

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.32520 of 2013

Order Reserved on 18.09.2015 Judgment Pronounced on 05.10.2015

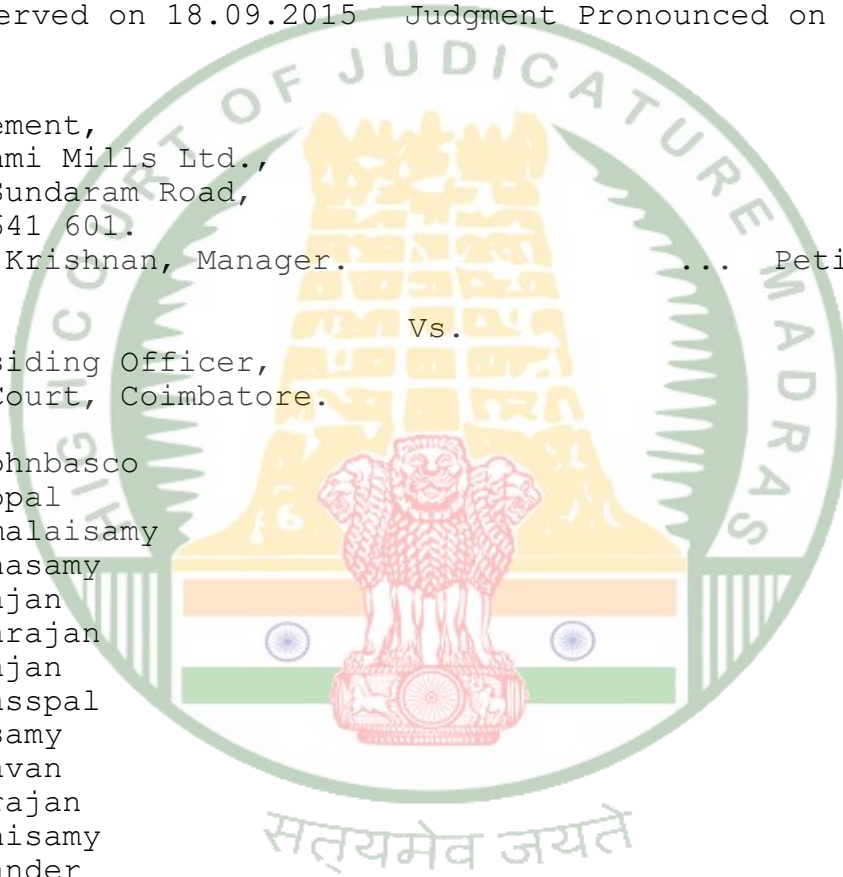
The Management,
Dhanalakshmi Mills Ltd.,
130, B.S.Sundaram Road,
Tiruppur 641 601.
Rep. by S.Krishnan, Manager.

.... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Coimbatore.

2.Maria Johnbasco
3.P.Rajagopal
4.R.Thirumalaisamy
5.N.Krishnasamy
6.K.Natarajan
7.V.N.Natarajan
8.A.Nagarajan
9.A.Yesudasspal
10.N.Ramasamy
11.N.Raghavan
12.P.Natarajan
13.R.Palanisamy
14.A.Alexander
15.S.Manoharan
16.V.Kulandaivelu
17.P.Venugopal
18.A.Loganathan
19.S.Ramasamy
20.B.Rajamanickam
21.A.Joseph Berdnnart Arokiaraj
22.M.Prabaharan
23.P.Chandrasekar
24.R.Somasundaram
25.R.Balasubramaniam
26.A.Mani



WEB COPY

27.Narayanan
28.R.Kothandapani
29.A.Ubakara Antonyraj
30.R.Radhakrishnan
31.A.Eswaran
32.S.Gunasekaran
33.V.Alagappan
34.R.Chinnasamy
35.P.Govindaraj
36.S.Rajendran
37.A.Arputhasamy
38.S.Theivasigamani
39.K.Thangappan
40.V.Karunanidhi
41.G.Kanirajaperumal
42.R.Palanisamy
43.P.Vasagan
44.A.Vincent
45.A.Muthusamy
46.P.Mohanbabu
47.A.Xavier
48.A.Lakshmanasamy
49.P.Shanmugam
50.R.Narayanasamy
51.V.Palanisamy
52.R.Balasubramaniam
53.A.Murugesan
54.P.Chandrasekaran
55.C.Natarajan
56.R.Senthilkumar
57.M.Ponnusamy
58.R.Prabaharan
59.C.Manoharan
60.P.Natarajan
61.R.Stephen Arokiadass

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records and quash the common order dated 27.06.2013 passed in C.P.No.72 to 133 of 2010 except in so far as it relates to C.P.No.124 of 2010 and C.P.No.127 of 2010 on the file of the first respondent, Presiding Officer, Labour Court, Coimbatore.

For Petitioner : M/s.Gupta and Ravi

For Respondents: Mr.V.Sivakumar (for R2 to 16, 18 to 22,
24 to 32, 34 to 61)

R1 - Court

R17, R23 & R33 - Not Ready Notice

O R D E R

The short facts of the case are as follows:

The respondents herein / workforce have filed a Computation Petition Nos.72 of 2010 to 133 of 2010 against the writ petitioner herein / Management stating that in the petitioner mill 174 permanent workers were employed. As per the direction of this Court, the petitioner Mill gave jobs in the petitioner 'A' mill to the 174 workers including the respondents with effect from 28.06.2005. The management suspended the operation of the mill with effect from 26.02.2007. The said act of the management is illegal. The said order of suspension of operation would amount to closure of the mill, because the management has permanently closed the mill from 26.02.2007. At that time 174 workers were employed in the petitioner mill. Hence, the provisions of Section 25-O of the Industrial Disputes Act will apply to the petitioner mill. As per the said section before closing of the mill a prior permission should be obtained from the appropriate Government. But the management did not obtain any permission as contemplated under Section 25-O of the Industrial Disputes Act. Hence the said closure is illegal and as per Section 25-O(6) of the Industrial Disputes Act, the respondents shall be deemed to be continued in service and they are entitled to full wages and allowances. Hence the petitions.

2.The Management filed a counter statement which are as follows:-

The petitioner company owned a spinning mill called "A" Mills and also owned a Weaving Mill called 'B' Mills. Since the petitioner mills sustained heavy loss the 'B' Mills was closed and an offer was made to the respondents who were working in the 'B' Mills to join in the 'A' mills. Thereafter 'A' Mills was also closed. Subsequently as per the order of this Court the 'A' mills was reopened on 28.06.2005 and the respondents herein have accepted the alternative work provided to them from 28.06.2005 and worked in the 'A' mills. However, due to sheer misconduct of certain group of workers including the respondents and due shortage of power and financial crisis the 'A' mills could not be run and therefore on and from 26.02.2007 the operations in the 'A' mills were temporarily suspended and was subsequently declared closed from 31.12.2008. The respondents have not disputed the suspension of operation as well as the closure of the 'A' mills by raising an Industrial Dispute. So without challenging the suspension of operation and closure of the mills the respondents cannot file petition under Section 33C (2) of the Industrial Disputes Act to compute the amount. There is no pre-existing right for the respondents to claim wages from 26.02.2007 to 31.12.2009. It is denied that there were 174

workmen working in the factory. Since the petitioner did not employ more than 100 workmen on the date of closure, the question of obtaining any permission does not arise. The provision of Section 25-O of the Industrial Disputes Act will not apply to the petitioner mills. The mills was closed only on 31.12.2008 and not from 26.02.2007 as alleged in the petitions. Therefore the petitioner prayed to dismiss the aforesaid petitions.

3. After considering the averments of both parties, the Labour Court had framed two issues and tried all Computation Petitions jointly. The workforce as well as the management did not deduce any oral evidence, however on the side of the workforce 24 documents were marked, on the side of the Management 8 documents were marked. After considering the averments of both parties and on perusing the exhibits marked by both parties, the Labour Court has come to the conclusion stating that the Management ought to have obtained prior permission as per Section 25-O(1) of the Industrial Disputes Act, but the Management did not obtain any permission from the Government as per the provision, therefore, the closure of mills shall be deemed to be illegal.

4. Therefore, the trial Court holds that the employees are entitled to receive the amounts maintained in their respective petitions and directed the Management to pay the said amount to the 60 employees on the basis of their last drawn monthly salaries. Against the said common order, the above writ petition has been filed by the Management.

5. The highly competent counsel Mr. Gupta appearing for the writ petitioner submits that the company consisting of 2 units namely: A. Mill Spinning and B. Mill weaving. The learned counsel has filed written arguments, which are as follows:-

"i). The petitioner company is a company incorporated under the Companies Act, 1956 and has its registered office at 130, B.S. Sundaram Road, Tiruppur. It had two units, viz. 'A' Mill Spinning and 'B' Mill Weaving. Due to reasons beyond the control of the Petitioner, the conducting of operations of 'B' Mill Weaving became unviable, and consequently an application was submitted before the Appropriate Government seeking permission to close down 'B' Mill Weaving under Section 25(o) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'). Pursuant to a reference made before the Special Industrial Tribunal in I.D.No.4 of 1993, an award was passed on 28.11.1994 granting permission to close down 'B' Mill Weaving and the Preparatory Section in 'A' Mill Spinning. The Award of the Special Industrial Tribunal became final since it was upheld by the Division Bench of this Court by judgment and decree dated 24.03.2008.

ii).In the meantime, the net worth of the company had eroded due to accumulated losses, and consequently the petitioner was declared a sick industrial undertaking under Section 3(1)(o) of the Special Industrial Companies(Special Provisions) Act, 1985 by the Board for Industrial and Financial Reconstruction (hereinafter referred to as "BIFR") by order dated 28.02.1994. The operations of 'A' Mill Spinning were also suspended in the year 1998, resulting in a reference being made to the Industrial Tribunal viz., I.D.No.326 of 1999. During the pendency of the dispute, most of the workmen of 'A' Mill Spinning entered into a settlement with the management agreeing to accept a scheme of voluntary scheme. Based on the said settlement the Industrial Tribunal disposed of the reference vide award dated 17.08.2004 which was also upheld by the Division Bench of this Hon'ble Court in its judgment and decree dated 24.03.2008.

iii).Meanwhile, pursuant to an order dated 17.03.2005 in W.P.No.34935 of 2004 this Hon'ble Court permitted the petitioner to infuse funds in order to settle the dues payable to the creditors and the workmen of the company. Based on the aforesaid order, the petitioner brought in a strategic investor who infused funds, with which all the liabilities of the company were settled and the net worth of the company became positive. The 'A' Mill Spinning was also reopened, and the remaining workers of 'B' Mill Weaving who had earlier refused the alternate employment based on the award of the Special Industrial Tribunal in I.D.No.4 of 1993 were provided employment in 'A' Mill Spinning. The manufacturing process commenced on 06.08.2005. However, due to the considerable gap in time between the closure and reopening of the said mill, i.e. between 1992 and 2005, most of the workmen became redundant with the result that the production became very low and the petitioner was unable to meet its day to day expenses. Further, the inefficiency of the workmen also resulted in gross indiscipline with the result that the petitioner had to take disciplinary action against many of the workmen.

iv).The petitioner operated the 'A' Mill Spinning with considerable trouble till February 2007, when a stage was reached when it was not possible to continue the manufacturing process. Given this, and in view of the non-cooperative disposition of the union representing the workmen did not challenge the validity of the suspension of operation declared by the management. Subsequently, the petitioner reached a stage whereby it came to the bonafide conclusion that it will not be possible to operate 'A' Mill Spinning and consequently closed down 'A' Mill Spinning on 31.12.2008. All the workmen who were on the rolls of the company on the said date were paid closure compensation and gratuity in accordance with law for the period of services rendered upto 31.12.2008.

v). Respondents 2 to 61 herein, claiming to be members of the union, filed C.P.No.72 to 133 of 2010 before the 1st respondent in the said claim petition, the workmen claimed wages for three different periods from 26-2-2007 to 31-12-2007, 01-01-2008 to 31-12-2008 and 01-01-2009 to 31-12-2009. The entire claim of the respondent workmen was that there was a stoppage of production from 26.02.2007 and that the same was contrary to law. The respondent workmen alleged that the temporary suspension of operation from 26.02.2007 was in fact a closure since, according to them, the petitioner had engaged 174 workmen on the said date, the closure is violative of Section 25(o) of the Act and hence they are entitled to full wages from 26.02.2007 till 31.12.2009.

vi). The petitioner herein filed a detailed counter statement questioning the maintainability of the claim petition filed under Section 33C(2) of the Act. The petitioner pointed out that in the claim petition, two different issues arise for consideration viz., (1) whether the suspension of operation from 26.02.2007 is valid; and if so to what relief the workmen are entitled; and (2) whether the closure of the factory from 31.12.2008 is justified. The petitioner pointed out that both the issues cannot be adjudicated in a proceeding under Section 33C(2) of the Act 1947. The 1st respondent, notwithstanding the submission of the petitioner by common order dated 27.06.2013 allowed all the claim petitions as prayed for by the respondents and computed salary for the period from 26.02.2007 till 31.12.2009, which is under challenge in the present writ petition.

vii). The issues that arise for consideration are as under:

(a). Whether the claim petition filed by the respondent under Section 33C(2) of the Act is maintainable?

(b). Whether the conclusion of the Labour Court that the closure of the mill from 31.12.2008 would relate back to the date of suspension of operations from 26.02.2007 is justified?

Issue I

viii). At the outset, it is pertinent to point out that in proceedings under Section 33C(2) of the Act, the Labour Court is entitled only to compute the benefits arising out of a pre-existing right. The 1st respondent is precluded from exercising the said power to adjudicate an industrial dispute for which the remedy lies elsewhere. Such an exercise would be prima facie illegal since it would be stretching the barriers of the jurisdiction granted to it under Section 33C (2) beyond limits that are permissible within the framework of the Act.

ix).The above being the case, it is axiomatic that respondents 2 to 61 have no choice but to raise an industrial dispute challenging the suspension of the mills. The 1st respondent in this regard misconstrued the nature of the dispute that was raised by respondents 2 to 61, and exercised jurisdiction even though the submissions before it by the workmen were that the suspension of operations from 26.02.2007 amount to closure and is therefore illegal. Such a dispute on the face of it cannot be adjudicated upon under proceedings initiated under Section 33C(2) of the Act. The workmen would have no choice but to seek a declaration from the Industrial Tribunal that it would amount to closure and only thereafter can respondents 2 to 61 seek to enforce any monetary claim arising out of the award of the Tribunal. Unless the legality of the suspension of operation has been adjudicated upon, the workmen cannot directly initiate proceedings under Section 33C(2) for the computation of wages, since the question of computation of wages arises only in the event of the suspension being held to be illegal. The 1st respondent, without considering the same, bypassed the entire process of adjudication on the determination of the legality of the suspension of activities, and took such power upon itself, which is patently contrary to establish statutory norms.

x).Therefore, it goes without saying that the 1st respondent, in exercise of its power under Section 33C(2) of the Act cannot, by any stretch of imagination, declare the suspension of operation from 26.02.2007 as closure and direct payment of full wages to all workmen from the said date. In this regard, a judgment of this Court with regard to the same petitioner is relevant in 2001 (4) LLN 93 (Dhanalakshmi Mills Ltd. Tirupur v. Labour Commissioner, Coimbatore & 220 Ors.) this Court held as follows in paragraph 11:

xi).Similarly, in (1995) 1 SCC 235 (Municipal Corporation of Delhi v. Ganesh Razak) the supreme Court held as follows in paragraph 11 & 12

"11.In central Inland Water Transport Corporation Ltd. v. The Workmen and Anr. [1975]1SCR 153, it was held with reference to the earlier decisions that proceedings under Section 33C (2) being in the nature of an execution proceeding, it would appear that an investigation of the alleged right of reemployment is outside its scope and the Labour Court exercising power under Section 33C(2) of the Act cannot arrogate to itself the functions of adjudication of the dispute relating to the claim of re-employment Distinction between proceedings in a suit and execution proceedings, thereafter was pointed out. It was indicated that the plaintiff's right to relief against the defendant involves an investigation which can be done only in a suit and once the defendant's liability had been adjudicated in

the suit, the workingout of such liability with a view to give relief is the function of an execution proceeding. This distinction is clearly brought out in that decision as under:-
"In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No.(iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under Section 33C (2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is normally, outside its scope. It is true that in a proceeding under Section 33C(2), as in an execution proceeding, it may be necessary to determine the identity of the persons by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'incidental'. To call determinations (i) and (ii) 'incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under Section 33C(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions-say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as incidental' to its main business of computation. In such determinations (i) and (ii) are not 'incidental' to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in State Bank of Bikaner and Jaipur v. R.L.Khandelwal. That a workman cannot put forward a claim in an application under Section 33C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute which requires a reference under Section 10 of the Act.

12.The High Court has referred to some of these decisions but missed the true impact thereof. The ratio of these decisions clearly indicates that where the very basis of the claim of the entitlement for the workmen to a certain benefit is disputed,

there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of proceeding under Section 33C(2) of the Act, the Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the labour Court's power under Section 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution".

xii).In (2005) 8 SCC 58 (State of U.P. & Anr. v. Bijpal Singh) the Supreme Court held as follows in paragraph 13:

"Thus, it is clear from the principle enunciated in the above decisions that the appropriate forum where the question of back wages could be decided is only a proceeding before the forum to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an industrial tribunal and entertain the claim made by the respondent herein which is not, based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the Act. Therefore, the Labour Court had no jurisdiction to adjudicate the claim made by the respondent herein under Section 33C(2) of the ID Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent workmen cannot ask the Labour Court in an application under Section 33C(2) of the ID Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs. Shyamala Pappu that the respondent workman can file application under Section 33C(2) of the Act for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No.15172 of 1987 dated 28.10.1987. The argument by the learned counsel for the workman has no force and it is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33C(2) of the ID Act and ordering payment of not only salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33C(2) of the ID Act. We, therefore, have no

hesitation in setting aside the order passed by the Labour Court in Misc.Case No.11 of 1993 dated 23.08.1995 and the order dated 09.01.2002 passed by the High Court in C.M.W.P.No.36406 of 1995 as illegal and uncalled for. We act accordingly”.

xiii).In addition to the above, the 1st respondent failed to consider the judgment of this Court in the case of the petitioners themselves reported in (2001) 4 LLN 923 which was subsequently confirmed by the Division Bench of this Court where it was held that proceedings under Section 33C(2) of the Act are in the nature of execution proceedings, and the determination of the employees' right to relief and the corresponding liability of the management are clearly outside the jurisdiction of the Labour Court. In the said case, this Hon'ble Court dealt with a similar issue when the workmen claimed wages under Section 33C (2) of the act on the ground that the award of the Special Industrial Tribunal in I.D.No.4 of 1993 would only be prospective and consequently the workmen would be entitled to wages for the period till the award of the Industrial Tribunal. While adjudicating the said issue, this Court clearly held that whether the workmen's right to relief along with the corresponding liability of the management is called for determination in an application under Section 33C(2) of the Act, the same would be beyond the scope of the jurisdiction exercisable under the said Section by the Labour Court. In spite of the clear pronouncement of this Court, which is also affirmed by the Division Bench arising between the same parties, the Labour Court in complete ignorance of the settled legal position has proceeded to adjudicate the claim made by the respondents 2 to 61, which is patently illegal and should be set aside.

xiv).A perusal of the above judgments clearly show that the Labour Court under Section 33C(2) of the Act can compute benefits arising out of a pre-existing right, and cannot exercise the power to adjudicate an industrial dispute. When the admitted fact of the respondent itself is that there was a suspension of operations from 26.02.2007 and that the same would amount to closure, the question as to whether the suspension of operation from the said date would amount to a closure so as to attract Section 25(O) of the Act cannot be gone into in a proceeding under Section 33C(2) of the Act.

xv).Proceedings under Section 33C(2) of the Act are in the nature of execution proceedings in which the Labour Court's power is limited to the amount of money due to the workmen from the employer or if the workmen are entitled to any benefit which is capable of being computed in terms of money which is sought to be calculated or the benefit which is sought to be computed. However, such benefits must be real ones, i.e., the award adjudicated upon or provided for must arise in the course of and

in relation to the relationship between the workmen and their employer. It is not competent for the Labour Court exercising jurisdiction under Section 33C(2) of the Act to arrogate itself the functions of an Industrial Tribunal and entertain the claim which is not based on a pre-existing right but which may be a subject matter of an industrial dispute under reference under Section 10 of the Act.

xvi).Lastly, in the present factual matrix, the first respondent in the impugned Award has virtually set aside the suspension of operation on 26.02.2007 as well as the subsequent closure on 31.12.2008, which cannot be done in proceedings under Section 33C(2) of the Act in which the powers of the Labour Court are limited. When the suspension of operation as well as the subsequent closure have not been challenged by means of any industrial dispute and has attained finality, the entire proceedings culminating in the order of the Labour Court would be completely without jurisdiction.

xvii).Therefore, for the above mentioned reasons, the claim petitions filed by respondents 2 to 61 under Section 33C(2) of the Act are not maintainable.

Issue 2

xviii).The fact that the Labour Court has totally contradicted itself with regard to the date of closure is evident from the fact that in paragraph-14 of its order, it has held that the petitioner mill was closed from 26.02.2007 itself while on the other hand, in paragraph-18 of the same order, on the basis of Exhibit M-7, it has conducted that the suspension of operation from 26.02.2007 was layoff and hence is violative of Section 25M(1) of the Act.

xix).The conclusion of the Labour Court that even it is assumed that the mill was closed on 31.12.2008 it relates back to the date of suspension of operation viz. 26.02.2007 because the mill was not functioning and consequently the mill was deemed to be closed on and from 26.02.2007 is completely perverse and ought to be set aside. The first respondent completely failed to see that when it was accepted that the mill was closed on 31.12.2008, it cannot by any stretch of imagination relate the closure back to an earlier date viz. 26.02.2007 because admittedly what was declared on 26.02.2007 was only suspension of operation. The first respondent has completely confused itself with two different causes of action and has proceeded to adjudicate the claim as if it is adjudicating an industrial dispute.

xx).The first respondent failed to see that there was no dispute about the fact that the closure of the mill was only on 31.12.2008 and even the documents filed by the respondents 2 to 61 themselves would show that they have been paid gratuity and compensation in accordance with law for the period of services till 31.12.2008. If that be the case, merely because the mill was not functioning for the period from 26.02.2007 till 31.12.2008, the closure cannot by any stretch of imagination, relate back to 26.02.2007 and the entire conclusion of the first respondent are completely perverse and ought to be set aside.

xxi).The conclusion of the Labour Court that on the date of closure the petitioner had employed more than 100 workers in completely erroneous. The Labour Court failed to see that the petitioner did not engage more than 100 workmen on any day preceding 12 months prior to the date of closure viz. 31.12.2008 and consequently Chapter-VB of the Industrial Disputes Act, 1947 does not apply. At any rate, the question whether the said Chapter-VB applies to the petitioner on the date of closure viz. 31.12.2008 and whether the said closure was in violation of Section 25(o) of the Industrial Disputes Act, 1947 cannot be adjudicated by the Labour Court under Section 33(c)(2) of the Industrial Disputes Act, 1947 and consequently the entire order of the Labour Court is liable to be set aside.

xxii).The Labour Court grievously erred in holding that since the petitioner had engaged more than 100 workmen for the period 12 months prior to 26.02.2007, they have violated Section 25(o) of the Industrial Disputes Act, 1947 is completely erroneous. When the specific case of the petitioner was that there was no closure of the factory on 26.02.2007, there was no question of the Labour Court going into the question as to whether the petitioner had actually engaged more than 100 workmen during the period 12 months prior to 26.02.2007. The entire approach of the Labour Court is completely vitiated and contrary to the provisions of statute.

xxiii).The Labour Court failed to keep in mind that the claim made by the respondent is for the period 26.02.2007 to 31.12.2008, during which period, admittedly, the factory was under suspension of operation. As held by this Court in the judgment reported in (2015) 1 LLN 521, the question as to whether the suspension of operations would amount to a closure cannot be adjudicated in a proceeding under Section 33C(2) of the Act.

xxiv).Further, the claim of wages for the period from 01.01.2009 till 31.12.2009 would depend on the issue as to whether the closure is violative of Section 25(o) of the Act. The question as to whether the closure would attract Section 25 (o) of the Act cannot be gone into in a proceeding under Section

33C(2) of the Act. There is no finding of fact by the Labour Court that on 31.12.2008 when the factory was closed, it had employed more than 100 workmen. However, on the erroneous ground that the petitioner had engaged more than 100 workmen, on 26.02.2007, the Labour Court had erroneously proceeded with the assumption that on 31.12.2008, when the factory was permanently closed, it would relate back to 26.02.2007 and hence the closure from 31.12.2008 is illegal.

xxv).The reliance placed by the Labour Court on the judgment of the Supreme Court in 1971 (1) LLJ 231 is misplaced in view of the fact that in the said judgment, the workmen claimed payment of compensation arising out of closure of an establishment. Only in that regard, the Supreme Court held that the entitlement of the workmen to closure compensation can be gone into in a proceedings under Section 33C(2) of the Act. On the other hand, in the case on hand, the respondent has claimed wages for the period subsequent to 26.02.2007 on the ground that the suspension of operations would amount to closure. In such a situation, there is no jurisdiction available to the Labour Court to declare that the suspension of operation from 26.02.2007 would amount to closure and set aside the same as illegal and grant full wages to the workmen for the period subsequent to the said date.

In the light of the above discussion, it is submitted that the order of the Labour Court dated 27.06.2013 in C.P.No.71 - 113 of 2010 has to be set aside on the ground that the claim petitions filed by the respondent under Section 33C(2) are not maintainable."

6.The learned counsel appearing for the respondents submit that 174 permanent workers were employed in the respondent Mills. This Court directs the Management to provide jobs in the respondent Mills with respect from 28.06.2005 subsequently, the Management without prior permission from the Government as per Section 25-0 of the Industrial Disputes Act had closed the Mills with effect from 26.02.2007 permanently. As such, the Act of the Management is illegal. Therefore, the employees shall be deemed to be in continuity of service and also they are entitled to full wages and allowances. However, the trial Court after considering both side averments and on perusing the documents produced by both parties, the Computation Petitions were partly allowed and directed the Management to pay the last drawn monthly salaries to the employees as claimed by them in their respective petitions. The impugned order passed by the Labour Court on merits as such, the order of the trial Court is suitable for execution since there is no short coming or lapse in the said common order.

7.At the time of admission, this Court directed the Management to deposit the entire notice pay amount and also the observance compensation amount before the Labour Court, Coimbatore, in respect of all the workmen i.e. all the 60 workmen. Further, this Court observes that after such a deposit being made, it is open to the workmen to move before the Labour Court with necessary applications for the withdrawal of the said amounts.

8.From the above discussions, this Court is of the view:

(1)The employees have claimed due arrears of salary for the period from 26.02.2007 to 31.12.2009. As per the additional typedset of papers filed by the Management, 8 employees have been since retired. One of the employees namely S.Gunasekaran had retired on 07.07.2005, as such the said employees Computation Petition No.102 of 2010 and claimed arrears of salary a sum of Rs.2,20,555/- is not maintainable, besides other employees have been retired on various dates i.e. on or before 31.12.2009, as such there is irregularity in the common order passed by the Labour Court unless the same is rectified the impugned order it is not suitable for execution.

(2)This Court imposed a condition on 21.03.2014 to deposit the entire notice pay amount and also to close the compensation amount as offered by the learned counsel and before the Labour Court. Accordingly, the deposit made by the Management before the Labour Court as per this Court's direction, it is open to the eligible workmen to withdraw their said amounts without prejudice among themselves in accordance of immediate settlement and accountability.

9.Considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side, on perusing the typed set of papers, the view of this Court as given (1) and (2) as above, the above writ petition is allowed, the eligible employees are at liberty to withdraw their said amounts as per this Court's 2nd view.

10.In the result, the writ petition is allowed with the above direction. No costs.

vs

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

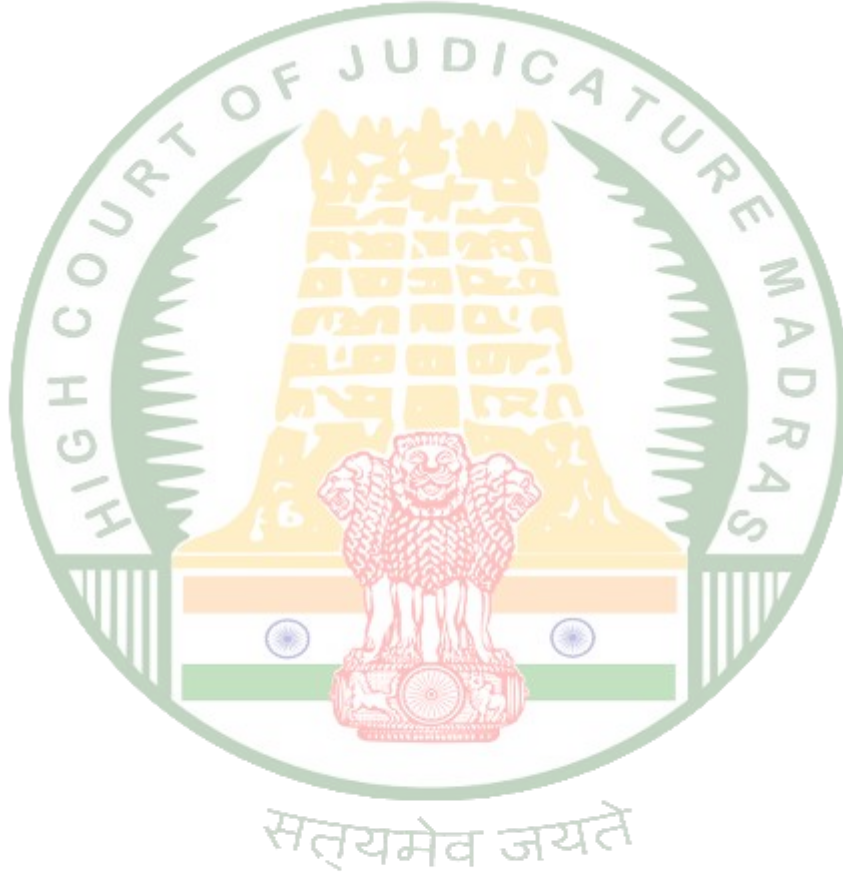
To

The Presiding Officer,
Labour Court,
Coimbatore.

+ 1 cc to M/s.Gupa and Ravi, Advocate SR 53973

msm(co)
prk14/10

W.P.No.32520 of 2013



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