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In the High Court of Judicature at Madras

Reserved on : 28-01-2015

Delivered on: 05-02-2015

Coram:

The Honourable Mr. Justice V. RAMASUBRAMANIAN
and

The Honourable Mr. Justice P. R. SHIVAKUMAR

Writ Appeal No. 57 of 2012

in

against W. P. No. 17627/2010

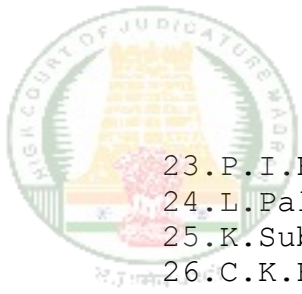
1. The Management of Chemech
Engineers (P) Ltd., Chennai-58.

2. Thiru V. C. Menon, Managing Director
Chemech Engineers (P) Ltd., Chennai-40. ...Appellants/Petitioners

Vs

1. The Presiding Officer, Principal Labour
Court, Chennai-104.

2. P. R. Sridharan
3. N. R. R. Panicker
4. B. F. Joseph
5. P. G. Rajkumar
6. K. Shanmugasundaram
7. K. Radhakrishnan
8. B. Mani
9. J. Venugopal
10. C. Sasidharan Pillai
11. N. Krishnan
12. Tmt. K. Santhakumari
13. K. Kesavalu
14. V. M. Makkunni
15. R. Gajendran
16. Jose K. Jacob
17. P. M. Badusha
18. S. Muthu
19. S. Sathiyaraj
20. D. Shanmugam
21. K. Etti
22. D. Krishnan



23.P.I.Bhaskaran
24.L.Palani
25.K.Subramanian
26.C.K.Balakrishnan
27.K.M.Thomas
28.K.Narayanaswamy
29.K.R.Harikumar
30.A.Sambandam
31.G.Kannayiram
32.P.Ramachandran
33.K.G.T.Mathew
34.K.T.Pankajashan
35.K.P.R.Panicker
36.Tmt.R.Geetha
37.K.G.Thankachan

...Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 25.8.2011 made in W.P.No.17627 of 2010.

This Writ Petition filed under Article 226 of the Constitution of India praying for a issue a Writ of Certiorari to call for the records in Claim Petition Nos.201 to 230/2006, 246 to 248/2006, 255/2006, 263/2006 and 326/2006 on the file of the Principal Labour Court, Chennai-104 the 1st respondent herein , quash the common order dated 30.4.2009 passed therein award costs.

For Appellants : Mr.S.Jayaraman
For Respondents 2 to 37 : Mr.S.Kumarasamy

JUDGMENT

V.RAMASUBRAMANIAN,J

The appeal arises out of dismissal of a writ petition filed by the management on an industry challenging the computation made by the Principal Labour Court, Chennai in the applications filed by the workers under Section 33-C(2) of the Industrial Disputes Act, 1947.

2. We have heard Mr.S.Jayaraman, learned counsel for the appellants and Mr.S.Kumarasamy, learned counsel appearing for the respondents/ workmen.

3. On the ground that the conditions in the factory are disturbed, the appellant/management issued a notice on 27.8.1999 stating that the factory would be kept closed from 26.8.1999 until further notice. Immediately, the trade union of workers raised an industrial dispute and the Assistant Commissioner of Labour II (Conciliation Officer) issued a notice dated 31.8.1999. The Conciliation Officer called for a meeting on 7.9.1999. But, by a



reply dated 6.9.1999, the management informed the Conciliation Officer that they had closed their factory on 26.8.1999. It was also indicated in the reply that the management was discussing with the union, the question of settlement of their workmen and staff.

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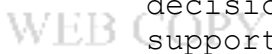
4. On a representation made by the workers union, the Deputy Commissioner of Labour also issued proceedings dated 27.12.1999 directing the Assistant Commissioner to take action regarding the closure of the factory without prior permission. However, the conciliation failed and the Government made a reference of the dispute for adjudication to the Labour Court. The question that was referred by the Government to the Labour Court was as to whether the lock out declared by the management was legal or not. It is relevant to note here that the question referred by the Government to the Labour Court for adjudication was not whether the closure of the factory was legal or not. The dispute that was referred by the Government for adjudication was taken on file in I.D.No.40 of 2002. Despite the same having been taken on file, workers filed claim petitions in C.P.Nos. 201 to 230, 246, 247, 248, 255, 263 and 326 of 2006 seeking a computation of wages payable to them, in terms of the provisions of Section 33-C(2) of the Industrial Disputes Act, 1947.

5. Incidentally, the claim statements under Section 33-C(2) were filed only by 36 workmen, in April 2006. But, even before the filing of the claim petitions, about 97 workmen entered into a settlement with the management on 15.7.2005 under Section 12(3) of the Act, 1947.

6. Therefore, the management contested the claim petitions, on the ground inter alia (i) that the claim petitions are not maintainable without an adjudication of the industrial dispute; and (ii) that the workers having already entered into a settlement, are not entitled to seek computation.

7. However, by a common order dated 30.4.2009, the Labour Court rejected the contentions of the appellant management and allowed the claim petitions, computing the wages payable to the workmen. Aggrieved by the said common order passed in several claim petitions, the appellant/ management filed a writ petition in W.P.No.17627 of 2010. The writ petition was dismissed by a learned Judge by an order dated 25.8.2011. Aggrieved by the said order, the management is on appeal.

8. The common order of the Labour Court as well as the order of the learned Judge upholding the same are assailed by Mr.S.Jayaraman, learned counsel for the appellant/management primarily on two grounds namely (a) that the claim petitions under Section 33-C(2) are not maintainable, when the very adjudication of the industrial dispute was pending consideration and when the same had eventually been

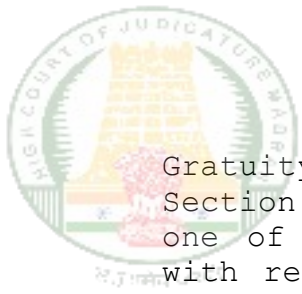


9. The learned counsel for the appellants relies upon two decisions of the Supreme Court and a decision of this Court in support of his contention. The first relied upon by the learned counsel for the appellants is the one in Municipal Corporation of Delhi Vs. Ganesh Razak & Another [1995 (1) LLJ 395] where a Three Member Bench of the Supreme Court categorically held that the Labour Court has no jurisdiction to first decide the workers' entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of the power under Section 33-C(2). It is only when the entitlement has been earlier adjudicated or recognized by the employer that the power under Section 33-C(2) can be exercised like that of the Executing Court.

11. The third decision relied upon by the learned counsel for the appellants is the one in Management of Binny Limited Vs. Presiding Officer, Principal Labour Court [2009 (1) LLN 340] where the Division Bench of this Court pointed out that there must be a pre-existing right on the workmen to file an application under Section 33-C(2) and that the Labour Court cannot entertain and adjudicate upon the petition under Section 33-C(2), when the entitlement itself is in dispute.

13. The second contention of the learned counsel for the appellants is that the workmen are not entitled to claim anything over and above what was agreed under a settlement under Section 12 (3). But, this argument was rejected by the Labour Court and by the learned Single Judge, on the very basis of the terms and conditions indicated in the settlement under Section 12(3). Upon a bare perusal of the contents of the settlement, both the Labour Court as well as the learned Judge rightly came to the conclusion that the only issue that was settled was gratuity.

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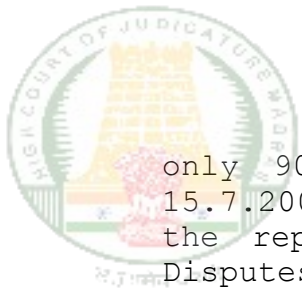
Gratuity Act, 1972 and that the same was sought to be settled under Section 12(3). Therefore, the settlement reached in respect of only one of the claims, cannot act as an impediment for making a claim with regard to the other benefits that the workmen are entitled to. This aspect has been clearly dealt with in paragraphs 10, 11 and 17 of the decision of the learned Judge. As a matter of fact, the learned Judge relied upon the decision of the Supreme Court in *Oswal Agro Furane Limited Vs. Oswal Agro Furane Workers Union* [2005 (1) LLJ 1117] and pointed out that if a settlement does not conform to the statutory conditions laying down a public policy, the same would not bind the parties. Therefore, the second contention of the learned counsel for the appellants is rejected.

15. Coming to the first contention, it is no doubt true (i) that what was referred for adjudication by the Government to the Labour Court was whether the lock out and not closure was valid or not; (ii) that even during the pendency of the said dispute in I.D.No.40 of 2002, the workmen entered into a settlement, received gratuity and filed petitions under Section 33-C(2); (iii) that after the claim petitions were allowed, the union chose to withdraw the industrial dispute in I.D.No.40 of 2002. Therefore, the question is as to whether the Labour Court was entitled to proceed with the computation or not.

16. But, what happened in this case was that right from the beginning, the one and only stand of the workmen was that it was a case of closure and that the industry employed 100 and more workmen and was consequently covered by Chapter V-B of the Act. The notice dated 27.8.1999 that triggered the dispute used the expression 'closed' and not the expression 'lock out'. When the union raised a dispute and went before the Conciliation Officer, their main contention was that the factory employed more than 100 workers and that it had been closed without following the statutory mandate indicated in Chapter V-B. When the Conciliation Officer issued a notice, the management gave a reply using the very same expression 'closure', without denying the employment of 100 and more workers. Even in the claim petitions, the workers maintained that there were 100 and more workers and that the factory was covered by Chapter V-B.

17. It was an admitted fact that the appellant/management did not take prior permission to close the factory in terms of Section 25-O. Today, what the appellant/management seeks to dispute is as to whether it employed 100 and more workers or not.

18. On the pleadings, both before the Labour Court as well as in the prior communications, the workers took a positive stand that the factory employed 100 and more workmen. The Labour Court pointed out that the management did not come up with a true statement in this regard. While, at one stage, the management claimed that there were



only 90 workers, the very settlement that they entered into on 15.7.2005 was with 97 workers. The Labour Court pointed out that in the report submitted under Rule 24 of the Tamil Nadu Industrial Disputes Rules, 1958, it was stated that the industry had been closed down illegally. In the annexure to the said report, there was a list containing the names of 106 workers. The Labour Court also pointed out that in the counter statement filed by the management, there was not even a demur that the number of workmen was less than 100.

19. During cross examination of the management witness R.W.1, a reference was made to Ex.P.8 - the list of workmen that was part of Ex.P.7, which contained the names of 106 workmen. R.W.1 admitted that the names of workmen employed in the industry were found in Ex.P.8. Therefore, the Labour Court came to the conclusion in paragraph 7 of its common order that the number of workmen employed in the factory was more than 100 and that consequently, Chapter V-B was applicable. In the exercise of jurisdiction under Article 226, there was no scope for interference with such a factual finding by the Labour Court and hence, the learned Judge was right in holding that Chapter V-B was applied.

20. Once it is concluded that the industry obviously employed more than 100 workmen and was covered by Chapter V-B, the ratio laid down in Oswal Agro Furane Limited would get attracted. The industry was liable to follow all the provisions of Chapter V-B. The fact that the statutory mandate was not followed is admitted by the management itself. Therefore, there was only one possible conclusion and that was what was reached by the Labour Court and confirmed by the learned Judge.

21. As a matter of fact, the issue can be looked at from another angle also. If there was no serious dispute about the employment of 100 or more workmen and the application of the provisions of Chapter V-B, the deeming fiction under Section 25-O(6) would naturally apply. Once the deeming fiction is applied, the workers are deemed to have continued in employment. In such an event, they could have even invoked the provisions of the Payment of Wages Act. If they had done so, the management would not have been in a position to raise the issue of maintainability, on the ground that the industrial dispute with regard to lock out, had not been decided and that therefore, such a petition was not maintainable. This has been pointed out, though in a different manner by the learned Judge, with reference to Section 33-C(1), inserted by way of amendment under Amendment Act 32 of 1996, as rightly pointed out by the learned Judge, the Supreme Court interpreted Section 33-C(1) in *Fabril Gasoss Vs Labour Commissioner* [1997 (3) SCC 150] to hold that where any claim is made under Chapter V-A or V-B, it may not even require the adjudication of a dispute. Therefore, the order of the learned Judge upholding the award of the Labour Court, is perfectly in order and the same does



not call for any interference.

22. Hence, the writ appeal is dismissed. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Presiding Officer, Principal Labour Court, Chennai-104.

1 cc to Mr.K.M.Ramesh ,Advocate, SR.No.6119
1 cc to Mr.S.Jayaraman ,Advocate, SR.No.6102

W.A.No.57 of 2012

rj(co)
pmk.12.2.2015