

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30834 of 2004
and
W.M.P.No.1522 of 2008

1.N.Sivasubramaniam
2.G.Krishnamurthy

..Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.The Management,
M/s.Lakshmi Machine Works Limited,
Periyanaickenpalayam,
Coimbatore - 641 020.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for records of the first respondent herein in his proceedings in C.P.No. 30 of 2001 dated 07.10.2003 and quash the same in so far as the petitioners are concerned and further direct the second respondent herein to pay the performance incentives due to the petitioners with interest.

For Petitioners: Mr.P.M.Duraiswamy

For R1 : Labour Court

For R2 : Mr.Sanjay Mohan
for M/s. S.Rama Subramaniam
and Associates

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O R D E R

The order dated 07.10.2003 passed in C.P.No. 30 of 2001 is under challenge in the present writ petition.

2. The writ petitioners state that they were the permanent workers of the second respondent/Management and opted to retire from service under a Voluntary Retirement Scheme, on 31.08.1998. Accordingly, the accounts of the writ petitioners were settled

by the second respondent/Management on 03.09.1998. The petitioners stated that they were not knowing the intricacies of the statement of accounts and they subsequently found that there was an error in not settling the performance incentives and other Dearness Allowances, due to them.

3. Under those circumstances, the petitioners filed a claim petition stating that as per the Settlement under Section 12(3) of the Industrial Disputes Act, 1947, the second respondent/Management has to pay every person, who was employed permanently, a performance incentive calculated at an amount equivalent to 7% of the net profit of the proceeding year divided by number of persons employed in that year in the Industry, payable in twelve equal monthly installments, commencing from the month of July in the subsequent year to the month of June in the succeeding year. In view of the settlement, the petitioners claimed the performance incentive till their date of retirement.

4. The second respondent disputed the contentions by stating that the writ petitioners were opted Voluntary Retirement Scheme and allowed to retire from service and they were retired in the year 1998 itself. The entire service benefits were settled under the Voluntary Retirement Scheme. There were no such performance incentives agreed in the 12(3) Settlement. In the absence of any such benefit and the 12(3) Settlement, the said benefit of performance incentive cannot be claimed by the writ petitioner, who were employers of the second respondent/Management. The Labour Court adjudicated the issues at length and arrived a conclusion that the writ petitioners had received the benefits as per the 12(3) Settlement, however, the benefit of performance incentive is not provided in the 12(3) Settlement. The Labour Court on verification found that the benefit of performance incentive has not been agreed upon by the Management in the 12(3) Settlement. Under these circumstances, the writ petitioner cannot claim the benefit of performance incentive.

5. In respect of such disputed facts, the petition under Section 33-C(2) of the Industrial Disputes Act, 1947 is also not maintainable. The claim petition can be entertained only if the pre-existing rights are established by the workmen. When there is no clause in the 12(3) Settlement regarding the payment of performance incentive, the claim cannot be made under section 33- C(2) of the Industrial Disputes Act. If at all, the petitioners are of the opinion that they are entitled for any such performance incentive, which is disputed by the Management then they are bound to adjudicate the issues and their claim petition cannot be entertained in respect of the disputed claims. In view of the claim petition, it cannot be entertained

as the liability of performance incentive has not been crystallized.

6. This Court is of an opinion that the Labour Court is right in rejecting the claim petition and there is no perversity or infirmity and accordingly, the order dated 07.10.2003 passed in C.P.No.30 of 2001 is confirmed and the writ petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

sni/dua

To

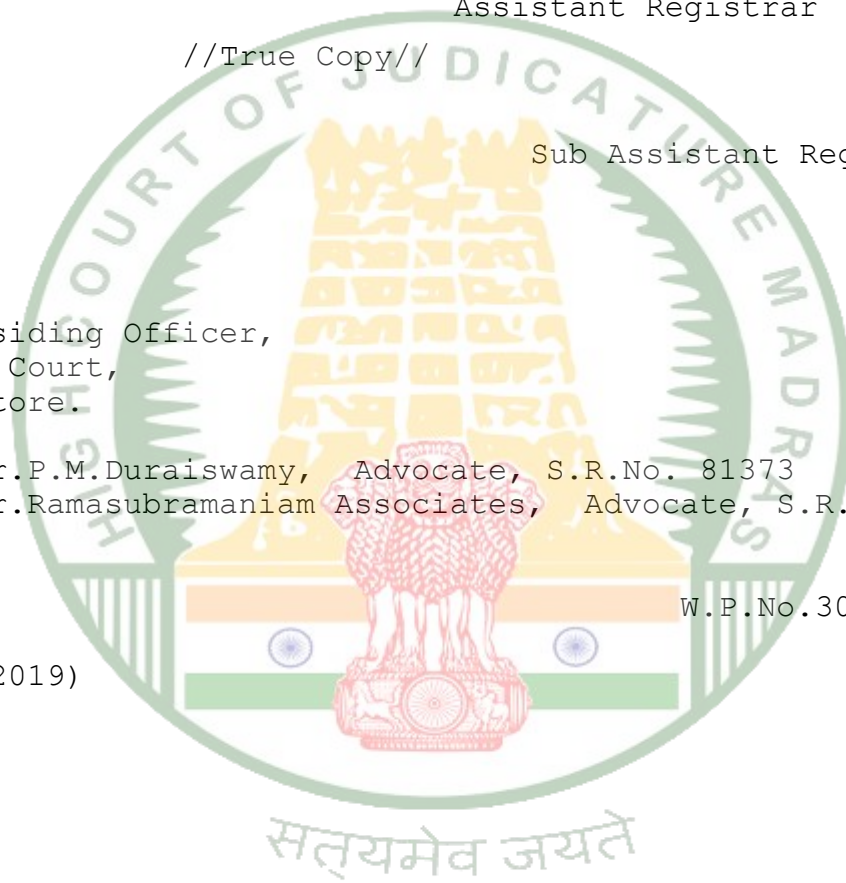
1.The Presiding Officer,
Labour Court,
Coimbatore.

+1cc to Mr.P.M.Duraiswamy, Advocate, S.R.No. 81373

+1cc to Mr.Ramasubramaniam Associates, Advocate, S.R.No. 80650

W.P.No.30834 of 2004

SSD(CO)
GN(06/11/2019)



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