

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.02.2017

Delivered on : 10.02.2017

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.A. No.691 of 2009

RAP MFRS' Employees Welfarem Union,
Rep. By General Manager,
Mr.Muthusamy. Appellant/Petitioner

-Vs-

1. The Deputy Commissioner of Labour,
Salem.
2. The Management of Renowned
Autoproducts Limited,
Rep. By General Manager, No.122,
SIPCOT Industrial Complex, Hosur 635 126.
3. A.Ramalingam,
Deputy Commissioner of Labour,
Madurai.
4. Manojkumar.Jha
Vice President. Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent against
the order dated 29.07.2008 passed in W.P.No.5831 of 2003 on the
file of this Court.

W.P.No.5831 of 2003 : Petition filed under Article 226 of the
Constitution of India for issuance of a Writ of Certiorari,
calling for the records of the 3rd Respondent purportedly in
exercise of the power vested in office or the 1st Respondent in
connection with the arbitration award dated 24.12.2001 in
Arbitration Case No.1/2000 and quash the same.

For Appellant : Mr.V.Prakash, Senior Counsel
for Mr.Ramapriya Gopalakrishnan

For Respondents : Mr.P.H.Aravindh Pandian,
Senior Counsel, for
Mr.P.V.Balasubramanian, for
M/s.Kochaan Associates for R-2

J U D G M E N T

THE HON'BLE CHIEF JUSTICE

The appellant Union seeks to propagate the case of two of the employees in respect of the dispute with the Management / the second respondent. There has been chequered history to the industrial relationship between the workers' union and the management and a memorandum of settlement was executed on 22.04.1997. But, apparently, this could not resolve the disputes, as there were even contract labourers engaged for the factory of the second respondent and some employees were dismissed on 03.03.2000. The Labour Officer, Krishnagiri, took up this matter which was followed up by Thiru.A.Ramalingam, the then Deputy Commissioner of Labour, Salem, taking up the conciliation proceedings. On 11.09.2000, a settlement was arrived at between the management and the workmen and it would be necessary to reproduce the relevant portion of the terms of settlement to appreciate the controversy as under:

TERMS OF SETTLEMENT

1. It is agreed that the dismissed workman Mr.M.Muthusamy will be reinstated with effect from 13th September 2000 with continuity of service and without back wages. It is also agreed that M.Muthusamy will not be paid any wages for the period from 3.3.2000 to 12.09.2000 on the principle of 'no work no wages'.
2. 14 workmen against whom domestic enquiry are conducted as per Clause 10 of the terms and conditions of the 12 (3) Settlement dated 22.4.97, the findings along with the copy of the enquiry proceedings to all the workmen will be submitted before Thiru A.Ramalingam, Deputy Commissioner of Labour, Salem, for his decision with regard to the punishment as an arbitrator. The decision of the Deputy Commissioner of Labour, Salem is final and both the parties agreed that the decision will be binding on both the parties. The decision will be given on or before 31st October, 2000.'

2.As a sequitur to this settlement, Mr.M.Muthusamy, the Secretary of the Union, was reinstated with effect from 13.09.2000 with continuity of service and without backwages and in terms of clause (2), the findings of the enquiry proceedings were submitted before Thiru.A.Ramalingam, the then Deputy Commissioner of Labour, Salem, for decision with regard to the punishment as an Arbitrator. Thiru.A.Ramalingam made an award on 24.12.2001. The result whereof was that five persons were recommended for dismissal including Mr.M.Muthusamy, two for suspension for some period and seven for increment cut. The position as it stands today is that even some of the cases which

were recommended for dismissal were reinstated back with varying punishments and thus, 12 out of 14 affected persons had been taken back except the General Secretary and the Joint Secretary.

3.The aforesaid Award was assailed in W.P.No.5831 of 2003 and in the course of proceedings, one of the issues which came up was as to the consequence of the agreement for reference to the Arbitrator not being published in the Official Gazette in terms of Section 10-A (3) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the said Act'). The plea raised was that the Award was consequently null and void. The factum of non-publication was not disputed. In view of certain conflicting decisions, this issue was referred to a Full Bench. In terms of the order dated 21.04.2006 of the Full Bench (reported in 2006 (3) CTC 399), this reference was answered and it was opined that an Award under Section 10-A of the said Act, which is rendered invalid due to non-compliance of the requirement of Section 10-A (3) of the said Act cannot be enforced by the parties as an award in private arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Arbitration Act'). This plea was raised as an endeavour by the Management to canvass a case that even if the agreement was not notified, that can be considered as an Award under the Arbitration Act.

4.On the reference being answered, the matter was taken up by the learned Single Judge and vide his order dated 29.07.2008, came to the conclusion that the arbitration agreement entered into the parties on 11.09.2000 could not be sustained on account of non-compliance of the publication of the same in terms of Section 10-A (3) of the said Act and thus, it cannot be enforced. While opining so, the learned Single Judge noticed the submissions on behalf of the Management that even if the said agreement dated 11.09.2000 was vitiated, the status quo ante prior to the agreement / settlement should be restored in such an event. In the same vein, it was submitted that resultantly, the domestic enquiry, the proceedings and findings of the enquiry officer, would stand restored and based on the said findings of the enquiry officer, a second show cause notice was issued to the workmen and punishment was awarded. These proceedings were alleged not to have been challenged by the Union and could not be challenged in the writ petition. The learned Single Judge opined that since the prayer in the petition was of quashing the award dated 24.12.2001, the same was granted. Once the award was quashed, all notices and orders including the dismissal became invalid. However, thereafter in para 13 it was observed as under:

'13. As rightly pointed out by the learned senior counsel for the respondents 2 and 4, after quashing the impugned award, the status-quo ante i.e., prior to agreement/settlement dated 11.09.2000 is restored. If

the management is advised to proceed further from that stage, it is open to them to do so, however as per law.''

5.The appellant Union has impugned these aforesaid observations and it is their plea that the effect of quashing of the Award would be that the petitioner would be deemed to be in continued service and would be entitled to all the backwages. Learned Senior Counsel for the appellant pleaded that the workmen were already reinstated under the settlement dated 11.09.2000 and a status quo ante prior to the settlement if restored would render the reinstated workers jobless. It was canvassed that the quashing of the award was a consequence of a faulty process, as the agreement was not published.

6.On the other hand, learned Senior Counsel appearing for the second respondent / Management pleaded that the settlement / agreement cannot be read piecemeal and both clauses (1) and (2) extracted aforesaid would have to be read in conjunction. The reinstatement was only as per the settlement which was coupled with the domestic enquiry required to be held by Thiru.A.Ramalingam, the then Deputy Commissioner of Salem. Thus, the workmen cannot claim to get the benefit of Clause (1), while seeking to challenge the Award made in respect of Clause (2), because it did not suit them on the technicality and on the Award having been set aside on that technicality, seek continuation of service under Clause (1).

7.On careful analysis of the factual situation, we are of the view that it is quite clear that the memorandum of settlement would have to be read as a whole. Disputes had arisen between the management and the workmen and as a part of the resolution, three things were agreed upon simultaneously, i.e. reinstatement of three dismissed employees, reinstatement of its Secretary, Mr.M.Muthusamy without backwages and the papers of the domestic enquiry to be placed before Thiru.A.Ramalingam, the then Deputy Commissioner of Salem, for a decision with regard to punishment as an Arbitrator. No doubt, the agreement was not published. On our query, we are informed that there is no time period specified for publishing of the agreement and it can still be done. The consequence of non-publication of the agreement is that whatever was done in pursuance thereto was brought to naught because of the provision of Section 10-A (3) of the said Act requiring the arbitration agreement to be published in the Official Gazette. The relevant provision reads as under:

- ''10-A. Voluntary reference of disputes to arbitration
- (1) ..
 - (2) ..
 - (3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the

conciliation officer and the appropriate Government shall, within one month from the date of receipt of such copy, publish the same in the Official Gazette.''

On reading of the said provision, we may clarify that the period of one month for publication is from the date of receipt of the copy by the appropriate Government, but in the present case, such a request was not made.

8.The workmen were reinstated in pursuance to this agreement and continued to work till the Award was made. In our view, the workmen cannot plead that for this period of time post the Award they should be entitled to monetary benefits because the Award has been set aside on the technicality and that they should be reinstated. They will have to be put back in the same position as they were before the terms of settlement were to operate, which contained the arbitration clause. Both Clauses (1) and (2) are intrinsic to the agreement and had to be read together.

9.In view of the aforesaid position, we can find no fault with the directions contained in para 13 of the impugned order.

10.We may add in the end that we did make an endeavour to see if the dispute could be resolved and on 03.08.2016, after noticing the relevant contentions of the parties, we recorded that we had explored the possibility as to whether considering the time lapse, it would be feasible to arrive at a settlement based on monetary benefits for the workmen. Learned counsel for the management sought time to obtain instructions. Thereafter, we were informed on behalf of the management that there was disagreement on the figures. However, learned Senior Counsel on the next date on 11.01.2017, took a different stand to state that no settlement was possible as his instructions was that both the jobs should be restored and the monetary benefits paid towards backwages and only the latter part could be negotiated. Thus, there was no feasible settlement.

The result of the aforesaid discussions is that the writ appeal is dismissed, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

sra

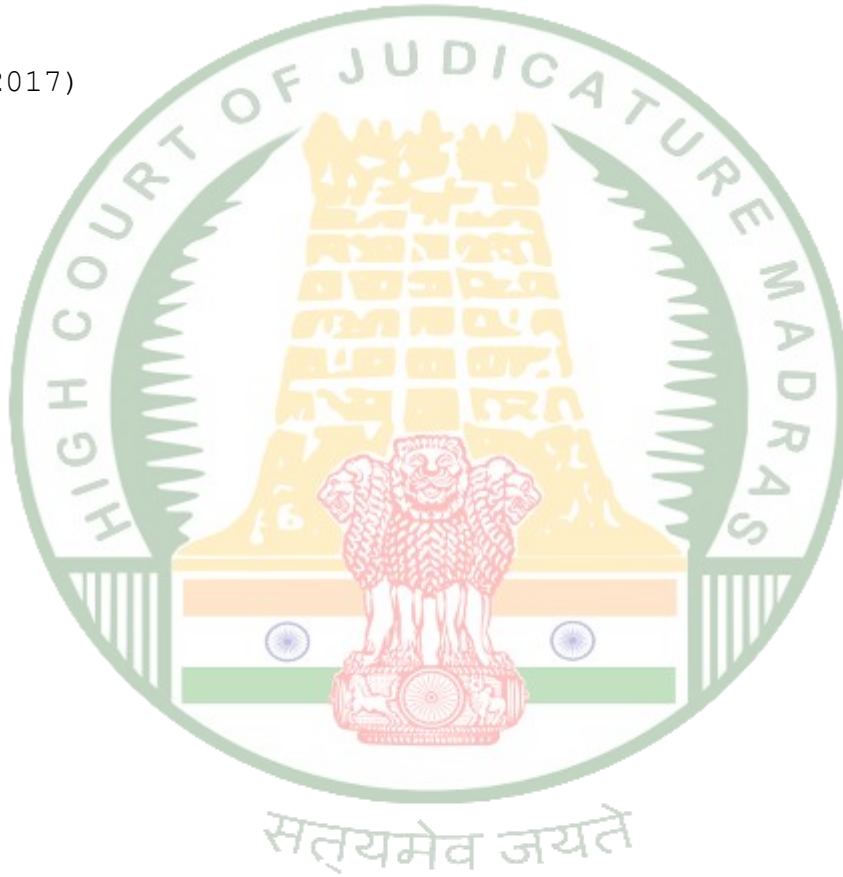
To

The Deputy Commissioner of Labour,
Salem.

+1cc to Mr.Ramapriya Gopalakrishnan, Advocate, S.R.No.8598
+1cc to M/s.Kochaan Associates, Advocate, S.R.No.9224
+1cc to the Government Pleader, S.R.No.8838

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