

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered on : 16.10.2015

Reserved on : 04.09.2015

CORAM

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Rev.Appln.No.212 of 2015
in M.P.No.1 of 2015
in W.P.No.1032 of 2012

M/s.S&S Industries and Enterprises Limited
Represented by its
Dy. General Manager, Mr.S.Ramasamy
204, SIDCO AIEMA Towers,
First Main Road, Ambattur Industrial Estate,
Chennai-600 058.

.. Petitioner

Vs.

- 1.The Presiding Officer,
Principal Labour Court,
Vellore, Vellore District.
- 2.The Secretary to Government,
Labour & Employment Department,
Government of Tamil Nadu
Fort St.George, Chennai-600 009.
- 3.Mr.C.Velmurugan
- 4.Mr.K.Rajendiran
- 5.Mr.B.P.Ramakrishnan
- 6.Mr.R.Munusamy
- 7.Mr.A.K.Ranganathan
- 8.Mr.K.Arumugam

- 9.Mr.G.Baskaran
- 10.Mr.D.Sundaramoorthy
- 11.Tmt.P.Rukku Ammal
- 12.Mr.R.Jagan
- 13.Mr.R.Baskar
- 14.Mr.G.Mohanam
- 15.Mr.S.Ramanathan
- 16.Mr.D.Srinivasan
- 17.Mr.K.Shanmugam
- 18.Mr.N.Kuppan
- 19.Mr.N.Vijayaragavan
- 20.Mr.L.Swaminathan
- 21.Mr.S.Hari Krishnan
- 22.Tmt.B.Mohana
- 23.Mr.C.Rajkumar
- 24.Mr.A.Sivasankaran
- 25.Mr.M.Balaraman
- 26.Mr.M.Palani (died)
Rep by her guardian the first respondent
- 27.Mr.R.Govindan
- 28.Mr.A.S.Saravanan
- 29.Mr.A.Srinivasan
- 30.Mr.J.Ravichandran
- 31.Mr.M.Mekendiran
- 32.Mr.A.Sambandam
- 33.Mr.G.Venkatesan
- 34.Mr.S.Baskar
- 35.Mr.L.Gunasekaran
- 36.Mr.D.Balaji
- 37.Mr.D.Balaji
- 38.Mr.D.Raghu
- 39.Mr.M.Shanmuga Sundaram
- 40.Mr.S.Venugopal
- 41.Mr.K.Sugumar
- 42.Mr.S.Swaminathan
- 43.Mr.A.Murugavel
- 44.Mr.K.Ravichandran
- 45.Mr.K.Sivasankar
- 46.Mr.L.Manoharan
- 47.Mr.N.Chandrasekaran
- 48.Mr.P.Sampath Kumar
- 49.Mr.T.Gnanasekar

50.Mr.S.Balamurugan
 51.Mr.T.S.Venkadathiri
 52.Mr.G.Poyya Mozhi
 53.Mr.S.G.Palani
 54.Mr.K.Mani
 55.Mr.R.Ravi
 56.Mr.G.Kumar

.. Respondents

Prayer:- Review Petition filed under Order XLVII Rule 1 CPC r/w. Section 114 CPC to review the order dated 05.08.2013 made in W.P.No.1625 of 2013.

For Petition : Mr.S.Ravindran
 for Mr.B.Natarajan

For Respondents : Mr.V.Subbiah,
 Special Government Pleader
 for R1 and R2

Mr.R.Rajaraman for R3 to R56

ORDER

M.SATHYANARAYANAN, J.

The petitioner/Management filed W.P.No.9879/2010, challenging the award dated 19.03.2010 passed by the Principal Labour Court, Vellore, in and by which I.D.Nos.32 to 38/2002 etc., batch filed by the private respondents came to be ordered by directing the petitioner herein to reinstate them with continuity of service, payment of 50% backwages and other attendant benefits. In respect of the petitioner in I.D.No.56/2002, the Labour Court has ordered that they are entitled to 50% backwages and other attendant benefits upto the date of death

of the petitioner/workman. The writ petition has been entertained and notices were ordered to the respondents. The private respondents/workmen filed M.P.No.2 of 2011 under Section 17-B of the Industrial Disputes Act, 1947 [in short "I.D. Act"] praying for appropriate direction, directing the writ petitioner/Management to pay last drawn salary for every month from the date of award till the disposal of the writ petition. The learned Single Judge, upon hearing the rival submissions, has passed an order dated 19.07.2013 directing the petitioner/Management to pay the last drawn salary for every month to the private respondents 3 to 56 from the date of the writ petition and the petitioner/Management is directed to pay the arrears upto June 2013 on or before 10.08.2013, with a further direction directing the petitioner/Management to continue to pay the last drawn salary from July 2013 and for subsequent months on or before 10th of every month.

2. The petitioner/Management, aggrieved by the said order, preferred an appeal in W.A.No.1625 of 2013 and it was dismissed on 05.08.2013. The petitioner herein filed this Review Application to review the above said order, vide Rev.Appl.No.SR106299 of 2013 and the papers were returned for compliance and while representing the

papers, delay of 502 days had occurred and filed M.P.No.1 of 2015 to condone the same and also filed M.P.No.2 of 2015 to condone the delay of 62 days in filing the Review Application and both the petitions were ordered on 10.07.2015 by putting the petitioner on terms and it was also complied with and thereafter, the Review Application came to be listed for admission.

3. Mr.S.Ravindran, learned counsel appearing for the petitioner would contend that the conditions for invoking Section 17-B of the I.D. Act have not been complied with and admittedly, the private respondents did not file any individual affidavits stating that he has not been gainfully employed and that apart, some of the employees retired from service and therefore, not entitled to get any benefit under the said provision and prays for reviewing the order. The learned counsel appearing for the petitioner would further contend that in any event, last drawn wages is to be paid from the date of the affidavit filed by the workman and not from the date of the writ petition. The learned counsel appearing for the petitioner, in support of his submissions, has placed reliance upon the decisions in **(i) Management of K.S.B.Pumps Ltd., Coimbatore v. Presiding Officer, Labour Court, Coimbatore and two others [2010 (2) L.L.N. 786 (DB)]**

and (ii) Palani Andavar Cotton & Synthetic Spinners Ltd., rep. by its Managing Director, Coimbatore District and Solyraaj and Others [2008-II-L.L.J. 887 (Mad) (DB)].

4. *Per contra*, learned counsel appearing for the private respondents would contend that Section 17-B of the I.D. Act is in the nature of beneficial/benevolent provision and though the private respondents raised individual disputes and they were also numbered accordingly, a common award came to be passed and admittedly, the petitioner/Management did not file individual writ petitions, but only a single writ petition and it is not open to contend that each of the private respondents has filed individual affidavits stating that he has not gainfully employed and prays for dismissal of this Review Application.

5. Heard the submissions of Mr.V.Subbiah, learned Special Government Pleader appearing for the respondents 1 and 2 also.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. In ***Management of K.S.B.Pumps Ltd., Coimbatore v. Presiding Officer, Labour Court, Coimbatore and two others [2010 (2) L.L.N. 786 (DB)]*** it has been held that the workman is entitled to last drawn wages from the date of filing of the affidavit stating that he is unemployed.

8. In ***Palani Andavar Cotton & Synthetic Spinners Ltd., rep. by its Managing Director, Coimbatore District and Solyraj and Others [2008-II-L.L.J. 887 (Mad) (DB)]***, it has been held that pendency of the proceedings before the competent forum under the proceedings of the Sick Industrial Companies (Special Provisions) Act, 1985 would not bar the workman from invoking Section 17-B of the I.D. Act.

9. The prerequisite for invoking Section 17-B of the I.D. Act are:

(a) the award of the tribunal should have directed reinstatement of the workmen on setting aside the order of his dismissal or unfair termination of service;

(b) the employer should have preferred proceedings such award before a High Court or the Supreme Court;

(c) the workmen should not have been gainfully employed in any establishment during the pendency of the proceedings; and

(d) as a proof of that, the workman should have filed an affidavit before the Court before which proceedings have been preferred.

10. In ***Levcon Instruments (P) Ltd. v. State of West Bengal [(2002) 2 LLN 564 (Cal)]***, it has been held that last drawn wages are payable from the date of initiation of writ proceeding before the High Court and not from the date of award. Whereas, the Division Bench judgment of this Court, in ***Management of K.S.B.Pumps Ltd., Coimbatore v. Presiding Officer, Labour Court, Coimbatore and two others [2010 (2) L.L.N. 786 (DB)]***, taking into consideration the order passed at the time of entertainment of the writ appeal, formed an opinion that the workman is entitled for 17-B wages from the date of affidavit of non-employment on 05.03.2009.

11. The object of Section 17-B of the I.D. Act is to give relief to a certain extent the hardship that is caused to the workmen due to the delay in implementation of the award and the payments required to be made by the employer to the workmen in terms of the said provision is in the nature of subsistence allowance, which would not be refundable or recoverable from the workmen, even if the award is set aside by the High Court or by the Supreme Court.

12. According to the learned counsel appearing for the petitioner, the petitioner industry at present is a sick industry and in the light of the judgment in ***Palani Andavar Cotton & Synthetic Spinners Ltd., rep. by its Managing Director, Coimbatore District and Solraj and Others [2008-II-L.L.J. 887 (Mad) (DB)]***, Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 is not a bar to comply with the mandate under Section 17-B of the I.D. Act. The primordial submission made by the learned counsel appearing for the petitioner/Management is that each of the private respondents have to file individual affidavits and since a common affidavit has been filed on their behalf, the petition ought not to have been ordered. A perusal of the affidavit filed on behalf of the workmen, more particularly para 12 would indicate that the details of the benefits payable to each workman in terms of the common award has been clearly given and in the considered opinion of the Court, it is not necessary for each of the workman to file individual affidavits.

13. As already pointed out, the provision under Section 17-B of the I.D. Act is in the nature of beneficial/benevolent provision to the

workman, who, inspite of getting the order of reinstatement and consequential benefits, is restrained or prevented from enjoying the fruits of the order passed in their favour on account of pendency of the writ petition and subsistence of the interim orders. It is also the submission of the learned counsel appearing for the petitioner that at any rate the protection under Section 17-B of the I.D. Act should have been made and payable from the date of the affidavit and not from the date of the writ petition. It is to be pointed out at this juncture that in normal course and circumstances, this Court used to pass interim orders staying the operation of the award either subject to certain conditions or without conditions, from the date on which, writ petitions are entertained and therefore, in all fairness, is of the view that it should be payable from the date of initiation of writ proceedings. When technicalities and substantial justice is pitted against each other, the Court always render substantial justice.

14. It is well settled position of law that the power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases and the review is not an appeal in disguise.

15. This Court, on a careful consideration of the rival

submissions and careful scrutiny and analysis of the entire materials placed before it, is of the considered opinion that this review petition lacks merit and deserves to be dismissed.

16. In the result, this Review Application is dismissed. N costs.

[M.S.N, J.] [T.S.S., J.]
16.10.2015

Index : Yes/No
Internet : Yes/No
jvm

To
The Secretary to Government,
Labour & Employment Department,
Government of Tamil Nadu
Fort St.George, Chennai-600 009.

M.SATHYANARAYANAN, J.
and
T.S.SIVAGNANAM, J.

jvm

Order in
Rev.Appln.No.212 of 2015

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