

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.10.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.18182 of 2013

1. M.Ekambaram
2. M.Kubendiran
3. M.Paranthaman
4. D.Viswanathan
5. B.Uvaraj
6. P.Sundararajan
7. A.Raja Mohmed Davuthu
8. A.Dharmalingam
9. V.Kumar
10. M.Kanagaraaj
11. W.Panneer Selvam
12. R.Arumainathan
13. S.Rajan
14. G.Kumaresan
15. C.Rajasekar
16. K.Venkatesan
17. D.Narayanan
18. E.Sampathkumar
19. M.Ravichandran
20. D.Mohanraj
21. S.Gunasekaran
22. D.Ethirajulu
23. C.Arunagiri
24. E.Ravi
25. K.Nainakumar
26. N.Udayakumar
27. E.Balu
28. A.Prabhakaran
29. S.Bhaskaran
30. S.Balaraman
31. A.Shanmugam
32. V.Lakshmipathy
33. M.Sankar
34. T.Shanmugam
35. M.Perumal
36. S.Nagarajan
37. G.S.Sivakumar
38. V.S.Hariharan
39. K.Kanniappan
40. S.Sathiyamurthy



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41.K.Hari Mohan
42.K.Anbalagan
43.S.Arulanandham
44.K.Mohan
45.D.Loganathan
46.E.Suresh Babu
47.K.Iruthayaraj
48.M.Mohan
49.D.Johnson
50.M.Lingesan
51.R.V.Balaji Rao
52.S.Francis

...Petitioners

..Vs..

1.Buckingham & Carnatic Mills Ltd.,
(M/s.Binny Ltd.,)
Rep by its Managing Director,
No.106, Armenian Street, Chennai - 01.

2.The Presiding Officer,
II Additional Labour Court, Chennai.

...Respondents

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent in respect of the Common Award dated 29.10.2012 with respect to the C.P's of the petitioner's as follows:

S.No.	Petitioner Name	C.P.Number
1.	Ekambaram	120/04
2.	Kubendiram	171/08
3.	M.Paranthaman	181/08
4.	D.Viswanthan	185/08
5.	B.Uvaraj	187/08
6.	P.Sundararajan	188/08
7.	A.Raja Mohamed Davuthu	191/08
8.	A.Dharmalingam	192/08
9.	V.Kumar	193/08
10.	M.Kanakaraj	194/08
11.	W.Paneerselvam	195/08
12.	R.Arumainathan	197/08
13.	S.Rajan	198/08
14.	G.Kumaresan	199/08
15.	C.Rajasekar	200/08
16.	K.Venkatesan	201/08
17.	D.Narayanan	207/08
18.	E.Sampath Kumar	208/08
19.	M.Ravichandran	209/08
20.	D.Mohan Raj	215/08
21.	S.Gunasekaran	216/08

22.	D.Ethirajulu	217/08
23.	C.Arunagiri	220/08
24.	E.Ravi	221/08
25.	K.Naina Kumar	222/08
26.	N.Udayakumar	223/08
27.	E.Balu	226/08
28.	A.Prabhakaran	227/08
29.	S.Baskaran	229/08
30.	S.Balaraman	233/08
31.	A.Shanmugam	235/08
32.	V.Lakshmipathy	236/08
33.	M.Shankar	237/08
34.	T.Shanmugam	239/08
35.	M.Perumal	241/08
36.	S.Nagarajan	243/08
37.	G.S.Sivakumar	247/08
38.	V.S.Hariharan	250/08
39.	K.Kanniappan	252/08
40.	S.Sathyamurthy	253/08
41.	K.Harimohan	254/08
42.	K.Anbalagan	255/08
43.	S.Arulanandam	256/08
44.	K.Mohan	257/08
45.	B.Loganathan	258/08
46.	E.Suresh Babu	259/08
47.	Irudayaraj	261/08
48.	M.Mohan	266/08
49.	D.Johnson	268/08
50.	M.Lingesan	271/08
51.	R.V.Balaji Rao	273/08
52.	S.Francis	442/08

to quash the same and to direct the first respondent to pay the balance amount of Rs.77,800/- to each of the petitioners together with interest at the rate of 24% per annum, as prayed in the Communication Petitions.

For Petitioners : Mr.T.Sundar Rajan

For Respondents : Mr.Anand Gopalan for
Mr.T.S.Gopalan & Co.
for R.1)
R2-Labour Court

ORDER

The common order passed in the Claim Petitions is sought to be quashed in the present writ petition.

2.The petitioners state that they were appointed as Trainees in the first respondent/Company and thereafter, they were made as permanent employees. The first respondent/Company was closed and inspite of efforts, it was not reopened. On 28.03.1998, a settlement was arrived at between the management and the workers under Section 12(3) of the Industrial Disputes Act. When the petitioners admittedly opted for voluntary retirement, only paid Rs.50,000/- including gratuity, by the first respondent.

3.The learned counsel appearing on behalf of the petitioner states that as per terms and conditions of the settlement, the writ petitioners are to get Rs.1,00,000/- on par with other employees who are receiving this amount. The petitioners filed Claim Petition before the second respondent on 02.06.2008 for the purpose of computation of balance dues to be paid to these workmen and also for the ex-gratia payment, along with the interest. The Claim Petitions filed under Section 33 C (2) of the Industrial Disputes Act were dismissed on 29.10.2012, against which the present writ petitioner is filed.

4.The learned counsel appearing on behalf of the petitioner mainly contended that all these writ petitioners were initially appointed as Trainees and subsequently absorbed as permanent employees. As per the terms and conditions of the settlement, all the employees who have opted for Voluntary Retirement Scheme have failed to receive Rs.1,25,000/- and the said amount has not been paid by the Management. The Management treated the writ petitioners as Trainees and therefore they have not granted the settlement as per the terms and conditions stipulated.

5.The learned counsel appearing on behalf of the first respondent/management disputed the contentions by stating that the Claim Petition under Section 33 C (2) itself was filed after a lapse of 10 years from the date of acceptance of the full and final settlement. All these writ petitioners have accepted the settlement, received the payments in full and waited for about 10 years and thereafter filed the Claim Petition by stating that they were permanent employees working in the first respondent/Company and they are entitled to get compensation on par with the permanent employees of the first respondent/Company. The Labour Court itself made a finding that the Claim Petition was filed after a period of 10 years. It is further stated that no reasons are furnished for the said huge delay of 10 years. In the absence of any valid reason, the delay is a vital factor and the petition itself is to be dismissed on the ground of laches.

6.The learned counsel appearing on behalf of the first respondent solicited the attention of this Court regarding the findings of the Labour Court that on 27.05.1998 itself the

petitioners have received the full and final settlement of the claims and they have issued receipt acknowledging the receipt of payment and none of the petitioners have received the Voluntarily Retirement Scheme compensation under protest or written any communication to the respondent/Company stating that they are entitled for higher amount for Voluntarily Retirement Scheme compensation. The Labour Court on verification of the documents found that the petitioners themselves filed in the para 7 of the affidavit as well as in the proof affidavit have accepted that they were Trainees, when they were working in the respondent/Company.

7.This being the finding of the Labour Court, this Court is of the opinion that the Claim Petition itself is not maintainable as the petition was filed after a lapse of 10 years and no reasons have been given for 10 years of delay. This apart the petitioners themselves admitted in the Claim Petition that they were termed as Trainees when they were working in the respondent/Company. When the writ petitioners are in service, at that point of time they were termed as Trainees, they were not entitled to the benefit of the permanent workmen of the Company.

8.Finally, the learned counsel appearing on behalf of the respondent states that a similar claim of other Trainee employees were dealt with by this Court in the case of R.Udayakumar & Others Vs. The Presiding Officer, II Additional Labour Court & Others in W.P.Nos.8040 to 8042 of 2009 and batch dated 12.07.2011 and the relevant paragraphs of the said Order are extracted hereunder;

"7.The Labour Court held that the workmen were bound by the settlement under Section 12(3) of the I.D.Act which is marked as Ex.P.3 and they have not proved to the satisfaction of the Court that they are not trainees and they are regular workers. It is also found that a sum of Rs.50,000/- was offered under Ex.R.3. The workers have received the sum without any protest and no further letters were written by them to the management. This fact was admitted by PW.1 in his cross examination as noted by the Labour Court in Paragraph 25 of the impugned order.

8.The learned counsel for the petitioners contended that the above order showing them as trainees in the year 1985 only stipulates training for the period of 52 weeks and thereafter they should be deemed to be regular workers. Therefore, the second respondent-mill cannot deny them as the status of the regular workers. He also placed reliance on a certificate issued wherein it was initiated that they are workmen in the second respondent-textile mill and therefore they are not described as trainees, but from

the certificate issued shows that it was issued to enable the workmen to obtain new Ration Card and no further meaning can be taken out for the said certificate. Even though the order of appointment shows that they have to undergo training for a period of 52 weeks, in the absence of any standing orders, by which, they are deemed to be in permanent status, this Court cannot presume that they are regular workers and eligible to get the amount paid to the regular workers in terms of Paragraph 3 of the said settlement. Even otherwise, as to the status of the workman, whether they are trainees or deemed to be in permanent workers is not an issue to the disputed under Section 33 C(2) of the I.D.Act, apart from that the Labour Court has also referred to the admission made by PW.1 that after receiving the amount of Rs.50,000/-, there was no protest by them and yet another factor which works against the workmen.

9.In these circumstances, no relief could be granted to the petitioners. Hence, the writ petitions stand dismissed. However, there will be no order as to costs."

9.In view of the facts and circumstances as narrated above, this Court has no hesitation in coming to the conclusion that there is no perversity or infirmity in respect of the common award passed by the Labour Court dated 29.10.2012. Accordingly, the award is confirmed and the writ petition stands dismissed. No costs.

mrn

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Presiding Officer,
II Additional Labour Court, Chennai.

+1cc to Mr.T.S.Gopalan , Advocate SR.No. 88538

+1cc to Mr.T.Sundar Rajan , Advocate SR.No. 88490

W.P.No.18182 of 2013

vba

A.SK(02/12/2019)