



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.3168 of 2015

- 1.K.K.Rajan
- 2.V.Gangai
- 3.P.Kumaresan
- 4.T.Chinna Pandaram
- 5.R.Rathinaswami Nadar
- 6.C.Madhavan Pillai
- 7.C.Ganapathi
- 8.K.Pushkala
- 9.Sudha
- 10.Siva
- 11.Subramanian

C/o.The General Secretary,
Kanyakumari Mavatta Thozhilalar
Nala Sangam (Regd.No.66/KKM),
Rashtra Mandir, Door No.3-30-A,
Marakudi Street,
Kanyakumari - 629 702.

... Petitioners

Vs.

1.The Management of Vivekananda
Rock Memorial & Vivekananda Kendra
Vivekanandapuram,
Kanyakumari - 629 702.

2.The Management of Poombuhar
Shipping Corporation Ltd,
692, Anna Salai, Nandanam,
Chennai - 600 035.



3.The Commissioner and Secretary,
Transport Department,
Fort St.George, Chennai - 600 009.

4.The Presiding Officer,
Labour Court,
Tirunelveli - 627 002.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to C.P.Nos.1 of 2010 and 7 of 2011 on the files of the fourth respondent and quash the common order passed therein dated 10.11.2014 insofar as the fourth respondent has denied the full claim made by the petitioners in the claim petitions and consequently direct respondents 1 to 3 to pay the entire claim made by the petitioners jointly and severally with interest at 12% p.a to date of realization within a time frame.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.J.Jeyakumaran for R1

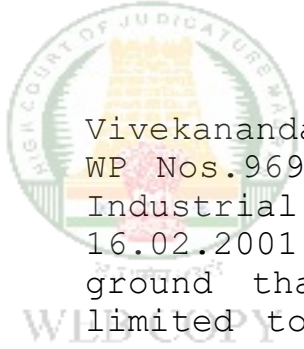
Mr.M.Azeem for R2

Mr.J.Gunaseelan Muthaiah,
Addl., Govt. Pleader for R3

ORDER

The petitioners herein were originally employed under Vivekananda Rock Memorial & Vivekananda Kendra, Kanyakumari District. They were dismissed from service during 1975-76. The aggrieved workers through their unions, raised industrial disputes before the Industrial Tribunal, Chennai. They were taken on file in ID.No.61 of 1977, etc., By order dated 31.12.1990 all the IDs were allowed. Except in the case of one Natarajan, other dismissed workers were directed to be reinstated in service. It was further directed that Krishnakumar and Gopkuttai Nair shall be paid full back wages and given continuity of service and other benefits and that the other workers excluding one Natarajan, shall be entitled to receive only half of the back wages upto to the date of award besides continuity of service and other benefits.

2.In the meanwhile, the ferry services operated by the first respondent was taken over by the Government vide G.O.Ms.872, Transport Department dated 29.07.1981. The management of



Vivekananda Rock Memorial and Vivekananda Kendra therefore filed WP Nos.9696 to 9698 of 1981 questioning the award passed by the Industrial Tribunal, Chennai. The learned Judge by order dated 16.02.2001 remanded the matter to the file of the Tribunal on the ground that the Government and Poombuhar Shipping Corporation limited to which the ferry service was subsequently transferred were not made as parties. Against the order dated 16.02.2001 made in the writ petitions, the workmen filed WA.Nos.831 to 833 of 2001 before the Hon'ble Division Bench of this Court. It was pointed out that in view of the Section 18 (3) (a) (c) of the Industrial Disputes Act any award passed would bind the successors and assigns. The discussions found in the order dated 18.04.2009 would read as follows :

5.It is brought to our notice that I.D No.61 of 1997 filed by the appellants in W.A.Nos.832 and 833 of 2001 against their dismissal from service was disposed of on 31st December, 1990 and as on the date of disposal of the I.D as well as the date on which the writ petition against the said I.D was filed, the Government and the Poombuhar Shipping Corporation are the employers of the appellants in WA.Nos.832 and 833 of 2001, as they have taken over the Management of Vivekananda Kendra vide G.O.Ms.No.872, Transport Department, dated 29.07.1981.

6.It is submitted by the writ appellants that as per Section 18(3) (a) (c) of the Industrial Disputes Act, even though there is change of management, the settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where notification has been issued under sub section (3-A) of Section 10-A or an award of a Labour Court or Tribunal or National Tribunal, which has become enforceable, shall be binding on-

(a) all parties to the industrial dispute ;

(b)all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c)

where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates.

7.In view of Section 18(3) (a) (c) of the Industrial



Disputes Act, considering the fact that the award has become final before filing of the writ petition and the objection taken by the writ petitioner before the learned Single Judge that the taking over of the management of Vivekananda Kendra by the Government and Poombuhar Shipping Corporation vide G.O.Ms.No.872, Transport Department, dated 29.07.1981, is not a ground to remand the matter and also on consideration of the entire facts and circumstances of the case, we are of the view that the order passed by the learned single Judge is liable to be set aside and it is, accordingly, set aside. Hence, the writ appeals are allowed with costs. Connected M.Ps. Are closed.

3.Since the order made in the writ petitions were set aside by the Hon'ble Division Bench of this Court, the workmen filed CP.Nos.1 and 7 of 2010 before the Labour Court, Tirunelveli. The Labour Court excluded Ex.Vevekananda Rock Memorial Management as well as the Poombuhar establishing corporation limit. The entire liability was fastened on the Government of Tamil Nadu. The Government was directed to pay sums ranging from Rs.90,480/- to 1,54,280/-. Such a quantification was made by taking into account the last drawn wages of the individual workmen. Aggrieved by the same, this writ petition has been filed.

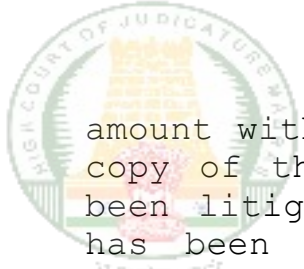
4.Heard the learned counsel on either side.

5.This Court is of the view that the Labour Court, Tirunelveli was right in excluding the respondents 1 and 2 herein and fastening the entire liability on the third respondent herein. No exception can be made since the Labour Court has done so going by the directions of the Hon'ble Division Bench in the order dated 18.04.2009 in WA Nos.831 to 833 of 2001. The labour court is entirely right in fastening the liability on the Government of Tamil Nadu, the third respondent herein.

6.Thiru.K.M.Ramesh, the learned counsel for the workmen/petitioners is absolutely justified in his contention that the amount awarded by the Labour Court is not in consonance with the award passed by the Industrial Tribunal in the first instance. In the very nature of things, the last wages drawn alone could not have been sole yardstick.

7.In this view of the matter, the matter has to go back to the Labour Court. But then, certain reliefs have to be given to the workmen even at this stage. It cannot be in dispute that the amounts awarded by the labour court are sums to which the workmen are entitled to.

8.Therefore, the third respondent is directed to pay the said



amount within a period of six weeks from the date of receipt of a copy of this order. It is distressing that the workmen have been litigating for the last 42 years and not even a single pie has been paid to them. Therefore, while making an order of remand, the third respondent is directed to pay the amounts as directed by the Labour Court, Tirunelveli in C.P.Nos.1 and 7 of 2010 dated 10.11.2014.

9.As rightly pointed out by the learned counsel for the petitioner, the third respondent has not questioned the order passed by the labour Court. The Labour Court is directed to take up the CPs afresh and a fresh computation shall be made. The Labour Court shall pass orders afresh in accordance with law on or before 30.10.2018. The Labour Court, Tirunelveli is directed to send a compliance report indicating the disposal of the CPs to the Registry of this Court. The Registry is directed to place the papers before this Court thereafter.

10.This Writ Petition is disposed of accordingly. No costs.

Sd/

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1.The Commissioner and Secretary,
Transport Department,
Fort St.George, Chennai - 600 009.

2.The Presiding Officer,
Labour Court, Tirunelveli - 627 002.

Copy to:

The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.Special Government Pleader,SR.No. 51610
+1cc to Mr.K.M.Ramesh, Advocate, SR.No. 50928
+1cc to Mr.J.JEYAKUMARAN, Advocate, SR.No. 51207

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