

CHIEF JUSTICE AND ASHOK S.KINAGI,

WP 9143/2020 , 11/09/2020

COMMON ORDER

1. We have heard the learned counsel appearing for the petitioners in support of these petitions where the challenge is to the order of the State Government dated 20th July, 2020 by which the State Government directed that the payment of Variable Dearness Allowance (for short, "VDA") which admittedly forms a part of the minimum wages fixed under the Minimum Wages Act, 1948, will stand deferred from 1st April, 2020 till 31st March, 2021.

2. Common submissions have been made in W.P. No.9350 of 2020. The learned senior counsel appearing for the petitioner in the said writ petition firstly submitted that though a stand has been taken now by the State Government that the exercise of power while passing the impugned order is under sub-section (2) of Section 26 of the Minimum Wages Act, 1948 (for short, "the said Act"), the impugned order does not say so, and in any case, the power which could be exercised under sub-section (2) of Section 26 of the said Act is completely different. It is a power to direct that the provisions of the said Act or any of them shall not apply to all or any class of

employees employed in any scheduled employment, or to any locality where a scheduled employment is being carried on.

3. The learned senior counsel has invited our attention to various provisions of the said Act. He pointed out Section 12 and submitted that once by virtue of a notification under Section 5 of the said Act, minimum wages are fixed, it is the obligation of every employer to pay to every employee wages at a rate not less than the minimum wages fixed. He submitted that there is no exception carved out under the provisions of the said Act as far as the applicability of Section 12 is concerned. He invited our attention to a decision of this Court in the case of PRIVATE HOSPITAL AND NURSING HOMES ASSOCIATIONS, PHANA AND OTHERS .v. THE SECRETARY, LABOUR DEPARTMENT, GOVERNMENT OF KARNATAKA, VIKASA SOUDHA AND OTHERS . He submitted that this Court has reiterated the well established principle of law that VDA is a part of minimum wages and cannot be separated from the minimum wages. He submitted that the fixation of minimum wages is a legislative act. In this behalf, he relied upon a decision of this Court in the case of MANGALORE GANESH BEEDI AND ALLIED BEEDI FACTORIES WORKERS ASSOCIATION .v. STATE OF KARNATAKA AND OTHERS . He submitted that there is a categorical pronouncement of law in the said decision that where the minimum rates of wages are linked with VDA, it forms a part of the minimum wages. He also relied upon two decisions of the Apex Court which hold that non-payment of minimum wages to the employees would amount to bonded labour which is completely prohibited under Article 23 of the Constitution of India. The other learned counsel appearing for the petitioners in the other petitions have supplemented the submissions made by the learned senior counsel.