

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP No.12563 & 12564/2013 and MP.Nos.1&1/2013 & WMP.Nos.22346 & 22347/2016

WP.No.12563/2013:-

Larsen & Toubro LTD, ECC Division
Rep by its Manager - Industrial Relations
Mylam Road, Sedarapet
Pondicherry 605111.

.. Petitioner

Vs

1. The Presiding Officer
Labour Court
Puducherry.

2. D.Kolanginathan

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the order No.C.P.No.3/2012, dated 23.01.2013 passed by the first respondent herein and quash the same.

WP No.12564/2013:-

Larsen & Toubro LTD, ECC Division
Rep by its Manager - Industrial Relations
Mylam Road, Sedarapet
Pondicherry 605111.

.. Petitioner

Vs

1. The Presiding Officer
Labour Court
Puducherry.

2. ***M.Boothathan**

3. K.Selvam

4. V.Ramalingam

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the order No.C.P.No.1/2012, dated 23.01.2013 passed by the first respondent herein and quash the same.

For petitioners
in both WPs : Mrs.Rita Chandrasekar
For M/s.Aiyar And Doila
For R-1 in both WPs : Labour Court
For R-2 in WP.No.12563/12 : Mr.V.Ajaykumar
& For RR2 to 4 in WP.No.
12564/2012 : Mr.P.R.Thiruneelakandan

C O M M O N O R D E R

Both the writ petitions are at the instance of one and the same petitioner. Issue involve in both the writ petitions is also the same. Hence, both the writ petitions are heard together and disposed of by this common order.

2. Heard the learned counsel for the petitioner and Mr.V.Ajayakumar, learned counsel appearing for the 2nd respondent in WP.No.12563/12012 and Mr.P.R.Thiruneelakandan, learned counsel for the respondents 2 to 4 in WP.No.12564/2012.

3. It appears that the private respondents in W.P.Nos.12563 and 12564 of 2012 are the workmen working under the writ petitioner. While they were in service, they were terminated by the writ petitioner / employer. Challenging the same, they approached the 1st respondent / Labour Court respectively in ID Nos.59 and 54 of 2001. The 1st respondent / Labour Court in the said Industrial Disputes, allowed the prayer made by them, directing their reinstatement with 50% of back wages on 31.01.2003.

4. The said awards were challenged by the writ petitioner/ Management in W.P.Nos.11476 and 11475 of 2003, which were dismissed on 08.02.2011 vide a common order. Aggrieved by the same, the writ petitioner filed the Intra Court Writ Appeals in W.A.Nos.578 and 577 of 2011, which were also dismissed on 07.04.2011 vide a common order. The writ petitioner then carried out the order of reinstatement and deposited 50% of the back wages from the date termination till their reinstatement. Disputing the payment of back wages at the rate of 50% from the date of Award till the reinstatement, workmen/respondents to the aforesaid writ petition respectively approached the 1st respondent / Labour Court vide C.P.Nos.3 and 1 of 2012 under section 33 C (2) of Industrial Dispute Act, claiming Rs.8,11,208/- and Rs.7,43,343/- towards the arrears of back wages inasmuch as that they were entitled to 100% back wages from the date of Award till the actual reinstatement. The Labour Court vide order dated 23.01.2013, directed the Management to

pay the workmen 100% back wages with all other benefits applicable to them, as per law from the date of Award i.e., from 01.02.2003 to 26.07.2011 the previous date on which they were reinstated.

5. The same has been challenged in the petitions by the petitioner/ Management on the ground that since they were directed to pay 50% back wages, they are liable to pay the same at the rate 50% of the wages. Having reinstated the workmen and having paid 50% of back wages, which they have accepted, the order of the 1st respondent in the Claim Petitions in question are unsustainable.

6. It is the contention of the learned counsel for the writ petitioner that since the Court had directed 50% of back wages with reinstatement into service and the same has been complied with, the order of the 1st respondent directing payment of 100% of back wages to each of the workmen, is not in consonance with the original Award passed in the ID Nos.59 and 54 of 2001 and hence the impugned orders passed in the Claim Petitions in question are liable to be quashed, more so when the workmen have accepted the same with acknowledgment is not in dispute.

7. Such a contention of the learned counsel appearing for the writ petitioner is seriously disputed by the learned counsel appearing for the respondents/workmen with the submission that the said contention is fallacious one inasmuch as when a reinstatement is not done after the order of the Labour Court, the workmen are entitled to 100% of back wages till the date of reinstatement which is well settled principle of law. Otherwise the award made by the Labour Court can well be frustrated by deferring the reinstatement and making payment of wages at a lower rate, thereby depriving the workmen his genuine wages, which he was entitled to get on reinstatement. As in this case the reinstatement was not done in compliance of the award of the Labour Court, the matter was dragged and complied only at belated stage. The workmen are entitled to the back wages at the rate of 100% from the date of award till their reinstatement and as such the Labour Court having directed the payment of the same in the C.P, these writ petitions challenging the same are devoid of merits. Further more so far as the receipt of the 50% of the wages is concerned the same does not dis-entitle the workmen to file the C.P claiming their actual entitlement and clarification to the same. The 1st respondent, as such taking note of the aforesaid fact and law when passed the order in the C.P, these petitions, challenging the same, is devoid of merits and liable to be dismissed.

8. It appears in the Industrial Dispute cases in the question, orders were passed 31.01.2003 directing the writ

petitioner to reinstate the workmen with 50% back wages 21.08.1998 i.e., from the date of termination till 31.01.2003 with continued service and other attendant benefits as applicable to them as per labour laws. The same was not complied with, the respective Awards were challenged. However, after being unsuccessful in the writ petitions as well as in the writ appeals, the Awards were complied with by the Petitioner/Management belatedly by reinstating the workmen and by paying only 50% of the back wages from the date of termination till reinstatement. Therefore, the workmen claimed back wages from the date Award till the date of reinstatement, i.e., 01.02.2003 to 26.07.2011, at rate of 100% in the Claim Petitions in question. The 1st respondent taking into consideration the law in this regard, in exercise of power u/s 33 C (2) in Industrial Dispute Act held that the workmen are entitled to the same inasmuch as the Labour Court though not specifically directed in the Industrial Dispute raised earlier in this regard, but can interpret the Award for clarification, in view of the law laid down by the Apex Court case in the Central Bank of India Ltd., Vs. P.S.Rajagopalan (1964) 3 SCR 140/ (1963) 2 LLJ 89 / (1964) o AIR (SC) 743., wherein it has been held that for the purpose of making necessary determination under section 33 C (2) of the Industrial Disputes Act in appropriate cases it is for the Labour Court to interpret the Award or settlement on which the workman's right rest.

9. It is a well settled law that such a claim of the respondent/workmen appears to have sanction of law inasmuch as after the order of reinstatement, if the award is not complied with, the workmen is entitled to 100% wages from the date of award till their reinstatement in as much as the benefit of reinstatement can very well be computed with in terms of money i.e., by directing the payment of 100% entitled wages. Therefore even though not in very many words the aforesaid order was passed in the Industrial Dispute, but in the C.P. the Labour Court having jurisdiction to interpret the award and while interpreting the award, having arrived into the aforesaid conclusion and accordingly directed the writ petitioner/Management to pay the differential amount of 50% and no fault can be found with the same. So far as the waiver of the claim is concerned the acceptance of part of the quantum does not dis-entitle the workmen to file a C.P, claiming the rest of the amount to which they are legally entitled to.

10. Therefore, this Court do not see any illegality / infirmity in the orders passed by the 1st respondent in the aforesaid Claim Petitions warranting interference of this Court.

11. Hence, the writ petitions are devoid of merits and the petitioner/Management is directed to deposit the remaining 50%

of the wages of the respondent / workmen from 01.02.2003 till the date of reinstatement i.e., 26.07.2011 quantifying the same with 6% simple interest per annum within three months from today, failing which, they are liable to pay interest at the rate of 12% from the date of award till the payment is made.

12. The writ petitions stands dismissed with the above direction. However, in the circumstances no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS V)

Dated:19/03/2018

*Corrected as per the order
of this Court dated 06/08/2018
made in W.P.Nos.12563 & 12564
of 2013

Sd/-

Assistant Registrar(CS-V)

Dated:16/08/2018

//True Copy//

Sub Assistant Registrar

kv

To

1.The Presiding Officer
Labour Court
Puducherry.

To be substituted the order
already despatched on
05/04/2018

2.Manager-Industrial Relations,
Larsen & Toubro LTD, ECC Division
Mylam Road, Sedarapet
Pondicherry 605111.

+1 cc to Mr.P.R.Thiruneelakandan Advocate *Sr 54147
+1 cc to M/s.Aiyar and Dolia Advocate sr 10235
+1 cc to Mr.V.Ajay kumar Advocate sr 10055

WP Nos.12563 & 12564/2013

ss(co)
aa22/03/2018
srg 16/08/2018