

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.903 of 2014
and
M.P.No.1 of 2014

P.M.P.Textiles Spinning Mills Limited
Pagalpatty,
Dharmapuri
Rep. by its Managing Director
Chennai - 600 003.

... Appellant

versus

1.The Presiding Officer,
Labour Court, Salem.

2.V.Chellapandian
Dharmapuri District Dravida Panchalai
Thozhilalar Munnetra Sangam,
No.86-A, Bharathiyar Nagar,
Avalappalli Road, Hosur - 635 109.

... Respondents

Appeal filed against the order passed by this Court dated 06.06.2014 made in M.P.No.2 of 2010 in W.P.No.11865/2010.

Prayer in M.P. 2 of 2010: Petition praying to vacate the interim stay granted on 09/06/2010 in MP.No. 1/2010 in W.P.No.11865 of 2010.

Prayer in W.P.No. 11865 of 2010 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other appropriate Writ, order or Direction calling for the records relating to the award dated 16/09/2009 made in I.D.No. 407 of 2004, which was received by the petitioner on 26/11/2009 and quash the same.

For Appellant : Mr.R.Parthiban

For Respondents : Mr.C.K.Chandrasekaran

J U D G M E N T
(Order of the Court made by R.SUBRAMANIAN, J.)

The challenge in this appeal is to the interim order of stay passed by this Court on 06.06.2014 in M.P.No.2 of 2010 in W.P.No.11865 of 2010.

The brief facts that led to the filing of the Writ Petition are as follows:-

2. The appellant herein viz., the Management impugned the award of the Labour Court made in I.D.No.407 of 2004 dated 16.09.2009 in the Writ Petition. By the said award, the Labour Court while setting aside the oral termination of the services of the workman by the Management on 16.03.2002, directed the Management to re-instate the workman in service with continuity of service and with full back wages.

3. The claim of the Management was that the workman who was engaged as a Cardings Tenter was involved in a criminal case of assault and due to the injuries sustained he was admitted in St.John Medical College Hospital in Bangalore from 19.10.2001 to 15.03.2002. It was claimed that he abandoned the service and never reported duty. The claim of the workman was that he was orally terminated as he was not allowed to rejoin duty on 16.03.2002.

4. Pending the above Writ Petition, the Management sought for a stay of implementation of the award in M.P.No.1 of 2010. Originally, this Court granted interim stay on 09.06.2010 and upon service, the 2nd respondent workman sought for vacation of stay. He also filed an application under Section 17-B of the Industrial Disputes Act. Before the learned Single Judge, the Management had contended that the workman is not without job and he is in fact running a small scale industry manufacturing Coir two ply yarn at Palayamputhur, Kombai Village, Dharmapuri District in the name of Vendhan Moorthy Coir Industry and the annual turnover of the said business is about Rs.4,50,000/-. Therefore, according to the Management, the workman was not entitled to invoke Section 17-B of the Act.

5. The said statement made by the Management regarding the fact that the workman is running a small scale industry was not disputed by him. However, a contention was raised by the workman that since he is ready and willing to work, if the Management refuses to allow him to work he will be entitled to atleast back wages as directed by the Labour Court.

6. The learned Single Judge taking into account the facts and circumstances of the case and the last drawn wages of a co-worker concluded that the arrears of back wages would come to

Rs.9,35,300/- and directed the appellant/ Management to deposit 50% of the said back wages and further permitted the workman to withdraw the amount after filing an affidavit before the Labour Court stating that in the event of the Writ Petition being allowed he would repay the same. Interim stay granted on 09.06.2010 was made absolute subject to the above condition. Aggrieved the Management has come forward with the appeal.

7. We have heard Mr.R.Parthiban, learned counsel appearing for the appellant and Mr.C.K.Chandrasekaran learned counsel appearing for the respondents.

8. Mr.R.Parthiban, learned counsel appearing for the appellant would vehemently contend that inasmuch as the workman had not denied the claim of the Management regarding his business he cannot be favoured with an order under Section 17-B of the Industrial Dispute Act. Mr. R.Parthiban, would further contend that the workman had in fact suppressed the fact that he is running a small scale industry in the affidavit filed by him in support of the application under Section 17-B, therefore, he should not be favoured with an order of payment of back wages.

9. Per contra Mr.C.K.Chandrasekaran, learned counsel appearing for the respondent would contend that the order passed by the learned Single Judge is not one under Section 17-B. According to him, the learned Single Judge had taken note of the fact that the workman is not un-employed and had only directed payment of 50% of the back wages directed to be paid by the Labour Court.

10. We have considered the rival submissions. The learned Single Judge had recorded that the last drawn salary of the workman was Rs.3,276/- and non-employment period is 90 months and 15 days. Therefore, the wages for non-employment period works out to Rs.2,96,478/-. The learned Single Judge had however concluded that the back wages would work out to Rs.9,35,300/-, taking into account, apparently, the wages that are being drawn by similarly placed workers with the appellant Management as on date. We are afraid that such a calculation of back wages on assumptions may not be in the interest of justice.

11. As per the calculation furnished by Mr.R.Parthiban, learned counsel appearing for the Management, the back wages payable to the respondent for the period of non-employment will be Rs.2,96,478/-. This takes care of the period till passing of the award i.e., 16.09.2009. Therefore, we are of the considered opinion that a direction to Management to deposit a consolidated sum of Rs.3,00,000/- towards back wages as a condition for stay would be in the interest of justice.

12. The appeal is therefore partly allowed the order of the learned Single Judge is modified and the stay granted on 9.6.2010 and subsequently, extended on 07.07.2010 is made absolute subject to the condition, the appellant Management deposits a sum of Rs.3,00,000/- to the credit of ID.No.407 of 2004 on the file of the Labour Court, Salem within a period of four (4) weeks from the date of receipt of a copy of the order failing which the stay granted shall stand automatically vacated. On such deposit, the respondent workman would be entitled to withdraw the said sum upon filing an affidavit as directed by the learned Single Judge. In the circumstances of the case, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

dsa

To
The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.R.Parthiban, Advocate SR.No.37399
+1cc to Mr.C.K.Chandrasekhar, Advocate SR.No.37339

W.A.No.903 of 2014

CP (CO)
GN (02/07/2018)

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