

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.03.2016

Coram

The Hon'ble Mr. Justice T.S. Sivagnanam

Writ Petition No.10876 to 10878 of 2016
and

W.M.P.Nos.9488 to 9490 of 2016

M.K.T. Engineering & Construction,
78, Bharathithasan Salai,
Kavery Street,
Appar Nagar, Saidapet,
Chennai - 600 015.

...Petitioner in all W.Ps.

Vs.

1. M.Thirunavukkarasu
2. G.Purushothaman
3. M.Elumalai

R-1 in W.P.No.10876/2016

R-1 in W.P.No.10877/2016

R-1 in W.P.No.10878/2016

- 3 The Presiding Officer,
II Additional Labour Court,
Chennai - 600 104.

...Respondent-2 in all W.Ps

Prayer in W.P.No.10876/2016:

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus to call for the entire records of the order of the second respondent, dated 05.05.2015, passed in I.A.No.303 of 2014, in C.P.No.355 of 2011, to quash the same as illegal, and consequently, to direct the second respondent to dismiss the said Computation Petition, as not maintainable.

Prayer in W.P.No.10877/2016:'

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus to call for the entire records of the order of the second respondent, dated 05.05.2015, passed in I.A.No.305 of 2014, in C.P.No.356 of 2011, to quash the same as illegal, and consequently, to direct the second respondent to dismiss the said Computation Petition, as not maintainable.

Prayer in W.P.No.10878/2016:

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus to call for the entire records of the order of the second respondent, dated 05.05.2015, passed in I.A.No.304 of 2014, in C.P.No.355 A of 2011, to quash the same as illegal, and consequently, to direct the second respondent to dismiss the said Computation Petition, as not maintainable.

For Petitioner : Mr.N.Nithianandam

COMMON O R D E R

As the issues involved in these Writ Petitions are identical in nature, they were taken up together and disposed of by this common order.

2. Heard Mr.N.Nithianandam, the learned counsel appearing for the petitioner.

3. The challenge in these Writ Petitions is to the interlocutory orders passed by II Additional Labour Court, Chennai in I.A.Nos.303 to 305 of 2014, filed by the first respondents/workmen to summon certain documents. The preliminary objection raised by the petitioner-Management is that the Applications are not maintainable, and the Labour Court cannot direct the Management to produce records, since the Labour Court, in an application filed under Section 33 (C) (2) of the Industrial Disputes Act, 1947 (hereinafter, referred to as 'the I.D.Act) cannot go into the question as to whether the first respondents were workmen or not, and unless and until, they have pre-existing right, the question of computation does not arise. The Labour Court considered such objection, while not disputing the legal position in page No.5 of the impugned orders, pointed out that, the Court, while entertaining the application under Section 33 (C) (2) of I.D. Act, can incidentally go into the question as to whether the first respondents/employees were workmen during the claim period. Accordingly, the aforesaid Interlocutory Applications were partly allowed, and the Management was directed to produce the register of particulars of payment of bonus, and register of particulars of payment of leave salary, and in respect of other documents, the Applications were dismissed.

4. The learned counsel for the petitioner vehemently contended that the Labour Court erroneously exercised its

jurisdiction, ignoring the settled legal position as held by the Hon'ble Supreme Court in the case of (Municipal Corporation of Delhi Vs. Ganesh Razak and another) reported in (1995) 1 S.C.C. 235 which has been followed by the High Court of Delhi in the case of (M. Vadivelu Vs. Rajkishan and Company and others), in W.P.(C). 336/2008 and CM 651/2008, dated 25.08.2014.

5. Thus, by referring to the observations made by the High Court of Delhi, it is submitted that the dispute relating to the entitlement of the workman could not be considered as incidental to the benefits claimed, and therefore, would fall outside the scope of the jurisdiction under Section 33 (C) (2) of the Act.

6. In order to examine as to whether the said decision could be applied to the facts of the cases on hand, the relevant facts arising in these cases have to be gone into by this Court. The case of the workmen is that they were employed in the year 1998, and were stopped from work from April, 2005 orally, without any reason and notice. For the said period, they have made certain claims relating to basic salary, daily allowances, leave salary, and other benefits and filed working sheets. Therefore, it is to be seen as to whether the Labour Court is going to decide the entitlement of workmen. Admittedly, this is not a case, where, the workmen seeks for relief of reinstatement in service with backwages, but they are claiming for certain benefits, which they are entitled to, during the period when they were employed.

7. Therefore, prima facie, it is clear that the Labour Court has got jurisdiction to decide the incidental question as to whether there is any pre-existing right vested with the workmen to claim those monetary benefits during the period when they were employed in service of the petitioner/Management. This Court is conscious of the fact that the petitioner's/Management's right to challenge all these issues after the final orders are passed in the Computation Petitions need to be preserved, and therefore, this Court does not foreclose the right of the petitioner-Management to challenge these issues in the final orders to be passed in the Computation Petitions by raising the same contentions, as raised by them before the Labour Court at the interlocutory stage. This alone would sub serve the purpose, for which, the jurisdiction has been vested with the Labour Court in terms of the scheme of the I.D. Act.

8. Thus, while confirming the orders, impugned in these Writ Petitions, the Writ Petitions are disposed of, leaving it

open to the petitioner/Management to raise the same contentions, as raised by them at the interlocutory stage, in the event, the Labour Court passes final orders in the main Computation Petitions, if the same is adverse to the interest of the petitioner-Management. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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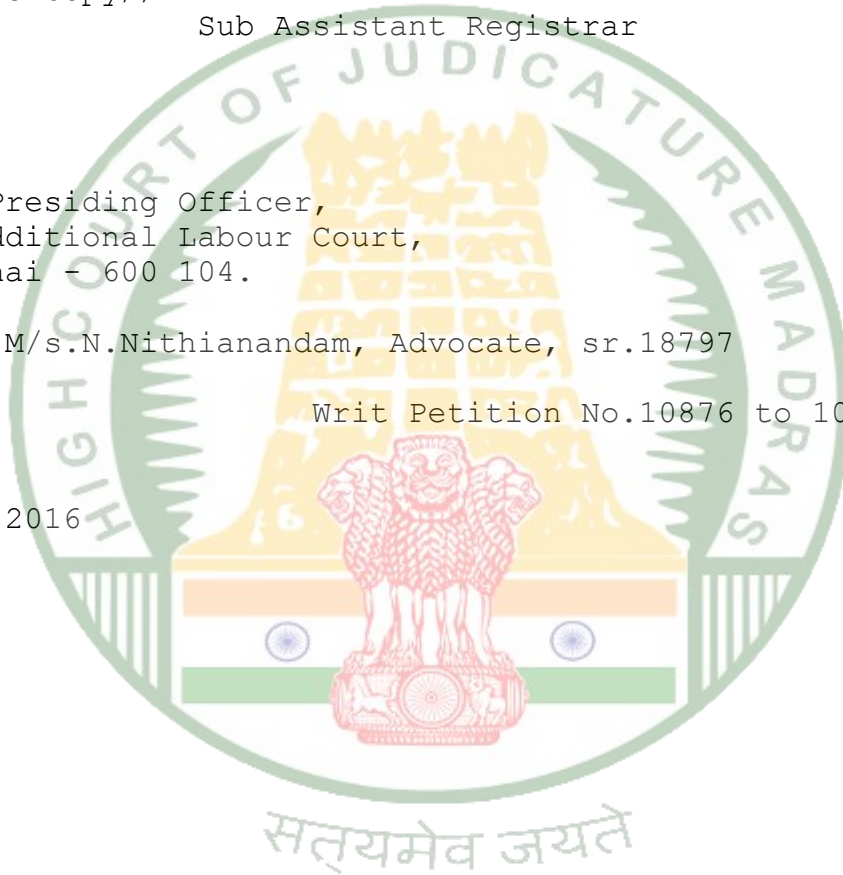
To

The Presiding Officer,
II Additional Labour Court,
Chennai - 600 104.

+3 ccs to M/s.N.Nithianandam, Advocate, sr.18797

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