

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1324 of 2018
and
C.M.P.No.10600 of 2018

Puthiya Jananayaga Thozhilalar Munnani
Regn.No.43/TVR
Rep. by its Secretary
No.110/63, NSK Salai, Kodambakkam,
Chennai 600 024. Appellant

vs.

- 1.The Management of Sungwoo Stamping Pvt Ltd
(Formerly Gestamp Sungwoo Hi Tech (Chennai) Pvt Ltd)
488/2, Mannur Village, Valarapuram
Sripurambudur,
Kancheepuram District 602 105.
Rep by its Assistant General Manager - HR
- 2.The Industrial Tribunal,
Rep by its Presiding Officer
City Civil Court Building
Chennai 600 104. ... Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order in W.P.No.24581 of 2017, dated 04.06.2018.

WP.NO.24581/2017:

Praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the Order dated 21.08.2017 passed by the first respondent in IA 219 of 2017 in IA 178 & 179 of 2017 in ID No.10 of 2017 and quash the same as being illegal contrary to law and perverse and consequently issue a direction to the first respondent to jointly adjudicate and decide the IA 178 & 179 of 2017 in ID No.10 of 2017 along with AP No.63 of 2017 etc. preferred by the petitioner.

For Appellant : Mr.Balan Haridas

For Respondents: Mr.C.K.Chandrasekar
Caveator for R1

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR, J)

On 28.09.2018, we passed the following order:-

"After making lengthy arguments, when a suggestion was mooted out by this Court, as to the disposal of I.D.No.10 of 2017, within three months from today, Mr.Balan Haridas, learned counsel for the appellant submitted that the evidence already recorded, need not be eschewed, and continued in the Industrial Dispute. He further added that the Respondent/Management be directed to give an undertaking that the services of the workman, be continued and respondent/Management also be directed to pay one month wages.

2. Placing reliance on a decision of this Court in J.Harikrishnan and Others Vs. Management of Hanil Tube Private Limited Rep. by its Assistant General Manager-Finance, Sriperumbudur - 602 117 and Another, reported in 2015-I-LLJ-402(Mad), Mr.A.L.Somayaji, learned Senior counsel submitted that the employee-employer relationship, would not be taken away, even if termination is upheld.

3. However, respondent/Management would file an affidavit by stating that the fact that the employees' are not in service will not be taken as a defence, during the adjudication of the Industrial Dispute, which pertains to the issue as to whether the employees should be regularised or not.

4. Management and the appellant will file the respective affidavits to the above effect.

5. No prejudice would be caused to the appellant, because of the order of the termination passed by the Management pending the Industrial Dispute.

6. Both, the Management and appellant shall not precipitate the hearing of the matter relating to approval petition.

7. Considering the acrimony between the two sides, Industrial Disputes Tribunal, Chennai, is requested to expeditiously dispose of the dispute, not later than three months from today. Both parties to adhere with the time limit.

8. Tamilnadu Industrial Tribunal, is directed to provide equal opportunity to the appellant to adduce evidence in ID No.10 of 2017. After adjudication it is open to the Industrial Tribunal to pass appropriate orders relating reinstatement / regularisation, in accordance with law.

9. Post on 01.10.2018, in the motion list."

2. Pursuant to the order dated 28.09.2018, Puthiya Jananayaga Thozhilalar Munnani, represented by its Secretary, Chennai/petitioner herein, has filed an affidavit, dated 01.10.2018.

3. Assistant General Manager of the first respondent/Management, Sungwoo Stamping Private Limited, (Formerly known as Gestamp Sungwoo Hi Tech (Chennai) Pvt. Ltd), Kancheepuram, has filed an affidavit, dated 09.10.2018.

4. However, the Management raised apprehension in respect of paragraph No.5 of our order dated 28.09.2018 and in the affidavit, dated 09.10.2018, filed by the Management, stated thus:-

"5. I submit that in para 7 of the Hon'ble Court's order dated 28-09-2018, it was further observed that the Industrial Tribunal will provide equal opportunity to the Union to adduce evidence in ID No.10 of 2017 and after adjudication it is open to the Industrial Tribunal to pass appropriate orders relating to reinstatement/regularisation, in accordance with law. It is well settled that both parties to a lis should be given equal opportunities to put forth the respective contentions/evidence and pleadings as per the scheme of the Industrial Disputes Act, 1947. I humbly submit that if the management is not given due opportunity, we will be put to prejudice on factual/legal issues, especially when several legal defences are available to sustain the action and the case is only at the threshold stage."

5. Without prejudice to the above, the Assistant General Manager of the first respondent/Management, agrees for the disposal of W.A.No.1324 of 2018, except Clause (e). For brevity, affidavit of the Secretary, Puthiya Jananayaga Thozhilalar Munnani, Chennai, reads thus:-

"a) The Industrial Dispute No.10/2017 to be disposed of within a period of 3 months from today.

b) The evidence so far let in by the 1st respondent/management will be considered as the evidence in I.D.No.10/2017. Further Cross examination of MW-2 will

have to be done by the appellant Union.

c) After conclusion of the evidence of the 1st respondent/management, the Appellant Union will have to be given opportunity to lead evidence on their side in the main Industrial Dispute.

d) Neither the appellant nor the 1st respondent should insist on any Interlocutory Applications filed by the 1st respondent/Appellant Union and Approval Petitions for being adjudicated.

e) The 1st respondent management at least to pay one month wages to the employees to tide over the crisis of non-employment.

f) The 1st respondent/management shall not take a plea that as the workmen is terminated from service they are not entitled to permanency/regularisation. The Industrial Tribunal has got power to order reinstatement/regularisation if case is made out by the Appellant Union."

6. Mr.C.K.Chandrasekar, learned counsel for the first respondent/Management, made submissions on the above objectionable portion, Clause (e), at the risk of repetition is reproduced:-

"e) The 1st respondent management at least to pay one month wages to the employees to tide over the crisis of non-employment."

7. Placing on record the above, W.A.No.1324 of 2018, is disposed of, taking note of the averments in paragraph No.3 of the affidavit, dated 01.10.2018, filed by Puthiya Jananayaga Thozhilalar Munnani, represented by its Secretary, Chennai/petitioner herein, and the objections.

8. Though Mr.C.K.Chandrasekar, learned counsel for the first respondent/Management, is not agreeable to Clause (e), regarding one month salary, considering the nature of litigation, length of time consumed, plight of the workmen, we hereby direct the first respondent/Management, to pay one month salary, to the workmen, who constrained to litigate for many years. We sincerely hope that the Management would comply with the directions, in letter and spirit, to avoid further litigation, for non-compliance.

9. With the above direction, writ appeal is disposed of.
Consequently, connected civil miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

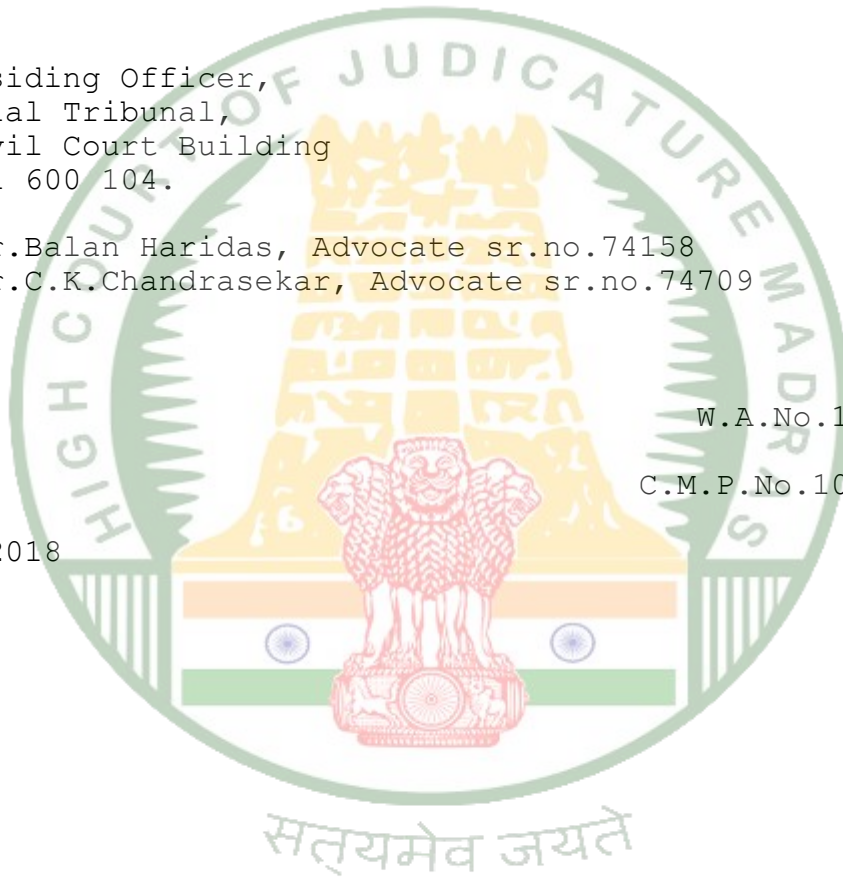
2.The Presiding Officer,
Industrial Tribunal,
City Civil Court Building
Chennai 600 104.

+1cc to Mr.Balan Haridas, Advocate sr.no.74158

+2cc to Mr.C.K.Chandrasekar, Advocate sr.no.74709

W.A.No.1324 of 2018
and
C.M.P.No.10600 of 2018

nr 31/10/2018



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