

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.03.2018

PRONOUNCED ON: 04.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.Nos.30057 to 30059 of 2013 & 30599 of 2013

& M.P.Nos.1 & 1& 1& 1 of 2013

N.Bakthavachalam

..Petitioner in
W.P.No.30057 of 2013

S.Veeran

..Petitioner in
W.P.No.30058 of 2013

R.Magesh

..Petitioner in
W.P.No.30059 of 2013

1.Mrs.S.Amudha

2.S.Vikram

3.Master S.Mathivanan

..Petitioners in W.P.No.30599 of 2013

(minor rep. by mother and natural
guardian Mrs.S.Amudha)

Vs

1. M/s.Tannex Apparels Ltd,
rep. by its Managing Director,
Mr.S.Viswanathan,
No.8, Block I, 1st Street,
Abhiramapuram, Chennai-28.

2.The Presiding Officer,
First Additional Labour Court,
City Civil Court Buildings,
Chennai-600 104.

.. Respondents in all Wps.

Common Prayer:-

Writ Petition filed under Article 226 of the Constitution of
India praying for issuance of a Certiorari to call for the

records and to quash the impugned order dated 27.06.2013, vide Award in I.D.Nos.67, 64, 65, 66 of 2005 respectively, passed by the second respondent herein(prayer in all Wps).

For Petitioners(in all Wps) : Mr.N.Kumar Rajan
for M/s.Kumar & Baskar

For R1 (in all WPs) : No appearance

ORDER

This writ petition has been filed by the petitioners, challenging the order passed by the second respondent under Section 2-A(2) of the Industrial disputes Act- 1947, in ID. Nos. 67, 64, 65, 66 of 2005 respectively.

2. As it appears that the petitioners joined in Hindustan Lever Ltd, as workmen and were the permanent employees of the said Management. However, the said Hindustan Lever Limited, was taken over by the first respondent with the condition to absorb the petitioners and other employees in similar condition of service in which they were working with Hindustan Lever Limited.

Accordingly, the petitioners were absorbed in the respondent No.1-Management. The petitioners' date of retirement with their former employer being 60 years of age, they were expecting to continue in the service with the respondent No.1 till they attained the aforesaid age of superannuation. But the respondent No.1-Management terminated their service before they reached the aforesaid age of superannuation and as such, they disputed the same before the Assistant Labour Commissioner, Conciliation, Chennai. However if failure report having been submitted in this regard on 01.04.2004 and 30.04.2004 respectively, they raised Industrial Dispute Case Nos.65,66,67 and 68 of 2004 before the Assistant Labour Commissioner to declare their termination to be illegal and direct the Management to reinstate them with all back wages and other benefits. The same was contested by the respondent No.1 disputing the petitioners' service in the erstwhile Management was taken over by the respondent No.1 on similar terms and conditions, but the stand of the respondent No.1 was that the petitioners while working with the Hindustan Liver Limited which was taken over by the respondent No.1, on consideration of their past service and on sympathetic ground, they were taken as new entrant by the respondent No.1. However, after taking over the said Company, since the respondent No.1 suffered from heavy financial loss due to lack of raw materials, it terminated the service of the petitioners in accordance with law.

3. It appears that the respondent No.1 taking into consideration the materials placed by the parties came to conclusion that the petitioners were new entrants in the Company of the first respondent and their termination is for bonafide reasons and since there was no work with the Leather stitching unit, in which the petitioners were working and the Company had suffered financial loss and there was no resources. The petitioners having also been paid their wages including the compensation in accordance with law which they have accepted as full and final settlement, they had no case, but since they have requested the first respondent to consider their case on humanitarian ground, and in view of the provisions contained in Section 18 (i) of the Industrial Disputes Act, and the petitioners were ready and willing to receive the additional compensation instead of the award of re-instatement, directed the payment of an amount of Rs.40,000/- to each of the petitioners as compensation. The same is challenged in this writ petition by the writ petitioners, inter-alia on the ground that the same is contrary to the materials on record and with a prayer to quash the same and to pass an order in accordance with law.

4. In spite of the notice, no counter affidavit having been filed nor anyone has made appearance on behalf of the respondent Company in the writ petition, hence, the case is heard ex-parte.

5. During course of hearing, learned counsel appearing for the petitioners does not press the prayer for reinstatement, but has submitted that as in the meanwhile Establishment has been closed and the compensation awarded being not commensurate to the facts and circumstances of the case, this Court should enhance the compensation, more particularly taking into consideration the fact that the petitioners were getting wages of more than Rs.5200/- per month on the date of their termination and had many years to serve.

6. There is no dispute that the petitioners' termination has been held by the Court to be for bonafide reasons, but the Court has also taking into consideration Section 18 (i) of the Industrial Disputes Act, has granted the additional compensation. When such additional compensation is granted, the same must be based on reasons and the facts and circumstances must be taken into consideration. As in this case the Court while granting additional compensation of Rs.40,000/- to each of the petitioners, appears to have not given any reasons more or less any appropriate and cogent reasons. In this case as each

of the petitioner was getting Rs.5200/- per month as wage on the date of termination and had many years of service to render, the additional compensation directed to be paid to each of the petitioners cannot be said to be commensurate to the facts and circumstances of the case. But, it also cannot be lost sight of that the Company was also running on loss and due to non-availability of the work and financial resources, the petitioners were terminated from service and the same was for the bonafide reasons. Therefore, this Court is of view that the additional compensation of Rs.1 lakh to each of the petitioners and the legal representatives of the deceased workmen who are the petitioners in W.P.No.30599 of 2013, shall be commensurate to the facts and circumstances of the case.

7. Accordingly, this Court allows the writ petitions, directing the respondents to pay the additional compensation of Rs.1 lakh deducting the amount of Rs.40,000/-. Needless to say that since it is not disputed that Rs.40,000/- has already been paid, the rest amount of Rs.60,000/- shall be paid to each of the petitioners. Such amount be deposited by the first respondent within a period of three months from the date of receipt of this order, with respondent No.2. The respondent No.2 on such deposit of the amount, shall transmit the same to the account to be furnished by the writ petitioners.

8. A copy of this order be also communicated to the respondent no.1 at the cost of the petitioners. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. M/s.Tannex Apparels Ltd,
rep. by its Managing Director,
Mr.S.Viswanathan, No.8, Block I,
1st Street,Abhirampuram, Chennai-28.

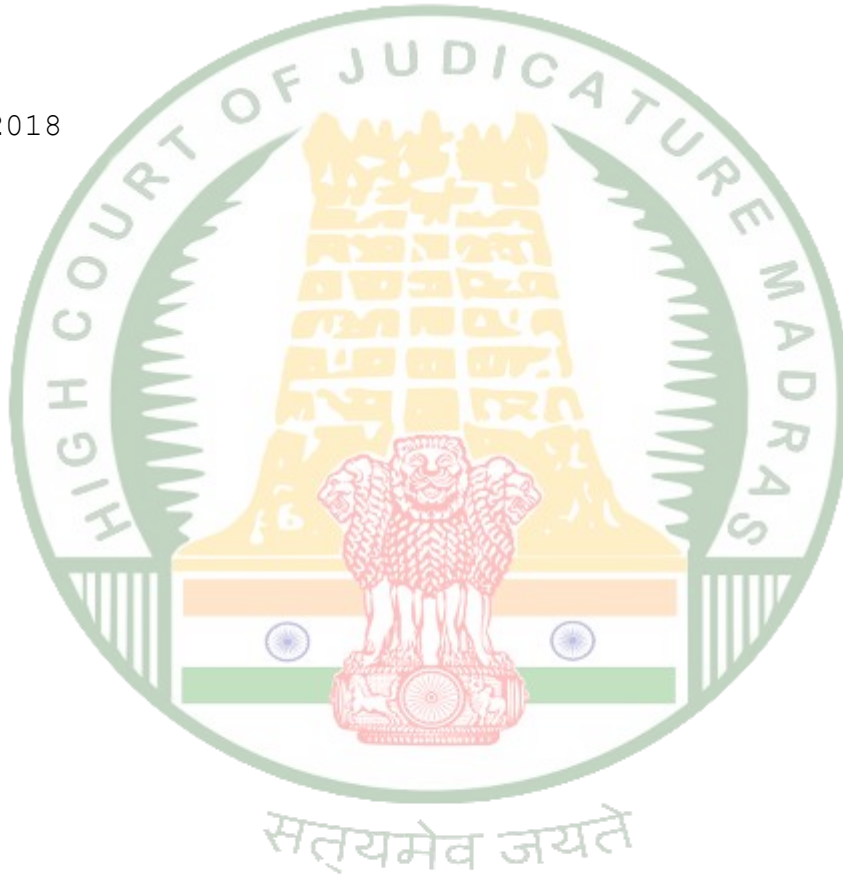
(To be Communicated at the cost of the petitioner)

2. The Presiding Officer,
First Additional Labour Court,
City Civil Court Buildings,
Chennai-600 104.

+4ccs to M/s.Kumar & Baskar, Advocate, S.R.No.34556

W.P.No.30057 to 30059 of 2013
& 30599 of 2013

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