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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

**W.A(MD)NO.1422 OF 2017
and
C.M.P(MD)No.10668 of 2017**

1. The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin.
2. The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin.

: Petitioners/Appellants

.vs.

V.Narayanan @ Narayanaperumal

: Respondent/Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order, dated 10.10.2017 in W.M.P(MD)No.15122 of 2017 in W.P(MD)No.18755 of 2017, on the file of this Court.

Prayer in WMP(MD). 15122/ 2017 :

To Stay the operation of the impugned award dated 31.10.2013 in I.D.No.49 of 2005 in so far as it directed payment of 50% back wages and other benefits pending disposal of the writ petition.

Prayer in WP(MD). 18755/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari, calling for the records of the 1st Respondent in I.D.No.49 of 2005 and quash the award dated 31.10.2013.

For Appellants : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co

JUDGEMENT

[Judgement of the Court was made by **M.VENUGOPAL, J.**]

This Writ Appeal has been filed praying this Court to set aside the order, dated 10.10.2017 in W.M.P(MD)No.15122 of 2017 in W.P(MD)No.18755 of 2017, on the file of this Court.



2. Heard the Learned Counsel for the Appellants. Since this Court is disposing of the present Writ Appeal at the admission stage itself, issuance of notice to the Respondent is dispensed with, in furtherance of substantial cause of justice.

3. According to the Learned Counsel for the Appellants, the Learned Single Judge ought not to have exercised the discretion by passing the impugned order in W.M.P(MD)No.15122 of 2017 in W.P(MD) No.18755 of 2017, dated 10.10.2017 and in short, should not have directed the Appellants to deposit the entire award amount(back-wages).

4. The Learned Counsel for the Appellants proceeds to take a plea that the Appellants/Tuticorin Thermal Power Station, being a Government of Tamil Nadu Undertaking, the interest of the Respondent/Writ Petitioner is well protected and as such, there is no need or necessity for the Learned Single Judge to pass the impugned order in W.M.P(MD)No.15122 of 2017 in W.P(MD)No.18755 of 2017, dated 10.10.2017.

5. Lastly, it is the submission of the Learned Counsel for the Appellants that the award passed by the Labour Court, Tirunelveli in I.D.No.49 of 2005, dated 31.10.2013 is blatantly an erroneous one.

6. Earlier, the Learned Single Judge while passing the impugned order in W.M.P(MD)No.15122 of 2017 in W.P(MD)No.18755 of 2017, dated 10.10.2017, at paragraph 2 to 4 had observed the following:

'2. Notice to the second respondent through court and privately returnable by 21.11.2017.

3. Interim stay on condition that the entire amount payable by the Petitioners to the second respondent under the impugned award shall be deposited in any Nationalized Bank in Madurai, in a fixed deposit for an initial period of one year and automatically renewable every year, in the name of Additional Registrar General, Madurai Bench of this Court, on or before 15.11.2017 and the original receipt for such fixed deposit shall be kept in the custody of the Additional Registrar General of this Court. In the event of failure to do so, the interim stay shall stand vacated automatically without further reference to this Court.

4. Post on 21.11.2017 for reporting compliance.'

and directed the Registry to list the matter on 21.11.2017, for reporting compliance.

7. It comes to be known that in a dispute in I.D.No.49 of 2015 under Section 2-A(2) of the Industrial Disputes Act, 1947 filed by the Second Respondent/Petitioner, he had sought for setting aside his termination and also sought for permanent job



of Field Assistant, payment of back-wages with continuity in service etc.

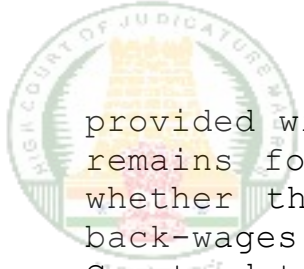
8.The First Respondent/Labour Court therein, after contest, on 31.10.2013, had ultimately allowed the Industrial Dispute in part and directed the Appellants/Respondents to issue appointment order to and in favour of the Second Respondent with continuity of service and also directed that the Second Respondent/Petitioner be paid 50% of back-wages along with other lawful benefits upon him.

9.Being dissatisfied with the award, dated 31.10.2013 passed by the First Respondent/The Presiding Officer, Labour Court, Tirunelveli, the Appellants/Respondents have preferred a Writ Petition in W.P(MD)No.18755 of 2017 before this Court. As afore-stated, the Writ Court passed a conditional order in W.M.P(MD) No.15122 of 2017 in W.P(MD)No.18755 of 2017, dated 10.10.2017 as stated supra, requiring the Appellants to pay the entire amount awarded by the First Respondent/Labour Court, Tirunelveli to the Second Respondent/Petitioner under the impugned award by depositing the said amount in a Nationalized Bank in Madurai in Fixed Deposit for an initial period of one year and automatically renewable every year in the name of Additional Registrar General, Madurai Bench of this Court on or before 15.11.2017 etc.,.

10.At this stage, the Learned Counsel for the Appellants brings it to the notice of this Court that the Second Respondent/Petitioner was appointed on 23.5.2014 as Field Assistant and he joined duty on 30.5.2014. According to the Second Respondent/Petitioner's averment in Section 2A(2) Petition under the Industrial Disputes Act, 1947. he had worked as a Contract Labour/Worker with Chandy and Company for the Tuticorin Thermal Power Station for the period from 1.4.1996 to 31.10.1999 and that as per Ex.W-16, dated 7.5.199 Circular, it was advised that if a person, who had worked for 480 days in 24 months prior to 5.1.1998 (from the contract labourers) then such person must be made permanent.

11.The Second Respondent/Petitioner took a plea before the First Respondent that under Section 2-A(2) in I.D.No.49 of 2005 before the First Respondent that he had worked for 480 days but the same was refuted by the Appellants/Management. Furthermore, he had pleaded in his petition under section 2-A(2) of the Industrial Disputes Act, 1947 that he was not having good education and from 31.10.1999 he was without any job and he was under mental torture and hardship. Furthermore, he was reportedly under penury condition and that too, without job and money.

12.At the risk of repetition, this Court points out that the Second Respondent/Petitioner was appointed as Field Assistant on 23.05.2014 and he joined duty on 30.5.2014 after passing of the award by the Labour Court on 31.10.2013. Since the Second Respondent/petitioner was



provided with an employment from 30.5.2014, the only question that remains for consideration which revolves on a narrow campus is whether the Second Respondent/Petitioner is entitled for 50% of back-wages as directed to be paid by the award of the Labour Court, dated 10.10.2017.

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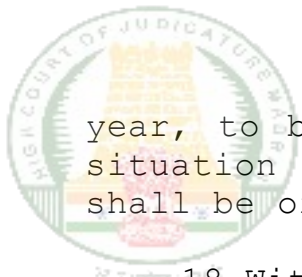
13.As a matter of fact, the First Respondent/The Labour Court, Tirunelveli, in its award, dated 31.10.2013 in I.D.No.49 of 2005 had clearly *inter-alia* observed that as per Ex.W28, even on 20.11.1999, the Superintending Engineer(Machine Section) had recommended for issuance of an appointment order to the Second Respondent on the basis that the latter had worked for 596 days.

14.It is to be noted that Section 17-B of the Industrial Disputes Act, 1947 is an enabling provision. It is to be remembered that an absolute stay is neither permissible nor can be granted *inter-alia* under the provisions of ingredients of Section 17-B of the 'Act',1947. Undoubtedly, Section 17-B of the 'Act', 1947 is a beneficial piece of legislation. An enquiry under Section 17-B of the 'Act', 1947 is limited to an extent of gainful employment of a workman. Moreover, the intend of the legislature is that a workman ought not to be permitted to starve, because of the defeated litigant's desire to initiate an appeal proceeding or otherwise.

15.At this juncture, the Learned Counsel for the Appellants submit that the Appellants/management are ready to deposit a sum of Rs.3 lakhs(Rupees three lakhs only) to the credit of I.D.No.49 of 2005, on the file of the First Respondent/The Labour Court, Tirunelveli and in this regard, prays for time for depositing the said amount, which can be determined by this Court.

16.In view of the said submission, this Court, without going into the merits of the factual and legal matrix revolving around I.D.No.49 of 2005, in the interest of justice and fair play, is of the earnest opinion that the Learned Single Judge can very well go into the merits of the award in I.D.No.49 of 2005, dated 31.10.2013 in the main Writ Petition so as to resolve the controversies/disputes centering around the parties, in a complete and comprehensive manner.

17.Accordingly, this Court directs the Appellants to deposit a sum of Rs.3,00,000/- (Rupees three lakhs only) before the First Respondent/Labour Court, Tirunelveli in I.D.No.49 of 2005 within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made by the Appellants/Management without any default to the credit of I.D.No.49 of 2005 on the file of First Respondent/The Labour Court, Tirunelveli, then the Presiding Officer of the First Respondent/The Labour Court, Tirunelveli is directed to deposit the said sum of Rs.3,00,000/- (Rupees three lakhs only) in State Bank of India, Tirunelveli (in a high yielding deposit, like Fixed Deposit) for a period of one



year, to be renewable periodically every year(if need be and if situation so warrants) and the original receipt for such deposit shall be ordered to be kept in its custody.

18. With the above said observation(s) and direction(s), the Writ Appeal stands disposed of. Consequently, the impugned order in W.M.P(MD)No.15122 of 2017 in W.P(MD)No.18755 of 2017, dated 10.10.2017 is set aside by this Court, for the reasons ascribed in this Writ Appeal. It is open to the Appellants/Management to make an earnest request before the Learned Single Judge for early disposal of the main Writ Petition since the matter to be adjudicated by the Writ Court relates to payment of 50% of back-wages as ordered by the Tribunal considering the fact that the Second Respondent/Petitioner was already given job on 30.05.2014 by way of reinstatement as Filed Assistant. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin.
2. The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin.

+ 1 cc TO M/s.P.Malini , Advocate in SR No. 88418

vsn

AE/SKN RSK/SAR1/06.12.2017/5P/4C

**JUDGEMENT MADE IN
W.A(MD)NO.1422 OF 2017
and
C.M.P(MD)No.10668 of 2017
21.11.2017**