

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 10.12.2014

DATED: 22.01.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.17871 of 2014

K.Sivasubramanian ... Petitioner

Vs.

1.The Management,
Veeraraghava Textiles (Private) Limited,
Rep.by its Proprietor Mr.Azhagappa Chetty,
Chengalpet Road,
Uthiramerur, Kancheepuram.

2.The Presiding Officer,
II Additional Labour Court,
Chennai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus or any other appropriate writ or order or direction in the nature of writ calling for the records from the 2nd respondent relating to the award dated 09.01.2014 passed in C.P.No.44 of 2007 and quash the award and to direct the 1st respondent to pay a sum of Rs.2,62,500/- (Rupees two lakhs sixty two thousand and five hundred only) as arrears of salary as claimed in C.P.No.44 of 2007 to the petitioner.

For Petitioner : Mr.T.P.Sekar

For Respondents : Mr.A.S.Thambuswamy

O R D E R

The short facts of the case are as follows:

The petitioner submits that he was working under the respondent Company from 01.01.1986 as Winder. The said company was functioning upto 2000. Thereafter, the respondent Company was unable to run

adequately. Hence, another company namely "M/s.MAHIR SPINNING MILLS" was conducting the respondent company namely Veeraraghava Textiles, Private Limited. During, that period the Company was unable to pay the Electricity Connection Charges around several Crores to the Tamil Nadu Electricity Board. Thereafter, no one came forward to run the Company. The petitioner further states that the respondent's company had not paid the salary to the petitioner from the year of 2000. The petitioner had received a sum of Rs.3,750/- as his last pay drawn salary. Further the petitioner is entitled to service salary arrears from January 2001 to October 2006 in total Rs.2,62,500/- from the respondent company as salary arrears. Hence, the petitioner has filed a Claim Petition No.44 of 2007, on the file of the 2nd respondent herein namely the Presiding Officer, II Additional Labour Court, Chennai.

2. The respondent Company had filed a counter statement and refuted the said claim petition. The respondent stated that due to financial crises the respondent company was unable to run. Therefore, there was an agreement made between the workers and the management, as per the agreement, the arrears of salary have been paid to the workers. Further, the company was not running from the year of 2000. The petitioner is also working as an employee for his personal gain, as such the petitioner is not entitled to secure any relief from the respondent herein.

3. After recording the statements of both parties, the Labour Court had framed an issues: (1) Whether the petitioner is entitled to receive the claim amount from the respondent?. On the side of the petitioner, he was examined as PW.1 and he had marked three exhibits namely: (1) Salary Slip; (2) Respondent's letter to the petitioner; (3) Order of the Additional Labour Court. On the side of the respondent one witness was examined as RW.1 and twenty four exhibits were marked namely: Exhibit 1-salary slip of the petitioner for the month of December 1999; Exhibit-2 salary slip of the petitioner for the month of July 2002; Exhibit-3 Copy of the Claim Petition No.36/2008 filed by the petitioner; Exhibits-4 and 5 Copy of Notice in MIHIR SPINNING MILL" Copy of the proceedings of Electricity Board; Exhibit-6- Management had written a letter to the petitioner regarding closure of the company; Exhibit-7 petitioner's authorization letter has been issued to the respondent company in the name of R.W.1; Exhibit-8 salary slip of Mr.Sivasubramanian; Exhibits 9 and 10-settlement copies; Exhibits-11 and 12 "MIHIR SPINNING MILL" salary particulars; Exhibit -13 paper publication; Exhibits-14,15,16-settlement slips; Exhibit-17 and 18 copy of the petitioner letter regarding the withdrawal of claim petition No.1291/07; Exhibit-19 Labour Inspector sent a letter to the Management; Exhibits-20 and 21 one Subramanian wrote a letter to the Commissioner for Provident fund;

4. PW.1 had adduced evidence stating that he had joined duty in

the respondent company in the year of 01.01.1996 as Winder. Further, the respondent Company was running in a fair manner upto the year of 2000. Thereafter, the said Company was unable to run profitably. At this point of time, one company namely "M/s. MIHIR SPINNING MILL" came forward to run the company during that period the said company was unable to pay several crores of rupees to the Tamil Nadu Electricity Board, as consumption charges. PW.1, further stated that thereafter no one took interest to run the company and he was not paid salary from January 2001 to October 2006 i.e., a sum of Rs.2,62,500/- as arrears of salary. He further stated that he is belonging to a poor family and out of his monthly salary he could run the family. He admits that he had not sent any legal notices to the management or not levelled any complaint before the Labour Officer.

5. RW.1, had adduced evidence stating that he was Accountant and Cashier under the respondent company. Due to some difficulties the respondent company could not run in an effective manner from the year of 1990, further from the year of 1996, the spinning mill could not run continuously. Regarding the salary of the employees the respondent company made an agreement with the employees union and as per settlement the arrears of salary has been paid to the employees. He further stated that in the year of 2000 due to the heavy financial crises, the company was unable to continue, under these circumstances one "M/s. MIHIR SPINNING MILL" took the company under lease and had run the company for a period of three months, during this period salary was paid to the employees. Thereafter, the respondent company had taken steps for disposing the company assets in order to settle the dues to the workers. Further, the company was closed in the year 2003 and notification was affixed on the door of the company thereafter the company was sold in the year of 2006. On 30.10.2006, the company had sent out letters to the workers stating that as per settlement arrived at between the workers unions and management the monetary benefits will be paid. After receipt of the said letters, 300 workers have received their salaries further the petitioner had not worked with the company from 2001 to 2006. He further stated that the petitioner had not produced any documentary proof for claiming arrears of salary, further the petitioner and others filed a petition on the file of Additional Labour Court for claiming the same relief, the same was not processed subsequently since the company was closed.

6. On recording the evidence of witnesses and on perusing the exhibits marked by both parties, the 2nd respondent herein/2nd Additional Labour Court, dismissed the claim petition assigning reasons stating that as per section 18(1) a settlement was arrived at between the workers union and management. Further, the management had sent a letter to the worker for receiving arrears of salary. The Labour Court further observed that the petitioner had not proved that he was working under the company from the year of 2001 to 2006. Not being satisfied with the findings of the Labour Court, the above writ

petition has been filed by the writ petitioner.

7. The highly competent counsel Mr.T.P.Sekar, appearing for the petitioner submits that the learned Labour Court Judge, failed to observe that the 1st respondent's company had not obtained any prior permission to close the company under section 25(o) of Industrial Disputes Act. Therefore, all the employees are entitled to receive all benefits including the salary. Further, as per the agreement dated 27.11.2006 made under section 18(1) of the Industrial Act had not been intimated to the petitioner, even after the employees wrote letters on 19.12.2006 to call for the terms and conditions of the agreement. As such the agreement has become defunct since the employees are not aware of the conditions of the agreement. The very competent counsel further submits that the respondent's company renewed the explosive licence till 31.12.2002 and the company paid contribution for employees to the provident fund office till the year of 2003. The notice regarding closure of the company was displayed on 30.08.2004, it clearly proves that the company was functioning upto the year of 2004. The learned judge has erroneously observed the principle of "No work no pay policy". Further one "M/s.MAHIR SPINNING MILLS" had run the company under the name and style of the respondent company. Therefore, the respondent company was not a sick unit. Further, as per the Apex Court judgment, the workmen are entitled to receive salary and arrears of salary if the company was closed without following the proper procedure. The workers are entitled to receive arrears of salaries under section 33 of the Industrial Disputes Act. The respondent's company contention that the dues of the workmen were settled to their respective association which is not proper. Since, the association has no locus standi to receive the workers benefits. The Company's statement regarding settlement which is their own opinion. The petitioner had received a sum of Rs.3,750/- as last drawn salary. Further about 1000 employees had worked in the company. The respondent company had not produced any crucial documents regarding the closure of the company or the company becoming a sick unit. Therefore, the petitioner is entitled to receive arrears of salary for his working period under the respondent company.

8. The above writ petition is not maintainable either in law or on facts. The petitioner's claim of Rs.2,62,500/- being wages for the period from January 2001 to October 2006 is baseless and frivolous. The claim of the petitioner that he worked continuously without taking any leave from 01.01.2001 to October 2006 is contrary to facts. Similarly, no prudent man will work for six years without salary and without taking any proceedings for payment of wages. The claim of the petitioner that he discharged his duties efficiently, but he was not paid for six years is not correct. For non-payment of wages for the period not worked and the Mill was not working, the petitioner cannot file a claim petition which is not the forum for claiming of non-payment of wages.

9. The allegations made in Para No.2 are denied. It is not correct to state that the petitioner discharged his duties to the full satisfaction of his superior and that his last drawn salary is Rs.3,750/-. The allegations that due to mismanagement and financial crisis, the company had not been running properly from the year 2000 onwards but the employees had come to the company on all days including the petitioner are denied. From the year 1998 onwards, there was no sufficient work for the first respondent to run to its full capacity. The first respondent Mill could not run to its full capacity due to slump in the textile business. Therefore, as per the Agreement entered into with the Four Unions, the workers were paid wages for the days they were provided with the work. It is not correct to state that the workers were paid for all the days in the month. In spite of these difficulties, the first respondent carried on the production to the extent possible and paid to the workers for the days they had worked, as per the Settlement with Unions.

10. After 2000, the first respondent could not run the Mills any further. One "M/s.MAHIR SPINNING MILLS" took the first respondent's Mills on lease for three months and the workers were given work during the period and they were paid by the said lessee for the work they have done during that period. The first respondent Mills was not functioning and there was no work from 2000 onwards and no worker worked in the Mills from 2000. The first respondent Mills sold the properties of the Mills and from the sale proceeds paid dues to 300 workers as per the settlement entered into all the four Workers Union under section 18(1) of the Industrial Disputes Act. The petitioner also received the letter calling upon him to come to the Mill's premises to receive his dues. But the petitioner and few other workers did not receive the amounts as agreed to by the settlement entered into with the unions. It is submitted that the settlement entered between the first respondent and unions are binding on all the workmen including the petitioner. The petitioner is also one of the members of the union which entered into settlement with the first respondent.

11. The allegations made in para No.3 are denied. It is not correct to state that the first respondent paid contribution for Employees' Provident Fund till the year of 2003. The first respondent paid contribution only for the period when the Mill was running and salary was paid to the workers. After the year 2000, there was no work and therefore no contribution was made towards provident fund. For the period for which the said "M/s.MAHIR SPINNING MILLS" was running the Mills as Lessee, they paid wages to the workers and paid corresponding contribution to Employees' Provident Fund. The allegation that the first respondent is employing more than 1000 workers and therefore, Sec 25(o) (6) of the Industrial Disputes Act will apply is denied. At no point of time, this respondent employed 1000 workers. Further, it is not the case

of the petitioner that in view of illegal closure, he is entitled to wages. On the other hand, his specific case is that he worked from 01.01.2001 to October 2006 without taking any leave but he was not paid wages. The question whether the closure is illegal or legal and whether permission under section 25(o) (6) of the Industrial Disputes Act is necessary or not, cannot be decided in the claim petition filed under section 33(C)(2) of the Industrial Disputes Act for payment of arrears of wages as he cannot raise such question individually, especially under that section.

12. The allegations made in Para No.4 are denied. It is not correct that the petitioner worked from 01.01.2000 till October 2006 and was not paid salary from the said period. This allegation is baseless. There was no work after 2000 and no worker was employed by the first respondent from that date. As per settlement entered into with the four Worker's Unions, all the dues of the workers were paid in full. Only the petitioner and few other workers did not receive the amount as per the settlement when offered by the first respondent. The petitioner and others filed in C.P.No.36 of 2008 and in para No.4 of the said petition, the petitioner and others admitted that the first respondent Mills was closed during 1999 - 2000 and there was no manufacturing business. In C.P.No.44 of 2007, the petitioner admitted that the Mills was not functioning properly from 2000. The petitioner has failed to prove that he worked from January 2000 to October 2006 that he was entitled to the claim made in C.P.No.44 of 2007. On the other hand, the first respondent by cogent, oral and documentary evidence proved that the mill was not functioning from 2000 onwards and nobody worked from January 2001 onwards except when "M/s.MAHIR SPINNING MILLS" as a lessee was running the Mills for a few months. For the said period, all the workers were paid their due salary and Provident Fund contribution by the said "M/s.MAHIR SPINNING MILLS".

13. The allegations raised on these Grounds are untenable, unsustainable and contrary to law as per the well established judicial pronouncements. The second respondent considered all the materials on record, the oral and documentary evidence let in by the petitioner and the first respondent and has come to a correct conclusion that the petitioner did not prove his case and rightly dismissed the claim petition. There is no error on the face of the record or there is no perversity in the order of the second respondent. There is no reason or circumstances warranting interference by this Court in writ proceedings under Article 226 of the Constitution of India. The writ petition is devoid of merits and is liable to be dismissed.

14. The very competent counsel Mr.A.S.Thambuswamy appearing for the 1st respondent submits that the petitioner's claim is Rs.2,62,500/- for arrear of salary from January 2001 to October 2007, supporting the claim namely card punching attendance and leave

particulars for a period of six years. Further, there was no adequate work from the year of 1998 to run the company to its full potential due to a slump in the textile business. Hence, an agreement has been entered with four employers union and paid wages to the workers. From the year of 2000 onwards the company could not run, hence the same was leased out to "M/s.MAHIR SPINNING MILLS" who had run the Mill for a period of three months. Thereafter, the respondent company sold the assets of the company and settled the dues of 300 workers as per the settlement made under section 18(1) of the Industrial Disputes Act. The Company had sent a letter to the petitioner for receiving of their dues, the petitioner and few others did not receive the said amount as per the terms and conditions of the settlement entered with the workers union.

15. The highly competent counsel further submits that the Company had not remitted the contribution for employers provident fund till the year of 2003. Actually, the employer had paid salaries upto 2000 thereafter, the Mill as lessee for a short period and during this period the workers were paid wages and also paid corresponding contribution to employer provident fund. Further, only limited workers were employed under the company and not 1000 employees who worked under the company as alleged by the petitioner, further more the Labour Court wherein they openly admitted that the Mill was closed during the year of 1999 to 2000 and there was no manufacturing business. The respondents had proved their case by way of oral and documentary evidence and that the Mill was not functioning from the year of 2000 except a few months and during this period the Mill was leased out to one "M/s.MAHIR SPINNING MILLS". Therefore, the claim of the petitioner is not bonafide.

16. From the above discussion this Court is of the view that:

(1) The petitioner's claim that he was not paid his salary from January 2001 to October 2006, in total a sum of Rs.2,62,500/- as arrears of salary. In order to claim the said amount the petitioner had not produced working particulars namely Attendance, leave particulars etc;

(2) As per the statement of the petitioner, he was not paid salary around seven years but he has filed a claim petition in the year of 2007, in between the petitioner had not raised his claim or request to the management or any legal notice or any complaint to the Labour Offices regarding non-payment of salary for a long period as such his claim is not supported by any documents;

(3) On the side of the respondents three salary slips were marked as Exhibits R2, R3 and R4 stating that the petitioner was paid salary for the month of November 2002, December 2002 and January 2003. Therefore, the claim of the petitioner from January 2002 to October 2006 is not tenable;

(4) The workers unions and management arrived at a settlement under section 18(1) of the Industrial Disputes Act dated 23.08.2002. As per the settlement most of the workers were paid except the petitioner and few others. In order to settle the said amount as per the arrival of the settlement, the company/1st respondent herein had sent a communication dated 30.10.2006 to the petitioner and the same was received, the copy of the communication has been marked as exhibit-16;

(5) The petitioner and others had filed a claim petition in C.P.No.1291 of 2007, subsequently, the same was withdrawn after filing an interlocutory application in I.A.No.91 of 2009, dated 08.06.2009, the same was withdrawn. As such the petitioner's claim petition is not maintainable;

(6) For claiming arrears of salary there is no crystal clear statement as well as relevant documents in order to prove the claim amount. Besides it is disputed fact that one "M/s.MAHIR SPINNING MILLS" had run the 1st respondent's company under lease for three months after the year of 2000. During that period whether the petitioner was paid the salary or not. This fact the petitioner had not revealed;

(7) The respondent company had given a paper publication as well as sending a notice to the petitioner regarding the closure of the company. Further, there is no material evidence that the company was functioning upto October 2006. Therefore, there is a lacuna on the side of the petitioner to prove his claim against the 1st respondent herein.

17. Considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and this Court's view (1) to (7) as given above, the above writ petition is dismissed. Consequently, the order passed in C.P.No.44 of 2007, on the file of the 2nd Additional Labour Court, Chennai, dated 09.01.2014 is confirmed. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To

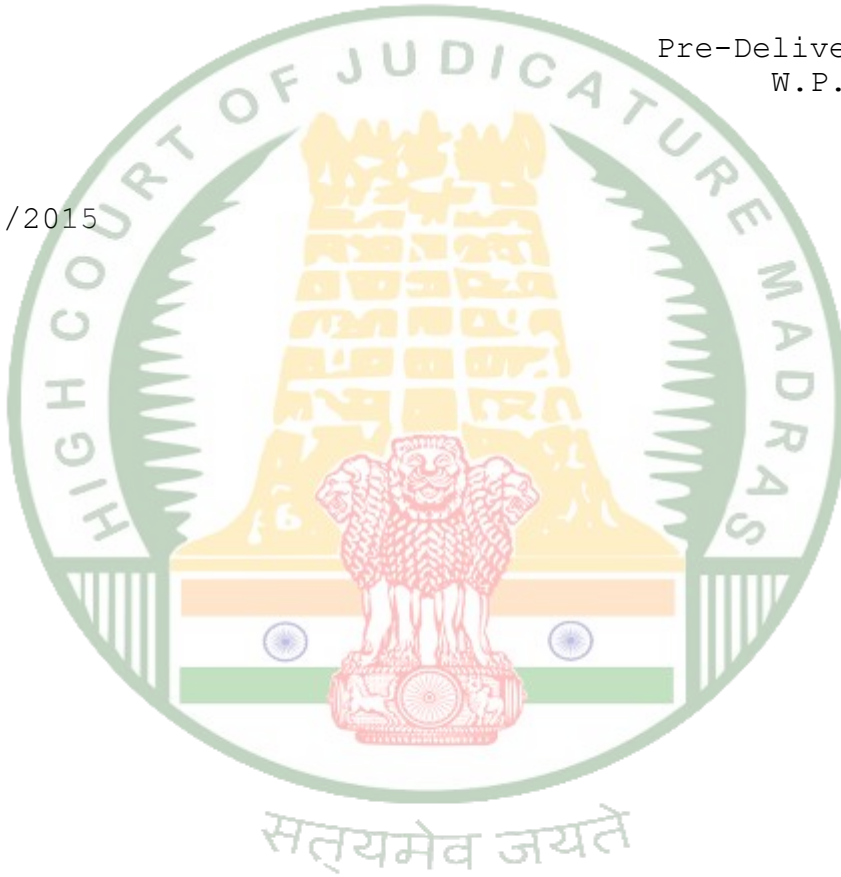
1.The Presiding Officer,
II Additional Labour Court,
Chennai.

+1 CC to MR.T.P.SEKAR, SR.NO.3358

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Pre-Delivery Order made in
W.P.No.17871 of 2014

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