

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Dated: 01.08.2018

CORAM:

THE HON'BLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.34064 of 2012

1.S. Amal Raj
2.R. Settu
3.M. Arumugam
4.K. Periyasamy
5.M. Joseph
6.A. Vellaisamy
7.A. Philomindoss
8.K. Murugesan
9.M. Kumaravadivel
10.R. Christopher
11.S. Arumugam
12.Y. Selvaraj
13.C. Chinnadurai
14.M. Padhmanaban
15.R. Kamalakannan
16.E. Ganapathy
17.S. Marimuthu
18.V. Selvendhiran
19.C. Ramalingam
20.T. Malarkolunthu
21.N. Rajendran
22.S. Aris Yuvaraj
23.A. Rathinam
24.M. Thangaraj

Vs.

1. The Senior General Manager
Heavy Alloy Penetrator Project,
Ministry of Defence,
Trichy - 25.

2. The Central Government Industrial Tribunal
Cum Labour Court, Represented by its Presiding Officer,
Shastri Bhavan,
Chennai.

...Petitioners

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records from the second respondent and to quash the order of the second respondent passed in C.P.No.04 of 2012 dated 26.10.2012; consequently direct the first respondent to extend the benefits to the petitioners

from 1998 to 2009 notionally and also direct to pay the wages from 08.05.2009 to 13.03.2012 on par with the regular employees.

For Petitioners: Mr.N.G.R. Prasad
for M/s. D.Muthukumar

For Respondents:Mr.Christopher Kishore Vincent for R1

: R2 - Court

O R D E R

The writ petitioners workmen working under the first respondent here in this writ petition filed under Article 226 of the Constitution of India, have impugned the order passed by the first respondent on 26.10.2012 in C.P.No.04 of 2012 rejecting their claim for regularization of their services by the first respondent from the year 1998 to 2009 notionally and thereafter from 08.05.2009 to 13.03.2012 actually by extending all monetary benefits on par with the regular employees of the first respondent, inter alia on the grounds that the same being contrary to law, is illegal and arbitrary, therefore cannot be sustained, scrutiny in the eye of law. Hence, they have made a prayer to call for the records from the second respondent in the aforesaid case and after hearing the parties, to quash the same and allow their prayer by issuing a writ of mandamus to the first respondent to regularize their service in the manner prayer for and release the monetary benefit accrued to them pursuant to such order to be passed in their favour.

2. As it appears from the averments made, the petitioners were working with the first respondent and engaged as sanitary and cleaning workers on contractual basis since 1988. While they were so working in the year 1997 the first respondent came out with an advertisement to recruit 25 regular workers through a process of recruitment to manage the work done by the petitioners which were perennial in nature without regularizing the service of the petitioners. The petitioners, therefore, came to challenge such notification of the first respondent before the Central Administrative Tribunal, Chennai vide Original Application No.489/1997 inasmuch as the first respondent is a Government of India undertaking and sought for a direction of regularization of their services and vide order dated 17.06.1998, the original application was allowed with a direction to the first respondent to evolve a scheme for absorption of the petitioners within three months of receipt of the copy of the order. However the first respondent challenged the same in W.P.No.19713 of 1998 before this Court wherein the operation of the order

impugned was stayed but by an interim order, the petitioners continued to be provided with the employment since 19.10.2000. The said writ petition however was disposed of finally vide order dated 05.11.2004 with a direction to the Central Government to refer the matter under Section 10 of the Industrial Disputes Act to the Industrial Tribunal and directed the Industrial Tribunal to pass the award within a period of six months on receipt of such reference. Accordingly, the matter came before the second respondent on such reference and registered the same as I.D.No.9 of 2008 wherein after hearing the parties and going through the materials placed, an award was passed on 21.07.2009 allowing the claim of the petitioners with the direction to the first respondent to start with the process of regularization of the petitioners forthwith. The first respondent unsuccessfully challenge the same in W.P.No.20682 of 2009 in this Court which was disposed of on 05.03.2010. The first respondent then preferred SLP (Civil) vide C.C.No.16449/2010 before the Apex Court against such order which was withdrawn on 03.12.2010 to prefer intra court appeal. The award having not been complied with in spite of direction in the writ petition to comply with the same within the period stipulated and also the extension of one month granted on the prayer made by the first respondent in the aforesaid writ petition, more so after disposal of the aforesaid SLP also, the petitioners filed Contempt Application No.275 of 2011 against the first respondent. The first respondent, thereafter at a belated stage filed Writ Appeal challenging the order in the writ petition vide W.A.No.473 of 2011 for which the contempt petition was closed. But ultimately the writ appeal was also dismissed on 17.03.2011. Thereafter also the award having not been implemented against the same another Contempt Application No.975 of 2011 was filed. During pendency of the said Contempt Application, SLP bearing No.16158 of 2011 was filed before the Apex Court which came to be dismissed on 21.10.2011 and as such the award of the first respondent directing forthwith regularization had reached its finality. Thereafter the first respondent though regularised the service of the petitioner from the date of the award of the Tribunal that is 21.07.2009 vide order passed 14.03.2012 as semi skilled labourers under Group C category but from 08.05.2009 to 13.03.2012, they were extended the benefit of regularization notionally. The contempt petition for such order of regularization was closed. However, the petitioners thereafter came to file the C.P.No.04/2012 seeking the relief as stated earlier under Section 33-C(2) of the Industrial Disputes Act, 1947.

3. It appears that the petitioners had made the

aforesaid prayer on the ground that since the Central Administrative Tribunal had directed their regularisation within three months by formulating appropriate scheme and the High Court in seisin over the matter in the writ petition, had not set aside the order of the Tribunal but had directed to refer the matter under Section 10 of the Industrial Disputes Act to the second respondent to work out the factual aspects of entitlement of the petitioners with regard to regularization and accepting their case the second respondent had directed regularization forthwith of the petitioners by its award dated 08.05.2009 passed in I.D.No.09/2008 which has reached its finality and accordingly petitioners were regularized as such they are entitled for regularization notionally from the date of the order of the Central Administrative Tribunal with actual benefit from the date of the order of the second respondent and accordingly they are entitled to the amount claimed.

4. Their such claim was resisted by the first respondent to be without any substance on the ground that the petitioners having accepted the regularization of their service pursuant to the order passed and taking into consideration of the same the Contempt Petition No.275 of 2011 having been closed and the order of the second respondent having been complied in letter and spirit, the petitioners' claims were without any substance, furthermore, the jurisdiction of the second respondent to entertain such petition also questioned on the ground after their regularization the relief sought for is not maintainable before the second respondent as the petitioners thereafter had become the employees of the Government of India and dispute if any in this regard is maintainable before the Central Administrative Tribunal.

5. The second respondent taking into consideration the facts and submissions made and also the materials on record as produced, though rejected the claim of the respondent with regard to jurisdiction of second respondent to entertain such petition but also rejected the claim of the petitioners seeking the relief. According to the second respondent the petition is in the nature of the execution proceeding the jurisdiction of the court being akin to the jurisdiction of the Executing Court. An Executing Court in no circumstances can act beyond the order to be executed though while executing the order, it can decide the questions arising incidental to the same and also the spirit and intendment of the order. In the instant case, since the award of the second respondent was implemented from the date of the award by grant of regularization notionally from that date and actually from the date of order and knowing well the spirit of the order the petitioners accepted the same and joined in their service, the second respondent held the claim of the petitioner in

the C.P. therefore was devoid of merit. Assigning the said reasons the C.P. was dismissed vide the impugned order.

6. The petitioners have come to challenge the same in this writ petition inter alia on the grounds that this Court in W.P.No.19713 of 1998 filed against the award of the Central Administrative Tribunal, directing to formulate the scheme within three months and regularize the service of the petitioner having not been set aside the same but directed the Government of India to work out the same, by reference to the second respondent under Section 10 of the Industrial Disputes Act and thereafter the award was also passed giving an approval to such order of the Administrative Tribunal with an order of forthwith regularization, which has reached its finality inasmuch as the respondents challenged the same unsuccessfully up to the final Judicial forum in this country and thereafter, even if the petitioners had accepted the regularization vide the order of the respondent regularizing their service from the date of award of the second respondent notionally and actually from the date of such order, the same could not have been held to have estopped the appellant questioning the same seeking a direction filing the C.P. to execute the order of the second respondent in letter and spirit. The award, therefore giving approval to the order of the Central Administrative Tribunal, the second respondent as such could not have rejected their claim on the ground that the aforesaid would amount to overreaching the award which jurisdiction is not available to an Executing Court. Hence, the impugned order being perverse inasmuch as it has failed to take note of the facts and situations and also illegal being contrary to law, liable to be quashed and the respondents be directed to execute the award with the aforesaid relief sought for.

7. The same has been resisted in the counter affidavit by the respondents inter alia on the ground that since order of the Central Administrative Tribunal was interfered by this Court in the writ petition No.19713 of 1998 and the Central Government referred the matter under Section 10 of the Industrial Disputes Act wherein an award was passed directing forthwith regularization which necessarily being an order of prospective regularization and the same has reached its finality, pursuant to which the services of the petitioners were regularized from the date of award though notionally and actually from the date they were issued with the order of regularization which the petitioners had accepted without any resistance and actual benefit being admissible from the date as they joined in the work after regularization, taking note of which the second respondent being an Executing Court, rejected the claim of the petitioners on the grounds stated in the impugned order and there appears to be no perversity on the impugned order,

this writ petition filed challenging the same therefore is devoid of merits and liable to be dismissed.

8. During the course of hearing, the learned counsel appearing for the petitioners, would submit that the petitioners were engaged to discharge the perennial work of the respondent being employed as a contract labourers, the contact was sham and nominal one inasmuch as the same was camouflage to evade the employment of the petitioners in the regular establishment which can be visualised from the fact that while the petitioners were continuing to work as such, the respondents came out with the proposal for recruitment against the work managed by them through a regular process of recruitment. Taking into consideration of the same when the Central Administrative Tribunal directed for their regularization within the period stipulated by formulating a scheme. However, this Court taking into consideration the nature of dispute without setting aside the order of the tribunal directed the appropriate Government to refer the dispute inasmuch as it is only in the event they are found to be regular employed by the first respondent and their engagement as contract labourers was a camouflage, they are entitled to regularization as per the seniority which are disputed question of fact, to determine the dispute between the parties. The Tribunal thereafter finding the case of regularization of the petitioner when passed the award in the I.D. case directing forthwith regularization it seems that the order of regularisation as passed by the Central Administrative Tribunal was approved and such order having reached its finality notwithstanding the fact the petitioners joined pursuant to the letter of regularization, the second respondent could not have refused to interpret the award on the grounds stated in the execution proceeding and directed the first respondent to pay the petitioners the actual benefit they have claimed from the date of the award, calculating the same notionally from the date of the order of the Central Administrative Tribunal. Therefore the reason assigned in refusing the prayer made on the ground that the petitioner has accepted the order of regularization and the petition being in the nature of execution the Tribunal cannot go beyond the award appears to be unsustainable. It is submitted that since the intendment of the award of the second respondent was in the nature of approval of an order of regularization passed by the Central Administrative Tribunal inasmuch as the second respondent as such was well within the jurisdiction to direct execution of the award in the manner prescribed. Hence, it is submitted that the order of the second respondent being contrary to the law traced in the aforesaid order, in the facts and situations the same cannot be sustained.

9. The same has been resisted by the first respondent on the grounds that when the order of the Central Administrative Tribunal was not approved by this Court in the writ filed and thereafter the matter was referred to the second respondent under the Industrial Disputes Act, wherein no order of retrospective regularization was passed inasmuch as the order speaks regularization forthwith which has reached its finality when complying with the said order the services of the petitioners were regularized notionally from the said date of award and actually from the date of order which the petitioners have accepted, rejecting their such claim on the ground stated by the second respondent as such cannot be found fault with. More so in view of the fact that in the contempt petition, this Court also did not interfere with the order of regularization issued on the said condition and closed the contempt application. Therefore the writ petition filed challenging the order of the second respondent is devoid of merits.

10. Before addressing the contention of the counsel appearing for the parties, it would be apposite to mention that the jurisdiction of the second respondent in a petition under Section 33-C(2) is that of an executing court. It is well settled that an executing court while executing an order cannot go behind the order or overreach the order but it has the jurisdiction to decide the incidental matter for execution of such order as well as to interpret the intendment of the order meaningfully for the purpose of execution. The aforesaid has been well settled by the Apex Court in a catena of decisions some of which can be traced in the decisions cited below.

11. In the case of Central Bank of India Ltd. Vs. P.S.Rajagopalan, reported in 1964 (3) SCR 140, the Apex Court has held as follows:

"Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under s. 33C (2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under s. 33C (2), it would, in appropriate cases, be

open to the Labour Court to interpret the award or settlement on which the workman's right rests." The aforesaid decision indicates that the power of the Labour Court under Section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer.

12. The Apex Court in the case of *Bombay Gas Co. Ltd. Vs. Gopal Bhiva* reported in 1964 (3) SCR 709, has held that proceedings contemplated by Section 33-C(2) are analogous to execution proceedings and the Labour Court, like the Executing Court in the execution proceedings governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is based.

13. In the case of *Chief Mining Engineer, East India Coal Co. Ltd. Vs. Rameswar* reported in 1968 (3) SCR 140, the Apex Court have held that the benefit which sought to be computed under Section 33-C(2) must be an "an existing one, that is to say, already adjudicated upon or provided for". In the said decision summarising the propositions of law as to the scope of Section 33-C(2) from the earlier decisions of the Apex Court in this regard, it has been held as follows:

(1) The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognised the need of individual workmen of a speedy remedy to enforce their existing, individual rights and therefore inserted s. 33A in 1950 and S. 33C in 1956. These two sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to s. 10(1) and without having to depend on their union to espouse their case.

(2) In view of this history two considerations are relevant while construing the scope of s. 33C. Where industrial disputes arise between workmen acting collectively and their employers such disputes must be adjudicated upon in the manner prescribed by the Act, as for instance under s. 10(1). But having regard to the legislative policy to provide a speedy remedy to Individual' workmen for enforcing their existing rights, it would not be reasonable to exclude their existing rights sought to be implemented by individual workmen. Therefore though

in determining the scope of s. 33C care should be taken not to exclude cases which legitimately fall within its purview, cases which fall, for instance under s. 10(1), cannot be brought under s. 33C;

(3) Section 33C which is in terms similar to those in s. 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 is a provision in the nature of an executing provision;

(4) Section 33C(1) applies to cases where money is due to a workman under an award or settlement or under Chapter VA of the Act already calculated and ascertained and therefore there is no dispute about its computation. But sub-section 2 applies both to non-monetary as well as monetary benefits. In the case of monetary benefit it applies where such benefit though due is not calculated and there is a dispute about its calculation;

(5) Section 33C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit on which their claim is based is disputed by their employers. It is open to the Labour Court to interpret the award or settlement on which the workmen's right rests.

(6) The fact that the words of limitation used in s. 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950 are omitted in s. 33C(2) shows that the scope, of s. 33C(2) is wider than that of s. 33C(1). Therefore, whereas sub-section 1 is confined to claims arising under an award or settlement or Chapter VA. claims which can be entertained under sub-section are not so confined to those under an award, settlement or Chapter VA.

(7) Though the court did not indicate which cases other than those under subsection would fall under sub-section 2. it pointed out illustrative cases which would not fall under sub-section 2, viz., cases which would appropriately be adjudicated under s. 10(1) or claims which have already been the subject-matter of settlement to which ss. 18 and 19 would apply.

(8) Since proceedings under s. 33C(2) are analogous to execution proceeding and the Labour Court called upon to compute in terms of money the benefit claimed by a workman is in such cases in the position of an executing court. the Labour Court like the executing court in execution proceedings

governed by the Code of Civil Procedure, is competent under s. 33C(2) to interpret the award or settlement where the benefit is claimed under such award or settlement and it would be open to it to consider the plea of nullity where the award is made without jurisdiction.

14. In the case of Central Inland Water Transport Corpn. Ltd. Vs. Workmen reported in 1974 (4) SCC 696, dealing with the scope of 33-C(2), the Apex Court have also held as follows:

"In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of

(i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No.

(iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under Section 33-C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations

(i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under Section 33-C(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'Incidental'. To call determinations (i) and

(ii) 'Incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under Section 33-C(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions-say of an Industrial Tribunal which

alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'Incidental' to its main business of computation. In such cases, determinations (i) and (ii) are not 'Incidental' to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in *State Bank of Bikaner and Jaipur v. R.L. Khandelwal*⁵ that a workman cannot put forward a claim in an application under Section 33-C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject matter of an industrial dispute which requires a reference under Section 10 of the Act."

15. Keeping in mind the aforesaid law so also the facts and situations the sustainability of the order passed rejecting the claim of the petitioner is required to be addressed. Furthermore it cannot be lost sight that this Court while exercising writ jurisdiction under Article 226 of the Constitution of India is not sitting on appeal over the order passed. It is only in the circumstances when there is a jurisdictional error and there is perversity in the order passed this Court can interfere with the same. The aforesaid position of law has also been settled in a catena of decisions one of such decisions can be traced in the decision rendered by the Hon'ble Supreme Court in the case of *Management of Madurantakam Coop. Sugar Mills Ltd., vs. S.Viswanathan* reported in (2005) 3 SCC 193, wherein it has been held as follows:

" Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that

nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court. The Division Bench too in appeal, in our opinion, has committed the same error. Maybe, there was some justification, since if it had to allow the appeal, then it had to consider the points of facts decided by the Ld. Single Judge. In that process it also took up for consideration every bit of evidence that was considered by the Labour Court as well as the Ld. Single Judge and disagreed with the finding of the Ld. Single Judge."

16. As it appears from the undisputed fact that the order of the Central Administrative Tribunal was not approved by this Court in the facts and situations inasmuch as the regularization of the petitioners being dependent on the determination of the fact whether their engagement as a contract labourer was a camouflage and also their entitlement of regularization, this Court directed the appropriate Government to refer the matter to the second respondent Industrial Tribunal under Section 10 of the Industrial Disputes Act. The petitioner did not challenge the same and suffered that order and also participated before the second respondent in such proceeding initiated vide the Industrial Dispute Case No.9 of 2008 where an award was passed directing forthwith regularization. The second respondent did not specifically direct regularization of the petitioner from the date anterior to any date of the date of award. The petitioner also did not challenge the same. The award specifically speaks of forthwith regularization which necessarily refers to regularization soon after the date of award. However, the respondent after unsuccessfully challenging the same upto the highest judicial forum, implemented the order from the date of award. Thereafter the award was implemented by issuing the necessary order of regularization from the date of award notionally and from the date when the order was passed actually. The contempt petition was filed therefore closed. The petitioner after accepting such order came to

challenge the same on the ground as indicated therein that the award was not implemented as directed by the second respondent though the same has reached finality. However the Tribunal as it appears refused the same on the ground stated earlier. Needless to say that in such order of the Tribunal has traced the law in this regard with regard to jurisdiction and power available to them in execution of the award. There is no dispute that the Tribunal has traced the law in this regard properly. So far as its applications with regard to the fact that retrospective regularization tracing the law was refused though seems to be just and proper in view of the award that was implemented, did not speak of retrospective regularisation and the Court in the absence of such an award in a petition under Section 33-C(2) cannot allow such claim, but so far refusal to grant the actual benefit of regularization from the date of award, citing the fact that the petitioners had accepted the order of regularization with notional benefit and also the same is impermissible under Section 33-C(2) cannot be said to have been passed in accordance with law. The intendment of the award was in favour of immediate regularization and necessarily all incidental benefit of such regularization. The respondent however procrastinated the same by dragging the matter unsuccessfully in different judicial forum and ultimately being unsuccessful in all the forums, implemented the award by regularizing the service of petitioner by way of permanent absorption from the date of award, but granted notional benefit from the date of award till the actual date of order of regularisation. The same therefore can very well be said that contrary to the award passed. No doubt in the contempt petition the contempt was closed on the ground that the order has been complied with but this Court being not examining the content whether the order of the Tribunal has been worked out or executed in terms of the award and the petitioners therefore cannot be estopped by filing an appropriate petition claiming the execution of the award passed under Section 33-C(2) of the Industrial Disputes Act. Furthermore, acceptance of the petitioner of such order of regularization does not amount to waiver of their right accrued in their favour by the said award of the second respondent and as such the petitioner filed by the petition under Section 33-C(2) could not have been rejected granting them the benefit of the actual benefit of the regularization from the date of the award more so, when the petitioners were admittedly working under the respondent on the date of the award and thereafter also even if pursuant to the interim order passed till the order of regularisation was passed in the writ petition is an admitted one.

17. Reliance in this regard can be placed in the case

of Bennett Coleman and Co. (Private) Ltd. v. Punya Priya Das Gupta reported in (1969) 2 SCC 1 wherein in paragraph 7 and 8, it was observed as follows:

" 7. The next contention was that the respondent, having signed the said receipt in full settlement of all his claims and having thereby induced the company to accept his resignation without insisting on a full month's notice, was estopped from making claims in respect of his leave for one month, the car allowance and the free telephone and newspapers and for including them as part of his wages for calculating gratuity. Certain decisions of this Court seem, however, to have expressed doubt whether technical pleas such as acquiescence, estoppel and waiver suitably apply to industrial adjudication. But assuming that the rule of estoppel, as incorporated in Section 115 of the Evidence Act, were to apply, the foundation of that rule is that it is inequitable and unjust to a person, that if another person by a representation induces him to act as he would not have otherwise acted, the person who made the representation should be allowed to deny the effect of his former statement to the loss and injury of the person who has acted on it (see Sarat v. Gopal¹³). The rule is one of evidence only and does not create any substantive right or confer any cause of action on the other. It comes into operation if a statement as to the existence of a fact has been made with the intention that the other person to whom it is made should believe and act on it and that that another person does in fact act upon the faith of it...

8. We next examine the question whether the respondent was precluded from making the rest of his claim. The burden of proving the ingredients of Section 115 of the Evidence Act lies on the party claiming estoppel. The representation which is the basis for the rule must be clear and unambiguous and not indefinite, upon which the party relying on it is said to have, in good faith and in belief of it, acted.....In these circumstances it becomes doubtful whether he could be said to have been estopped from making the said claims on the ground only of the said receipt, if that receipt was obtained, as alleged by him, under the stress of circumstances. In this connection the fact that he kept the said cheque uncashed is not totally without relevance. Under Section 115

of the Evidence Act the representation which estop a person making it from acting contrary to it is one on the belief of which the other person acts in a manner he would not have done but for it and on believing it to be true. Such a conclusion is difficult in face of the uncontradicted statements in the letter, Ext. W-4 that the management would not give him the letter of acceptance of his resignation unless he signed the said receipt in full settlement of all his claims. The plea of estoppel made on behalf of the company, therefore, cannot be accepted."

Therefore, there is no illegality or irregularity in the order passed by the Labour Court."

18. Therefore, I am of the view that the writ petition filed by the petitioner challenging the order passed by the Tribunal rejecting their claim deserve to be allowed in part with the relief of actual benefit of regularization from the date they were permanently absorbed. Consequently, the first respondent is directed to work out the claim of entitlement of the benefit actually from the date of regularisation / permanent absorption which was given notionally and release the same in favour of the petitioners, within a period of four months from the date of receipt of a copy of this Order. It goes without saying that if such claims of the petitioners are not properly worked out they may approach the appropriate forum in this regard to settle their dispute.

19. With the aforesaid relief to the petitioners, this writ petition stands disposed of. However, in the circumstances there shall be no order to costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Senior General Manager
Heavy Alloy Penetrator Project,
Ministry of Defence,
Trichy - 25.
2. The Presiding Officer,

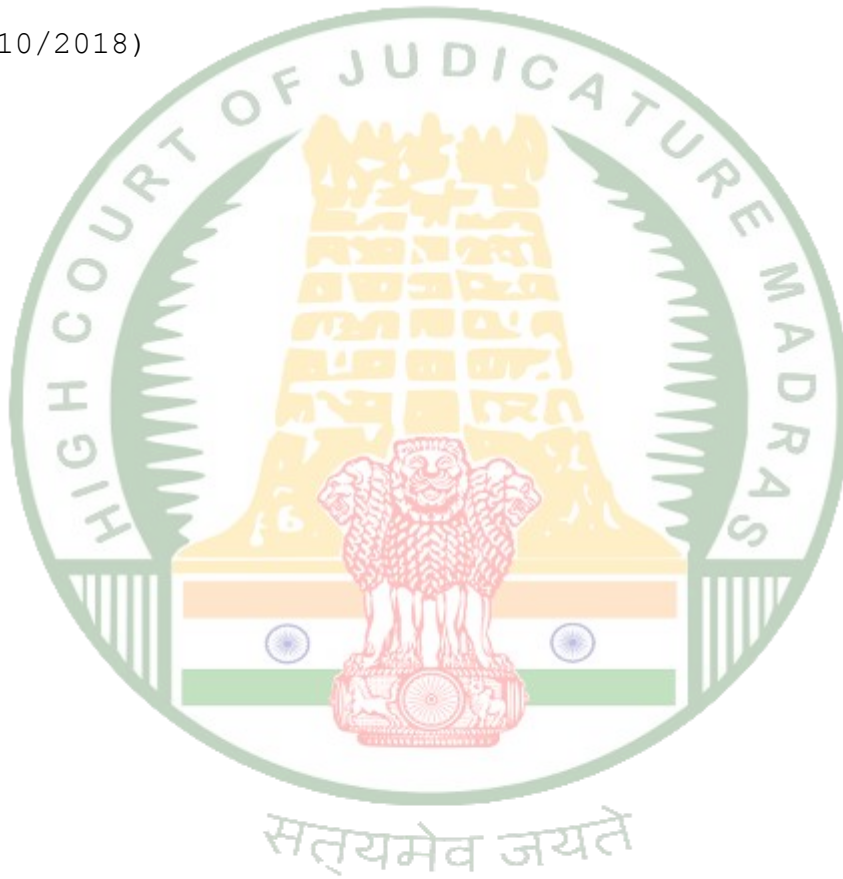
The Central Government Industrial Tribunal
Cum Labour Court,
Shastri Bhavan,
Chennai.

+3ccs to M/s. D.Muthukumar , Advocate SR.No.52274

+1cc to Mr.hristopher Kishore Vincent , Advocate SR.No.
52628

W.P. No.34064 of 2012

ASK(16/10/2018)



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