

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27384 of 2006

Vasanth Samuel

... Petitioner

Vs.

1. The Management of the Periakaramalai Tea
& Products Co., Ltd.,
Cowcoody Chambers
234 - A, Race Course Road,
Coimbatore - 641 018.

2. The Presiding Officer,
Labour Court,
Coimbatore.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records in C.P.No.1098/2004 dated 19.04.2006 on the file of the second respondent and quash the portion of the order refusing to direct the first respondent to pay Rs.13,675.80 towards Medical Benefits, Rs.3,520.00 towards leave travel allowance, Rs.2,400.00 towards annual leave with wages based on UPASI agreement, Rs.11459/- towards encashment of unavailed leave and interest upon provident fund contribution and interest for the arrears of salary and to direct the first respondent to pay Rs.13,675.80 towards Medical Benefits, Rs.3,520.00 towards leave travel allowance, Rs.2,400.00 towards annual leave with wages based on UPSAI agreement, Rs.11,459.00 towards encashment of unavailed leave and interest upon provident fund contribution and interest for the arrears of salary to the petitioner.

For Petitioner : Mr.A.Immanuel

For Respondents : Mr.B.S.Rajan Rajagopalan

O R D E R

The petitioner has filed this writ petition seeking issuance of Certiorarified Mandamus to call for the records in C.P.No.1098/2004 dated 19.04.2006 on the file of the second respondent and quash the portion of the order refusing to direct the first respondent to pay Rs.13,675.80 towards Medical Benefits, Rs.3,520.00 towards leave travel allowance, Rs.2,400.00 towards annual leave with wages based on UPASI agreement, Rs.11459/- towards encashment of unavailed leave and interest upon provident fund contribution and interest for the arrears of salary and to direct the first respondent to pay Rs.13,675.80 towards Medical Benefits, Rs.3,520.00 towards leave travel allowance, Rs.2,400.00 towards annual leave with wages based on UPSAI agreement, Rs.11,459.00 towards encashment of unavailed leave and interest upon provident fund contribution and interest for the arrears of salary to the petitioner.

2. The case of the petitioner is that the petitioner had been working as Steno-typist in the office of the first respondent and she was dismissed from service on 16.03.1992 after conducting a domestic enquiry. As against the order of dismissal, she raised an industrial dispute under Section 33 C (2) of the Industrial Dispute Act, 1947 (hereinafter called as Act) before the second respondent and the second respondent passed the award dated 06.03.1996, directing the first respondent to reinstate the petitioner with continuity of service, back wages and other attendant benefits. As against the award, the first respondent filed a writ petition in W.P.No.13684 of 1996 before this Court and this Court dismissed the Writ petition and confirmed the award passed by the second respondent.

3. The learned counsel for the petitioner further submitted that during the pendency of the writ petition in W.P.No.13684 of 1996 as per the direction of this Court the first respondent deposited a sum of Rs.40,000/- on 23.10.1996 and Rs.30,000/- on 24.05.1999 and the petitioner also withdrew the interest from the above deposit. However, the said amount of Rs.70,000/- which was in the custody of the second respondent, was paid to the petitioner.

4. The petitioner retired from service on 11.02.1995. As per the award, the petitioner is entitled to full back wages from the date of dismissal till the date of retirement of service. On 28.02.2004, she issued a lawyer notice to the first respondent calling upon the first respondent to pay the amount due to the petitioner. After receipt of notice, the first

respondent paid a sum of Rs.1,46,962/-. The petitioner filed computation petition No.1098 of 2004 before the second respondent. The claim made by the petitioner are as follows:

1. Basic Pay, Dearness Allowance, House Rent Allowance, Educational Allowance, Conveyance Allowance, Gas Allowance	... 1,56,555.16
2. Minimum Bonus	... 10,000.00
3. Medical Allowance	... 13,675.80
4. Leave Travel Allowance	... 3,520.00
5. Annual Leave with Wages	... 2,400.00
6. Interest on Company Share of GPF	... 29,774.00

	(2,27,384.00)

	(2,15,924.96)

On perusal of the above calculation memo the total amount stated in the affidavit is Rs.2,27,384/-. However, calculation of the above reveals a sum of Rs.2,15,924.96/-.

5. After adjudication, the second respondent allowed the petitioner's claim of Rs.1,56,555.16/- towards back wages and allowances and Rs.10,000/- towards Bonus. Accordingly, the second respondent allowed the computation petition in the above terms. The second respondent refused to allow the petitioner's claim of Rs.13,675.80/- towards Medical Benefits, Rs.3,520/- towards leave travel allowance, Rs.2,400/- towards annual leave with wages based on UPASI agreement, Rs.11,459.00 towards encashment of unavailed leave and interest upon provident fund contribution and interest for the arrears of salary.

6. Mr.A.Immanuel, learned counsel appearing for the petitioner submitted that though this case has been referred to Tamilnadu Mediation Conciliation Centre, the matter was not settled between the parties. Though, the second respondent partially allowed the computation petition, however rejected other allowances without any basis.

7. Mr.B.S.Rajan Rajagopalan, learned counsel appearing for the respondents would submit that the second respondent, Labour Court rejected the petitioner's claim i.e., medical allowances and annual leave and other benefits which will be awarded only

to those who are working in the relevant period. In the present case, the petitioner has not worked in the particular time and hence she is not entitled to claim leave and travel allowances. Hence, the second respondent labour Court rejected the petitioner's claim.

8. The learned counsel appearing for the respondent further relied upon para 3.4 of the counter affidavit filed by the first respondent, the relevant portion of which reads as follows:

This point also is covered by the above decision of Madras High Court in W.P.No.9244/91 dated 14.09.1999 by Justice N.V.Balasubramaniam and followed by Justice Sathasivam which is reported in 2001 (1) L.L.J. 706.

"After considering relevant provisions of I.D.Act as well as catena of decisions of various High Court and the Apex Court, the learned Judge has held that the workman is not entitled to claim the same as part of wages inasmuch as he had not actually worked". In this circumstances the petitioner had rendered no actual service and so payment of leave travel allowance would not arise.

9. The learned counsel appearing for the respondents further submitted that after elaborate discussion the second respondent, Labour Court rightly rejected the claim of the petitioner after following the due process of law and after considering the provisions of the Act in this aspect.

10. Heard, Mr.A.Immanuel, learned counsel appearing for the petitioner and Mr.B.S.Rajan Rajagopalan, learned counsel appearing for the respondents.

11. On perusal of the computation petition filed under Section 33 C (2) of the Act, it is known that the petitioner was initially reinstated in service when she obtained order from the labour Court. Thereafter, she retired from service on 11.02.1995. Thereafter, in the year 2004, the petitioner filed the computation petition under Section 33 C (2) of the Act. After consideration, the labour Court awarded the claim of Rs.1,56,555.16/- towards the back wages and allowances and Rs.10,000/- towards the minimum bonus. However, the petitioner retired. The petitioner had been working during the relevant period. Accordingly, she is entitled to claim the same as part of wages inasmuch as she had not actually worked. However, the second respondent Labour Court rejected the other allowances on the ground the petitioner is not entitled to other allowances when she was not actually employed. Accordingly, the decision

relied upon by the learned counsel for the respondent squarely apply to the present case on hand. Hence, this writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Labour Court, Coimbatore.

+1cc to Mr.A.Immanuel, Advocate, S.R.No.32443

W.P.No.27384 of 2006

MP (CO)
GSP (18/09/2018)



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