

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2019

CORAM

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P.No. 14648 of 2009
& MP.No.2 of 2009

K.Parthasarathy Spinning Mills,
Rep. by its Managing Partner
P.Gopalakrishnan,
Ganapathypalayam Post,
Udumalpet-641 122
Coimbatore District.

...Petitioner

Vs

- 1.The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai 600 104.
- 2.Desiya Panchalai Thozhilalar Sangam,
Kovai 45.
- 3.Kovai Periyar Mavatta Dravida Panchalai
Thozhilalar Munnetra Sangam,
Kovai 12.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the award dated 23.06.2008 made in I.D.No.17/2004 on the file of 1st respondent Tribunal and quash the same in so far as allowing the relief claimed for in favour of the 3rd respondent herein.

For Petitioner : Mr.R.Gouri

For Respondents : Mr.V.Govardhanan

for M/s. Row and Reddy for R3

: No Appearance for R2

R1-Court

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O R D E R

This writ petition has been filed questioning the correctness of the impugned award dated 23.06.2008 passed in I.D.No.17/2004 by the first respondent/Industrial Tribunal.

2. The learned counsel appearing for the petitioner management would submit that when the industrial dispute raised by the respondents 2 and 3, praying to hold that the denial of work from 05.04.2003 to 07.06.2003 and from 13.07.2003 by the management is illegal and consequential direction to the management to grant work, wages and all other monetary benefits besides payment of bonus at the rate of 35% for the year 2001-2002.

3. The first respondent/the learned Industrial Tribunal, in its award dated 23.06.2008, while dismissing the dispute as against the second respondent Union, wrongly allowed the claim made by the third respondent union. When the impugned award passed by the first respondent clearly holds in favour of one union that the action of the management in not operating the mill, is unjustified and it is not fair on the part of the first respondent/Industrial Tribunal to give contra findings in respect of another union/ 3rd respondent holding that they are not entitled for wages and all other attendant benefits. Adding further, it is stated that when the second and third respondent unions have jointly raised the said dispute for grant of full wages to the workmen for the period during which the management mill was not operating and demanded bonus for the year 2001-2002 and it is contended that the action of the petitioner management in closing the unit under the pretext of financial crisis is unjustified because the management was unable to pay the electricity charges in view of its inability and the financial crisis along with various dues payable by them. Due to non-payment of electricity consumption charges, the electricity department has disconnected the service connection. Consequently, the petitioner management was under compulsion to close down the Mill from operation. This was also accepted by the learned Industrial Tribunal on perusing all the documents produced on behalf of the petitioner management namely the oral evidence and also a settlement reached between the parties vide Ex.W23. The contention of the petitioner management is that they were forced to stop their mill because of their inability and financial crisis to pay the electricity charges was accepted. The non-employment of the workers from 13.07.2003 was also to be accepted as a bonafide and justifide one. This was also considered by the Assistant Labor Officer and when the non-employment of the workers from 13.07.2003 has to be decided by both the parties by way of negotiations and the Assistant Labour Officer has given his advisory note that non-employment of the workers from 13.07.2003 is decided by way of negotiations and neither of the unions had come forward

for any negotiations subsequent to the agreement. Therefore, it goes to show that the workers have given up their rights in this regard as per Ex.M28. When the second and third respondent unions have not come forward and asked for any negotiations, they have given up their rights and this has been completely over looked and this apart, while considering the second claim made by the third respondent union, for payment of minimum wages for the year 2001-2003, the learned Industrial Tribunal recorded the findings for the period 2001-2002. The minimum bonus has been disbursed and paid to the workers and they have received that amounts also. More over, the petitioner management was able to establish their case that the mill has not gained any profit to pay their workers other than the minimum bonus. But this aspect was also completely over looked by the Tribunal. Admittedly, from the year 2000 onwards, the petitioner mill was not functioning properly for the various reasons namely due to inability and financial crisis to pay electricity charges and later it was closed down. It was also a matter of fact that stopping of production from 13.07.2003 was also established that the said period of closure was due to the disconnection of electricity supply for non payment of electricity charges by the petitioner management. The learned Industrial Tribunal ought to have dismissed the industrial dispute raised by the second and third respondents. But without considering the practical issues raised between the parties, the Tribunal has wrongly passed the impugned award. Therefore, the same is liable to be set aside.

4. Per contra, Mr.V.Govardhanan, the learned counsel appearing for the employees of third respondent union has vehemently contended that the learned Industrial Tribunal has carefully considered the findings and the conclusions recorded and passed the award holding that the second and third respondent union workers are entitled for statutory minimum bonus for the year 2001-02 and the action of the petitioner mill for not providing employment to the workers from 13.07.2003 is unjustified. This Court, while exercising its jurisdiction under Article 226 of the Constitution of India cannot interfere with the award passed by the Tribunal and adding further, it is contended that when the mandatory conditions mentioned under Section 22(2) are completely over looked and this has been meticulously appreciated by the learned Industrial Tribunal and passed the award, hence no interference is called for.

5. But, this Court is unable to find any merit in the contentions raised by the learned counsel for the respondents 2 and 3. Moreover, the findings given by the learned Industrial Tribunal are being contrary to each

finding given for the issues tried, this Court is of the view that the Writ Petition filed by the petitioner management deserves to be allowed for the following reasons. Firstly, it is not in dispute that the petitioner management has stopped its production because of its inability and financial crisis to pay electricity charges and various dues payable by them to the electricity department. However, appreciating the ground reality that the petitioner management expressed its inability to run its mill continuously, the workers themselves have entered into an agreement and they have given up their rights stating that the petitioner management is not bound to pay any amount and an agreement has been entered into between the parties vide Ex.W23, which was admittedly a settlement arrived at between the parties and the lessee M/s.Senthil Mill Unit. The petitioner management has subsequently given work to the workers of the second respondent union from 03.02.2005 as per the agreement Ex.W23 and the agreement viz., Ex.W23 is admitted by all sides which carries the date as 02.02.2005. As per the above said agreement, the lessee M/s.Senthil Mil unit has permitted the workers of the 2nd respondent union namely 45 workers to work in the premises of the petitioner mill for consolidated pay. Further in this agreement, it has been mentioned as under:

''மேற்கண்ட சங்கத்தின் 23 6 2004 மற்றும் 25 6 2004 தேதிய
மனுக்களில் கண்டுள்ள இதர பிரச்சனைகள் பற்றி நிர்வாகங்களும்
சங்கமும் நேரில் பேசி தீர்வ காண வேண்டும்''.

6. From the above note, it is very clear that the non employment of the workers from 13.07.2003 has to be decided by both the parties by way of negotiations. But after the advisory note, the petitioner management has not asked for any negotiations, subsequent to the agreement. This was also recorded by the learned Industrial Tribunal in paragraph no.10 of the award. Therefore, when the second respondent and third respondent unions have not even asked for any negotiations, it is not known how the learned Industrial Tribunal can say that while the closure of the mill that was occurred only due to disconnection of electricity service connection for non payment of electricity charges, inability and financial crisis to pay the electricity charges can be taken as a ground that the petitioner management has deliberately closed the Mill only for the purpose of denying employment to the workers.

7. During the pendency of writ petition, the learned counsel appearing for the petitioner has stated that the petitioner mill is not functioning and it has been closed once and for all for the various reasons namely its inability, financial crisis prior to the non-production and due to non-payment of electricity charges etc. It is also mentioned that the workers of the third respondent union

have accepted the case of the petitioner management and they are not asking for even minimum bonus or any other reliefs that also shows that the justification made by the petitioner management was accepted by second respondent union having about 290 workers, whereas, the other union namely third respondent union having about 200 workers, who have failed to follow the practical difficulties placed and that was accepted by the major unions. Therefore, for all the above said reasons, this Court finds no merit in the impugned Award dated 23.06.2008 made in I.D.No.17 of 2004 passed by the learned Industrial Tribunal.

8. Accordingly, the writ petition is allowed and the impugned Award dated 23.06.2008 made in I.D.No.17 of 2004 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai 600 104.
- 2.Desiya Panchalai Thozhilalar Sangam,
Kovai 45.
- 3.Kovai Periyar Mavatta Dravida Panchalai
Thozhilalar Munnetra Sangam,
Kovai 12.

+1cc to Mr.M.N.Balakrishnan, Advocate SR.No. 40147
+1cc to Mr.R.Gouri, Advocate SR.No. 39446
+1cc to M/s. Row and Reddy, Advocate SR.No. 40105

W.P.No. 14648 of 2009

A.SK(24/06/2019)