



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2018

CORAM:

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A.(MD).Nos.420 to 422 of 2018
and
C.M.P.(MD) Nos.2511 to 2513 of 2018

The Management,
Sri Abirami Spintex Private Ltd.,
24/3, Anna Nagar, Suthamalli,
Pettai, Tirunelveli District.

... Appellant in
all appeals

Vs.

1.S.Muthukrishnan ... R1 in W.A.420/2018

1.S.Arumuga Nainar ... R1 in W.A.421/2018

1.N.Komban ... R1 in W.A.422/2018

2.The Presiding Officer,
Labour Court,
Thirunelveli.

3.The Management,
Ragavendra Spinners,
24/3, Anna Nagar, Suthamalli,
Pettai, Tirunelveli District. ... Respondents 2&3 in all
appeals

PRAYER:These appeals are filed under Clause 15 of the Letters Patent, to set aside the orders dated 25.06.2015 made in M.P.(MD) Nos.1,1 and 2 of 2011 in W.P.(MD) No.6611, 6613 and 6614 and of 2009 on the file of this Court.

Prayer in MP(MD). 1/ 2011 in WP(MD).6611/2009 :

To direct to the 1st respondent / petitioner to pay the petitioner the back wages as well as last drawn wages as provided Under Section 17(B) of Industrial Disputes Act, 1947 and thereby render justice.

Prayer in WP(MD). 6611/ 2009 :

<https://hcservices.ecourts.gov.in/hcservices/>

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of



Certiorari, to call for the records relating to the Award dated 30/04/2008 passed by the first respondent in I.D.No. 270 of 97, and to quash the same.

Prayer in MP(MD). 1/ 2011 in WP(MD).6613/2009 :

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To direct to the 1st respondent / petitioner to pay the petitioner the back wages as well as last drawn wages as provided Under Section 17(B) of Industrial Disputes Act, 1947 and thereby render justice.

Prayer in WP(MD). 6613/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the Award dated 30/04/2008 passed by the first respondent in I.D.No. 273 of 97, and to quash the same.

Prayer in MP(MD). 1/ 2011 in WP(MD).6614/2009 :

To direct to the 1st respondent / petitioner to pay the petitioner the back wages as well as last drawn wages as provided Under Section 17(B) of Industrial Disputes Act, 1947 and thereby render justice.

Prayer in WP(MD). 6614/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the Award dated 30/04/2008 passed by the first respondent in I.D.No. 276 of 97, and to quash the same.

For Appellant : Mr.S.Seenivasagam

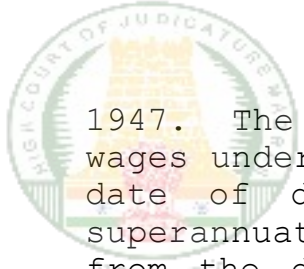
For Respondents : Mr.M.E.Ilango for R1 in all appeals

COMMON JUDGMENT

(Judgment of this Court was delivered by T.S.SIVAGNANAM, J.)

Heard Mr.S.Seenivasagam learned counsel for the appellant and Mr.M.E.Ilango, learned counsel for the respondents workmen.

<https://hcservices.ecourt.gov.in/hcservices/>
These appeals by the Management are directed against the orders passed by the Writ Court in applications filed by the respondents workmen under Section 17(B) of Industrial Dispute Act,



1947. The Writ Court, by the impugned order directed the payment of wages under Section 17(B) of the Act from the date of award till the date of disposal of the writ petitions or till the date of superannuation whichever is earlier. The arrears of 17(B) wages from the date of award till 31.05.2015 was directed to be paid within two months from the date of receipt of a copy of that order. Further, the wages payable from the month of June 2015 onwards shall be paid on or before 10th of every subsequent month. The main writ petitions were directed to be posted for hearing on 14.07.2015.

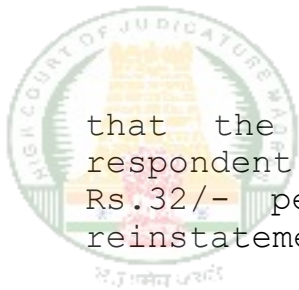
3.The learned counsel for the appellant vehemently contended that the Management had no opportunity to file counter affidavits in the applications filed for wages under Section 17(B) of the Act. It is submitted that if an opportunity had been granted, the Management would have established that the workmen were gainfully employed during the relevant period and they are not entitled for wages under Section 17(B) of the Act. Further, it is submitted that the payment of wages under Section 17(B) of the Act is not automatic, but it is subject to proof that the workmen were not gainfully employed.

4.The learned counsel for the respondents workmen submitted that the appellant Management cannot canvass the merits of the case and test the correctness of the award in interim applications when applications for 17(B) wages have to be disposed of most expeditiously and relief should be granted to the workmen, who have succeeded before the Labour Court. In support of the said contention, the learned counsel relies on the decisions of the Hon'ble Supreme Court in the case of *Workmen represented by Hindustan V.O. Corporation Ltd. Vs. Hindustan Vegetable Oils Corporation Ltd. and Others - (2009) 9 SCC 534*.

5.We have heard the learned counsel for the parties and perused the materials placed on record.

6.We find that the applications for wages under Section 17(B) of the Act were filed by the workmen in the year 2011 in the writ petitions filed by the Management in the year 2009, challenging the award passed by the Labour Court. The applications were disposed of by the Writ Court only on 25.06.2015. Therefore the Management had enough time to file counter affidavit in the interim applications. Therefore, we do not agree with the submissions of the learned counsel for the appellant that no opportunity was granted to them to file counter affidavits.

7.Be that as it may, we have perused the grounds of appeals and the only contention raised in the memorandum of grounds of appeals are that the workmen were engaged in Masanory work, Agricultural work and Auto Driver respectively after they were relieved from work, earning not less than Rs.400/-, Rs.300/- and Rs.500/- respectively per day, which will workout to more than Rs.10,000/- per month. Further, in the grounds, it has been stated



that the respondents workmen were only apprentices, and the respondent workman in W.A.(MD) No.420 of 2018 was paid stipend of Rs.32/- per day and the award of the Labour Court directing reinstatement is erroneous.

8. So far as the allegation that the workmen were gainfully employed, we find that the contentions raised in the memorandum of appeals are absolutely vague. A person, who has been out of employment cannot starve to death and he has to eke his livelihood. Even assuming that the respondents workmen were engaged with other works intermittently as claimed by the appellant Management, that cannot be taken as gainful employment. Therefore, the contentions advanced by the appellant Management is not feasible of consideration. With regard to the submission that the respondent workmen were only apprentices, this is an issue, which is touching upon the merits of the award passed by the Labour Court and this cannot be adjudicated at this stage of the matter and has to be argued in the writ petitions filed by the management.

9. The learned counsel for the appellant submitted that the writ petitions are pending since 2009 and though the Writ Court had fixed a date for hearing of the writ petitions on 14.07.2015, the same was not listed for final disposal. The learned counsel for the appellant submitted a letter to the Registrar (Judicial) dated 09.03.2018 to post the writ petitions for an early date for disposal. So far as the delay in disposal of the main writ petitions is concerned, it is not solely attributable to the workmen or the Management, but there are many other factors, which attribute to the delay. However, there can be no denial of the fact that the Courts as well as counsels are discharging duties in an effective manner so as to bring down the pendency of the cases before the Courts. Therefore, the Management has to pursue the request made to the Registry for early listing of the writ petitions.

10. The learned counsel for the respondents workmen submitted that after the award of the Labour Court, they had filed computation petitions before the Labour Court under Section 33(C)(2) of the Industrial Dispute Act and those petitions were ordered and the Management challenged the order passed on those petitions and the writ petitions were dismissed with cost. Thus for all the above reasons, we find that there are no grounds made out by the appellant to interfere with the orders passed by the Writ Court.

11. Accordingly, these writ appeals fail and they are dismissed. The appellant Management is directed to pay the last drawn wages under Section 17(B) of I.D. Act, from the date of award till the date of disposal of the writ petitions or till the date of superannuation of the workmen, whichever is earlier. The arrears of 17(B) wages from the date of award till 31.02.2018 shall be paid within a period of two months from the date of receipt of a copy of this judgment. The wages payable from the month of March 2018 on



wards shall be paid on or before 10th of every subsequent month and the payment would commence from 10th April 2018. No costs. Consequently, connected miscellaneous petitions are also dismissed.

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Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

The Presiding Officer,
Labour Court,
Thirunelveli.

+1cc to M/s.S.Seenivasagam, Advocate, SR.No.57381

+1cc to M/s.M.E.Ilango, Advocate, SR.No.58358

Arul

RL/4C/5P/KKR/SAR4/17/4/2018

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