

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.27687 of 2011

J.N.Agnihotri

... Petitioner

Vs

1. The Management,
Hindustan Construction Company Ltd.,
53-B, Edward Ellis Road,
Chennai-600 004.
(Chennai Office closed)
Head Office at
Hincon House, L.B.S.Marg,
Post - Tagore Nagar,
Vikhroli (West), Mumbai.

2. The Presiding Officer,
Principal Labour Court,
Chennai-600 104

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent pertaining to the order dated 22.11.2011 made in claim petition No.297 of 2000 and quash the same in so far as it denied the interest on claim amount and direct the first respondent to pay 12% interest on award amount from the date of filing of claim petition.

For Petitioner : Mr.Jugal Kumar

For Respondents : Mr.R.Jayaprakash for R1
R2- Court

O R D E R

Heard Mr. Mr.Jugal Kumar, learned counsel for the petitioner as well as Mr.R.Jayaprakash, learned counsel for the 1st respondent.

2. The petitioner has approached this Court, seeking the following relief:

"To issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent pertaining to the order dated 22.11.2011 made in claim petition No.297 of 2000 and quash the same in so far as

it denied the interest on claim amount and direct the first respondent to pay 12% interest on award amount from the date of filing of claim petition."

3. The writ petition has been filed against the order passed by the Labour Court in denying interest on the backwages payable to the petitioner by the 1st respondent/Management. The 2nd respondent/Labour Court while denying the interest on the backwages payable to the petitioner, had relied on the decision of this Court in the case of G.RAMDASS AND OTHERS V. MANAGEMENT OF TANSIK DIE CASTINGS INDUSTRIAL ESTATE, CHENNAI AND OTHERS, reported in 2000(4) LLN 914.

4. The learned Judge, as he then was, has categorically held that the award of interest in the proceedings under Section 33 (C) (2) of the Industrial Disputes Act, 1947, cannot be incidentally questioned and in the absence of any specific provisions in the main award itself for interest, such interest cannot be claimed in the proceedings under Section 33(C) (2) of the Act.

5. As against the denial of the interest, the petitioner is before this Court challenging the order of the second respondent/Labour Court.

6. Learned counsel for the petitioner would submit that in view of the belated payment of backwages, while reinstating him in service pursuant to the order passed in W.P.No.15435 of 1990, dated 11.09.1996, the interest became payable.

7. At this, the learned counsel for the first respondent/Management would submit that the ratio laid down by the learned Judge of this Court as he then was reported in (2000(4) LLN 914 (as stated supra), is squarely applicable to the facts of the present case. Useful reference made to the aforesaid decision which reads as follows:-

" 4.As far as W.P.No.13051 of 1993 is concerned, the following points are to be considered:

(i) Whether the petitioner/workman is entitled interest for the award amount as claimed by him.

(ii) Whether the workman is entitled to allowances.

5. Regarding the first claim, namely, interest, admittedly, the award in I.D.No.459 of 1987 on the file of the First Additional Labour Court, Madras, does not contain any clause for interest. Likewise, there is no specific provision enabling the Labour Court/Industrial Tribunal to award

interest. In this regard, Sri S. Kanniah, learned counsel for the workman has very much relied on the following decisions:

(i) E.I.D. Parry (India) Ltd., v. Industrial Tribunal, Madras, and others [1991-1 L.L.J.250].

(ii) Ghaziabad Development Authority v. Union of India [(2000) 6 S.C.C. 113]; and

(iii) Vepar Vikas Co-operative Bank, Ltd., v. Ghanshyam Lallubhai Patel [2000 (4) L.L.N. 878] (current issue).

6. In the first case, namely, 1991-1 L.L.J. 252 (vide supra), the Division Bench of this Court has held that Industrial Tribunal is having powers wider than a civil Court in a matter of adjudication of dispute and its jurisdiction to grant interest. Their Lordships have further held that Industrial Tribunal is a Court within the meaning of Interest Act, 1839. In the light of the said Division Bench decision, it is clear that both the Labour Courts and Industrial Tribunals are Courts within the meaning of Interest Act, 1839, and they are having powers wide than a civil Court in the matter of adjudication of an industrial dispute and can award interest in appropriate cases.

7. In the case reported in (2000) 6 S.C.C. 113 (vide supra), the Hon'ble Supreme Court has held that interest on equitable grounds can be granted in appropriate cases. Their Lordships also held that the rate of interest awarded in equity should neither be too high nor too low. Further, the said decision arose out of breach of contract and a complaint was filed before the M.R.T.P. Commissioner.

8. In the case reported in 2000 94) L.L.N. 878 (Current issue), the learned Single Judge of the Gujarat High Court, while dismissing the writ petition filed by the Co-operative Bank against the order of the Labour Court, passed an order in an application filed by the employee under S.33 C(2) of the Industrial Disputes Act, directing the management of the co-operative bank to pay the amount with 9 per cent interest.

9. It is clear from the above decisions that though there is no provision in the Act as observed by the Division Bench of this Court in the case reported in 1991-1 L.L.J. 25 (vide supra), Labour Courts/Industrial Tribunals are having wider powers than civil Courts in a matter of adjudication of industrial dispute and accordingly in appropriate cases they can award interest. Likewise, the same authorities, on equitable grounds, can grant interest in appropriate cases. Further, while confirming the award of the Labour Courts/Industrial Tribunals, this Court can also direct the management to pay reasonable interest for the unpaid amount.

10. Sri M.Vijayan, learned counsel for management, by relying on the judgment Nainar Sundaram, J (as he then was reported in 1988 (2) L.L.N. 95, Management of Nathan's Press, Madras v. K. Krishnan would contend that in the absence of provision for interest in the main award itself, the Labour Court under S.33C(2) the Act cannot award interest. When considering the question, namely whether Labour Court can award interest in the application filed under S.33C(2) of the Act the learned Judge has held thus, in Para-4, page 96 of the order.

"The second grievance of the learned counsel for the petitioner is directed against the award of interest. Learned counsel would submit that the second respondent is now civil Court on the question of interest..."

Such a view has been expressed Verraswami, J. (as he then was) Krishnamurthy v. Main [1964-II L.L.N.88]. The learned Judge further observed follows:

"Interest is not one of the items the appear to be competent for the labour Court to go into under that section unless has been provided for in an award or settlement. That is not the case here. The order of the Labour Court in so far as related to interest cannot be sustained.

It is not here that the award passed in the instant case provided for payment of interest as such. In this context, one has

to take note of the scope S.33 C(2) of the Industrial Disputes Act, 1947, under which alone the present claim petition has come to be filed. The Labour Court, while making the computation be got only role of an executing Court, and cannot go beyond the award unless the question is incidental to working the reliance on the basis of the award. The heads of claims could be based only on the award and in the absence of any provision for payment of interest in the award, they could not be any claim for such interest and countenancing thereof by the second respondent in the present case. The claim for interest could not be stated to be incidental to computation of the benefit given under the award. I find the view expressed in Krishnamurthy v. Main [1964-II L.L.J.88], has been taken note of and followed by a Single Judge of the High Court of Delhi in Union of India v. Central Government Labour Court [1985 (1) L.L.N. 279]. In this view, the award of interest by the second respondent has got to be discountenanced."

Though the decision of Nainar Sundaram, J. (as he then was) appears to be conflicting with the decision of the Division Bench of this Court in 1991-I L.L.J.250 the learned Judge has concluded that in the absence of any provision for interest in the main award itself, the same cannot be granted while considering claim petition filed under S.33C (2) of the Act. As rightly contended, the Labour Court can determine and compute as per the award secured by the parties. In the absence of any direction for payment of interest in the award, in the claim petition filed under S.33 C(2) of the Act, the Labour Court cannot impose or award interest. In other words, the claim for interest could not be stated to be incidental to computation of benefits given in the award. I am in respectful agreement with the view expressed by Nainar Sundaram, J. (as he then was).

11. Similar view has been expressed by the Hon'ble Supreme Court in 1995 (1) L.L.N. 402, Municipal Corporation of Delhi v. Ganesh Razak and Another. After considering the jurisdiction of the Labour Court under

S.33C(2) of the Industrial Disputes Act, Their Lordships have held that the Labour Court cannot adjudicate dispute relating to entitlement of workmen to parity in wages. Their Lordships further held that power under S.33C(2) of the Act can be exercised only when entitlement has been earlier

adjudicated upon or recognised by employer. Their Lordships further held that its jurisdiction is similar to that of executing Court."

8. In view of the above settled legal position, this Court does not see any infirmity in the order passed by the 2nd respondent and therefore, the writ petition is dismissed as devoid of merits and substance. No costs.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The Presiding Officer,
Principal Labour Court,
Chennai-600 104

+1 CC to Mr.R. Jayaprakash, Advocate sr 42019.

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W.P.No.27687 of 2011

SP(31/07/2018)

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