudication does take into account to some extent considerations of right and wrong, propriety and impropriety, fairness and unfairness". That the entire exercise was balanced in nature was also highlighted, by holding that "considerations of the financial position of the employer and the state of national economy had their say, and the requirements of a workman living in a civilised and progressive society also come to be recognised." Para 10 of the report, thereafter, proceeds to hold as under:

> "It is because of this socio-economic aspect of the wage structure that *industrial adjudication postulates that no employer can engage industrial labour unless he pays it what may be regarded as the minimum basic wage. If he cannot pay such a wage he has no right to engage labour, and no justification for carrying on his industry; in other words, the employment of sweated labour which would be easily available to the employer in all undeveloped and even under developed countries is ruled out on the ground that the principle of supply and demand has lost its validity in the matter of employment of human labour, and that it is the duty of the society and the welfare State to assure to every workman engaged in industrial operations the payment of what in the context of the times appears to be the basic minimum wage. This position is now universally recognised.*"
>
> (Emphasis supplied)

The judgement goes on to recognise that the then extant concept of "minimum wage" was indistinguishable from that of a "basic

minimum wage", which was "the bare subsistence wage". Above the said "basic minimum wage" were only to be found the fair wage and, above that, the living wage. It was observed that this position was undergoing a change, in the light of the 1949 report of the Fair Wages Committee, which emphasised that "the minimum wage must provide not merely for the that sustenance of life but for the preservation of the efficiency of the worker", for which "the minimum wage must also provide for some measure of education, medical requirements and amenities."

17. In any event, there can be no dispute that "sweated labour" is an anathema to any civilised society, and is a harkback to the gladiatorial era when slavery and bonded labour were the order of the day. The dignity of the working-class (or "labour", as some would like to call it) has to be assiduously protected and preserved at all costs; for all other classes depend on it for survival and sustenance.

18. The judgement of the Constitution Bench in ***U. Unichoyi v State of Kerala, AIR 1962 SC 12*** - again authored by Gajendragadkar, J. (as the learned Chief Justice then was), this time presiding over the Bench - which is regarded, in some measure, as a watershed in minimum wages jurisprudence, distilled the earlier authorities on the point and went on, to hold, in para 13 of the report, as under:

> "It is, therefore, necessary to consider what are the components of a minimum wage in the context of the Act. The evidence led before the Committee on Fair Wages showed that some witnesses were inclined to take the view that the minimum wage is that wage which is essential to cover the bare physical needs of a worker and his family, whereas the overwhelming majority of witnesses agreed that a minimum wage should also provide for some other essential requirements such as a minimum of education, medical facilities and other amenities. *The Committee came to the conclusion that a minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker, and so it must also provide for some measure of education, medical requirements and amenities. The concept about the components of the minimum wage thus enunciated by the Committee have been generally accepted by industrial adjudication in this country. Sometimes the minimum wage is described as a bare minimum wage in order to distinguish it from the wage structure which is 'subsistence plus' or fair wage, but too much emphasis on the adjective "bare" in relation to the minimum wage is apt to lead to the erroneous assumption that the maintenance wage is a wage which enables the worker to cover his bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage.* On the other hand, 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.*"
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> (Emphasis supplied)

19. Multiplication of references to authorities which expound on the concept of "minimum wage", or analyse the concept in the light

of the cognate concepts of "fair wage" and "living wage", is neither necessary nor advisable. Suffice it to state that the contours of the said concepts, as delineated in the decisions cited hereinbefore, remain the same even today, more than half a century thence.

20. On what exactly constitutes a "minimum wage", the judgement of Kuldip Singh, J., in ***Workmen v Reptakoss Brett & Co. Ltd, (1992) 1 SCC 290***, set the standards, which continue to prevail till date. The Supreme Court, in that case, first noticed the following five norms, for fixation of "minimum wage", as declared by the Tripartite Committee of the Indian Labour Conference held at New Delhi in 1957, for being followed during the Second Five Year Plan, and also noticed the fact that the said norms had been approved by the Supreme Court itself, in its earlier decision in ***Standard Vacuum Refining Co (supra)***:

> "(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.
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> (ii) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr Aykroyd for an average Indian adult of moderate activity.
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> (iii) Clothing requirements should be estimated at per capita consumption of 18 yards per annum which

would give for the average workers' family of four, a total of 72 yards.

(iv) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.

(v) Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20 per cent of the total minimum wage."

Having noted as above, the Supreme Court went on to hold that, as times had changed, and compulsions of labour and industry stood altered, a sixth norm was also required to be included, in a "minimum wage". Para 12 of the report, which so holds, reads thus:

> "The concept of 'minimum wage' is no longer the same as it was in 1936. Even 1957 is way behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry:
>
> "(*vi*) children's education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25 per cent of the total minimum wage."

Having so held, the judgement went on to clarify thus, in para 13 of the report:

> "*The wage structure which approximately answers the above six components is* <u>*nothing more than a minimum wage at subsistence level*</u>. *The employees are entitled to the*

minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry."
(Emphasis supplied)

21. Of significance, and relevance, in the context of the present case, is the enforceability, and mandatory nature, of compliance with the requirement of payment of minimum wages. The following trenchant pronouncement, by M. Hidayatullah, J. (as the learned Chief Justice then was), speaking for a 3-Judge Bench of the Supreme Court in ***Kamani Metals and Alloys v Workmen, AIR 1967 SC 1175***, unmistakably laid down the law:

> "To cope with these differences certain principles on which wages are fixed have been stated from time to time by this Court. Broadly speaking *the first principle is that there is a minimum wage which, in any event, must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity.*"
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> (Emphasis supplied)

The above legal position was echoed in a later judgement, of the Supreme Court, in ***Woolcombers of India Ltd v Woolcombers Workers Union, (1974) 3 SCC 318***.

22. Payment of minimum wages is, therefore, an essential characteristic of humanity. Extraction of labour without payment of minimum wages, per corollary, would reflect an attitude which is inhuman.

23. ***Workmen of Gujarat Electricity Board v The Gujarat Electricity Board, AIR 1970 SC 87*** re-emphasised the point by holding that "if the claim be for a minimum wage, the employer must pay that wage in order to be allowed to continue the industry; and, in such a case, the capacity of the industry to pay is irrelevant". Similarly, ***Shivraj Fine Arts Litho Works v State Industrial Court, (1978) 2 SCC 601*** also noted that "the Minimum Wages Act, 1948 secures the payment of the minimum wage."

24. Minimum wages, and the absolute necessity of payment thereof, were again subject matter of detailed consideration, by yet another Constitution Bench of the Supreme Court, in ***Chandra Bhavan Boarding & Lodging v State of Mysore, (1969) 3 SCC 84***. The object and purpose of enacting the Minimum Wages Act, 1948, were thus stated, in para 9 of the report:

> "We have earlier noticed the circumstances under which the Act came to be enacted. Its main object is to prevent sweated labour as well as exploitation of unorganised labour. It proceeds on the basis that *it is the duty of the State to see that at least minimum wages are paid to the employees irrespective of the capacity of the industry or unit to pay the same.* The mandate of Article 43 of the Constitution is that the State should endeavour to secure by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. *The fixing of minimum wages is just the first step in that direction*." (Emphasis supplied)

Para 13 of the report drives the point home, yet again, thus:

> "Our attention was not drawn to any material on record to show that the minimum wages fixed are basically wrong. Prima-facie they appear to be reasonable. We are not convinced that the rates prescribed would adversely affect the industry or even a small unit therein. *If they do, then the industry or the unit as the case may be has no right to exist. Freedom of trade does not mean freedom to exploit.* The provisions of the Constitution are not erected as the barriers to progress. *They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any kind of slavery, social, economic or political.* It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complimentary and supplementary to each other. The provisions of Part IV enable the legislatures and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive principles are implemented. The mandate of the Constitution is to build a welfare society in which justice social, economical and political shall inform all institutions of our national life. *The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met.*"
> (Emphasis supplied)

25. Non-payment of minimum wages, to a workman is, therefore, unconscionable and unpardonable in law. It strikes at the very root of our constitutional framework, and belies the aspirations set out in the preamble thereto. The preamble to the Constitution *is* the Constitution. It is the most basic feature or the basic structure of the Constitution which, it is trite, is

inviolable and immune from amendment. Any attempt to erode the values enshrined in the preamble to our Constitution has, therefore, to be quelled with a heavy hand, if we are, as we profess to be, a "sovereign, socialist, secular, democratic republic".

26. It is also interesting to note that the above decision, in ***Chandra Bhavan Boarding & Lodging (supra)***, is an early example of the gradual dilution of the earlier existing conservative school of thought (emanating, no doubt, from Article 37 of the Constitution) that the directive principles of State policy are unenforceable in law. This aspect acquires especial significance, in the context of minimum wages, as they are relatable to Articles 38 to 43, and 47, of the Constitution of India. The limited nature of the controversy in the present petition, however, would not justify any further dilation on the interplay of fundamental rights and directive principles, which would necessitate a jurisprudential dissertation all its own.

27. The above discussion leaves no manner of doubt that minimum wages are the basic entitlement of the workman, and an industry which employs workmen without paying them minimum wages has no right to continue. Obviously for this reason, employment of workmen without paying minimum wages to them, constitutes a criminal offence, for which punitive sanctions are provided in Section 22 of the Minimum

Wages Act, 1948. Possibly on account of the fact that the Minimum Wages Act, 1948 is a self-sufficient legislation, on the requirement and necessity of paying minimum wages, and on the criminality inherent in failing to do so, employment of workmen without paying minimum wages is not among the "unfair labour practices" enumerated in the 5th Schedule to the Industrial Disputes Act, 1947. Even so, employment of "workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen" is specified as an unfair labour practice. No less insidious, in the perception of this court, would be employment of workmen without paying the minimum wages, as stipulated in the Minimum Wages Act, 1948.

28. This Court is, therefore, constrained to observe that any reluctance on the part of an employer, to award minimum wages for a workman for the period during which he had admittedly worked, is not only illegal and immoral but also invites criminal liability. Such an attitude erodes the very foundations of a socialist society which the preamble of the Constitution professes us to be, and belies the promises held out to every citizen by the Constitution of India.

29. The principle of limitation – and, equally, of delay and laches – is a principle of equity and repose. It cannot be invoked by one

who practices inequity, or commits fraud on the Constitution. An employee who obtains work, from a workman, while denying him minimum wages, is, in my view, absolutely disentitled from calling, into service, the doctrine of laches, when the employee moves the competent legal forum, seeking only minimum wages for the period during which he has served the employer. In that view of the matter, I am of the opinion that there was no justification for the Labour Court to restrict the relief awarded to Geetam Singh to the period October 1992 to September 1995. Geetam Singh has admittedly worked with the period 1st September 1989 to September, 1995 and cannot, therefore, be denied minimum wages for the said period. The Court can ill afford to be a party to the portentously criminal act of the Club.

30. Accordingly, the writ petitions are disposed in the following terms:

(i) WP (C) 17474/2004, filed by the Central Secretariat Club, is dismissed.

(ii) WP (C) 19106/2005, filed by Geetam Singh, is allowed.

(iii) The Club is directed consequently, to disburse, to Geetam Singh the difference in payment, between the wages paid to him and the minimum wages payable to him, under the Minimum Wages Act, 1948, for the period 1st September, 1989 to September, 1992, in addition to the amount awarded by the Tribunal vide the impugned award.

(iv) The said amount shall carry simple interest from the date of the award i.e.16th July 2004, till the date when the amount is paid to Geetam Singh, at the rate of 12% per annum.

(v) Keeping in view the fact that (a) the Club extracted work, from Geetam Singh, for 6 years without even paying him minimum wages, and (b) despite failure to obtain any stay from this Court, the Club has, till date, not complied with the impugned Award of the Labour Court, passed more than 14 years ago, the Club is also held liable to pay costs, to Geetam Singh, quantified at Rs.50,000/-.

(vi) Payments, as above, are directed to be disbursed, by the Club, to Geetam Singh, within a period of 4 weeks from today.

31. The writ petitions are disposed of in the above terms.

C. HARI SHANKAR
(JUDGE)

2nd November 2017
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