



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 28.04.2017
ORDERS PRONOUNCED ON : 21.06.2017

WEB COPY

CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.1156 OF 2017
and
W.P.(MD) No.1501 of 2017

W.P. (MD) No.1156 of 2017:

The Management,
Hari & Co.,
rep. By its Authorized Signatory,
No.4/29E, Madurai Bypass Road,
Thoothukudi - 628 006,
Thoothukudi District.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2. S.Chellathurai

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records pertaining to the impugned order passed by the 1st respondent in unnumbered I.A. of 2016 in C.P.No.24 of 2016, dated 03.01.2017, quash the same and direct the 1st respondent to decide as a preliminary issue whether the 2nd respondent is a contract employee receiving retainer salary or not.

W.P. (MD) No.1501 of 2017

The Management,
Hari & Co.,
rep. By its Authorized Signatory,
No.4/29E, Madurai Bypass Road,
Thoothukudi - 628 006,
Thoothukudi District.

... Petitioner

Vs.

<https://hcservices.eplus.gov.in/CaseDetails>
1.The Presiding Officer,
Labour Court, Tirunelveli.



2. Y.Kilbart Thangaraj
3. M.Sermakani
4. K.Paramasivam
5. V.Muniraja
6. K.Marimuthu
7. M.Ashok
8. S.Mathavan
9. K.Chellam
10. P.Marimallusamy
11. A.Radhakrishnan
12. S.Kasi
13. S.Rajasekaran
14. S.Peter Vijayakumar
15. D.Thirumani
16. K.Jeyakumar
17. M.Chendur Chezhiyan
18. M.Ponraj
19. R.Narayanaperumal
20. K.Kanthasamy
21. P.Marimuthu
22. S.Kumar
23. S.Gopalakrishnan
24. R.Uthayakumar
25. Michael Thomas Xavier
26. M.Alasis
27. M.Kithiyon
28. K.Perumal
29. R.Saravana Kumar
30. K.Jayaprakash
31. J.A.Selvakumar
32. A.Muthusamy
33. P.Ashok Kumar
34. C.Vallimayil
35. M.Mariappan
36. U.Kombaiah
37. S.Jesuraj
38. N.Ramasubbu
39. D.Antony Royappan
40. Y.Savarimuthu
41. S.Velladurai
42. R.A.Marimuthu

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, seeking a direction to the 1st respondent to send the Claim Petitions filed by respondents 2 to 42 to the National Lok Adalat to be held on 11.02.2017 at Madurai Bench of Madras High Court.

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C O M M O N O R D E R

As the issue involved in both the Writ Petitions is one and the same, both the cases are taken up for disposal by a common order.

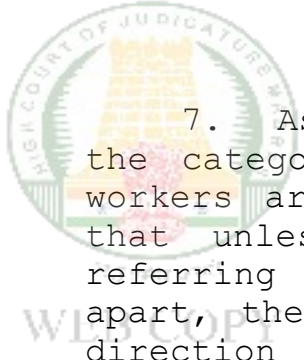
2. W.P.No.1156 of 2017 is filed seeking to quash the impugned order passed by the 1st respondent in unnumbered I.A. of 2016 in C.P.No.24 of 2016, dated 03.01.2017 and for a further direction to the 1st respondent to decide as a preliminary issue as to whether the 2nd respondent is a contract employee receiving retainer salary or not. Thereafter, the petitioner/Management filed another Writ Petition in W.P.No.1501 of 2017 for a direction to the 1st respondent to send the Claim Petitions filed by respondents 2 to 42 to the National Lok Adalat to be held on 11.02.2017 at Madurai Bench of Madras High Court.

3. The case of the petitioner is that employees working as Drivers in their Management numbering about 70 and above have filed Claim Petitions before the 1st respondent/Labour Court, Tirunelveli on the ground that salary paid to them is meagre and that they are entitled to the benefits under the Minimum Wages Act, 1948 and claimed a sum of Rs.5,00,000/- and above depending on their entry into service. The Claim Petitions numbering 30 have been settled as withdrawn before the Lok Adalat and the remaining 42 Claim Petitions are pending.

4. The petitioner/Management filed a detailed counter contending that the employees are Retainer Salary employees and they have been paid on contract basis depending upon the execution of work and that the amount received by the employees under different heads is more than what they have claimed in the Claim Petitions.

5. In such circumstances, the petitioner filed an Interlocutory Application to decide as a preliminary issue as to whether the employees are contract employees receiving retainer salary or not. Since the said I.A. presented before the 1st respondent on 14.12.2016 was not received, the petitioner filed a Transfer Petition in Tr.C.M.P.(MD) No.575 of 2016 before this Court and this Court, by an order dated 20.12.2016 directed the 1st respondent either to receive or reject the said I.A. within two weeks. Accordingly, the 1st respondent received the I.A. and dismissed the same on 03.01.2017 as unnumbered, on the ground that it is not necessary to decide the issue whether Drivers are contract employees or not. Aggrieved by the said order, the petitioner is before this Court with W.P.No.1156 of 2017.

6. Heard Mr.A.Jinasenan, learned counsel for the petitioner and respondent. Material documents available on record.



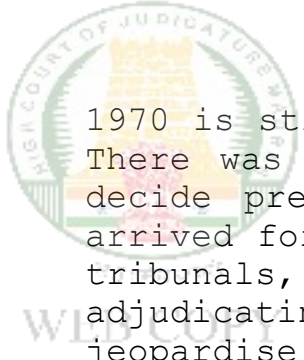
7. As far as W.P.(MD) No.1501 of 2017 is concerned, it is the categorical statement of the petitioner/Management that the workers are not willing for Mediation. However, it is submitted that unless and otherwise, the respondents/workmen agree for referring the matter to Mediation, it cannot be referred. That apart, the prayer in the Writ Petition is that there shall be a direction to the 1st respondent to send the Claim Petitions filed by respondents 2 to 42 to the National Lok Adalat to be held on 11.02.2017 at Madurai Bench of Madras High Court. Since the Lok Adalat scheduled on 11.02.2017 is already over, the relief of mandamus sought by the petitioner/Management cannot be granted. If the Writ Petition in W.P.(MD) No.1501 of 2017 is allowed, several Managements like the petitioner would try to stall the entire proceedings under the guise of Lok Adalat or Mediation and this Court is not inclined to accept the plea of the petitioner/Management, as it is devoid of merits.

8. As far as W.P.(MD) No.1156 of 2017 is concerned, the main contention addressed by the petitioner/Management before this Court is that the claim petition itself is not maintainable. However, it has been stated by the learned counsel that the issue before the Labour Court is whether the application claiming minimum wages can be maintained before it, when there is a specific enactment namely, Minimum Wages Act, 1948.

9. Now, the only issue before this Court is whether the application filed before the Labour Court claiming Minimum Wages is maintainable or not.

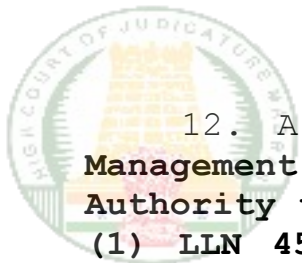
10. Even though the other issue raised and rejected has not been addressed, this Court is of the view that the Labour Court has rightly rejected the interim application, as the Apex Court in the case of **D.P.Maheswari vs. Delhi Administration and others** reported in **1983 (2) LLJ 425**, has held that all the issues have got to be tried together in a composite manner. Though the said decision has been rendered with regard to the preliminary issue, viz. whether a person is a workman or not in an industrial dispute, the principle will apply to the facts of this case also. For better understanding, relevant portion of the said decision is extracted hereunder:

"It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial disputes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in



1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication, is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues."

11. The Apex Court, in the case of **Cooper Engineering Limited vs. P.P.Mundhe** reported in **1975 (2) SCC 661**, has held that a decision rendered by means of a preliminary order/award can be questioned along with the final award, but, the petitioner/Management in the case on hand has raised preliminary issues to drag the proceedings. In **D.P.Maheswari's** case, the Apex Court has held that persons, who are well affordable cannot be allowed to invoke the jurisdiction of the High Court or the Apex Court challenging the interim orders and thereby make persons, who are ill affordable, litigate and starve. It is further held by the Apex Court that time has come to avoid trying the preliminary issues at the threshold, thereby depriving the workers to get speedy justice at the earliest.



12. A Division Bench of this Court in the case of **the Management of Tamil Nadu Mercantile Bank Ltd. vs. Appellate Authority under the Tamil Nadu Shops and another, reported in 1990 (1) LLN 457** has held that only with regard to two aspects, the Labour Court can decide the preliminary issues, viz. (i) whether the settlement arrived at between the Management and the workers is fair and (ii) whether the delay in filing the Appeal should be considered or not.

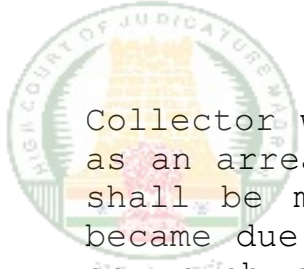
13. In the present case on hand, the contention of the petitioner/Management is that the Labour Court has no jurisdiction to entertain the Claim Petition under Section 33-C(2) claiming minimum wages. It is their further contention that Section 20 of the Minimum Wages Act clearly empowers the employees to approach the authority and if there is any delay, the authorities are empowered to condone the same. However, the delay aspect has got to be decided at the threshold. In order to circumvent the delay aspect, the employees have approached the Labour Court and on that ground also, the proceedings of the Labour Court has got to be interfered with.

14. A claim for minimum wages under the Minimum Wages Act, 1948 for the period which was beyond the period of limitation prescribed under the Act is maintainable under Section 33C(2) of the Act as held in the case of **Municipal Council, Akola vs. Labour Court** reported in **1976 (1) LLJ 334**).

15. Learned counsel for the petitioner/Management drew the attention of this Court to Section 33-C and submitted that if an employee wants to make an application claiming minimum wages before the Labour Court, the application has got to be filed within one year. The contention of the Management is far-fetched. Firstly, in the case on hand, the application claiming minimum wages has not been filed under Section 33-C(1). It is an application filed under Section 33-C(2), for which, no time limit is prescribed.

16. For the sake of convenience, Sections 33-C(1) and 33-C(2) of the Industrial Disputes Act, 1947 are extracted below:

"(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of 4 Chapter VA or Chapter VB], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the



Collector who shall proceed to recover the same in the same manner as an arrear of land revenue: Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer: Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months:

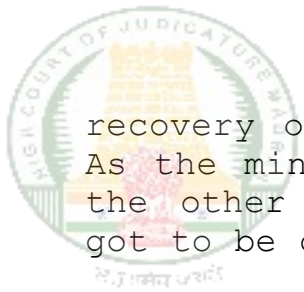
Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]”

17. There is no time limit prescribed for filing a petition before the Labour Court under Section 33-C(2) for computation of wages due to the workers. After determination of the amount by the Labour Court under Section 33-C(2), in case, the amount has not been paid to the employee, he can approach the Labour Court now under Section 33-C(1) for recovery of the amount for which a period of one year is fixed. Previously, the employee had to approach the Government for Recovery Certificate. Hence, the contention of the petitioner/Management that the period of one year limitation is prescribed for maintaining the application under Section 33-C(2) cannot be accepted and the said contention is rejected.

18. A reading of Sections 33-C(1) and 33-C(2) is very clear. The former sub-section deals with cases where money is due to a workman under a Settlement or Award. Whereas, sub-section (2) deals with cases where workman is entitled to receive money or any benefit from an employer, which has got to be computed in terms of money. Thus, where the amount due to the workman has got to be arrived by calculation, the only enquiry that is required to be made is whether it is due to the workman or not and recourse of summary proceedings is not only appropriate, but it is also desirable to compute the same.

19. In the case on hand, had the petitioner/Management not ~~disputed the amount~~ ^{disputed the amount} which agreed with the amount due to the employees, certainly the employees could have straightaway approached the Government for

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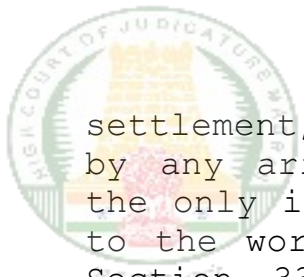


recovery of money under Section 33-C(1) before the Labour Court. As the minimum wages amount is disputed, the only recourse is to the other provision namely Section 33-C(2), wherein, amount has got to be computed by the Labour Court.

20. The Minimum Wages Act is not a complete Code which excludes the jurisdiction of the Labour Court under Section 33-C (2) of the Industrial Disputes Act.

21. At this juncture, it is worth referring to the Apex Court judgment in the case of of **Fabril Gasosa vs. Labour Commissioner** and others, reported in **(1997) 3 SCC 150**, wherein, it is held as follows:

"19. Section 33-C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Sections 33-C(1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those sub-sections. The distinction between sub-section (1) and sub-section (2) of Section 33-C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two sub-sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf or his assignee or heirs in case of his death, the appropriate Government is satisfied that the *amounts so claimed are due and payable* to that workman. On that satisfaction being arrived at, the Government can initiate action under this sub-section for recovery of the amount provided the amount is a determined one and requires no "adjudication". The appropriate Government does not have the power to *determine* the amount due to any workman under sub-section (1) and that determination can only be done by the labour court under sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the labour court under sub-section (2) the amount so determined by the labour court, can be recovered through the summary and speedy procedure provided by sub-section (1). Sub-section (1) does not control or affect the ambit and operation of sub-section (2) which is wider in scope than sub-section (1). Besides the rights conferred under Section 33-C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Sections 33-C(1) and 33-C(2) shows that the difference between the two sub-sections is quite obvious. While the former sub-section deals with cases where *money is due* to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, sub-section (2) deals with cases where a workman is entitled to recover from the employer any money or any benefit which is *capable of being computed* in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a



settlement, is predetermined and ascertained or can be arrived at by any arithmetical calculation or simpliciter verification and the only inquiry that is required to be made is whether it is due to the workmen or not, recourse to the summary proceedings under Section 33-C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33-C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter V-A and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement, an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub-section (1) as only a calculation of the amount is required to be made.

22. The Division Bench of the Bombay High Court was therefore, right in holding that the recovery certificates issued by the Labour Commissioner for recovery of the amounts claimed by the workmen in the proceedings under Section 33-C(1) of the Act were perfectly valid, legally sound and suffered from no infirmity whatsoever. We do not find any merit in these appeals and consequently dismiss the same with costs. One set of fee only in the two appeals.

23. Before parting with the judgment, we would, however, like to clarify that the application which has been filed by the employees' union before the labour court under Section 33-C(2) of the Act for recovery of benefits/amounts, other than those claimed in their application under Section 33-C(1) of the Act shall be decided by the labour court on its own merits and the findings recorded by us hereinabove shall be considered as confined only to the recovery certificates issued by the Labour Commissioner under Section 33-C(1) of the Act, which are the subject-matter of the appeals hereby disposed of by us."

22. Section 33-C(1) provides for recovery of amount as arrears, whereas, Section 33-C(2) is meant for computation of money. Section 33-C(2) is wider than Section 33-C(1). Section 33-C(2) entitles the workmen to apply to the appropriate Government for both non-monetary as well as monetary benefits from the date, the workmen will be entitled to. If the entitlement is based on adjudication of a right, Section 33-C(2)



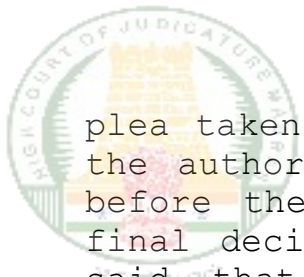
cannot be invoked. But, in the case on hand, the claim is based on minimum wages, which fact alone is disputed, for which a petition under Section 33-C(2) is maintainable.

23. For determining the jurisdiction of the Labour Court, one has to refer to the averments in the application under Section 33-C(2) and not the defence raised therein. Whenever, the question as to the entitlement of money or benefit is disputed by the employer, that question will have to be decided by the Labour Court. If the disputed question is an industrial dispute, then the remedy is for a reference. Whether a particular question can be decided in an enquiry under Section 33-C(2) depends upon the facts of each case. If the question is a incidental one relating to interpretation of rules, award, order, law or agreement, then it is open to the Labour Court to interpret the same. The process of law for recovery of the amount cannot take away the statutory right given under Section 33-C(2).

24. The Labour Court is empowered to compute the benefits and not confer any benefits, in view of the fact that the employees' claim is with regard to minimum wages, which they are entitled to and it is not going to confer any right, which cannot be considered as the disputed question of fact. Mere denial of status by the employer on the ground that the person is not a workman within the definition of the Act will not take away the jurisdiction of the Labour Court, if it has jurisdiction to entertain the application of the employee. In this regard, the High Court of Calcutta in the case of **Central Inland Water Transport Corporation vs. Second Labour Court and others (1974 (1) LLJ 445)** has held that in making the computation, the Labour Court can enter into and determine all questions which arise incidentally of which could be said to be essential or indispensable for the purpose of computation.

25. In dealing with a petition under Section 33-C(2), the Court has to determine on the facts of each case. If it is only with regard to the computation of money, the Labour Court is empowered to decide the dispute. Answering the issue raised by the Management with regard to maintainability of an application under Section 33-C(2) by the Labour Court, instead of an application before the Deputy Commissioner of Labour/an authority under the Minimum Wages Act, 1948, this Court is of the view that the jurisdiction of the Labour Court under Section 33-C(2) of the Act should not be treated as excluded in view of the provisions of Section 20 of the Minimum Wages Act.

26. There are two forums open to an employee. It is up to him to choose one forum as has been held by the Apex Court in the case of **Nirchaliya & others vs. Management of Safire Theatre, Madras & another** reported in **1991 (1) LLJ 111**. In that case, the



plea taken by the Management was that the employee had approached the authority under the Shops Act and also by filing a petition before the Labour Court. The Apex Court has held that unless a final decision is taken by one Court or Authority, it cannot be said that the other Court/forum does not have jurisdiction. Unless there is a bar against the alternative forum being moved, the jurisdiction of the authority would not be barred. The limitation is only in respect of the claim made under Section 33-C(1). There is no limitation provided for claims made under Section 33-C(2).

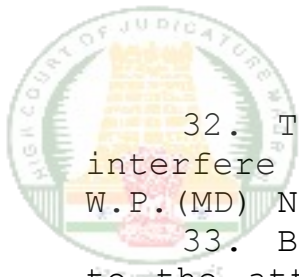
27. As the employee felt that there may be a preliminary objection with regard to delay and in case of adverse decision against the Management, the Management may take it to higher Courts and stall the final adjudication/decision on merits. Hence, the act of the employees in the case on hand in approaching the Labour Court is perfectly justified and their rights are protected in terms of the provisions referred to supra.

28. The Supreme Court in the case of **Krishna District Co-operative Marketing Society Limited, Vijayawada vs. N.V.Purnachandra Rao and others, (1987) 4 SCC 99** has held that if a person employed approaches the authorities under the Shops and Establishments Act, the authority is entitled to go into the question of non-payment of retrenchment compensation under the Industrial Disputes Act, 1947 in the proceedings under Section 41 of the Shops Act.

29. The Supreme Court, in the case of **Syed Azam Hussaini vs. Andhra Bank Limited** reported in **1995 Supp (1) SCC 557**, has followed the decision laid down in the case of **Krishna District Co-operative Marketing Society Limited** (cited supra) and held that the Shops Act authority in interfering with the termination order for non-payment of retrenchment compensation was valid.

30. In that event, the Labour Court, while dealing with the proceedings with regard to Payment of Minimum Wages Act under Section 33-C(2), is empowered to direct the Management to pay compensation not exceeding ten times the amount due to the employee in terms of Section 20(3) of the Minimum Wages Act, 1948.

31. The Apex Court has held that only in respect of claims for gratuity under the Payment of Gratuity Act, 1972, the jurisdiction of the Labour Court is excluded and that the employee will have to approach the authorities mentioned under the Payment of Gratuity Act. This is not available or applicable to a case where an employee seeks for wages due to him under Minimum Wages notification and approach the Labour Court excluding the other forum viz. the authority under the Minimum Wages Act.



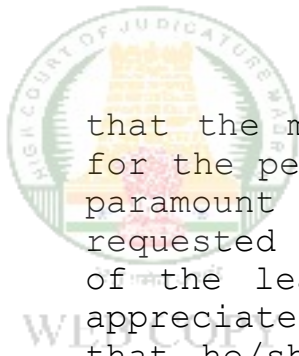
32. Thus, in view of the above, I do not find any reason to interfere with the impugned order passed by the 1st respondent in W.P.(MD) No.1156 of 2017.

33. Before parting with the judgment, I would like to refer to the attitude of the petitioner/Management in the present case on hand. When W.P.(MD) No.1156 of 2017 came up for hearing before me in the Madurai Bench, I heard the matter at length and when I was about to dismiss the Writ Petition, learned counsel for the petitioner/Management submitted that a few employees have settled the matter and that if time is given, all the other employees may also settle the issue. Hence, at the request of the learned counsel for the petitioner/Management, I directed to post the said Writ Petition before the National Lok Adalat to be held on 11.02.2017 for settlement. In the meantime, the petitioner/Management filed another Writ Petition in W.P.(MD) No.1501 of 2017 seeking to refer the matter to National Lok Adalat to settle the claim petitions in respect of other employees.

34. As there was no settlement, both the Writ Petitions were taken up at Madurai Bench on 01.03.2017 and the junior counsel sought adjournment. I refused adjournment and posted the matters 'for orders' on 02.03.2017. When the matters were taken up for hearing on 02.03.2017, the junior counsel again sought adjournment, as otherwise, he will be taken to task by his senior. In order to protect his interest, I directed the Registry to post both the matters before me as 'part-heard' before the Principal Seat, after obtaining necessary necessary orders from the Hon'ble The Chief Justice, as I had to resume to Chennai after completing my tenure in Madurai.

35. After obtaining necessary orders from the Hon'ble The Chief Justice, both the matters were listed before me in the Principal Seat on 27.03.2017. On that date, a junior counsel representing the counsel for the petitioner appeared and took passover and thereafter, the counsel on record appeared and submitted that papers pertaining to both the cases are at Madurai and that he requires further time to get the papers and address arguments. At that time, it was pointed out to the learned counsel that both the cases were heard at length. However, to give one more opportunity, the cases stood adjourned to 13.04.2017. On that date, learned counsel for the petitioner/Management submitted that the petitioner has instructed him to withdraw both the cases, vide their letter dated 12.04.2017 and he also produced those letters before this Court. I did not accede to his request and adjourned both the cases to 28.04.2017, on which date, I reserved both the cases 'for orders'.

36. The attitude of the Management in seeing the pulse of the Judge and taking time and seeking to withdraw the Writ Petition cannot be accepted. This Court could have dismissed the Writ Petition "without any liberty". There is a possibility of the petitioner/Management filing a Writ Appeal and trying to scrap the observation 'without liberty' and filing one more Writ Petition for the same cause of action. Instead of such a chance, I thought



that the matter has got to be decided on merits. Learned counsel for the petitioner/Management ought to have stated that he has got paramount duty to the Court than to his client and should have requested to pass orders on merits. Instead of doing so, the act of the learned counsel seeking withdrawal of the matter is not appreciated and the act is deprecated. A lawyer must understand that he/she is here to assist the Court and only based on the assistance given by them, the Court can render justice.

37. Admittedly, no document has been produced by the petitioner/Management before this Court pertaining to the settlement of the claims to any one of the workers concerned in this Writ Petition. For the act of the petitioner/Management in trying to withdraw the matter after the matter has been addressed in full, this Court imposes costs of Rs.2,500/- (Rupees Two Thousand Five Hundred only) payable by the petitioner/Management **to each employee who have not settled the matter with the Management.** The employees, who have not settled the matter with the Management are 42 in the case on hand and the costs payable to them comes to Rs.1,05,000/- (Rs.2,500/- x 42). It is made clear that if the petitioner/Management is unable to pay the costs imposed by this Court within 30 days from the date of receipt of a copy of this judgment, any of their properties or the personal properties of the official concerned may be attached for payment of the same. In this regard, the employees are supported by a Division Bench decision of this Court in the case of **A.Sachidanandam, Macneil and Magor Kilburn Group Companies Employees' Union vs. S.Srinivasan and others** reported in **2011 (6) CTC 844**, which has been confirmed by the Apex Court vide its judgment dated 13.12.2011 made in S.L.P.(Civil) No.34244 of 2011.

In fine, both the Writ Petitions are dismissed with the above direction and observation. Consequently, connected W.M.P.(MD) No.969 of 2017 is closed.

Sd/-

Assistant Registrar(CS-I)

/ True Copy /

Sub Assistant Registrar(C.S.)

To:

The Presiding Officer,
Labour Court,
Tirunelveli.

+2cc to M/S.S.SETHURAMAN, Advocate SR.No.61693&61694

(aeb)

MAS/MR-KKR/SAR2:04.07.2017:13P-4C