A.F.R.

Court No. - 38

Case :- WRIT - A No. - 9927 of 2020

Petitioner :- Chandrawati Devi

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Ram Lalit Chaudhary

Counsel for Respondent :- C.S.C.,Awadhesh Kumar,Bhupendra Kumar Tripathi

Hon'ble Pankaj Bhatia,J.

The present writ petition has been filed alleging that the petitioner is continuously working as a cook for making mid-day-meal in Basic Primary School Pinesar, Basti since 2005 and petitioner is also a member of Mandhyan Bhojan Rasoiya Mazdoor Sangh. The petitioner has approached this Court alleging that despite the fact that the petitioner is working since 2005, the petitioner has been removed without any opportunity from 01.08.2019. It is also alleged that since the appointment of the petitioner was made in the year 2005, the petitioner was paid monthly wages of Rs. 1000/- per month and, despite the petitioner having worked for more than 14 years, she has been removed. The petitioner claims to be a very poor lady and has no other source of income, however, somehow she managed resources to approach this Court for highlighting the exploitation of the petitioner at the hands of the government and the authorities which are State, within the meaning of Article 12.

This Court had expressed its displeasure in the manner in which the amount of Rs. 1000/- was being paid to the poor lady for more than 14 years and, looking into the exploitation of the petitioner, had called the respondents to file a counter affidavit explaining as to why and how the petitioner was being exploited for such a long time by paying a meager amount of Rs. 1000/- per month.

A counter affidavit has been filed before this Court on 09.12.2020, wherein in para 16 the factum of the petitioner's working since 2005 has not been denied. In respect of the amount paid to the petitioner, reliance has been placed on the Government Order dated 24th April, 2010, wherein the wages for the cook, providing mid-day-meal, is fixed as Rs. 1000/- per month, out of which 75% is to be borne by the Central Government and rest 25% is to be borne by the State Government.

The counsel for the respondents states that w.e.f. 09th March, 2019 the amount payable to the cooks has been enhanced from Rs. 1000/- to Rs. 1500/- per month. He has also brought on record a Government Order dated 14th August, 2019 to the effect that new incumbents are to be appointed as cook for providing mid-day-meal and preference would be given to the persons whose one of the child is studying in the school in question, and thus argues that as the petitioner's child is not studying in the school, she could not be considered for fresh appointment.

The present case highlights the manner in which the practice of Forced Labour is prevalent in the country even after 70 years of independence and the helpless people similar to the petitioner continue to suffer the exploitation willingly.

Part III of the Constitution of India provides for the freedoms to which are guaranteed to every citizen of this country . The present case is specifically concerned with Article 14, Article 21 and Article 23 of the Constitution of India, more particularly Article 23 .In the context of the facts of the present case what is to be considered is that whether the payment of wages at the rate of Rs. 1,000/- per month is an ***other form of Forced Labour*** as barred by virtue of Article 23 of the Constitution of India or not.

The question of “other forms of Forced Labour” as finds place in Article 23 of the Constitution of India came up for consideration before the Hon’ble Supreme Court for the first time in the case of ***People’s***

Union For Democratic Rights and Others v. Union of India and Others; (1982) 3 SCC 235, wherein in the form of Public Interest Litigation, the plight of the workers engaged in the construction for the Asian Games, was highlighted before the Supreme Court. The contention before the Supreme Court was that the workers employed for constructions were being paid wages which were less than the minimum wages prescribed. The Supreme Court specifically considered the scope of Article 23 and recorded as under:-

> *"**12.** Article 23 enacts a very important fundamental right in the following terms:*
>
> *"23. Prohibition of traffic in human beings and forced labour.—(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.*
>
> *(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them."*
>
> *Now many of the fundamental rights enacted in Part III operate as limitations on the power of the State and impose negative obligations on the State not to encroach on individual liberty and they are enforceable only against the State. But there are certain fundamental rights conferred by the Constitution which are enforceable against the whole world and they are to be found inter alia in Articles 17, 23 and 24. We have already discussed the true scope and ambit of Article 24 in an earlier portion of this judgment and hence we do not propose to say anything more about it. So also we need not expatiate on the proper meaning and effect of the fundamental right enshrined in Article 17 since we are not concerned with that article in the present writ petition. It is Article 23 with which we are concerned and that article is clearly designed to protect the individual not only against the State but also against other private citizens. Article 23 is not limited in its application against the State but it prohibits "traffic in human being and begar and other similar forms of forced labour" practised by anyone else. The sweep of Article 23 is wide and unlimited and it strikes at "traffic in human beings and begar and other similar forms of forced labour" wherever they are found. The reason for enacting this provision in the Chapter on Fundamental Rights is to be found in the socio-economic condition of the people at the*

time when the Constitution came to be enacted. The Constitution-makers, when they set out to frame the Constitution, found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socio-economic regeneration with a view to reaching social and economic justice to the common man. Large masses of people, bled white by wellnigh two centuries of foreign rule, were living in abject poverty and destitution, with ignorance and illiteracy accentuating their helplessness and despair. The society had degenerated into a status-oriented hierarchical society with little respect for the dignity of the individual who was in the lower rungs of the social ladder or in an economically impoverished condition. The political revolution was completed and it had succeeded in bringing freedom to the country but freedom was not an end in itself, it was only a means to an end, the end being the raising of the people to higher levels of achievement and bringing about their total advancement and welfare. Political freedom had no meaning unless it was accompanied by social and economic freedom and it was therefore necessary to carry forward the social and economic revolution with a view to creating socio-economic conditions in which every one would be able to enjoy basic human rights and participate in the fruits of freedom and liberty in an egalitarian social and economic framework. It was with this end in view that the Constitution-makers enacted the directive principles of state policy in Part IV of the Constitution setting out the constitutional goal of a new socio-economic order. Now there was one feature of our national life which was ugly and shameful and which cried for urgent attention and that was the existence of bonded or forced labour in large parts of the country. This evil was the relic of a feudal exploitative society and it was totally incompatible with the new egalitarian socio-economic order which "we the people of India" were determined to build and constituted a gross and most revolting denial of basic human dignity. It was therefore necessary to eradicate this pernicious practice and wipe it out altogether from the national scene and this had to be done immediately because with the advent of freedom, such practice could not be allowed to continue to blight the national life any longer. Obviously, it would not have been enough merely to include abolition of forced labour in the directive principles of state policy, because then the outlawing of this practice would not have been legally enforceable and it would have continued to plague our national life in violation of the basic constitutional norms and values until some appropriate legislation could be brought by the legislature forbidding such practice. The Constitution-makers therefore decided to give teeth to their resolve to obliterate and wipe out this evil practice by

enacting constitutional prohibition against it in the Chapter on Fundamental Rights, so that the abolition of such practice may become enforceable and effective as soon as the Constitution came into force. This is the reason why the provision enacted in Article 23 was included in the Chapter on Fundamental Rights. The prohibition against "traffic in human beings and begar and other similar forms of forced labour" is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against the State but also against any other person indulging in any such practice."

13. *The question then is as to what is the true scope and meaning of the expression "traffic in human beings and begar and other similar forms of forced labour" in Article 23?* ***What are the forms of "forced labour" prohibited by that article and what kind of labour provided by a person can be regarded as "forced labour" so as to fall within this prohibition?*** *When the Constitution-makers enacted Article 23 they had before them Article 4 of the Universal Declaration of Human Rights but they deliberately departed from its language and employed words which would make the reach and content of Article 23 much wider than that of Article 4 of the Universal Declaration of Human Rights. They banned "traffic in human beings" which is an expression of much larger amplitude than "slave trade" and they also interdicted "begar and other similar forms of forced labour". The question is what is the scope and ambit of the expression "begar" and other similar forms of forced labour'? Is this expression wide enough to include every conceivable form of forced labour and what is the true scope and meaning of the words "forced labour"? The word "begar" in this article is not a word of common use in English language. It is a word of Indian origin which like many other words has found its way in the English vocabulary. It is very difficult to formulate a precise definition of the word "begar", but there can be no doubt that it is a form of forced labour under which a person is compelled to work without receiving any remuneration. Molesworth describes 'begar' as "labour or service exacted by a Government or person in power without giving remuneration for it". Wilson's Glossary of Judicial and Revenue Termsgives the following meaning of the word "begar": "a forced labourer, one pressed to carry burthens for individuals or the public. Under the old system, when pressed for public service, no pay was given. The begari, though still liable to be pressed for public objects, now receives pay. Forced labour for private service is, prohibited." "Begar" may therefore be loosely described as labour or service which a person is forced to give without receiving any remuneration for it. That was the meaning of*

the word "begar" accepted by a Division Bench of the Bombay High Court in S. Vasudevan v. S.D. Mital [AIR 1962 Bom 53 : 63 Bom LR 774 : (1961-62) 21 FJR 441] . "Begar" is thus clearly a form of forced labour. ***Now it is not merely "begar" which is unconstitutionally (sic) prohibited by Article 23 but also all other similar forms of forced labour. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values.*** *The practice of forced labour is condemned in almost every international instrument dealing with human rights. It is interesting to find that as far back as 1930 long before the Universal Declaration of Human Rights came into being, International Labour Organisation adopted Convention No. 29 laying down that every member of the International Labour Organisation which ratifies this convention shall "suppress the use of forced or compulsory labour in all its forms" and this prohibition was elaborated in Convention No. 105 adopted by the International Labour Organisation in 1957. The words "forced or compulsory labour" in Convention No. 29 had of course a limited meaning but that was so on account of the restricted definition of these words given in Article 2 of the Convention. Article 4 of the European Convention of Human Rights and Article 8 of the International Covenant on Civil and Political Rights also prohibit forced or compulsory labour. Article 23 is in the same strain and it enacts a prohibition against forced labour in whatever form it may be found. The learned counsel appearing on behalf of the respondents laid some emphasis on the word "similar" and contended that it is not every form of forced labour which is prohibited by Article 23 but only such form of forced labour as is similar to "begar" and since "begar" means labour or service which a person is forced to give without receiving any remuneration for it, the interdict of Article 23 is limited only to those forms of forced labour where labour or service is exacted from a person without paying any remuneration at all and if some remuneration is paid, though it be inadequate, it would not fall within the words "other similar forms of forced labour". This contention seeks to unduly restrict the amplitude of the prohibition against forced labour enacted in Article 23 and is in our opinion not well founded. It does not accord with the principle enunciated by this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597 : (1978) 2 SCR 621] that when interpreting the provisions of the Constitution conferring fundamental rights, the attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content. It is difficult to imagine that the Constitution-makers should have intended to strike only at certain forms of forced labour leaving it open to the socially or*

economically powerful sections of the community to exploit the poor and weaker sections by resorting to other forms of forced labour. ***Could there be any logic or reason in enacting that if a person is forced to give labour or service to another without receiving any remuneration at all, it should be regarded as a pernicious practice sufficient to attract the condemnation of Article 23, but if some remuneration is paid for it, then it should be outside the inhibition of that article? If this were the true interpretation, Article 23 would be reduced to a mere rope of sand, for it would then be the easiest thing in an exploitative society for a person belonging to a socially or economically dominant class to exact labour or service from a person belonging to the deprived and vulnerable section of the community by paying a negligible amount of remuneration and thus escape the rigour of Article 23****. We do not think it would be right to place on the language of Article 23 an interpretation which would emasculate its beneficent provisions and defeat the very purpose of enacting them. We are clearly of the view that Article 23 is intended to abolish every form of forced labour. The words "other similar forms of forced labour" are used in Article 23 not with a view to importing the particular characteristic of "begar" that labour or service should be exacted without payment of any remuneration but with a view to bringing within the scope and ambit of that article all other forms of forced labour and since "begar" is one form of forced labour, the Constitution-makers used the words "other similar forms of forced labour". If the requirement that labour or work should be exacted without any remuneration were imported in other forms of forced labour, they would straightaway come within the meaning of the word "begar" and in that event there would be no need to have the additional words "other similar forms of forced labour". These words would be rendered futile and meaningless and it is a well-recognised rule of interpretation that the court should avoid a construction which has the effect of rendering any words used by the legislature superfluous or redundant. The object of adding these words was clearly to expand the reach and content of Article 23 by including, in addition to "begar", other forms of forced labour within the prohibition of that article. Every form of forced labour, "begar" or otherwise, is within the inhibition of Article 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion."*

Thereafter, the Supreme Court proceeded to consider as to whether a person is said to be providing Forced Labour if he is paid less than the minimum wages for it and recorded as under:-

> *"**14.**Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is "forced labour" that is labour or service which a person is forced to provide and "force" which would make such labour or service "forced labour" may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as "force" and if labour or service is compelled as a result of such "force", it would be "forced labour". Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly "forced labour". There is no reason why the word "forced" should be read in a narrow and restricted manner so as to be confined only to physical or*

legal "force" particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The Constitution-makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word "force" must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is "forced labour" because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. ***We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be "forced labour" and the breach of Article 23 is remedied****. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23."*

Thereafter, the Supreme Court considered the obligations of the State in the event of a complaint being made against violation of

fundamental rights enacted under Article 17 or Article 23 or Article 24 and recorded as under:-

> *"**15.** Before leaving this subject, we may point out with all the emphasis at our command that whenever any fundamental right which is enforceable against private individuals such as, for example, a fundamental right enacted in Article 17 or 23 or 24 is being violated, it is the constitutional obligation of the State to take the necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same. **Of course, the person whose fundamental right is violated can always approach the court for the purpose of enforcement of his fundamental right, but that cannot absolve the State from its constitutional obligation to see that there is no violation of the fundamental right of such person, particularly when he belongs to the weaker section of humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him**. The Union of India, the Delhi Administration and the Delhi Development Authority must therefore be held to be under an obligation to ensure observance of these various labour laws by the contractors and if the provisions of any of these labour laws are violated by the contractors, the petitioners vindicating the cause of the workmen are entitled to enforce this obligation against the Union of India, the Delhi Administration and the Delhi Development Authority by filing the present writ petition. The preliminary objections urged on behalf of the respondents must accordingly be rejected."*

Thus, following the said judgment of the Supreme Court, I am of the firm view that the payment of wages at the rate of Rs. 1,000/- per month since the year 2005 up to 2019 to the petitioner was clearly a form of Forced Labour, which is prohibited under Article 23 of the Constitution of India. The petitioner was never in a position to bargain with the might of the State and continued to suffer the violation of a rights for a period of 14 years.

The counsel for the petitioner has narrated the sorry State of affairs through which the petitioner is undergoing after her removal from the

service in the year 2019 and in fact states that the petitioner is still ready and willing to suffer the injustice and perform her duties even if she is paid Rs. 1,500/- per month, which has been prescribed by the Government vide Government Order dated 9th March, 2019 and requests that this Court may direct the State to permit the petitioner to continue on the post of cook at whatever rates, the State may deem fit to give to the petitioner.

This Court being a custodian of the fundamental rights cannot shut its eyes to the injustice carried out against the petitioner and the persons, who are similarly placed by an act of the State, which claims to achieve *socio economic* equality as the cherished dreams of the Constitution. Despite the fact that the petitioner is ready and willing to even work at the rates prescribed by the State, if this Court allows the payment of wages as fixed by the State, that is, Rs. 1,000/- per months enhanced to Rs. 1,500/- per months in the year 2019, the Court would be clearly guilty of perpetuating the violation of the rights of the petitioner enshrined and guaranteed under Article 23 of the Constitution of India.

This Court can also not overlook the fact that the persons employed as cooks throughout the State of Uttar Pradesh are being paid such paltry amounts which clearly qualify as forced labour and they continue to render their services without any complaint whatsoever. This Court cannot comprehend that a person earning Rs. 1,000/- per month would be empowered to approach this Court, more particularly because of their socio economic condition, which forced them to accept the services on such conditions as have been imposed by the State.

I am of the firm view that the Government Orders, referred to by the Standing Counsel being the Government Order dated 24th April, 2010 prescribing Rs. 1,000/- per month as wages and the Government Order dated 9th March, 2019 prescribing the minimum wages at Rs. 1,500/- per month are clearly a form of “Forced Labour”, which is specifically prohibited under Article 23 of the Constitution of India. Thus, I have no hesitation in holding that the State has misused its dominant position in

fixing the wages as have been fixed by the two Government Orders to be paid to the cooks employed for providing mid-day-meal.

To remedy the ill, I issue a general mandamus directing the State to ensure the payment of wages calculating at the rate prescribed under the Minimum Wages Act to all the cooks employed for providing mid-day-meal in the Institutions run by the Government or Semi-Government bodies. The said cooks, including the petitioner shall be paid minimum wages calculated and payable for every month and year of services rendered by them w.e.f. 2005 till date by paying them the difference of the said amount, which is over and above Rs. 1,000/- per month.

The State Government and the Union of India are further directed to take steps for issuance of directions fixing the rate prescribed under the Minimum Wages Act, as the wages which would be payable to the cooks employed for providing mid-day-meal in the Institutions run by the Government or the Semi-Government bodies, the respective Governments may work out their payment obligations in consultation with each other, however, it shall be ensured that the cooks are not paid wages less than the minimum prescribed under the Minimum Wages Act, in any case. It is clarified that this order shall operate to the benefits of all the cooks employed who provide mid-day-meal whether they have approached this Court or not or whether they approach the Government by filing a separate application or not.

The directions given by this Court shall be carried out by the District Magistrates in respect of all the cooks, who are working for providing mid-day-meal in the Government and Semi-Government Schools within their Districts. The said exercise of payment of the difference of the amount, as directed above, shall be made within a period of four months from today.

As a general mandamus has been issued, the Registrar General of this Court is directed to circulate a copy of the present order to the Chief

Secretary, State of U.P. and the District Magistrates throughout the State of U.P. for compliance of the directions given by this Court within the time granted and indicated hereinabove.

The writ petition deserves to be allowed and is consequently **allowed** in terms of the directions issued hereinabove.

Copy of the order downloaded from the official website of this Court shall be treated as certified copy of this order.

Order Date :- 15.12.2020
Pkb/SR