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W.A.No.948 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	09.09.2024
<i>Pronounced on</i>	01.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.948 of 2024
and
C.M.P.No.6794 of 2024

M.Madhan

...Appellant

Vs.

The Management of MRF Limited,
 Represented by its Managing Director,
 P.B.No.5285, Thiruvottiyur,
 Chennai – 600 019.

...Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order of this Court dated 31.10.2023 passed in W.P.No.20445 of 2023.

For Appellant : Mr.V.Prakash, Sr. Counsel
 for Ms.Radhaa Priya A.M.

For Respondent : Mr.Vijayan
 for M/s.King & Partridge



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JUDGMENT

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M.S.RAMESH, J.

1.1. On the strength of the proven charges of misconduct, the appellant/workman was dismissed from service on 30.09.2016 by the respondent/Management. Together with the order of dismissal, the workman was paid one month wages amounting to Rs.18,051.70/- and had also filed an application in A.P.No.84 of 2016 on the same day before the Industrial Tribunal, Chennai, as mandated under the Proviso to Section 33(2)(b) of the Industrial Disputes Act (hereinafter referred to as 'the Act').

1.2. Before the Tribunal, the workman had filed an application under Section 11 of the Act, seeking for dismissal of the approval application, in I.A.No.20 of 2019 for non-compliance of the mandatory requirement of payment of one month wages under the Proviso to Section 33(2)(b) of the Act. According to the workman, his one month wages would amount to Rs.26,145/-, which also includes an interim relief amount of Rs.4,000/- ordered to be paid, as per the order passed by this Court and confirmed by the Hon'ble Supreme Court of India, together with an amount of Rs.203/-, which is the concessional value of health



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drinks coupons and coconut oil.

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1.3. The Tribunal, through its order dated 03.12.2021, had found that the Management had not paid the workman the full wages for one month and therefore, since has not complied with the requirements under the Proviso to Section 33(2)(b) of the Act, rejected the application in A.P.No.84 of 2016.

1.4. When the Management had challenged the order of the Tribunal before the learned single Judge of this Court in W.P.No.20445 of 2023, the Writ Petition came to be allowed on 31.10.2023, by holding that the Tribunal had erred on the following counts:-

“a) Inordinate delay of more than five years in deciding on the approval petition.

b) Misinterpreting the components of the monthly wages paid to the respondent without understanding the amount payable was contingent or not.

c) Not clarifying whether Rs.4,000/- as interim allowance was paid for September 2016 or not.

d) Concluding on the one month wages based on earlier months' pay slips.

e) Not adverting its attention to the validity of the domestic enquiry.”



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2. The aforesaid order of the learned single Judge is assailed in this intra-court appeal.

3. The learned senior counsel appearing on behalf of the workman submitted that the learned single Judge had traversed beyond the scope of judicial review under Article 226 of the Constitution of India and had interfered with the order of the Tribunal like an Appellate Authority. According to the learned senior counsel, though the workman had claimed for inclusion of several allowances, he restricted the claim to include a sum of Rs.4,000/- per month towards wages, which is an interim relief ordered by the Tribunal in I.D.No.08 of 2014, dated 12.08.2015, which order was confirmed till the Hon'ble Supreme Court, together with a sum of Rs.203/-, which is the concessional value of health drinks coupons and coconut oil, which amounts were regularly paid to the workman, prior to his dismissal. With such submissions, he submitted that the payment of partial wages is opposed to the mandate under the Proviso to Section 33(2)(b) of the Act, as well as several decisions of the Hon'ble Supreme Court.



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4. On the contrary, the learned counsel for the Management put forth his submissions in two folds. Firstly, he would submit that since the defacto relationship between the workman and the Management had ended from the date of his dismissal, he would not be entitled for the payment of the interim relief of Rs.4,000/-, since he would not be performing his duties after the order of dismissal. Secondly, he raised a similar objection stating that since the workman will not be undertaking any physical duty after the date of his dismissal, he would not be entitled to seek for concessional value of health drinks coupons and coconut oil. With such submissions, he placed reliance on the decision of the Hon'ble Supreme Court in the case of ***S.Ganapathy and Others Vs. Air India and Another*** reported in ***(1993) 3 SCC 429*** and submitted that even assuming that the workman was entitled for the interim relief, as well as the concessional value of health drinks coupons and coconut oil, the Tribunal ought to have granted approval to the Management, with a condition to pay the differential amount in the one month wages.

5. The claim of a sum of Rs.4,000/-, payable to the workman in the



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monthly wages, relates to an order pending dispute, touching upon the charter of demands in I.D.No.08 of 2014 before the Tribunal. This order of the Tribunal, awarding an interim relief to the workman pending the main Industrial Dispute, was taken up on appeals and ultimately confirmed by the Hon'ble Supreme Court, fixing the interim relief at Rs.4,000/-. The fact that the workman was receiving this interim relief of Rs.4,000/- till his date of dismissal, is not in dispute. When the workman had claimed that his one month wage paid under Section 33(2)(b) of the Act did not include the interim relief of Rs.4,000/-, the Management had admitted the non-payment, but had raised an objection stating that the interim relief is not a remuneration, which falls under the definition of 'Wages' under Section 2(rr) of the Act. Likewise, a similar objection was also raised by the Management for non-inclusion of the concessional value of health drinks coupons and coconut oil.

6. The Tribunal had observed in its order that the interim relief is a remuneration, which is a part of the definition of 'Wages' under Section 2(rr) of the Act, as well as under the definition of 'Wages' under the Payment of Wages Act. The fact that the workman was being paid every month a sum of Rs.4,000/- by the Management, as well as the



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concessional value of health drinks coupons and coconut oil, was also taken into account by the Tribunal and thereby had come to the conclusion that the one month wage of Rs.18,051.70/- was only partial wage, as against the entitlement of the workman's one month wage of Rs.26,145/- and accordingly had rejected the approval petition filed by the Management.

7. The learned Single Judge, however, had made an observation in the order stating that the principles to be considered by the Tribunal before granting or refusal of approval under Section 33(2) of the Act are to observe, whether the standing orders justify the orders of dismissal; whether the enquiry has been held as prescribed by standing orders and whether the condition laid down in the Proviso to Section 33(2)(b) of the Act are fulfilled. With such an observation, it was remarked that the first two principles were not followed by the Tribunal, but the non-payment of one month wage alone was dealt with by the Tribunal. In our view, the principles recorded by the learned Single Judge is beyond the scope of the procedure to be followed by the Tribunal in exercise of its powers under Section 33(2)(b) of the Act. However, since no further discussions were made with regard to how these principles will be relevant, we shall not



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delve any further on this aspect.

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8. With regard to the quantum of one month wages is concerned, the learned Single Judge had made an observation that there was no clarity as to whether the interim relief of Rs.4,000/- was paid to the workman or not. By remarking on the order of the Tribunal that there was no clarification as to whether the interim relief was paid or not, the learned Single Judge had relied on ***S.Ganapathy's case (supra)*** and held that the Tribunal could have granted approval, with a condition to pay the balance amount, in the event of the one month wages being less than the actual wages payable to the employee. The learned Single Judge had also taken note of the inordinate delay of 5 years in deciding the approval petition and failure to deal with the validity of the domestic enquiry.

9. The scope of inquiry by the Tribunal in the proceedings under Section 33(2)(b) of the Act is summary in nature and an exercise of its powers is restricted to a very few considerations, which legal ratios have been consistently held in several decisions of the Hon'ble Supreme Court, including the cases in ***Lalla Ram Vs. D.C.M. Chemical Works*** reported in ***AIR 1978 (S.C.) 1004; John D' Souza Vs. Karnataka State Road***



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Transport Corporation reported in ***(2019) 18 SCC 47*** and ***Cholan***

Roadways Ltd. Vs. G.Thirugnanasambandam reported in ***(2005) 3 SCC***

241. Among the restricted jurisdiction, which the Tribunal could exercise while dealing with the proceedings under Section 33(2)(b) of the Act, the mandate of payment of one month wages, along with the order of dismissal to the workman, also requires to be complied. It is the consistent view of the Hon'ble Supreme Court that the mandate of payment of one month wages under the Proviso is “*to soften the rigour of unemployment that will face the workman against whom an order of discharge or order of dismissal has been passed*”, as held in the case of ***Syndicate Bank Ltd. Vs. K.Ramanath V. Bhat*** reported in ***AIR 1968 SC 231***, among several other like decisions of the Hon'ble Supreme Court.

10. In the case of ***Bennett Coleman & Co. (P) Ltd. Vs. Punya Priya Das Gupta*** reported in ***(1969) 2 SCC 1*** and ***Dilbagh Rai Jarry Vs. Union of India and Others*** reported in ***(1974) 3 SCC 554***, the mandate on the part of the Management to pay one month full wages to the workman while issuing the order of discharge or dismissal, was made obligatory. In the case of ***Bharat Electronics Limited Vs. Industrial Tribunal, Karnataka, Bangalore and Another*** reported in ***(1990) 2 SCC***



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314, the Hon'ble Supreme Court had observed that even a paisa less in one month wage paid to the workman, would be fatal and it is for the Management to establish that the wages paid under the Proviso to Section 33(2)(b) of the Act, represent the full wages of the month. The relevant portion of the judgment reads as follows:

“17. Before concluding the judgment the observations in Syndicate Bank case [(1967-68) 32 FJR 490, 497: (1968) 1 SCR 327: AIR 1968 SC 231], aforequoted, are again to be borne in mind. In the facts and circumstances of this case the management paid to the workman a sum of Rs 607.90 as a month's salary “to soften the rigour of unemployment that will face the workman”. How could a short payment of Rs 12 be said to have lessened the softening of such rigour is thought stirring. Viewed in the context, there could genuinely be a dispute, as in the present case, as to whether a particular sum was due as wages. It is, of course, risky for the management to raise it as to pay even a paisa less than the month's wages due under Section 33(2)(b), would be fatal to its permission sought. But at the same time it needs to be clarified that it is for the management to establish, when questioned, that the sum paid to the



workman under Section 33(2)(b) represented full wages of the month following the date of discharge or dismissal, as conceived of in the provision and as interpreted by us in entwining the ratios in Bennett Coleman case [(1969) 2 SCC 1: (1970) 1 SCR 181] (supra) and Dilbagh Rai Jarry case [(1974) 3 SCC 554: 1974 SCC (L&S) 89: (1974) 2 SCR 178] and adding something ourselves thereto.”

11. Thus, the law is well established making it compulsory for the Management to pay the full wages of a month, for which the workman would be entitled to under the express or implied terms of employment.

12. The learned senior counsel for the workman made a faint attempt to place reliance to ***S.Ganapathy's case (supra)*** and attempted to propose that even when the one month wage falls short, the difference could have been ordered to be paid by the Tribunal as a pre-condition, while granting approval. This submission, in our view, is misconceived to the *ratio decidendi* laid down in ***S.Ganapathy's case (supra)***.

13. The issue that arose for consideration in ***S.Ganapathy's case***



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(*supra*) was, as to whether the statutory deduction of income tax from the one month wages payable under the Proviso to Section 33(2)(b) of the Act, would amount to violation of the provision. While dealing with this decision, the Hon'ble Supreme Court had observed that, if an approval was to be rejected on merits and otherwise to be rejected for not making complete payment of one month wage, it would thus be just and proper to let the employer deduct the statutory tax deduction from that one month wage, since the relationship of an employer and an employee has effectively not been terminated, to meet the eventuality, lest the approval application be dismissed on merits. It was further held that, on the other hand, it would be just and proper either for the employer on his own or on the asking of the Tribunal to let the sum representing statutory tax deduction be deposited in the Tribunal for payment to the workman in the event of the approval application being allowed. It is in the background of these two situations, the Hon'ble Supreme Court had held that there would, in no event, be a dismissal of the approval application for payment of wage subjected to statutory tax deduction. The Hon'ble Supreme Court had also taken note of the fact in their case relating to statutory tax deduction and the further fact that apart from the statutory tax deduction, not a penny was retained by the Management. Such observations are



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hereunder:-

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“12..... Here distinction would have to be drawn between statutory deductions like tax deductions and other deductions which the employer considers he can make. In either event, he takes the risk when making a deduction. In the case of statutory tax deductions, his justificatory burden is less, for he has the shelter of the tax law. The case of the other deductions would obviously be on different footing for he may not have any thrust of law. Those may purely be contractual. Those deductions may not be compulsive under any law. The employer makes the deduction in such cases at his peril. But here, in the present situation, there definitely arose a genuine claim to make the tax deduction and doing so the employer projected its case before the Tribunal in that angle. Not a paisa otherwise was kept back. Thus in the facts and circumstances it appears to us that the respondent was able to establish that its deliberate deduction representing the tax from one month's wage was not to shorten the wage and cause infraction of Section 33(2)(b) but a compulsive deduction to fulfil a statutory obligation by the thrust of the Tax Act.”



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14. ***S.Ganapathy's case (supra)*** case deals only with situations involving deduction of statutory income tax amount from the one month wage alone and no universal law was laid down therein to facilitate the Management to deduct any short falls or deficits in the mandatory full back wages payable under Section 33(2)(b) of the Act.

15. The learned Single Judge of this Court had placed reliance on ***S.Ganapathy's case (supra)*** for holding that the short payment in the one month wages will not be fatal. We do not agree with such findings on account of the above reasons rendered by us.

16. The predominant issue that was raised by the learned counsel for the Management is that the interim relief of Rs.4,000/-, as well as the concessional value of health drinks coupons and coconut oil, do not form part of the wages, as defined under Section 2(rr) of the Act. The definition of 'wages' under Section 2(rr) of the Act is comprised of three parts. The first portion is a general definition of all remunerations, the second portion is for specific inclusion of certain remunerations and the third portion disqualifies certain remuneration payable. Under the general definition, all remunerations capable of being expressed in terms of



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money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment.

The second portion *inter alia* provides for inclusion of certain allowances, concessions, etc. The third portion specifically excludes certain remunerations being bonus, terminal gratuity and contributions towards pension fund or provident fund.

17. In the instant case, the Management has admitted to put forth their case claiming that the interim relief of Rs.4,000/- and the concessional value of health drinks coupons and coconut oil will not form part of wages. Under the general definition of 'wage', the Act brings in all kinds of remuneration capable of being expressed in terms of money, which a workman would have earned, while fulfilling his terms of employment. In other words, had the workman attended his regular duties under the terms of his employment for the ensuing months, the heads of remunerations, which he will be legally entitled, can be termed as wages for the purpose of Section 33(2)(b), subject to the specific exclusions provided therein.

18. When the charter of demands raised by the Union was pending



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for a substantial period, the workman had made a plea before the Tribunal seeking for an interim relief. This claim was adjudicated by the Tribunal and ultimately, when the dispute reached the Apex Court, an *ad hoc* payment of Rs.4,000/- per month was determined. Had the workman continued his employment after the date of his dismissal, he would be entitled to receive this interim relief, which fact is not under dispute.

19. The only ground raised by the learned counsel for the Management is that since their *de facto* relationship with the workman had ceased, he will not be entitled for his relief. We are unable to endorse such an objection. The entitlement of the workman to receive this interim relief was not contingent upon any condition and mere reporting for duty alone would suffice for his entitlement to receive the interim relief.

20. In the case of ***Bennett Coleman (supra)***, when the Hon'ble Supreme Court, while answering to a reference as to whether free telephone allowances and newspaper allowances would be includable in wages, as defined under Section 2(rr) of the Act, it was held that all remunerations capable of being expressed in terms of money, is not dependent on any contingents and therefore, held those allowances to be



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included under the definition of wages. Similarly, while excluding night shift allowances from the purview of definition of wages in ***Bharat Electronics Limited's case (supra)***, the yardstick that the Hon'ble Supreme Court had adopted was that the night shift allowance was contingent upon his reporting to duty and being put to that shift and thus would not flow as an entitlement and therefore, excluded night shift allowance from the purview of the term 'wages'.

21. In the light of our above discussions and in line with the observations of the Hon'ble Supreme Court in all the aforesaid cases, the interim relief of Rs.4,000/-, which the workman was otherwise entitled to receive, would form part of his one month wage.

22. Insofar as the concessional value of health drinks coupons and coconut oil are concerned, the very definition of 'wages' under Section 2(rr)(ii) of the Act exclusively provides it as an ingredient of wages, which definition is extracted hereunder:-

2(rr)(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other



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articles;

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23. Admittedly, the Management had not included the remuneration under the head of concessional value of health drinks coupons and coconut oil, in the one month wages paid to the workman under Section 33(2)(b) of the Act, which is in violation to the very definition of the term 'wages'.

24. The learned Single Judge, however, had not taken note of all these aspects into consideration while dealing with the non-payment of the full wages for one month. A reference has also been made in the order of the learned Single Judge to a delay of five years in deciding the Approval Petition. The upper limit of three months prescribed under Section 33(5) is not mandatory, but rather directory in nature, in view of the Proviso therein, which entitles the Tribunal to extend the proceedings over and above a period of three months for recorded reasons.

25. What would be relevant in a case of this nature is the consequential prejudice that may have been caused to the Management in this regard. The Management has come out with a specific prejudice that



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may have caused to them, owing to the delay in concluding the proceedings before the learned Single Judge. In the absence of any serious prejudice to the Management, we do not find the observation of the learned Single Judge in this regard appealing.

26. For all the foregoing reasons, the impugned order of the learned Single Judge passed in W.P.No.20445 of 2023 dated 31.10.2023 is set aside. Consequently, the Management shall forthwith pass orders, allotting duty to the appellant/workman by extending all the service and monetary benefits, including continuity of service from 30.09.2016 and disburse the backwages forthwith, in any event, within a period of two weeks from the date of receipt of a copy of this judgment.

27. In the result, the Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

[M.S.R., J] [C.K., J]
01.10.2024

Index:Yes
Neutral Citation:Yes
Speaking order
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The Managing Director,
Management of MRF Limited,
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Pre-delivery judgment made in
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