

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.11.2017
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.Nos. 13482 to 13486 of 2010
M.P.Nos.1 to 1 and 2 to 2 of 2010

The Management,
M/s. Florind Shoes Pvt. Ltd.,
Upper Division,
M.C.Road, Solur, Ambur,
Rep by its
Deputy General Manager-HR
Mr.S.Syed Saleem.

... Petitioner in W.P.Nos.13482, 13484,
13485 of 2010

The Management,
M/s.United India Shoe Corporation Pvt.Ltd.,
Upper Division,
M.C.Road, Solur, Ambur,
Rep by its
Divisional Manager-HR
Mr.A.R.Vijayakumar.

... Petitioner in W.P.Nos.13483 and 13486 of 2010

Vs

1.The Special Deputy Commissioner of
Labour (Appeals),
DMS Compound, Teynampet,
Chennai 600 006.

2.A.Venkatesan

... Respondents in all W.Ps

PRAYER IN ALL W.Ps: Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records and quash the order dated 01.06.2010 passed in 1)P.W.case No.1 A2 in 7 of 2009 2)P.W.case No.1 A5 in 11 of 2009 3)P.W.case No.1 A4 in 10 of 2009 4)P.W.case No.1 A3 in 9 of 2009 5) P.W.case No. 1 A1 in 6 of 2009 respectively by the 1st respondent, Special Deputy Commissioner of Labour (Appeals), DMS Compound, Teynampet, Chennai 600 006.

In all W.Ps

For Petitioners : Mr.Gupta for M/s.Gupta & Ravi
For Respondents : Mr.S.V.Duraisolaimalai,
Additional Government Pleader for R1
: Mr.V.Ajoy Khose for R2

C O M M O N O R D E R

Heard Mr.Gupta, learned counsel for the petitioners and Mr.S.V.Duraisolaimalai, learned Additional Government Pleader appearing for the first respondent and Mr.V.Ajoy Khose, learned counsel for the second respondent.

2. The petitioners have approached this Court for seeking the following relief,

"To issue a writ of Certiorari, to call for the records and quash the order dated 01.06.2010 passed in P.W.Case No.1.A.1 in 6 of 2009, P.W.Case No.I.A.2 in 7 of 2009, P.W.Case No.I.A.3 in 9 of 2009, P.W.Case No.I.A.4 in 10 of 2009, P.W.Case No.I.A.5 in 11 of 2009, by the 1st respondent, Special Deputy Commissioner of Labour (Appeals), DMS Compound, Teynampet, Chennai 600 006."

3. These five writ petitions raise common issues and grounds and therefore, the same are taken up together for disposal.

4. The facts and circumstances necessitating the filing of the writ petitions are stated hereunder :-

The petitioner Companies are engaged in the manufacture of Shoe products. The employees who are arrayed as respondents in the writ petition were the workers of the petitioner Managements. According to the workers, they were not paid wages for a particular period. Therefore, the workers were constrained to approach the authority under the Payment of Wages Act, who is the first respondent herein.

5. Before the authority, the petitioner managements raised a preliminary objection stating that the application under Payment and Wages Act, was not maintainable on the ground that the employees are not entitled to wages for certain reasons like they were placed under suspension or there was a lock out of the Company. The said preliminary objection was filed in the form of Interlocutory Application and the same was also resisted by the workmen stating that there was no merit in such preliminary objection.

6. On consideration of rival submissions, the first respondent authority had passed an order stating that the dispute regarding, whether the workmen were entitled to wages or not, can be decided only by trial and no preliminary finding could be rendered in the matter. The first respondent authority had also stated that the preliminary objection also always to be considered along with the main dispute and composite order could be passed in the matter. The order passed by the first respondent in the Interlocutory Application are put to challenge in these writ petitions.

7. The learned counsel appearing for the petitioner Management would submit that the order passed by the first respondent authority, not giving any finding on the preliminary objection is invalid, since the objections raised on behalf of the Managements goes to the very root of the issue whether the workmen are entitled to wages for the period in question. According to the learned counsel for the petitioner Management, when a prima facie case is made out that the authority had no jurisdiction, the Management need not be subjected to unnecessary ordeal of facing enquiry by the authority.

8. Per contra, the learned counsel appearing for the respondent workmen would submit that the order passed by the first respondent authority holding that the preliminary objection would also be tried along with the main dispute cannot be faulted with. The Hon'ble Supreme Court of India has repeatedly held that in labour matters, the preliminary objection will also be taken into consideration along with the main dispute.

9. The learned counsel for the petitioner Managements would rely on the decision passed by this Court in W.P.No.3393 of 2017 dated 26.04.2017. However, it is found that the said decision cannot be applied to the factual matrix of the present case.

10. On the other hand, the learned counsel for the workmen would rely on the decision of the Hon'ble Supreme Court of India, in the case of National Council for Cement and Building Materials Vs. State of Haryana & Ors, reported in 1996 LLJ 125, in which, the Hon'ble Supreme Court has held that the High Court cannot interfere with the order passed by the Industrial Tribunal, agreed to decide preliminary issue along with the main issue. Such discretion cannot be interfered with by the High Court in the proceedings.

11. In view of the aforesaid submissions of the learned counsel, this Court is of the clear view that the challenge to the order passed by the first respondent holding that the preliminary issue will be tried along with the main issue, cannot be faulted with and the same is in consonance with the law, well established legal principles. Even otherwise, no prejudice would be caused to the Management, if the preliminary issue is also considered along with the main issue. Such being the case, this Court does not understand as to why the Management has challenged the order passed by the first respondent in the Interlocutory Application. The reasons are quite obvious that the Management is only attempting to frustrate the claim of the workmen by dragging the issue for many years. By challenging the preliminary order, the Management has achieved its purpose and the writ petition has been kept pending in this Court for several years.

12. In the said circumstances, writ petitions are dismissed as devoid of merits and substance, since the matters have been pending in this Court for seven years, the first respondent authority is directed to dispose of the application under the payment of wages Act, within a period of three months from the date of receipt of a copy of this order, after giving proper notices to the parties concerned.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk
To

The Special Deputy Commissioner of
Labour (Appeals),
DMS Compound, Teynampet,
Chennai 600 006.

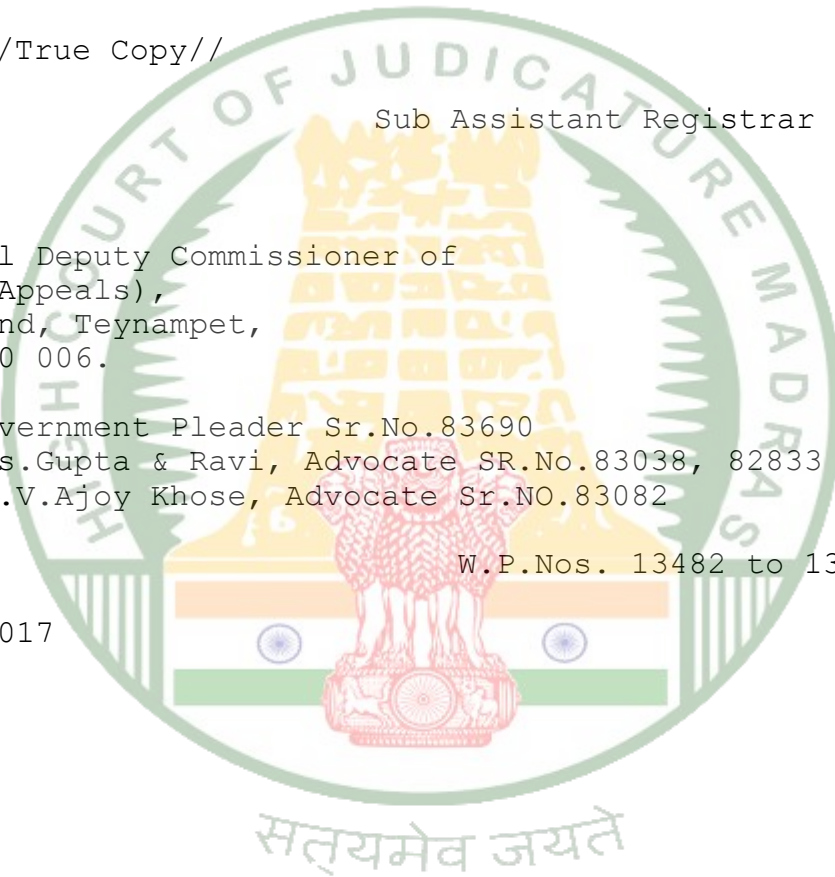
+1cc to Government Pleader Sr.No.83690

+2cc to M/s.Gupta & Ravi, Advocate SR.No.83038, 82833

+1cc to Mr.V.Ajoy Khose, Advocate Sr.NO.83082

W.P.Nos. 13482 to 13486 of 2010

NM(CO)
sm:29.12.2017



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