

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2015

CORAM

THE HON'BLE Ms. JUSTICE K.B.K.VASUKI

W.P.Nos.976 & 13410 of 1998

WP.No.976 of 1998

The Management of Tamil Nadu Cooperative Milk
producers Federation Ltd.,
Madhavaram, Madras - 600 051.

... Petitioner

Vs.

- 1.The Workmen
rep by the General Secretary,
Tamil Nadu Dairy Development Corporation Employees
Union, No.3, Dr.Vasudevan Street,
Kilpauk, Madras-10.
 - 2.Presiding Officer,
Industrial Tribunal,
Madras.
 - 3.Ekambaram
 - 4.R.Krishnamoorthy
 - 5.T.V.Nagarajan
 - 6.The Workmen of the Tamilnadu Co-operative
milk producers federation Ltd., Madhavaram rep by
Tamil Nadu Dairy Development Corporation Employees
Union (regn.379/CPT) rep. by its General Secretary
Mr.K.Kanagaraj No.24, Kovoore Vaithianathan Street,
Chindatripet, Chennai-2.
 - 7.E.Manickam
 - 8.S.Abdul Gafoor
 - 9.R.Subramani
 - 10.P.Subramani
 - 11.P.Theresa
- RR7 to 11 are impleaded as per order dated 31.10.2000
in WMPs.No.17919 to 17923 of 2000 respectively.
- 12.G.Lazarus
- R12 impleaded as per order dated 07.08.2002
in WMP.5378 of 2001.

... Respondents

WP.976 of 1998 : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari to call for the concerned records from the 2nd respondent Tribunal dated 17.02.1997 in ID.No.31/1985 and 70/86 published in the Gazettee dated 30.04.1997 filed and marked as Exhibits and to modify the award in respect of 279 workers who have signed 18(1) settlement whose names are given in the annexure to the typed set and others who enter into 18(1) settlement and in respect of others who have not signed the settlement.

WP.No.13410 of 1998

The Workmen of the Tamilnadu
Co-operative milk producers federation Ltd.,
rep. by its General Secretary,
Tamil Nadu Fairy Development Corporation Employees Union,
No.3, Dr.Vasudevan Street,
Kilpauk, Chennai-10.

... Petitioner

vs.

1.The Management of Tamil Nadu
Cooperative Milk Producers Federation Ltd,
Madhavaram, Chennai-51.

2.The Presiding Officer,
Industrial Tribunal,
High Court, Campus, Chennai.

... Respondents

WP.13410 of 1998 : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari Mandamus calling for the records of the common award dated 17.02.1997 passed in ID.No.31 of 1985 and 70 of 1986 on the file of the second respondent viz., the Industrial Tribunal, Chennai and quash the portion of the common award dated 17.02.1997 wherein 25% of the backwages from the respective dates of reference and direct the first respondent management to pay full back wages to the workers/members of the petitioner union who are covered under the above said common award dated 17.02.1997 from the day on which they were not allowed for duty within a reasonable time to be fixed by this Court by modifying the above said common award dated 17.02.1997 appropriately. (prayer amended as per the order dated 17.12.2003 in WPMP.No.40503 of 2003)

For Petitioners : Mr.G.Govardhanan
for M/s.Row and Reddy in WP.976 of 1998
Mr.K.M.Ramesh in WP.13410 of 1998

For Respondents : Mr.K.M.Ramesh for R1, R7 to R11
M/s.R.Kamtchi Sundaresan for R3 to R5.
Mr.R.Ganesan for R6.
M/s.Sudha Ramalingam for R12.

COMMON ORDER

Both the writ petitions are arising out of the common award dated 17.02.1997 made in ID.Nos.31 of 1985 and 70 of 1986 against the second respondent/Industrial Tribunal, Chennai directing reinstatement of the dismissed employees with 25% backwages and continuity of service. While WP.No.976 of 1998 is filed by the Tamil Nadu Cooperative Milk Producers Federation Ltd., for setting aside the impugned award and for modifying the same in respect of workers who entered into S.18(1) settlement and also in respect of others who have not signed the agreement. WP.No.13410 of 1998 is filed by the workman of the Tamil Nadu Co-operative Milk Producers Federation Ltd., rep by its General Secretary Tamil Nadu Dairy Development Corporation Employees Union for setting aside the award in so far as it relates to denial of full backwages and to order reinstatement with full backwages and other attendant benefits.

2.The parties are for the sake of convenience referred to as the petitioner management and employees union.

3.The facts which are relevant for consideration herein are as follows :

The management having his brand name as Aavin used to procure milk from various District union for the purpose of distributing milk in Madras. There were about 1500 workmen employed by the management for various activities carried on by them and majority of them were the members of the employees union. During 1980 the employees union demanded 20% bonus as against 8.33% declared by the management and decided to resort to one day token strike on 19.11.1980 without giving notice to the management and without paying any heed to the request made by the management not to do so. Though the strike on 19.11.1980 was only token strike for one day and it was but without any notice, the workers did not join duty from 20.11.1980 onwards. While according to the management, the workman abandoned the service, according to the workmen they were denied entry when they reported to duty on 20.11.1980, which gave rise to a dispute raised by the workmen relating to their non employment and the same was referred to conciliation and on the failure of the conciliation, the matter was referred to Industrial Tribunal. The Government issued two Government Orders dated 30.04.1985 and 25.09.1986 referring the issue of non employment of 901 and 169 workmen for adjudication by the Tribunal and the same were taken on file as ID.No.31 of 1985 and 70 of 1986.

4.During the pendency of the industrial dispute, the Government issued G.O.No.71, dated 24.02.1989 directing the Managing Director of Aavin to employ 489 persons as fresh recruits, who denied employment from 20.11.1980. In pursuance of the same settlement under Section 18(1) of the Industrial Dispute Act was entered into between the

individual workmen and the management. The management having entered into such agreement, approached the Industrial Tribunal for passing interim award and the Tribunal after hearing both sides passed interim award dated 07.10.1989 and 07.07.1994 in respect of 323 and 47 workmen totally 370 workman. Pending adjudication in respect of remaining 700 workers, 4 workers joined duty prior to Government direction. The Government also passed another G.O. on 29.01.1997, thereby directing the management to provide employment to 427 employees as fresh recruits. Out of 427 workmen names of 20 workmen were not referred to the Tribunal. In pursuance of the same, the management entered into individual settlement under Section 18(1) of I.D.Act with 279 workers and obtained their signatures in the individual settlement.

5. In the meanwhile, the Tribunal after hearing both sides passed a common Award in ID.Nos.31 of 1985 and 70 of 1986 on 17.02.1997 holding the non employment of the workmen as one without justification and ordered reinstatement with 25% backwages and continuity of service from the respective dates of reference till the date of reinstatement. The Award was also communicated to the Government of Tamil Nadu and published in Government Gazette on 30.04.1997. Much thereafter, the petitioner filed WP.No.976 of 1998 on 21.01.1998 seeking to modify the common award in terms of Section 18(1) settlement in respect of 279 workmen who were signatories in Section 18(1) and in respect of others, who were not signatories and who would enter into Section 18(1) settlement. At the same time, the employees union has come forward with WP.No.13410 of 1998 against denial of full backwages. Pending writ petitions, Government also issued letters directing the management to give employment to direct recruits in pursuant to the earlier letters and to accordingly fix their wages notionally as if they are not dismissed from service.

6. The facts above referred to would reveal that out of 1070 employees, whose non employment was referred to as Industrial Dispute for adjudication, 370 workers entered into Section 18(1) settlement for being appointed as fresh recruits and were accordingly accommodated, during the pendency of the Industrial dispute, and appropriate award was passed in terms of settlement of those 370 workers. Out of the remaining workers four joined the service as fresh recruits and the remaining workers were numbering 696, out of which, 279 workers entered into S.18(1) settlement individually, after the award was passed.

7. The issue involved in WP.No.976 of 1998 is as to whether the remaining 700 petitioners excluding 370 petitioners in respect of whom interim award was passed, are entitled to the benefit of continuity of service and backwages as per the award or whether the award has to be modified for employment of the entire remaining workers in terms of the Section 18(1) settlement entered into in terms of 279 workers to achieve uniformity.

8.The learned senior counsel for the management in WP.No.976 of 1998 seriously contended that there cannot be different award for those who have signed in Section 18(1) settlement and who are not signed the same and the Tribunal ought to have passed the same award in respect of 279 workers as that of the award passed in respect of 370 workers. It is also contended that the award for reinstatement with backwages and continuity of service is not supported by any valid reasoning and the same is passed without considering the fact that there was continuous strike by the employees and what was resorted by them was not one day strike and it is the workers, who failed to turn up for the work and bunked the service and are disentitled to seek any employment with backwages and with continuity of service. The sole criteria for seeking the relief in WP.No.976 of 1998 is thus Section 18(1) settlement entered into by some of the individual employee with the management.

9.As far as employee Union is concerned they opposed the relief sought for in WP.No.976 of 1998 mainly on the ground that the management has no authority to enter into any settlement under Section 18(1) with individual workers, when they are represented by the association in the adjudication proceedings and when their rights are being agitated through the association.

10.Regarding the relief sought for in WP.No.13410 of 1998 is concerned, the same is as already stated one for reinstatement with full backwages. According to employees union as the denial of employment by the management is without justification and not due to any misconduct on the part of the employees, the management is bound to reinstate them with full backwages.

11.Heard the rival submissions made on both sides and perused the records.

12.The fact that the employees union announced one day token strike and they resorted to strike on 19.11.1980 is not seriously disputed. Whether the absence of employees from 20.11.1980 is due to any act of abandonment of service by them or due to denial of employment to them by the Management is well considered and discussed by the second respondent/Industrial Tribunal. The second respondent/Industrial Tribunal arrived at conclusion that staying away from duty is different from abandonment and absence of the employee continuously for a period of 8 days amounting to abandonment of service and the management dismissing them from service ought to have followed the provisions of law (ie.) to take disciplinary action for their prolonged absence and thereafter to come to a conclusion and the dismissal of the employees for an act of abandonment of service is in violation of the procedure laid down under the Act and is in violation of the principles of natural justice and amounting to denial of reasonable opportunity and the non employment of the

workmen is hence not justified and the Management is bound to reinstate them in service. The management has not made out any ground before this Court to interfere with such well considered award of the Industrial Tribunal.

13. Insofar as the modification of the award is concerned the same is sought for bringing in uniformity in service conditions to all the workers having regard to Section 18(1) settlement entered into by same and who were reinstated as fresh entrants. It is well settled that this court cannot in this writ petition go into the fairness and reasonableness of the settlement. What can be decided herein is the locus standi of the individual of the workmen to enter into any settlement and validity of any settlement during adjudication of the Industrial Dispute raised by the trade union.

14. The learned counsel for the employees union has by relying on the judgment of the Hon'ble Supreme Court reported in (i) (1996) 10 SCC 446 KCP Ltd., V. Presiding Officer (ii) (1998) 1 SCC 650 P. Virudhachalam V. Lotus Mills and (iii) (1983) II LLJ 181 (Mad) Britannia Biscuit Ltd., Employees Union V. Assistant Commissioner of Labour, Head Quarters and others contended that recognised union negotiated with the management on behalf of the individual workers as the individual do not come into the picture and it is not permissible for the management pending determination of dispute raised by the Association to enter into any settlement under Section 18(1) with the individual workman. In the judgments above cited, the Hon'ble Supreme Court and the High Court dealt with the collective bargaining, power of the union to enter into settlement and the right of the individuals to enter into settlement with the management pending adjudication of dispute by the union and the issues were answered against individuals and in favour of the collective bargaining power of the union. While doing so, it is held that the individuals have no role to play in the scheme of Industrial Dispute Act and they have no say in the Industrial Dispute raised by the union. It is also categorically held in KCP case that it is only the trade union that could decide the issue particularly during the pendency of the Industrial Dispute. It is also held in P. Virudhachalam case that the claim of bargaining on behalf of workman made by the union who espouse the common cause on behalf of its members and the settlement arrived at by the union with the management would bind its members.

15. The learned counsel for the employee union has also brought it to the notice of this court about the order of the learned brother judge Hariparanthaman, J in WP.Nos.7325 and 7326 of 2006 wherein, the learned brother judge had an occasion to deal with the validity of Section 18(1) settlement entered into by the Management with the individual workmen. The writ petitions arose out of the order passed under Payment of Gratuity Act, thereby directing payment of gratuity for the past service by ignoring Section 18(1) individual settlement

entered into by the respective employees to join service as fresh entrants. The learned brother judge after detailed discussion held against the validity and binding effect of such settlement on the trade union representing the employees in the Industrial Dispute. In view of the categorical findings so rendered by the Apex Court and our High Court this court feels that section 18(1) entered into by the management with the individual workmen will have no impact on the award passed by the industrial tribunal on merits raised by the trade union and that cannot be a ground to modify the award passed by the Industrial Tribunal and the Management is hence disentitled to get any relief on that ground in the writ petition.

16.Regarding the relief sought for in the writ petition filed by the employees union in WP.No.13410 of 1998, the same is only for full backwages as against 25% of backwages awarded by the industrial tribunal. The Industrial Tribunal having regard to the length of the period for which they were unemployed was of the view that it would meet the ends of justice if 25% of backwages is paid. The learned counsel for the employees union would by relying on the judgment of the Supreme Court reported in (2013) 10 SCC 324 Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and others argue that the denial of backwages would amount to indirectly punishing the employee and rewarding the employer by relieving him of backwages for the period during which he denied employment to the workers.

17.However, the learned Industrial Tribunal considering the fact that the respondent Union cater the need of the public with regard to one of the essential commodities and having regard to the statement made on behalf of the management that in event of the award of full backwages or award for payment of compensation would result in increase of price of milk thereby shouldering the burden on the public, was of the view that it would meet the ends of justice if the employees are awarded 25% of the backwages. This Court accepting the reasons set out in the impugned award for denying full backwages as bonafide, is not inclined to interfere with the award and the common award passed by the industrial Tribunal is hence confirmed in its entirety.

18.In the result, both the writ petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Management of Tamil Nadu
Cooperative Milk Producers Federation Ltd,
Madhavaram, Chennai-51.
- 2.The Presiding Officer,
Industrial Tribunal,
High Court, Campus, Chennai.

+1cc to M/s.Balan Haridas, Advocate, S.R.No.20871
+1cc to M/s.Row and Reddy, Advocate, S.R.No.21102
+2cc's to Mr.K.M.Ramesh, Advocate, S.R.No.20870

W.P.Nos.976 and 13410 of 1998

ALA(CO)
CA(22/09/2015)



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