

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Thursday, the Twenty Second day of February Two Thousand Eighteen

PRESENT

THE HON`BLE MR JUSTICE SATRUGHANA PUJAHARI

WMP.No.32242 of 2017

in WP.No.27262 of 2017

S.JAGANATHAN,

[PETITIONER]

Vs

1 THE PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
PUDUCHERRY.

[RESPONDENTS]

2 KARAIKAL PORT PRIVATE LIMITED,
REP BY ITS DIRECTOR, GRK REDDY,
KEEZHAVANJOOR VILLAGE, T.R.PATTINAM,
KARAIKAL 609 606.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Direct the 2nd Respondent to pay the Petitioner his full last drawn wage of Rs.12,000/- from the date of award i.e. on 21.09.2017 in ID (L) No.21 of 2013 and continue to pay the same on or before 10th day of each English Calendar month, (in WMP.No.32242/2017) pending disposal of the above WP.No.27262/2017.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.P.R.THIRUNEELAKANDAN, Advocate for the petitioner and of M/S.V.P.SURESH for M/S.SHIVAKUMAR AND SURESH Advocate for the 2nd respondent the court made the following order:-

Heard the learned counsel for the petitioner/workman and learned counsel for the second respondent/writ petitioner.

2. It is submitted by the learned counsel for the petitioner/workman that though the award has been challenged, the provision of 17B of the Industrial Disputes Act has not been complied with hence the writ petitioner/management may be directed to comply with the same within the stipulated time.

3. The learned counsel for the writ petitioner/ management submits that the award being perverse, there is every chance of success of writ petitioner in the writ petition. The amount paid

under Section 17 (B) of the Industrial Disputes Act being not refundable even if the writ petition of the management is allowed. The prayer made in the writ miscellaneous petition to direct them payment of the same pending disposal of the writ petition, is without any substance. Hence warrants rejection by this Court.

4. To appreciate the contention of the parties, it would be apposite to have a look on Section 17 (B) of the Industrial Disputes Act, which reads as thus:

17B. Payment of full wages to workman pending proceedings in higher courts.- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.]

5. From the mandate of the aforesaid Section, it is clear that when the order of the Labour Court directing reinstatement is challenged by the Management, the management is liable to pay the workman, the last wages drawn before his termination during the pendency of such litigation in the Supreme Court or High Court. The payment of such last wages drawn during the pendency of litigations at the instance of the management, is not dependant on the success of the writ petition and also the same is non refundable one even if the management succeed in the litigation challenging such award of the Labour Court. It is only in the circumstances, when the workman is employed in any other establishment and receiving the remuneration, the Supreme Court or High Court as the case may be can refuse such prayer. However, in this case, the management has failed to produce any material in this regard nor has taken a plea on that ground to absolve it from the liability of compliance of the mandate of Section 17 (B) of the Industrial Disputes Act. The workman say he is not receiving any remuneration being employed in any establishment. In such premises, this Court is of the view that the management/writ petitioner is liable to comply with the mandate of Section 17 (B) of the Industrial Disputes Act.

5. Hence, this writ miscellaneous petition filed to direct the second respondent / management to pay last drawn wages with all attendant benefits to the workmen from the date of award till the end of February within a period of three months by depositing the same on the file of the respondent no.2/labour court, and on such deposit, the said amount be remitted to the workmen/petitioner through RTGS or paid through an account paid cheque or the demand draft, as the case may be. So far as the wages on the aforesaid rate from the month of March is concerned, the same be paid by 10th of every succeeding English calendar month to the workman in his Bank account or by an A/c payee demand draft or cheque.

6. It is submitted by the writ petitioner/management that the matter be taken up expeditiously.

7. The writ petition being of the year 2017, this Court is not assigned with the roster, therefore, the counsel for the petitioner as such may make a mention in this regard before the appropriate bench, if so desired.

-sd/-

22/02/2018

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
PUDUCHERRY.

C.C. to M/S.P.R.THIRUNEELAKANDAN Advocate on payment of necessary charges

C.C. to M/S.SHIVAKUMAR AND SURESH Advocate on payment of necessary charges

Order

in
WMP.32242/2017

in
WP.27262/2017

Date :22/02/2018

From 26.2.2001 the Registry is issuing certified copies of the Interim Orders in this format
KP(27/02/2018)