

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.Nos.10262, 10263, 10268, 10269, 10273, 10274,
10339 and 10340 of 2003

R.Sundararajan ...Petitioner in W.P.Nos.10262 & 10263 of 2003

M.Manickam ...Petitioner in W.P.Nos.10268 & 10269 of 2003

R.Selvakumar ...Petitioner in W.P.Nos.10273 & 10274 of 2003

V.Palanisamy ...Petitioner in W.P.Nos.10339 & 10340 of 2003

Vs.

1. The Management of
Sri Balaji Cotton Mills
Rakkipatti, Salem District

2. Presiding Officer
Labour Court, Salem ...Respondents in all W.Ps.

Prayer in .WP.No.10262/2003: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus after calling for the records relating to Claim Petition No.198 of 1999 dated 21.10.2002, quash the same and consequently direct the respondent management to pay the petitioner backwages and other attendant benefits from the date of illegal termination together with interest at 12% p.a., award costs.

Prayer in .WP.No.10263/2003: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus after calling for the records relating to Claim Petition No.485 of 2000 dated 21.10.2002, quash the same and consequently direct the respondent management to pay the petitioner backwages and other attendant benefits from the date of illegal termination together with interest at 12% p.a. award costs .

Prayer in .WP.No.10268/2003: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus after calling for the records relating to Claim Petition No.201 of 1999 dated 21.10.2002, quash the same and consequently direct the respondent management to pay the petitioner backwages and other attendant benefits from the date of illegal termination together with interest at 12% p.a. award costs

Prayer in .WP.No.10269/2003: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus after calling for the records relating to Claim Petition No.488 of 2000 dated 21.10.2002, quash the same and consequently direct the respondent management to pay the petitioner backwages and other attendant benefits from the date of illegal termination together with interest at 12% p.a. award costs

Prayer in .WP.No.10273/2003: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus after calling for the records relating to Claim Petition No.199 of 1999 dated 21.10.2002, quash the same and consequently direct the respondent management to pay the petitioner backwages and other attendant benefits from the date of illegal termination together with interest at 12% p.a. award costs

Prayer in .WP.No.10274/2003: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus after calling for the records relating to Claim Petition No.487 of 2000 dated 21.10.2002, quash the same and consequently direct the respondent management to pay the petitioner backwages and other attendant benefits from the date of illegal termination together with interest at 12% p.a., award costs

Prayer in .WP.No.10339/2003: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus after calling for the records relating to Claim Petition No.200 of 1999 dated 21.10.2002, on the file of the 2nd respondent, quash the same and consequently direct the respondent management to pay the petitioner backwages and other attendant benefits from the date of illegal termination together with interest at 12% p.a., award costs

Prayer in .WP.No.10340/2003: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus after calling for the records

relating to Claim Petition No.486 of 2000 dated 21.10.2002, on the file of the 2nd respondent, quash the same and consequently direct the respondent management to pay the petitioner backwages and other attendant benefits from the date of illegal termination together with interest at 12% p.a., award costs.

For Petitioner
in all W.Ps

.. Mr.K.M.Ramesh

For Respondent-1
in all W.Ps

.. Mr.Anand Gopalan

Respondent-2
in all W.Ps

.. Labour Court

COMMON ORDER

Four workers of Sri Balaji Cotton Mills have filed the present writ petitions, challenging the common order passed by the Labour Court, Salem, dismissing their petitions filed under section 33-C (2) of the Industrial Disputes Act, 1947.

2. The factual matrix of the case is as under:

(i) There was an industrial dispute in Sri Balaji Cotton Mills and the dispute was seized by Mr.Chandran, the then Deputy Commissioner of Labour, Salem, before whom, the management of Sri Balaji Cotton Mills and the four unions, representing the interest of the workmen, submitted their respective view points. After protracted conciliation proceedings, the management and the unions arrived at a settlement on 5.7.1996 under section 12 (3) of the Industrial Disputes Act, 1947. All the disputes between the Management and the Union were mutually resolved before the Conciliation Officer except the alleged misconduct of the four petitioners during the period of the industrial unrest.

(ii) Clause 7 of the 12(3) Settlement dated 5.7.1996, which speaks about the action to be taken against the four petitioners is as under:

"7. As the following four employees worked outside the industry, the management should conduct a domestic enquiry in respect of the charge memo issued as against them, and should complete the same on or before 15.9.1996. In case, the enquiry is not completed within two months, on completion of the domestic enquiry on or before 15.10.1996, the report of the enquiry officer should be submitted to Thiru R.Chandran, Deputy Commissioner of Labour.

(1) R.Sundararajan

(2) R.Selvakumar

(3) M.Manickam

(4) V.Palanisamy

The management and the union should give full cooperation for conducting the domestic enquiry. If there is no cooperation on the side of the employees in the domestic enquiry, the management should conduct enquiry ex-parte and submit a report. If the management does not cooperate for conducting the domestic enquiry within the aforesaid period, Mr.Chandran, Deputy Commissioner of Labour, in order to solve the dispute, will conduct the proceedings with effect from 16.10.1996. It is also agreed that both parties should accept and abide by the decision taken by Mr.Chandran, Deputy Commissioner in respect of the four persons. It is also agreed that the management and the union will not file any appeal as against the decision taken by the arbitrator. It is also agreed that the said four persons will be kept under suspension with effect from 15.7.1996 for conducting domestic enquiry." (Free English translation from Tamil).

(iii) Though Clause 7 is not happily worded, yet it is seen that the management had agreed to complete the disciplinary proceedings as against the four petitioners on or before 15.10.1996 and if in any event the management is not able to complete the process, they had agreed to refer the dispute to Mr.Chandran, the then Deputy Commissioner of Labour and both parties agreed to accept his verdict implicitly.

(iv) Admittedly, the management was not able to complete the proceedings against the four petitioners before 15.10.1996. Therefore, the petitioners moved Mr.Chandran for initiating arbitration proceedings on 20.11.1996, on the strength of Clause 7 in the 12(3) Settlement dated 5.7.1996.

(v) The management appeared before Mr.Chandran and contended that the 12(3) Settlement dated 5.7.1996, which contained the arbitration clause, was not duly submitted to the State Government and gazetted under section 10-A (3) of the Industrial Disputes Act, and therefore, the proceeding itself is not maintainable. The Management also contended that they have terminated the services of the four petitioners from 24.3.1997.

(vi) However, Mr.Chandran proceeded with the arbitration proceedings and passed an award on 5.10.1998 in favour of the four petitioners, directing their reinstatement with backwages from 24.3.1997. Unfortunately, this award of Mr.Chandran was also not gazetted as required under section 17 of the Industrial Disputes Act.

(vii) Based on the award dated 5.10.1998, given by Mr.Chandran, the four workmen filed 8 Claim Petitions (two each) before the Labour Court, Salem, claiming back wages and other reliefs for two distinct periods. In all these petitions, the management entered appearance and contended that the award given by Mr.Chandran has no legal force inasmuch as neither the settlement was gazetted as required under section 10-A (3) nor the subsequent award of Mr.Chandran was gazetted under section 17 of the Industrial Disputes Act. The Labour Court agreed with the submission of the management and dismissed the 8 Claim Petitions by a common order dated 21.10.2002, challenging which the four workmen have filed the present eight writ petitions.

3. Heard Mr.K.M.Ramesh, learned counsel for the petitioners and Mr.Anand Gopalan, learned counsel for Management.

4. Mr.K.M.Ramesh, learned counsel for the petitioners, submitted that the award passed by Mr.Chandran was not under the provisions of the Industrial Disputes Act and therefore, the same need not be gazetted. He contended that in 12(3) settlement, both parties agreed to complete the disciplinary proceedings as against the four petitioners before 15.10.1996 and on the failure of the management to complete the proceedings, they had agreed to refer the dispute to Mr.Chandran in his individual capacity as both parties had faith in him. Therefore, Mr. K.M.Ramesh, learned counsel, submitted that when they have agreed to have the dispute settled by Mr.Chandran, the management cannot later on turn around and repudiate the award. Mr.K.M.Ramesh further submitted that the management cannot approbate and reprobate. Mr.K.M.Ramesh placed strong reliance upon a judgment of the Division Bench of this Court in T.U.C.S.Ltd., Madras (by Special Officer) vs. S.Loganathan and others, reported in 1986 (2) LLN 286 (Mad), wherein this Court had held that failure to publish the award in the Gazette is a curable defect.

5. Per contra, Mr.Anand Gopalan, learned counsel for the management placed strong reliance upon two Full Bench Judgments of this Court, namely, (i) Ramakrishna Kulwantrai Steels (P) Limited and Enfield India Limited and their workmen and another, in Re, reported in 1977 (1) LLJ 382 and (ii) Krishnaveni Transports and others vs. Special Deputy Commissioner of Labour, Madras and others, reported in 1982 (2) LLN 786, and submitted that non-publication of the agreement in the Gazette, as required under section 10-A (3) and non-issuance of Notification under section 10-A (3-A) of the Industrial Disputes Act, are fatal and have rendered the award of Mr.Chandran as void and unenforceable.

6. This Court gave its anxious consideration to the rival submissions and perused the materials available on record.

7. The first contention of Mr.K.M.Ramesh that the agreement entered into between the management and the union is an arbitration agreement simpliciter outside the purview of Industrial Disputes Act, and therefore, the same need not be gazetted, has been answered by the Full Bench of this Court in the case of Ramakrishna Kulwantra Steel (P) Limited (cited supra), wherein it is held as follows:

"We are also of the view that an agreement entered into during conciliation proceedings between the management and the workers union regarding an industrial dispute is an agreement to refer dispute to arbitration under S.10-A, for, the Act does not contemplate arbitration of an industrial dispute outside S.10-A. In the face of S.10A(5) excluding the application of Arbitration Act, 1940 to arbitrations under S.10A, it would be very doubtful whether private agreements in respect of industrial dispute contracting out of the statutory provisions of S.10 A would be permissible at all in law. The argument that in the instant case, the arbitration agreement was not forwarded to the Government or the other officers referred to in sub-S.(3) of S.10A and that the agreement or the award also was not published in the Gazette showed that the parties deliberately did not want to avail the provisions of S.10A, could not be accepted as that will amount to putting the cart before the horse." (emphasis supplied)

Thus, it is clear that there cannot be a private treaty between the Management and the Union in such matters outside the purview of Industrial Disputes Act.

8. As regards the necessity of publishing the agreement under section 10-A (3) of the Industrial Disputes Act, the Full Bench in the case of Krishnaveni Transports and others (cited supra), has held as follows:

"13. For the foregoing reasons, we hold that the non-publication of the arbitration agreement vitiates the award and the publication of the arbitration agreement as required under S.10A(3) of the Act is mandatory."

Thus, it is beyond any cavil that any dispute between the management and the workmen should be only within the contours of the Industrial Disputes Act and any such arbitration agreement entered as a 12(3) settlement requires to be gazetted under

section 10-A (3) of the I.D.Act and there should be a further notification under section 10-A (3-A) of the I.D.Act. As stated above, this procedure has not been followed in this case, inspite of the fact that the Management had raised their objection even before Mr.Chandran during the Arbitration Proceedings.

9. In view of the aforesaid authoritative pronouncements of two Full Bench Judgments, this Court cannot come to any other conclusion except to uphold the common order passed by the Labour Court, dismissing the Claim Petitions. Ergo, these eight writ petitions are dismissed. Liberty is given to the parties to work out their remedies in the manner known to law. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ajr

To

Presiding Officer
Labour Court, Salem

+1cc to Mr.Ramesh, Advocate, S.R.No.5207
+1cc to Mr.Raghavan, Advocate, S.R.No.5196

NMI (CO)
RS (14/02/2017)

सत्यमेव जयते
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