

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.15334 and 15734 of 2011

L.Andrews .Petitioner in W.P.No.15334 of 2011

P.Devaki .Petitioner in W.P.No.15734 of 2011

Vs.

1.The Presiding Officer
II Additional Labour Court
Chennai.

2.The Management
M/s.Kent Ceramic Tiles (P) Ltd.
Sivapootham village
Vanagaram post
Chennai 602 102.

... Respondents in both WPs.

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the records of the 1st respondent pertaining to the award dated 21.01.2010 passed in C.P.Nos.466 and 446 of 2005, quash the same and consequently, directing the 2nd respondent to pay the compensation as it is prayed in C.P.Nos.466 and 446 of 2005.

In both WPs.

For Petitioner : Mr.P.Solomon

For R2 : Mr.Umasuthan

C O M M O N O R D E R

Writ Petitions are filed challenging the award of the 1st respondent dated 21.01.2010 made in C.P.Nos.466 and 446 of 2005 and consequently, directing the 2nd respondent to pay the compensation as it is prayed in C.P.Nos.466 and 446 of 2005.

2.The issues involved in both the writ petitions are interlinked and therefore, both the writ petitions are disposed of by this common order.

3. Heard the learned counsel appearing for the petitioners and perused the materials available on record. The learned counsel appearing for the 2nd respondent submitted that he has reported no instructions and he has filed a memo to that effect.

4. The wife of the petitioner in W.P.No.15334 of 2011 viz., Mrs. Glory and the petitioner in W.P.No.15734 of 2011 are employees of the 2nd respondent management. According to the learned counsel appearing for the petitioners, the petitioner in W.P.No.15734 of 2011 and the petitioner's wife in W.P.No.15334 of 2011 along with nine workers raised industrial dispute in I.D.No.139 of 1983 on the file of the 1st respondent. The 1st respondent by award dated 01.12.1984 directed the 2nd respondent management to reinstate the employees with continuity of service, backwages and all attendant benefits. The 2nd respondent management did not pay the amounts as per the award. Therefore, the wife of the petitioner in W.P.No.15334 of 2011 and the petitioner in W.P.No.15734 of 2011 along with nine others filed C.P.No.405 of 1985 before the 1st respondent under Section 33-C (2) of the Industrial Disputes Act, claiming salary for the period from 1982 to 28.02.1985. The 1st respondent/Labour Court by the order dated 12.02.1987 ordered payment of Rs.16,632.50 each to the petitioners. But the 2nd respondent management did not reinstate the workers. The wife of the petitioner in W.P.No.15334 of 2011 filed C.P.No.844 of 1988 and the petitioner in W.P.No.15734 of 2011 filed C.P.No.845 of 1988 claiming wages for the period from April 1985 to June 1988. The said claim petitions were dismissed on 15.04.1993 on the ground that "No work, No pay". Subsequently, the petitioners filed present C.P.Nos.466 and 446 of 2005 claiming salary from 01.07.1988 to 30.09.2003 and 01.07.1988 to 30.04.2005 together with bonus and earned leave.

5. The 2nd respondent in the counter affidavit filed before the 1st respondent contended that present 2nd respondent took over the management in the year 1982. After the order passed in C.P.No.405 of 1985, dated 12.02.1987, the 2nd respondent management paid the amounts as ordered in the claim petition as full and final settlement as per the agreement entered between the management and workers. All the employees including wife of the petitioner in W.P.No.15334 of 2011 and the petitioner in W.P.No.15734 of 2011, signed the agreement and received payment. After dismissal of C.P.Nos.844 and 845 of 1988, the employees and the petitioners did not initiate any further proceedings. They have not reported for duty after passing of the award dated 01.12.1984 in I.D.No.139 of 1983. The petitioners are not entitled to any wages on the principle of "No work, No pay" and prayed for dismissal of the writ petitions.

6.From the materials available on record, it is seen that the petitioners are claiming wages from 01.07.1988 to 30.09.2003 and 01.07.1988 to 30.04.2005 on the ground that they demanded work by the letters dated 20.10.2000, 01.07.2002, 29.07.2003, 22.09.2004, 27.09.2004 and 14.12.2004, but the 2nd respondent did not give work. The 2nd respondent denied having received the said letters. The petitioners have not filed any proof for having sent the said letters and that the 2nd respondent has received the same. Even otherwise the petitioners are claiming salary from 01.07.1988 onwards. The petitioners have not stated that they made demand before 01.07.1988 and the 2nd respondent refused to give them work. Except in the notice issued by the petitioners through advocate dated 14.12.2004, they have not filed any acknowledgement. Further the petitioners have not denied the contention of the 2nd respondent that against the order of dismissal made in C.P.Nos.844 and 845 of 1988 on the ground that "No work, No pay", the petitioners have not initiated any further proceedings and the said order has become final.

7.The 1st respondent, considering all the above facts, dismissed the claim petitions holding that the petitioners have not proved their claim and they are not entitled to backwages without seeking employment on the principle of "No work, No pay". The other claim of the petitioners for bonus and earned leave was dismissed as they are not entitled to the said amounts for the period they have not worked. There is no error in the order passed by the 1st respondent warranting interference by this Court.

8.For the above reason, the writ petitions stand dismissed. No costs.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Presiding Officer
II Additional Labour Court
Chennai.

+1cc to MrP.Solomon, Advocate, SR.No.71780/19

W.P.Nos.15334 and 15734 of 2011

Kak(19/11/2019)