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

+ W.P.(C) 10462/2020

KAUM FAQEER SHAH Petitioner

Through: Mr. Robin Raju, Advocate

versus

MINISTRY OF LABOUR AND EMPLOYMENT & ORS.

..... Respondents

Through: Ms. Nidhi Raman, CGSC with Mr. Zubin Singh, Advocate for R-1
Ms. Hetu Arora Sethi, ASC, GNCTD with Mr. Arjun Basra and Mr. Nirmal Prasad, Advocates for R-2 to 5

+ W.P.(C) 159/2021 & CM APPL. 7378/2021

MOHD. KADIR ANSARI Petitioner

Through: Mr. Robin Raju, Advocate

versus

STATE OF NCT OF DELHI & ORS. Respondents

Through: Ms. Hetu Arora Sethi, ASC, GNCTD with Mr. Arjun Basra and Mr. Nirmal Prasad, Advocates for R-1, 3 and 4
Ms. Nidhi Raman, CGSC with Mr. Zubin Singh, Advocate for R-2

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Date of Decision: 08th January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T(ORAL)

1. The present Petition i.e., W.P. (C) 10462/2020 has been filed seeking



the following reliefs.

“1. To issue a writ, order or direction in the nature of mandamus, directing the Respondent authorities to recover pending backwages of the Petitioner’s child and 115 other victims of Bonded Labour as mentioned in Annexure P-12 (Category “A”) (including 39 Child Labourers aged under 14 years), wherein the proceedings for recovery of backwages have been initiated, in a time bound manner;

2. To issue a writ, order or direction in the nature of mandamus, directing the Respondent authorities more particularly the Labour Department to initiate the recovery proceedings on behalf of 77 child victims (including 37 Child Labourers aged under 14 years) as mentioned in Annexure P-12 (‘Category B’) where despite a legal rescue no recovery action has been undertaken;

3. To provide an accountability mechanism which ensures that back wages/ minimum wages are given to child labourers within a stipulated time period.

4. Pass any other appropriate direction to any concerned department which this Hon’ble Court may deem fit and appropriate to the facts and circumstances in this case.”

(Emphasis supplied)

2. The W.P. (C) 159/2021 has been filed seeking the following reliefs:-

“a. Issue a Writ in the nature of Mandamus or any other appropriate writ order or direction to the Respondents, particularly Respondent No. 3 and Respondent No. 4, to forthwith grant the Petitioners’ child and other 35 victims of Bonded Labour in the State of Delhi [NCR], immediate financial rehabilitative assistance, as applicable under the CS Scheme, 2016 and as per the Mechanism provided in the SOP laid down by this Hon’ble Court in Walter Kerketta vs. Sub- Divisional Magistrate- South East Delhi, WP (C) No. 9744/2017 on 04.07.2018 (hereinafter “Judgment”);

b. Issue a Writ in the nature of Mandamus or any other appropriate writ order or direction to the respective District Magistrates and the Sub-Divisional Magistrates to forthwith grant the remaining 87 child victims of Bonded Labour as mentioned in Annexure-P-14, immediate financial rehabilitative assistance, as applicable under the CS Scheme, 2016 and as per the Mechanism provided in the judgment dated 04.07.2018;

c. Issue a Writ in the nature of Mandamus or any other appropriate writ order or direction to the Respondents, to place on record the Status report pertaining to compliance of each of the SOP steps as mentioned in the preceding Paragraph No. 19(e);

d. Issue a Writ in the nature of Mandamus or any other appropriate writ order or direction to the Respondents, to have in place an accountability



mechanism for the Respondent authorities to ensure time-bound compliance of the CS Scheme, which will consequently ensure timely grant of “Rehabilitative Immediate Financial Assistance”;

e. For costs of this Petition; Pass any other directions or orders as deemed fit by this Hon’ble Court.”

(Emphasis supplied)

3. The Petitioner in each of these petitions is the father of a child who has been a victim of bonded labour. The petitions have been filed seeking relief for the minor child of the Petitioner as well as similarly placed children who have inter-alia not received the benefit of financial assistance under the statutory schemes.

4. Learned Counsel for the Petitioner states that in W.P. (C) 10462/2020 the Petitioner is seeking directions for expeditious recovery of long pending backwages of the Petitioner’s minor child and 115 similar other child victims of bonded labour. He states that the said victims have been categorized into two (2) groups.

4.1. He states the first category comprises of those cases where recovery of backwages has been initiated by the Respondents; the second category comprises of cases where Respondents have failed to initiate recovery proceedings. He states that the tabular list annexed with the writ petition (as Annexure P-12) reveals that there are cases where recovery notices date back 7 years; however, the backwages have not been provided to the rescued children.

4.2. He states that this Court vide order dated 09.08.2023 had directed the Petitioner to furnish the bank account details of rescued children so that Respondent No. 2 can transfer the due amount for the rescued children. He states that in compliance of the said direction the Petitioner has furnished bank account details of three (3) children to the Respondent No. 2; however,



no amounts have been received in the said accounts, till date.

5. In reply, Ms. Hetu Arora Sethi, the learned counsel for Respondent Nos. 2 to 5 states that recovery letters have been issued in as many as 115 cases. She further states that she has placed on record Joint Suggestions dated 12.12.2023 on behalf of the Petitioner and Respondent Nos. 2 to 5 to satisfy the reliefs sought in these petitions. She states that the said suggestions have been made in coordination with all the concerned Government departments responsible for implementation of the rates sought in these writ petitions. She states that the said suggestions may be accepted by the Court and the appropriate directions be issued to the Respondents in terms thereof.

5.1. She states that prompt steps will be taken by the Respondents for releasing payment in the three (3) bank accounts of the rescued children provided by the learned counsel for the Petitioner.

6. In response the learned Counsel for the Petitioner states that he has perused the said Joint Suggestions dated 12.12.2023 filed by Respondent Nos. 2 to 5 and is satisfied with the mechanism suggested therein for providing immediate financial assistance to the rescued child labourer and expeditious recovery of backwages due to the said child labourer.

7. The Petitioner in W.P. (C) 10462/2020 has sought a direction for establishing a mechanism for a time bound recovery of back wages due to the rescued child labourer. Similarly, the Petitioner in W.P.(C) No. 159/2021 has sought a direction for payment of immediate financial rehabilitative assistance to the rescued child labourer. This Court has perused the Joint Suggestions dated 12.12.2023 and is satisfied that the same are lawful. Accordingly, this Court approves the said Joint Suggestions and with the



consent of the parties issues the following directions in relation to the mechanism to be adopted by Respondent Nos. 2 to 5 in the post rescue protocol for rescued child labourer with additional directions:

A. Immediate Financial Assistance

(i) In the event such a rescued child is placed in a childcare/juvenile home under the care of the Govt. of NCT of Delhi, a savings bank account shall be jointly opened immediately after the rescue of the child. Such a bank account shall be opened in the name of the child along with the Superintendent/In-charge of the respective Child Care Institution under GNCTD [as the temporary guardian of the child]. Such a bank account shall be opened by providing the address of the Child Welfare Committee ('CWC') as the temporary address of such child.

(ii) If the parents/guardian of the rescued child are located at any point in time (in future), then subject to due verification and the provision of their bank particulars, the amount of financial assistance shall be transferred by the government electronically within one (1) week from the verification of this information.

(iii) In the event the rescued child is repatriated to his native place immediately upon rescue, the said information shall be shared by CWC with the Department of Labour, Government of NCT of Delhi, so that information with respect to the bank account opened with respect to such a child can be ascertained and necessary financial assistance as well as recovered back



wages shall be transferred to such account within one (1) week of receipt of such information.

(iv) In the event that the rescued child who as per (i) remained under the care of the CWC, and during the period of his stay at such CWC attains the age of majority, then, upon such an individual submitting an application directly to the bank where an account has been opened in his name, he/she shall be granted permission to operate such account as a sole individual.

(v) NGOs and Vigilance committees shall extend all coordination and assistance in providing information with respect to bank account details and other relevant documents and records of rescued children or that of their parents/guardians.

B. Recovery of back wages and legal proceedings in this regard

As per the Central Sector Scheme for Rehabilitation of Bonded Labourers – 2016, an expeditious trial under Section 21 of the Bonded Labour System (Abolition) Act, 1976 is to be concluded within three (3) months from the date of identification or rescue, whichever is later.

The benefits to labourers under the Standard Operating Procedure formulated by the GNCTD approved by this Hon'ble Court in its judgment dated 04.07.2018 in W.P. (C) No. 9744/2017 titled "*Walter Kerketta vs. Sub-Divisional Magistrate, South-East Dist., and Ors.*" provides that the



Labour Department must immediately initiate proceedings for the recovery of back wages from the accused employers/owners, including wages for overtime in accordance with the Minimum Wages Act, 1948. However, there is no time-limit statutorily prescribed under the Minimum Wages Act, 1948 for the initiation and conclusion of the proceedings for the recovery of such back wages. However, it is hereby directed that:

(i) Recovery Notices shall be issued by the Department of Labour, Government of NCT of Delhi within a period of two (2) working days of rescue of a child.

(ii) In recovery proceedings, the Inspector under the Minimum Wages Act, 1948 or the Payment of Wages Act, 1936 shall grant the accused employer/owner two (2) weeks' time to deposit back wages. In those cases, wherein these amounts are not deposited within such a time-frame, the Inspector thereafter requests the Child Welfare Committee ('CWC') to recover the same as fine, as the Chairperson are bench of magistrates. It is directed in case backwages are not deposited by the accused employer/owner within the stipulated period of two (2) weeks, recovery certificates shall be issued by the concerned authority and the backwages shall be recovered as arrears of land revenue by the concerned SDM;

(iii) In cases where the back wages for a particular bonded child labour is recovered, the same shall be disbursed to the said child or his/her parents/legal guardians in identical procedures



as outlined for the Immediate Financial Assistance. Such disbursal shall be made within one (1) week from such a recovery.

(iv) NGOs and Vigilance committees shall extend all coordination and assistance in providing information with respect to bank account details and other relevant documents and records of rescued children or that of their parents/guardians in accordance with Clause 11 of the “Standard Operating Procedure for Identification of Bonded Labourers and Release of Immediate Financial Assistance” as approved by this Court in its judgment dated 04.07.2019 passed in W.P.(C) No. 9744/2017, titled “*Walter Kerketta v Sub-Divisional Magistrate, South- East Delhi &Ors.*”

(v) The concerned authority shall ensure that the actual recovery from the accused employer/owner is completed within three (3) months from the date of issue of recovery certificate.

(vi) The concerned departments of GNCTD shall ensure strict time bound compliance of the directions.

8. We place on record our appreciation for the joint exercise undertaken by the Petitioner and the Respondent Nos. 2 to 5 for formulating the Joint Suggestions. We direct Government of NCT of Delhi to place the aforesaid directions on the website along with the SOP approved in W.P.(C) No. 9744/2017, titled “*Walter Kerketta v Sub-Divisional Magistrate, South-East Dist. &Ors.*”

9. The Respondent No. 2 is directed to ensure that amounts due and payable in the three (3) bank accounts of the rescued children, furnished by



the learned counsel for the Petitioner are remitted within the period of two (2) weeks from today.

10. In addition, the prayers in W.P. (C) 10462/2020 are disposed of directing the Respondent Nos. 2 to 5 to recover the pending backwages of the children enlisted in Annexure P-12 (both in category A and category B) in a time bound manner as per the aforesaid directions.

11. So also, the prayers in W.P. (C) 159/2021 are disposed of directing the Respondent Nos. 3 and 4 to provide immediate financial assistance to the children enlisted in Annexure P-14 in terms of the aforesaid directions issued by this Court.

12. With the aforesaid directions, the writ petitions stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 8, 2024/MG

Click here to check corrigendum, if any