

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

Rev.Appln.88/2018

The President
Pudhuvai Koothuravu Noorpalai
Thozhilalar Sangam
42, Cuddalore Road
Mudaliarpet, Pondicherry.

.. Applicant
/ Petitioner

Vs

1.The Managing Director
Pondicherry Cooperative Spinning
Mills Ltd., [P.396], [SPINCO]
Thirubuvanai & PO
Kandamangalam [via]
Pondicherry.

2.The Presiding Officer
Labour Court, Puducherry.

.. Respondents

Prayer:- Review filed under Order 47 Rule 1 read with section 114 of the Civil Procedure Code against the order dated 13.09.2013 in WA.No.872/2013.

For Appellant	:	Mr.M.Saravanan
For R1	:	Mrs.N.Mala
R2	:	Labour Court

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the review application is taken up for final disposal.

2 The first respondent in the review application raised an industrial dispute in ID.No.33/2003 before the Labour Court, Pondicherry to resolve the following disputes between the petitioner and respondents and it is relevant to extract the same:-

"1 *Whether the employer-employee relationship exists between the Management M/s.The Pondicherry Cooperative Spinning Mills Ltd., No.P.396, Thirubuvanaï, Pondicherry and the workers mentioned hereunder?*

- 1 *M.Shanmugam, S/o.Murugan*
- 2 *M.Kanniappan, S/o.Munusamy*
- 3 *Veerappan, S/o.Samikannu*
- 4 *Jothi, S/o.Kandasamy*
- 5 *Ramesh, S/o.Kaliyamurthy*
- 6 *Jothimani, S/o.Nadesan*
- 7 *Irichappan, S/o.Chinnasamy*
- 8 *Velayudam, S/o.Manickam*
- 9 *M.P.Arul Stalin, S/o.A.R.Palanivel*
- 10 *Perumal, S/o.Chinnathambu*
- 11 *Sivakumar, S/o.Kaliavaradhan*

- 12 Soundarajan, S/o.Pakkirisamy
- 13 Periathambu, S/o.Narasingam
- 14 Jayachandiran, S/o.Velayudam
- 15 Sagadevan, S/o.Mottaiyan
- 16 Murugan, S/o.Ganapathy
- 17 T.K.Jayabalan, S/o.Dhanapal
- 18 Syed Ismail, S/o.Syed Rashid

2 *Whether the denial of confirmation to the aforesaid workers by the said Management is justified or not?*

3 *To what relief the said workmen are entitled to?*

4 *To compute the relief, if any, awarded in terms of money, if it can be so computed?"*

3 The Labour Court, after contest, has passed an Award dated 23.02.2010 and granted the following relief:-

- *there exists employer-employee relationship between the management of the respondent and the 18 [eighteen] security personnel listed in the Government Order ;*

- *That the denial of confirmation to the aforesaid workers by the said Management is not justified.*
- *That the respondent is directed to reinstate the 18 security personnel in service of the respondent-mill for watch and ward purpose, by giving top priority and according to their seniority, when recruitment of watchman are made in the mills.*
- *The appointment of these 18 persons will not hamper the employment of more security personnel in the mills through contract labour.*
- *These 18 security personnel listed above will be under the control of the respondent – management and they will not be under the control of any contractor.*
- *That these 18 security personnel will be entitled for reinstatement in service with full backwages and attendant benefits from the date of dismissal, i.e, midnight of 10.12.2003 till reinstatement.”*

4 The petitioner/Union, challenging the legality of the Award, had filed WP.No.18329/2010 and it was entertained. The petitioner/Labour Union filed MP.No.2/2010, praying for an order of

direction, directing the Management to pay the Last Drawn Wages to the 18 Workmen in ID.No.33/2003 on the file of the Labour Court, pending disposal of the writ petition.

5 The learned Single Judge, vide interim order dated 25.08.2011, made in the said Miscellaneous Petition, has directed the Management to pay the respective Last Drawn Wages to the 18 workmen commencing from 23.02.2010, with a further direction that it shall continue to be paid every month pending disposal of the writ petition and arrears was also directed to be paid within a period of four weeks from the date of receipt of a copy of that order.

6 Accordingly, the Management, in stead of paying the arrears, had deposited the arrears to the tune of Rs.6,99,551/- on 26.04.2013 to the credit of ID.No.33/2003 on the file of the Labour Court, Pondicherry. The Management, aggrieved by the said interim order, filed WA.No.872/2013 and the said writ appeal also came to be dismissed on 13.09.2013, confirming the order passed by this Court.

7 Mr.Saravanan, learned counsel appearing for the petitioner / Union would submit that though MP.No.2/2012 was filed under Article

226 of the Constitution of India, the learned Single Judge has construed the said petition as a petition filed under section 17-B of the Industrial Disputes Act, 1947 and accordingly, passed the interim order and he would further add that the payment of last drawn wages ordered to be paid by the Labour Court in the impugned order is in the nature of statutory entitlement and as such, the impugned order passed in MP.NO.2/2010 in WP.No.18329/2010 cannot be faulted with and prays for allowing of the review petition.

8 *Per contra*, Mrs.N.Mala, learned counsel for the first respondent/Management would submit that the workmen were not directly employed as Security Personnel in the services of the first respondent/Management ; but their services were engaged through a Labour Contractor and as such, they are not entitled for permanency / confirmation and other consequential reliefs and would further add that the Labour Court has thrown the entire burden on the applicant/Management to prove the case of the workmen/Union and since the applicant/Management is having a bright chance of success in the writ petition, prays for dismissal of the review application.

9 This Court has carefully considered the rival submission and also perused the materials placed before it.

10 It is relevant to extract section 17-B of the Industrial Disputes Act, 1947:-

"17-B Payment of Full Wages to workman pending proceedings in Higher Courts:-

Where in any case, the Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and employee 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 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."

11 It is not in dispute that the Labour Court has passed the Award in favour of the applicant / Union vide Award dated 23.02.2010 and it has been put to challenge by the first respondent/Management

in WP.NO.18329/2010 and the same is pending and the fact remains that the Award is yet to be set aside. It is also seen that as against the interim order passed in the writ petition, writ appeal in WA.No.872/2013 has been filed by the first respondent / Management and the said writ appeal also came to be dismissed on 13.09.2013, confirming the said interim order, as against which, the present review is filed.

12 In the present review application, the learned counsel for the first respondent/Management, attempted to canvass the merit of the main writ petition and in the considered opinion of the Court, it is impermissible for the reason that the review cannot be treated as an appeal in disguise and under the guise of arguing the review application, it is not open to the first respondent to put forth the very same contention.

13 The learned counsel for the review petitioner has also placed reliance upon the judgment rendered by the Hon'ble Apex Court in ***AIR 2018 SCC 1267 : 2018 [4] SCC 341[Rajeshwar Mahto Vs. Alok Kuma Gupta, General Manager, Birla Corporation Limited]***. The facts of the case would disclose that the Corporation

had got an Award in its favor and it was set aside by the learned Single Judge of the High Court of Calcutta. An Intra Court Appeal was preferred by the Corporation and the same was dismissed by the Division Bench, upholding the order of the learned Single Judge and the matter was taken up before the Hon'ble Supreme Court of India and vide order dated 31.10.2000, the Apex Court had allowed the appeal filed by the Corporation and as a consequence, the Award passed by the Industrial Tribunal, holding that the applicant was not the workman, came to be upheld and pending disposal of the Civil Appeal, the Apex Court has passed an interim order, directing the Corporation to pay the full wages and the Corporation also undertook to pay a sum of Rs.2,00,000/-, notwithstanding the result of the appeal. The Workman, alleging violation of the said order, has filed a contempt petition. The Hon'ble Apex Court has placed reliance upon the decision rendered in ***Dena Bank Vs. Kiritikumar T. Patel*** reported in **1999 [2] SCC 106**, and in paragraph No.19, observed as follows:-

".....

19 *In other words, even if the employer eventually succeeds in its appeal against his employee, in which such order was passed during the pendency of employer's appeal, the employer continues to remain under legal obligation to*

comply with such order passed by the Court under section 17-B of the Act in favour of the employee. To put it short, an order passed under section 17-B of the Act does not merge with the final order passed in the appeal and being an independent order, it remains alive for enforcement."

14 It is well settled position of law that the object of section 17-B is in the nature of benevolence legislation and it is rather, a statutory obligation cast upon the first respondent/Management to pay the last drawn wages and as already pointed out, the writ petition challenging the Award, is still pending and the same is yet to be set aside and the learned Single Judge has exercised his discretion by passing an order u/s.17-B and the challenge made in the writ appeal, also came to be dismissed.

15 In the considered opinion of the Court, there is no error apparent on the face of the record and taking note of the legal position that the scope of the review is limited, this Court is not inclined to interfere with the impugned order.

16 At this juncture, the learned counsel for the first respondent/Management would submit that it is obligatory on the part of the individual workmen to file an affidavit that they were not gainfully employed and they may be directed to do so before the Labour Court.

17 In the result, the review application is dismissed. It is open to the individual workmen to file individual affidavits before the Labour Court in ID.NO.33/2003 for withdrawal of section 17-B ID Act wages due and payable to them, subject to filing of affidavits that they were not gainfully employed during the relevant point of time and on deriving such satisfaction, the Labour Court, permit them to withdraw the 17-B wages due and payable to the workmen at the earliest. It is also open to the first respondent/Management to withdraw the interest accrued on such deposit and it is subject to the result of the writ petition. No costs.

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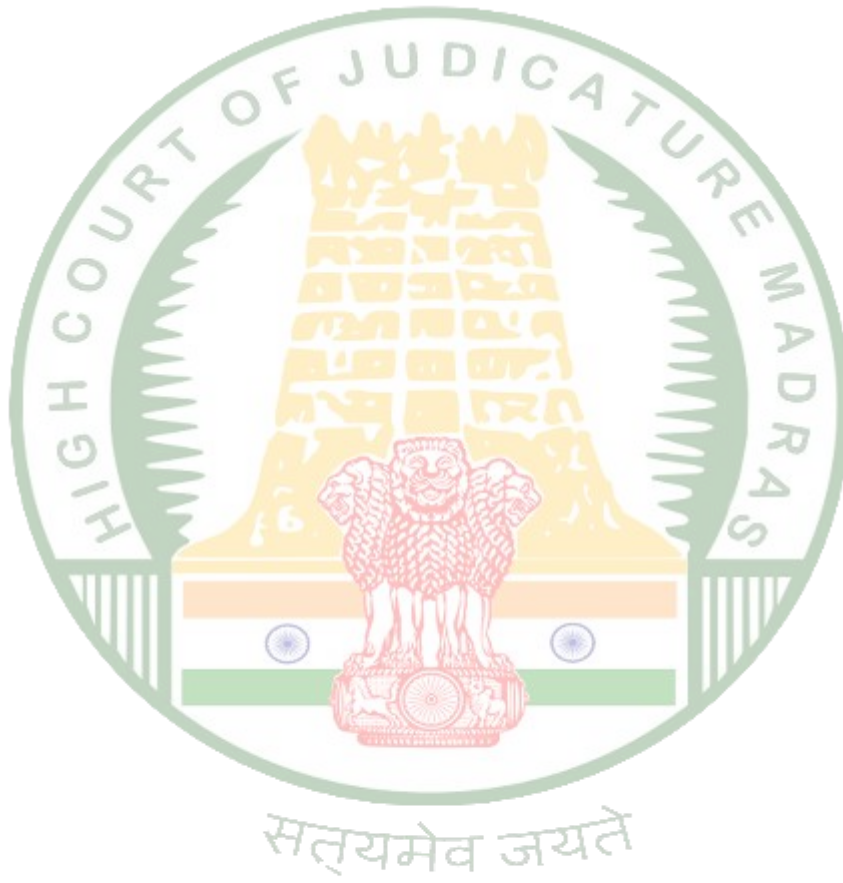
[M.S.N., J.,]

[N.S.S., J]

08.10.2018

Internet : Yes

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M.SATHYANARAYANAN, J.,
and
N.SESHASAYEE, J.,
AP

To

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