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W.P.No.22055 of 2022 etc., (batch cases)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.22055, 22076, 22079, 22060, 22064, 22068, 22070, 22071 and
22074 of 2022

& W.M.P.Nos.21054, 21067, 21069, 21071, 21056, 21059, 21062, 21065
and 21066 of 2022

In W.P.No.22055 of 2022:-

The Management of
Dhanalakshmi Mills Ltd.,
130, B.S.Sundaram Road,
Tirupur,
Rep. by its Director

.. Petitioner

Versus

1. V.Dhandapanai (deceased)
2. Sarojini
3. D.Gunasekaran

.. Respondents

(RR-2 and 3 are substituted as LR's of deceased R1
as per order, dated 22.11.2024 in W.P.No.22055 of 2022)

Prayer in W.P.No.22055 of 2022 : Writ Petition filed under Article 226 of
the Constitution of India, pleased to issue a Writ of Certiorari to call for the



W.P.No.22055 of 2022 etc., (batch cases)

records and quash the order, dated 04.03.2022 passed in C.P.No.30 of 2020
by the Presiding Officer, Additional Labour Court, Coimbatore.

For Petitioner : M/s Gupta and Ravi
(in all W.Ps)

For Respondents : Mr.V.Sivakumar
(for RR-2 and 3 in W.P.No.22055 of 2022
and for the respondents in remaining W.Ps)

COMMON ORDER

All these matters are connected to each other and as such, are taken up
and disposed of by this common order.

2. The brief factual background, in which these Writ Petitions arise, is
that the petitioner mill was not working from the month of March, 1998.
The mill was refurbished with new machineries and was reopened and
started functioning from 28.06.2005. It is the case of the management that
when the mill got functioning, the workmen involved in these 9 Writ
Petitions, were found to be wanting in their capacity to work. On account of
the advancement of age and due to their physical condition, they are not able



W.P.No.22055 of 2022 etc., (batch cases)

WEB COPY

to give output as desired by the management. Therefore, the management directed them to appear before the Medical Board on 05.12.2005. However, they did not report before the Medical Board on the said date and therefore, by separate orders, dated 14.12.2005, they were discharged from the service by enclosing a Demand Draft for the one month instead of one month notice.

3. Aggrieved by the said discharge, the workmen approached the Labour Court, Coimbatore by way of Computation Petitions under Section 33 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and by a common award, dated 13.09.2012, held that the workmen have to raise an industrial dispute and adjudicate the same and without doing so, straightaway their entitlement of salary does not arise and on that score, dismissed the petitions under Section 33C(2) of the Act.

4. Thereafter, the workmen had resorted to raising of a dispute and upon the conciliation being failed, filed Claim Petitions by invoking Section



W.P.No.22055 of 2022 etc., (batch cases)

WEB COPY

2A(2) of the Act in the year 2014 which were taken on file by the Additional Labour Court, Coimbatore. A preliminary objection was raised in those industrial disputes by raising the point of limitation that the petitions under Section 2A(2) of the Act are not maintainable inasmuch as three year period of limitation, as prescribed under Section 2A(3) of the Act has already since been expired. The Labour Court found favour with the said contention of the management and held that in view of the Section 2A(3) of the Act, the Claim Petitions are not maintainable and rejected the Claim Petitions.

5. Thereafter, once again, the workmen, involved in these Writ Petitions, filed Claim Petitions under Section 33C(2) of the Act. The pleadings of the workmen in the present Computation Petitions, as contained in paragraph Nos.7 and 8 of the Computation Petitions read as follows:-

" 7. மனுதாரராகிய நான் ஏற்கனவே இந்நீதிமன்றத்தில் பணப்பயன் கோரிக்கை மனு வழக்கு எண். CP.NO.32/2008 தாக்கல் செய்திருந்தேன். இவ்வழக்கை விசாரணை செய்த இந்நீதிமன்றம் பணிநீக்கம் குறித்து தொழிற்சாலை



WEB COPY



W.P.No.22055 of 2022 etc., (batch cases)

கிளப்பி பரிகாரம் ஏற்பட்ட பின் தான் பணப்பயன் கோரிக்கை மனு தாக்கல் செய்யப்பட வேண்டும் என்று கூறி 13.09.2012ம் தேதியிட்ட உத்தரவின் மூலம் மனு தள்ளுபடி செய்யப்பட்டது.

8. பின்னர் எதிர்மனுதாரர் நிர்வாகம் மனுதாரரை பணிநீக்கம் (Discharge) செய்யப்பட்ட 15.12.2005 தேதி முதல் 31.12.2007 தேதி வரையான காலத்தில் மனுதாரராகிய நான் தொடர்பணி புரிந்த காலமாக எதிர்மனுதாரர் நிர்வாகம் ஒப்புக்கொண்டு டிசம்பர் 2008ம் மாதத்தில் வழங்க வேண்டிய சம்பளத்தின் (ரூ.5962.20) அடிப்படையில் கணக்கீடு செய்து பணிக்கொடை தொகையை (Gratuity) வழங்கி விட்டனர். மனுதாரராகிய நான் பணிக்கொடையை தொகையை 04.12.2012-ல் பெற்றுக்கொண்டேன். இதன் காரணமாக எதிர்மனுதாரர் நிர்வாகத்தின் பணிநீக்க உத்தரவு (Discharge order) தானாகவே செல்லத்தகாதது ஆகிவிட்டது (infructuous) என்பதால் முதலாளி, தொழிலாளி உறவில் பணி முறிவு ஏற்படவில்லை. (No Break in Service) என்பதால் தற்பொழுது தொழிற்சாராறு ஏதுமில்லை. எனவே பணிநீக்கம் செய்யப்பட்ட 15.12.2005 தேதி முதல் 31.12.2007 தேதி வரையான காலத்தில் தொடர்பணி புரிந்த காலமாக எதிர்மனுதாரர் நிர்வாகமே ஒப்புக்கொண்டு பணிக்கொடை தொகை வழங்கியுள்ளதால் மனுதாரராகிய நான் இக்கால முழுமைக்கும் சம்பளம் பெறுவதற்கு தகுதியுடையவர் ஆகிறேன் என்பதால் நேடியாகவே தொழிற்சாராறு சட்டம் பிரிவு 33 C (2) பிரிவின் கீழ் பணப்பயன்



W.P.No.22055 of 2022 etc., (batch cases)

கோரிக்கை மனு தாக்கல் செய்ய சட்டப்பூர்வமான
உரிமையுடையவன் ஆகிறேன்."

6. The Computation Petitions were resisted by the management. The pleading of the management, in paragraph No.9 of the counter-affidavit in the Computation Petitions is extracted hereunder:-

" 9. Secondly, the applicant mill suspended its operation from 26.02.2007 and was closed on 31.12.2008. The petitioner till date has not disputed the closure of the "A" mill on 31.12.2008. It is further submitted that the petitioner is not entitled for the relief of reinstatement and continuity of service with attendant benefits and as if he was deemed to be in service of the respondent, since the respondent has paid gratuity till 31.12.2008. This contention put forth by the petitioner is denied as totally false. The payment of gratuity paid to the petitioner was restricted to the last working day of the petitioner. Even assuming that, if the calculation of payment of gratuity was made till date claimed by the petitioner, it does not mean that the termination/discharge of the petitioner has automatically been set aside.

The petitioner claiming wages, bonus and annual leave wages from the date of termination/discharge of the service of the petitioner from service without disputing it and without any award, order or settlement as stipulated under Section 33 C (2) of the I.D.Act is found to be erroneous, unlawful and illegal. A reference may be made to Section 33 C (2) of the I.D.Act, which will enlighten that the petition is not maintainable u/s 33 C (2) of the I.D.Act, stipulates as under:-

33-C Recovery of money due from an employer.



WEB COPY



W.P.No.22055 of 2022 etc., (batch cases)

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months]

From the above reading it is well established that in this case the petitioner has no pre-existing right to file an application u/s. Section 33-C (2) of the Act. This Honble Court cannot entertain and adjudicate upon a petition u/s. 33 C (2) when the entitlement itself is in dispute and thus the application u/s. 333 C (2) is not maintainable, if the petition is filed on disputed facts which require adjudication by the Labour Court."

7. The Labour Court, thereafter, took up the Computation Petitions and in the enquiry, no oral evidence was let in on behalf of the workmen or the management and the documents were marked in **Ex.W-1** to **Ex.W-3** and **Ex.M-1** to **Ex.M-3** on behalf of both the sides. After considering the case of the parties, the Labour Court took into consideration the fact that the workmen were paid the gratuity till the date of the permanent closure of the mill i.e., with effect from 31.12.2008 and accordingly, held that in view of the fact that the industry was permanently closed only with effect from



W.P.No.22055 of 2022 etc., (batch cases)

WEB COPY

31.12.2008 and that the management itself calculated the gratuity till the said date and paid to the workmen, there is a pre-existing right for the workmen to claim salary for the period between 15.12.2005 till the date of closure i.e., till 31.12.2008 and awarded wage arrears, minimum bonus, surrender leave salary in respect of this period and computed the sums varying from Rs.1,72,630/- etc., and ordered the same to be paid with further interest at the rate of 9% per annum and also costs. Aggrieved by the same, the petitioner management filed the present Writ Petitions.

8. Heard *Mr.Gupta* learned Counsel for the petitioner management and *Mr.V.Sivakumar*, learned Counsel for the respondents workmen.

9. The learned Counsel for the petitioner management would submit that a petition under Section 33C(2) of the Act can be entertained and the amounts can be awarded if only there is a pre-existing right for the workmen. Admittedly, in this case, already, the workmen filed Computation



W.P.No.22055 of 2022 etc., (batch cases)

WEB COPY

Petitions which were dismissed by holding that there is no pre-existing right unless they challenge their dismissal by way of an industrial dispute. Thereafter, they raised an industrial dispute which came to be dismissed on the ground of limitation and the said order has become final. In the teeth of the said earlier orders, just because the management had erroneously calculated the gratuity, which can only be an act of error or an act of magnanimity, that will not give rise to a concomitant right to the workmen to claim wages to the said period. Therefore, the Labour Court committed a gross error in awarding the said sum.

10. The learned Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in *Management of Nilpur Tea Estate Vs. State of Assam and Ors.*¹, more specifically, relying upon paragraph No.5 of the judgment to contend that unless the order of termination is held to be invalid, no proceedings under Section 33C(2) can be entertained by the Labour Court. The learned Counsel would also rely upon the judgment of

¹ AIR 1996 SC 737



W.P.No.22055 of 2022 etc., (batch cases)

WEB COPY

this Court in ***The Management, Khizaria Leathers Vs. The Presiding Officer, Labour Court and Ors.***², more specifically, relying upon paragraph No.7 of the judgment, in which, this Court, speaking through the Hon'ble Mr.Justice K.Chandru, held that when the claim of the workmen was squarely rejected by the Labour Court vide award in the industrial dispute, then, it would not be open for the workmen to go before the Labour Court and file a petition under Section 33C(2) of the Act.

11. Per *contra*, the learned Counsel for the workmen would submit firstly, this Court is concerned about the validity of the order passed in the current Computation Petitions. The order of the Labour Court is based on the pleadings of the parties. He would submit that even though the learned Counsel for the management is arguing before this Court that it is an act of mistake in granting gratuity and it is an error, it is not the same pleading raised before the Court. On a perusal of the counter-affidavit filed to the Computation Petitions, it is clear that atleast in paragraph No.9, it is stated

² MANU/TN/9720/2006



W.P.No.22055 of 2022 etc., (batch cases)

WEB COPY

that their last day on rolls were taken into account. It proceeds as if these

workmen were all in rolls till the date of closure of the mill in the year 2008.

Therefore, when as per the pleading of the management, the Labour Court granted the relief, a new plea is now raised in the Writ Petitions to plead that it is an error. Therefore, he would submit that the award of the Labour Court is in order and should not be interfered by this Court.

12. It is also brought to the notice of this Court that at the time of granting of interim order, 50% of the amount awarded in the Computation Petitions, was ordered to be deposited to the credit of the Computation Petitions. The same is also complied with by the petitioner management. In that background, I proceed to consider the submissions made on either side and I have also perused the material records of the case.

13. On a perusal of the material records, these cases seem to be a series of errors. Originally, by the order, dated 14.12.2005, the management



W.P.No.22055 of 2022 etc., (batch cases)

WEB COPY

resorted to pass an order of termination simplicitor in exercise of Order 17A of the Standing Orders. However, the order categorically contains detailed averments with reference to the incapacity, the workmen not coming up to the expectation of the management and not performing the work to the satisfaction etc. Though this Court cannot now expressly hold that the said order is erroneous at this point of time, suffice it to say that whether that exercise itself is correct or not, remains to be doubtful and is not decided on merits at any point of time.

14. The second error is committed by the workmen. Instead of raising a dispute as against the said order of termination, they straightaway filed Computation Petitions under Section 33C(2) of the Act. The same came to be dismissed on 13.09.2012 rightly so by holding that straightaway they cannot approach by way of Computation Petitions under the Act. Thereafter, according to the learned Counsel for the management, once again the workmen committed error in straightaway filing an application under



W.P.No.22055 of 2022 etc., (batch cases)

WEB COPY

Section 2A(2). Since the period of three years have been lapsed, the workmen ought to have approached the Government for referring the dispute and instead, erroneously filed a claim under Section 2A(2) of the Act.

15. It can be seen that Section 2A of the Act was amended in the year 2010 after the dismissal of the employee, but, before the Claim Petitions were filed. The Labour Court took into consideration of the amendment which came into force before filing of the petitions, however, held that the limitation expired in the year 2009 itself. Whether that view, expressed by the Labour Court, would be correct or not, cannot be gone into as that order was also not challenged by the workmen. Thereafter, when the present Computation Petitions were filed, the averments made by the workmen in paragraph Nos.7 and 8 were extracted *supra*. It is the specific contention of the workmen that in view of the subsequent act of the management in treating them also on rolls upto the date of closure, gave a fresh cause of action to them for filing the Computation Petitions.



W.P.No.22055 of 2022 etc., (batch cases)

WEB COPY

16. It is expected of the management to categorically plead that the said act was only an error and cannot give rise to any concomitant right to the workmen. However, unfortunately, on the part of the management, for the first time, an error was also committed by them to plead as if these workmen were also on the rolls and that everything is settled and time and again, when the industry is also permanently closed and everything since settled,, the unions and the workmen are erroneously raising disputes. Therefore, the Labour Court considered the said pleading and only because such a stand is taken by the management by treating the workmen on rolls upto the closure of the mill, the Labour Court held that it is not bound by the earlier orders in view of the subsequent action of the management treating the workmen as if they were all on rolls till the closure of the mill in the year 1998 and awarded all the wage arrears, bonus, surrender leave etc.



W.P.No.22055 of 2022 etc., (batch cases)

WEB COPY

17. Thus, it can be seen that on the one hand, the workmen are clinging upon the fresh lease of life granted by the management in the form of averments as if they were on rolls till the date of closure and also paying gratuity to them till the date of the closure. The pleading of the management is that the earlier orders permanently sealed the fate of the workmen and thereafter, merely because the gratuity is granted, it can at best be an error or an act of magnanimity on the part of the management and will not grant a concomitant right. I only considered the chain of events which happened in this case.

18. It can be seen that there is error after error committed by the parties in dispute and therefore, the peculiar facts of this case make this case as an extraordinary case. Therefore, when the facts of the case remain extraordinary, the normal principles, whether Section 33C(2) can be invoked, whether the earlier orders will become *res judicata* or whether the management should be restricted to its own pleadings etc., which are



W.P.No.22055 of 2022 etc., (batch cases)

WEB COPY

bordering on the technical and legal arguments, cannot be applied to the instant case. I consider that the averments were made by the management in the present computation petitioners considering the industrial peace and resolution of the disputes.

19. In that view of the matter, considering the overall facts and circumstances of the case, I am of the view that the interests of justice will be well served by restricting the benefit granted to the workmen by the Labour Court to the 50%, which is already deposited by the management and they will not be entitled to claim any further amount towards the principal claim amount or the interest thereon. Suffice to grant the relief to pay the 50% amount already deposited along with accrued interest, if any, to the workmen and let the matter be given a quietus.

20. In that view of the matter, these Writ Petitions are partly allowed on the following terms:-



W.P.No.22055 of 2022 etc., (batch cases)

WEB COPY

(i) In view of the reasoning which is given holding that the facts of the present cases, being extraordinary in nature, where neither the legality of the termination of the workmen having been decided all through and was being rejected only on technical grounds and in view of the technical ground which is pleaded in the present Computation Petitions, I am of the view that the workmen will be entitled for computation and payment out of only 50% of the total amount entitled to them which is already deposited by the management;

(ii) The said sum which is deposited in the respective Computation Petitions shall be paid out to the workmen without insisting for any further formal application and only upon filing of a memo along with a copy of this order. The amount shall be paid out to them by issue of cheque along with accrued interest;

(iii) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.



W.P.No.22055 of 2022 etc., (batch cases)

Neutral Citation : yes
grs

To

The Presiding Officer,
Additional Labour Court,
Coimbatore.



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W.P.No.22055 of 2022 etc., (batch cases)

D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.Nos.22055 of 2022 etc., (batch cases)



WEB COPY



W.P.No.22055 of 2022 etc., (batch cases)