

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.20055 of 2003

Entyce Retail Marketing Division,
Coimbatore,
Rep. by Manager (Marketing)

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Pondicherry.

2.The General Secretary
Entyce Employees' Trade Union
C/o.Entyce Show Room
400, CMK, Second Road,
Alandur, Chennai - 16.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent of his order in I.D.No.6/2001 dated 19.11.2002 quash the same.

For Petitioner : Mr.R.Parthiban

For Respondents : Mr.A.Nagarathinam for R2

सत्यमेव जयते
O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records of the first respondent in I.D.No.6/2001 dated 19.11.2002 and to quash the same.

2.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the second respondent.

3.For the sake of convenience, the petitioner will be hereinafter referred to as 'Management' and the second respondent will be hereinafter referred to as 'Union'.

4.The brief facts of the case are as follows: The second respondent Union raised Industrial Disputes before the first respondent Labour Court under Section 2 K of the Industrial Disputes Act for the following relief:

"to declare that the demand of the Union that the employees of the Entyce showroom, Pondicherry should be paid an incentive of Rs.7,74,663.10 (Rupees seven lakhs seventy four thousand six hundred and sixty three and paise ten only) for the years 1995-96 is genuine, with a direction to the management to effect payment."

5.The case of the second respondent Union averred in the claim petition was that the original target fixed by the Management was Rs.65.30 Lakhs. Through hard work, the members of the Union reached the target. Accordingly, the members of the Union are entitled for the incentive of 2% of the total sales. However, the Management paid only ½% of the incentive. Aggrieved over the same, they raised the Industrial Dispute. The first respondent Labour Court, after elaborate discussion, allowed the claim in favour of the second respondent Union on the ground that there is no proof to show the entire sale was effected in favour of the Adi Dravidar Welfare Department. The observations made in paragraph nos.15 and 16 are as follows:

"15.Ex.B5 is the photo copy of the letter dt.27-9-95 sent by the respondent to General Manager. R.M.D. would also refer to the purchased price of per saree from National Handloom Development Corporation for Rs.95/- Ex.B6 is the photo copy of the purchase order dt.20-9-95 which also refers to the National Handloom Development Corporation price as Rs.95/- per cottonsaree. Ex.B7 is the unauthentic tabulation which refers to the price of at cotton saree including respondent's margin as Rs.173.50. There is not even an initial in that Ex.B7. As such for all the above said reasons this labour court holds that there is nothing on record to show that the respondent selling goods to the Adi Dravidar Welfare Department, Pondicherry and in such a case the employees concerned of the petitioner association are entitled for 2% incentive.

16.On the Respondent side it was contended that a bulk sales 2% incentive cannot be given. On the petitioner side Ex.A3 was relied on and it is a circular dt.22-5-93 in modification of the earlier

circulars in Ex.A1 and Ex.A2 and it clearly states that even in respect of bulk sales if the discount given 10% and less the incentive would be 2%. As such I could see no reason in ordering that the employees of the petitioner association are entitled for 2% incentive on the bulk sales effected infavour of Adi Dravidar Welfare Department and accordingly the calculation should be made and the amount to be paid deducting the incentive already paid of any by the respondent to the employees concerned of the petitioner association. Accordingly, this point is decided."

6.The learned counsel appearing for the petitioner would submit that the issue raised before the Labour Court is whether 14% discount was given by the respondent in favour of Adi Dravidar Welfare Department, Pondicherry, while effecting the sale during the year 1995-96 and whether it is a bulk sale effected in favour of the Adi Dravidar Welfare Department, Pondicherry during the year 1995-96.

7.In support of his argument he relied upon the Circular dated 20.10.1992 of the National Textile Corporation (TN & P) Limited, Coimbatore, wherein in clause 6, it is stated as follows:

"6.GENERAL:-

The following are applicable for semi-wholesale and Institutional Bulk Sales:-

a) Incentive: The shoppersonnel will also be eligible on such semi-wholesale/Institutional Bulk Sales transactions at 2% (two percent) only on net sales done from the show-room concerned."

8.The learned counsel appearing for the petitioner further relied upon the Circular dated 22.05.1993, wherein clause (c) reads as follows:

"c) Discount either 14% or 10%. Incase of 14% discount $\frac{1}{2}$ % (half percent) incentive will be paid to showroom staff and in the case of 10% discount the incentive will be paid 2% (two percent)".

9.On a perusal of the above two Circulars, the second respondent workmen were initially eligible for 2% incentive for some wholesale or institutional bulk sales. However that Circular is modified by another Circular dated 22.05.1993, saying that if it is 14% discount, the Union is entitled for $\frac{1}{2}$ % incentive and if it is 10% discount the Union will be paid 2%

incentive even in the institutional bulk sales and some wholesales. Accordingly, the Labour Court held that the entire sale was made to the Adi Dravidar Department, Pondicherry, as bulk sales during the year 1995 and awarded to pay 2% incentive to the second respondent's workmen contrary to the findings. Hence, there is error on the face of it and it is liable to be quashed.

10. Per contra, the learned counsel appearing for the second respondent would submit that there is a specific discussion in paragraph nos.15 and 16 with regard to the sale of Adi Dravidar Welfare Department alone. The relevant discussion from paragraph nos.15 and 16 are as follows:

"There is not even an initial in that Ex.B7. As such for all the above said reasons this labour court holds that there is nothing on record to show that the respondent selling goods to the Adi Dravidar Welfare Department, Pondicherry and in such a case the employees concerned of the petitioner association are entitled for 2% incentive."

"As such I could see no reason in ordering that the employees of the petitioner association are entitled for 2% incentive on the bulk sales effected infavour of Adi Dravidar Welfare Department and accordingly the calculation should be made and the amount to be paid deducting the incentive already paid of any by the respondent to the employees concerned of the petitioner association. Accordingly, this point is decided."

11. On a perusal of the above, though the Labour Court discussed that there is no record to show the second respondent selling the goods to the Adi Dravidar Welfare Department as bulk institutional sales, however, there is communication dated 26.05.1995 in between the Adi Dravidar Department and the second respondent which is marked as Ex.B2, wherein, the entire purchase goods were purchased from National Handloom Development Corporation and All India Handloom Fabricators Marketing Co-operative Society Limited. The entire purchase were supplied to Adi Dravidar Welfare Department, Pondicherry. Those exhibits were marked as Ex.B2 and Ex.B7. Without any discussion about the same, the Labour Court arrived at a conclusion, which reads as follows:

"20. In the result, the award is passed as follows without costs:-

The employees concerned of the Entyce

show room are entitled for 2% incentive on the bulk sales effected during the year 1995-96 by the respondent in favour of Adi-Dravidar Welfare Department, Pondicherry and accordingly the amount shall be calculated and paid to the employees concerned after deducting the amounts already paid in this regard. The rest of claim is dismissed."

12. On the face of it, the award of the Labour Court is perverse and liable to be interfered with, since in the discussions in paragraph nos. 15 and 16, it is discussed that no documents were produced to show that the bulk sale was made to the Adi-Dravidar Welfare Department. However, the last paragraph no. 20 finding says that the entire sale was effected during the year 1995-96 by the respondent in favour of Adi-Dravidar Welfare Department, Pondicherry and ordered 2% incentive in favour of the second respondent's workmen which is bad.

13. The learned counsel appearing for the petitioner submitted that though the interference of the High Court with the Labour Court award is very very limited, the order of the Labour Court can be interfered with if there is error on the face of record and contrary to the documents. Accordingly, he relied upon the decision of the Hon'ble Supreme Court reported in (2013) 12 Supreme Court Cases 573 (M/S Atlas Cycle (Haryana) Ltd vs Kitab Singh) and submitted that unless the order of the Labour Court is perverse and there is error on the face of record, then only the High Court can interfere while exercising its power under Article 226 of the Constitution of India and further submitted that the award of the Labour Court is perverse and liable to be interfered with and prayed for allowing the writ petition.

14. In the present case on hand, the findings of the Labour Court is contrary to the discussions made in the earlier paragraphs. Accordingly, on the face of it, the Labour Court has committed error and the order passed by the Labour Court in I.D.No.6/2001 dated 19.11.2002, warrants interference under Article 226 of the Constitution of India.

15. It is useful to refer the decision of the Hon'ble Supreme Court of India reported in (2013) 12 Supreme Court Cases 573 (M/S Atlas Cycle (Haryana) Ltd vs Kitab Singh) wherein, it has been held as follows:

"15. We are satisfied that the learned single Judge thoroughly analysed all the aspects and arrived at a correct conclusion. It is settled law that when the Labour Court arrived at a finding overlooking the materials on record, it would amount to

perversity and the writ Court would be fully justified in interfering with the said conclusion. We are conscious of the fact that the High Court exercising writ of certiorari would not permit to assume the role of the appellate Court, however, the Court is well within its power to interfere if it is shown that in recording the said finding, the Tribunal/Labour Court had erroneously refused to admit the admissible and material evidence, or had erroneously admitted any inadmissible evidence which has influenced the impugned finding, the writ Court would be justified in exercising its remedy. In other words, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari.

16. On going through the entire reasoning of the Labour Court, materials placed and stand taken by the workman and the Management, we are satisfied that the learned single Judge was fully justified in interfering with the conclusion arrived at by the Labour Court which has been rightly affirmed by the Division Bench. Consequently, the appeal of the Management fails and the same is dismissed with costs quantified at Rs.10,000/-."

16. It is now represented by the learned counsel appearing for the petitioner that the award amount has been deposited before the

Labour Court. Hence, the petitioner is given liberty to file an appropriate petition before the Labour Court for withdrawal of the amount lying in the credit of I.D.No.6/2001.

17. Accordingly, this writ petition is allowed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

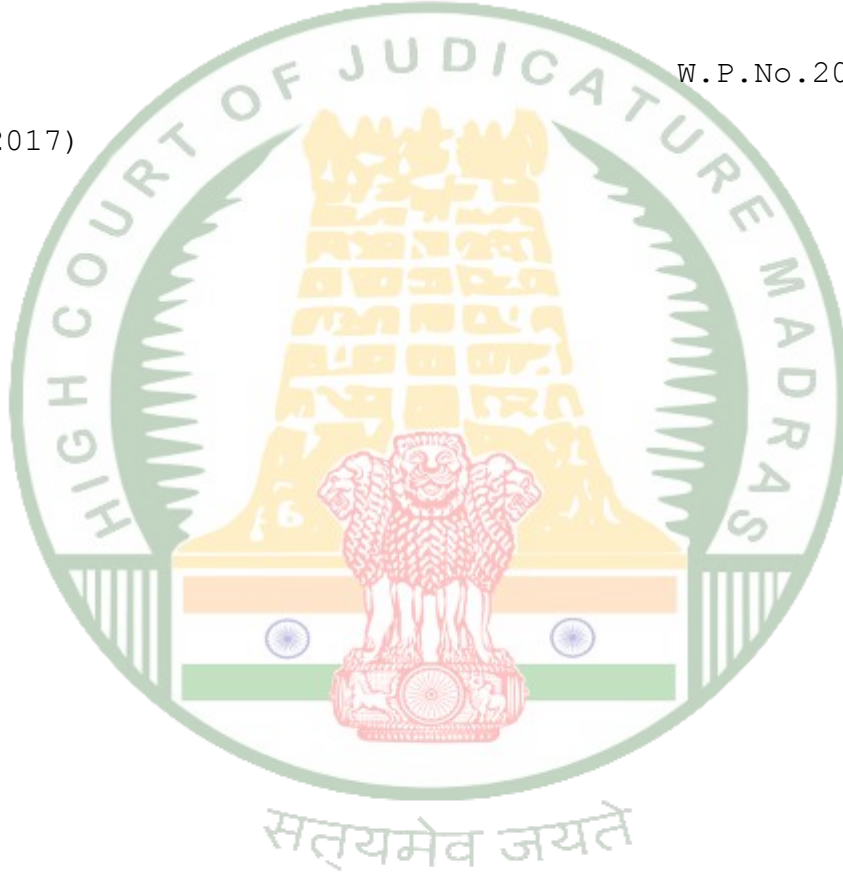
1.The Presiding Officer,
Labour Court,
Pondicherry.

+1cc to Mr.R.Parthiban, Advocate sr.67822

+1cc to Mr.A.Nagarathinam, Advocate sr.67827

W.P.No.20055 of 2003

ss (26/10/2017)



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