

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

Orders Reserved on	Orders Pronounced on
23.02.2018	04.06.2018

W.P.Nos.4515 and 4516 of 2014

The Managing Director,
Superfil Products Limited,
R.S.No.28/8-12, Mangalam Road,
Puducherry-605 110.

... Petitioner
in both W.Ps.

Vs.

1.The Presiding Officer,
Labour Court,
Puducherry.

2.C.Swamidurai

.. Respondents
in both W.Ps.

Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records from the first respondent herein, in C.P.Nos.18 and 19 of 2012 respectively, and to quash the orders passed therein dated 17.07.2013.

For Petitioner : Mr.K.R.Vijayakumar
(in both W.Ps.)

For Respondent : Mr.P.R.Thiruneelakandan
(in both W.Ps.)

COMMON ORDER

Both the writ petitions have been filed by the Managing Director, Superfil Products Limited challenging the order of the 1st Respondent herein passed in C.P. Nos.18 and 19 of 2012 on 17.07.2013 directing the petitioner herein to pay the respective workmen, i.e., the 2nd respondent in both the writ petitions, the subsistence allowance from 10.01.2011 to 15.12.2011 in C.P. No.18 of 2012 and from 10.01.2011 to 15.1.2011 in C.P. No.19 of 2012 @75% of the wages during the relevant period after deducting the subsistence allowance which has already been paid in view of Section 10A of the Industrial Employment (Standing Orders) Act, 1946 (for short "the Act") to be illegal and arbitrary being contrary to the materials on record as well as law.

2. As it appears, the 2nd respondent workmen in the aforesaid writ petitions were put under suspension pending disposal of domestic enquiry against them. However, they having not been paid the subsistence allowance during such period of suspension as contemplated under Section 10A of the Act they approached the 1st respondent vide C.P. Nos.2 and 3 of 2011 under Section 33(c)(2) of the Industrial Disputes Act. Taking into consideration the aforesaid provisions, their such claim was allowed and the present petitioner-Management was directed to release the substantial amount in favour of the aforesaid petitioners of Rs.39,222/- and Rs.45,651/- respectively. The

petitioner management complied with the said order of the Labour Court. Thereafter, on conclusion of the domestic enquiry, however, the services of the workmen were terminated on 31.01.2012 and 15.12.2011 respectively. Hence, the writ petition was directed to pay the allowance from 10.01.2011 to 31.01.2012 to the respondent no.2 in W.P. No.4515 of 2014 and from 01.01.2011 to 15.12.2011 to the respondent no.2 workmen in W.P. No.4516 of 2014 @ 75% of the wages in C.P. Nos.18 and 19 of 2012 raised under Section 33(c)(2) of the Industrial Disputes Act. The 1st respondent has passed such an order taking note of the provisions contained in Section-10'A' of the Act. The same has been challenged in this writ petition to be perverse, inasmuch as the same is contrary to the materials on record. No counter affidavit has been filed by the contesting respondent-workmen.

3. I have heard learned counsel for the petitioners, so also learned counsel appearing for the 2nd respondent.

4. It is submitted by the learned counsel appearing for the petitioner that the order being perverse inasmuch as even if there is material on record indicating the fact that the workmen had contributed in delay in disposal of the domestic enquiry, but the respondent no.1 without consideration of the same directed to pay the subsistence allowance @75% taking note of the provisions contained in Section 10A of the Act, hence the

5. However, learned counsel appearing for the 2nd respondent-workmen in both the writ petitions, submitted that there is no material on record indicating the aforesaid fact. Since no material was placed indicating the fact that the respondent-workmen have contributed in delay in disposal of the domestic enquiry, the impugned order passed cannot be found fault with and moreso, when the same is in accordance with the mandate of Section 10A of the Act.

6. To appreciate the contentions of both the parties, it would be apposite to have a look to Section 10A of the Act which reads as thus :-

"10A. Payment of Subsistence Allowance:- (1)
Where any workman is suspended by the employer pending investigation or inquiry into complaints of charges of misconduct against him, the employer shall pay to such workman subsistence allowance-

(a) At the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) At the rate of seventy five per cent of such wages for the remaining period of suspension, if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman."

7. From the aforesaid, it appears that when workmen is suspended

by the employer pending enquiry of a charge of misconduct against him, the employer is required to pay subsistence allowance for 90 days of suspension. However, if such enquiry is not concluded within 90 days of suspension, he is entitled to enhancement of subsistence allowance at the rate of 75% of such wages for the remaining period of suspension, unless the delay in completion of the disciplinary proceeding/domestic enquiry is attributable to him.

8. Undisputedly, the materials on record would go to show that the domestic enquiry could not be concluded within 90 days though the workmen were under suspension pending disposal of such enquiry. Thereafter, as per the mandate of Section 10A of the Act, the workmen are entitled to 75% of the wages drawn by them towards subsistence allowance, unless it is shown by the Management in such delay in disposal of the domestic enquiry the workmen is contributed in any manner. No material is placed before the Labour Court indicating the fact that the respondent-workmen contributed such delay in disposal of such domestic enquiry. During the course of hearing, nothing is also brought to the notice of this Court indicating the fact that such materials are there, but the Labour Court has not taken the same into consideration. In the absence of any convincing materials indicting the respondent-workmen contributed to the delay in disposal of the domestic enquiry, for which the domestic enquiry could not be completed within the stipulated period of 90 days, the impugned order cannot be said to be perverse for non consideration of relevant materials on record and based on

surmises and conjectures. The order therefore having been passed as per the mandate of Section 10 A (quoted supra), taking into consideration the materials on record, this writ petition filed challenging the same is devoid of merits and as such liable to be dismissed.

9. Accordingly, both the writ petitions stand dismissed. The management is directed to comply with the order within a period of four weeks hence, failing which they are liable to pay interest @ 9% over and above the amount due on the date of the order of the Labour Court. In these circumstances, there shall be no order as to costs.

04.06.2018

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Index : Yes / No
Speaking / Non-speaking Order

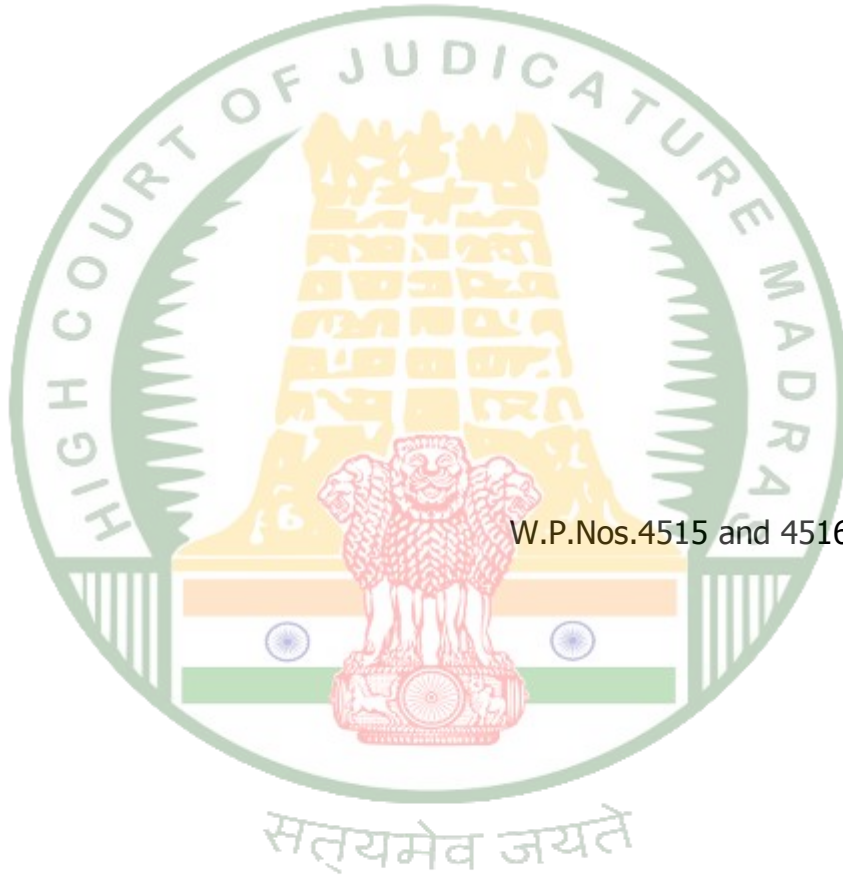
To

The Presiding Officer,
Labour Court,
Puducherry.

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SATRUGHANA PUJAHARI, J.

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