

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 33952 OF 2006

and

M.P. No. 1 of 2006

The Management,  
Salem District Consumers  
Co-operative Whole Sale Stores Ltd., ... Petitioner

Vs.

1. The Presiding Officer  
Labour Court  
Salem.

2. Selvi

... Respondents

PRAYER: This Writ petition is filed under Article 226 of Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records in C.P. No. 465 of 2005 on the file of the Presiding Officer, Labour Court, Salem, the first respondent herein, quash the order dated 19.01.2006 passed therein and to pass such further orders.

For Petitioner : Mr. M.R. Raghavan  
For Respondents : Ms. T. Kalaimani for  
M/s.K.V.Shanmughanathan for R2  
R1 -Court

O R D E R

This Writ Petition is directed against the impugned order passed by the learned Labour Court, Salem in C.P. No. 465 of 2005 dated 19.01.2006, in and by which a direction was given to the petitioner Management for payment of Rs.5 lakhs to the second respondent herein, allowing her application filed under Section 33(c) (2), wherein she has claimed wages of her deceased husband from 01.01.1991 to 04.11.2003.

2. Assailing the above order, Mr. M.R. Raghavan, learned counsel appearing for the petitioner Management would submit that the Computation Petition filed by the second respondent, after the death of her husband Late Mariappan, in C.P. No. 465 of 2005 before the first respondent under Section 33 (c)(2) of the Industrial Disputes Act, seeking a claim of Rs.5 lakhs, without there being any basis, ought not to have been allowed by the first respondent. When the computation petition was filed by the second respondent, a detailed counter affidavit was filed by the petitioner Management, taking a specific plea that the said computation petition was not maintainable since no pre-determined right has been accrued in favour of the second respondent.

3. It was also further contended that the conditions of service of the employees are governed by various rules and regulations. Ignoring the said plea, learned Labour Court directly had allowed the computation petition for payment of Rs.5 lakhs to the second respondent herein. As the approach adopted by the learned Labour Court is contrary to law, the same is liable to be set aside. Further, Section 33(c) (2) being an execution provision, the second respondent cannot invoke the said provisions, unless she has got a pre-determined right accrued in favour of her or in favour of her deceased husband N. Mariappan. When the second respondent was unable to show that there was a pre-determination existing, the computation petition under Section 33(c) (2) being not maintainable ought not to have been allowed. Concluding his argument, he stated that when the second respondent's husband Late Mariappan along with 32 other workmen, who were also employed for loading and unloading, filed an Application before the Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981, Salem, an order was passed on 27.01.2003 granting permanent status. Although the said order was challenged by the petitioner in W.P. No.481 of 2004, subsequently the same was dismissed by order dated 30.07.2008, however, on the basis of the circular issued for payment of salary to the employees employed for loading and unloading goods in the petitioner Society, a sum of Rs.2,16,200/- was already paid for the period commencing from 01.01.1991 to 04.11.2003. On the said day, the second respondent's husband Mariappan passed away. Therefore, when the wages/ salary payable to Late Mariappan has been paid and cleared from 01.01.1991 to 04.11.2003, it was not open to the second respondent to file a petition under Section 33 (c) (2) without any basis whatsoever.

4. Opposing the same, learned counsel appearing for the second respondent submitted that the husband of the 2<sup>nd</sup> respondent Late Mariappan was employed in the petitioner Society from 01.01.1991 on daily wages basis, however, when the Petitioner Management refused to regularise his services although he was working regularly on those days, the 33 workmen who were employed for loading and unloading filed an application before the Authority under the Tamil Nadu

Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981, Salem, and obtained an order of permanency in Na.Ka. No. Aa/3874/2000 on 27.01.2003. The said order was also confirmed by this Court in W.P. No.481 of 2004 on 30.07.2008, therefore, Late Mariappan, husband of the second respondent is entitled to get full salary. In view of that, the second respondent, after the death of her husband moved a Computation Application under Section 33(c)(2) before the first respondent. That was also ordered in favour of the second respondent on 19.01.2006, therefore, no interference is called for, in the impugned order.

5. But this Court finds it very difficult to accept either the plea of the second respondent or the impugned order. Admittedly, Late Mariappan, husband of the second respondent was employed as 'Kalasi' in the petitioner Society, joining with the other workmen employed for loading and unloading, filed a petition before the Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981, Salem, and the authority also considering the case of the workmen passed an order on 27.01.2003 granting the benefit of permanency in Na.Ka. No. Aa/3874/2000 on 27.01.2003. That order was also challenged before this Court in W.P. No. 481 of 2004. But this Court considering the case of both parties, dismissed the said Writ Petition by order dated 30.07.2008. That shows that Late Mariappan, husband of the second respondent was entitled to receive the salary as a permanent employee. Accordingly, it was also admitted by both parties that for the said period, viz., 01.01.1991 to 04.11.2003 the Late Mariappan worked in the petitioner society, hence a sum of Rs.2,15,200/- had been paid, being the salary for the period commencing from 01.01.1991 to 04.11.2003. It may be mentioned herein that the Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981, Salem, conferred permanent status to the Late Mariappan by its order dated 27.01.2003. Thereafter, as highlighted above the petitioner Society calculating his salary from 01.01.1991 to 04.11.2003 disbursed Rs.2,16,200/-. Whiles, learned Labour Court without there being any basis whatsoever, entertaining the Application filed under Section 33(c) (2) of the Industrial Dispute Act as though there has been a pre-determined right accrued to the said Late Mariappan, in my view is fictitious, ought not to have allowed the same. As a matter of fact, when a sum of Rs.2,16,200/- had been paid for the period worked by Late Mariappan, namely, from 01.01.1991 to 04.11.2003, the application filed under Section 33(c)(2), without there being any basis to show that there is any pre-determined right accrued to Late Mariappan ought not to have entertained. The records show that even the order dated 27.01.2003, passed by the Inspector of Labour Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981, Salem, has not been produced by the second respondent before the Labour Court. Be that as it may be, Section 33(c) (2) of the Industrial Dispute Act being a provision for execution of pre-

determined right, the learned Tribunal without giving a finding as to whether the deceased Mariappan had any pre-determined right to maintain the petition filed under Section 33(c) (2) had shown hasty exercise in allowing the same. The Management had repeatedly pleaded to the Labour Court that the claim petition had no cause of action since no pre-determined right was shown to exist. More particularly, when it was contented on behalf of the Management that wages for the period commencing from 01.01.1991 to 04.11.2003 were paid to Late Mariappan and again when it was hotly objected the maintainability of the petition filed under Section 33(C) (2) of the I.D. Act, in my considered view the learned Labour Court had exceeded its jurisdiction in proceeding to decide the claim under Section 33(C) (2) of the I.D. Act. When there was no pre-determined right shown to have accrued in favour of the deceased Mariappan, the impugned order has no legal basis to stand whatsoever. Accordingly, the same is liable to be set aside.

6. In fine, the Writ Petition is allowed and the impugned order passed in Computation Petition No.465 of 2005 dated 19.01.2006 is set aside. Consequently, the connected M.P. is closed. No order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Presiding Officer  
Labour Court  
Salem.

+1 cc to Mr.K.V.Shanmuganathan, Advocate sr.11031

+1 cc to Mr.M.R.Raghavan, Advocate sr.11236

W.P.NO. 33952 of 2006  
and  
M.P. No.1 of 2006

aa28/04/2015