

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.07.2019

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.23438 and 23439 of 2013  
and

M.P.Nos.2 and 2 of 2013

**W.P.No.23438 of 2013**

M/s.Aziz Export,  
represented by its Authorized person,  
M.D.Shamim,  
No.20, Salai Road, Choolai,  
Chennai- 600 112.

... Petitioner

Vs

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

2.Renuka

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Award in I.D.No.64 of 2007 dated 29.09.2010 of the first respondent and quash the same.

**W.P.No.23439 of 2013**

M/s.Aziz Export,  
represented by its Authorized person,  
M.D.Shamim,  
No.20, Salai Road, Choolai,  
Chennai- 600 112.

... Petitioner

Vs

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

2.Selvi

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Award in

I.D.No.65 of 2007 dated 29.09.2010 of the first respondent and quash the same.

For Petitioner : Mr.R.Ramesh

For R1 : Court

For R2 : No appearance

### COMMON ORDER

The petitioner has come forward, challenging the Award passed by the 1<sup>st</sup> Respondent dated 29.09.2010 in I.D.Nos. 64 and 65 of 2007. The workers, who had approached the Labour Court after obtaining a failure report from the Conciliation Officer while seeking his intervention to conciliate the dispute, have filed a petition under Section 2A of the Industrial Disputes Act, 1947, seeking to interfere with the dismissal order and also sought for reinstatement, continuation of service, backwages and other benefits. Before the Labour Court, the Management has remained absent and the labour Court had passed an Award as follows:

#### AWARD

This petition has been filed by the petitioner under Section 2(a)(2) of the I.D.Act, 1947 prayed for an order to set aside the dismissal order, Continuity of service with backwages and other benefits with costs.

2)Counter statement filed by the respondent and remained absent.

3)Petitioner present. W.W.1 proof affidavit filed and examined W.W.1., Ex.W.1 to W3 marked. Records perused. Award is passed as prayed for directing the respondent to reinstate the petitioner with full backwages, continuity of service and all other attendance benefits. No costs."

2. On perusal of the above Award of the Labour Court, it is clear that the management had remained absent before the Labour Court. In terms of Rule 48(1) of the Tamil Nadu Industrial Disputes Rules, 1958, in an application filed by the Employer to recall the exparte Award passed when one of the Parties is absent and fails to appear before the Labour Court, the Proceeding may go on, as if the Party had duly attended and had been represented. For the sake of conveniences, Rule 48(1) of

the Tamil Nadu Industrial Disputes Rules, 1958 reads as follows:

"48.Ex-parte proceedings: (1) If without showing sufficient cause any party to proceedings before a Board, Court, Labour Court, Tribunal or arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal or the Arbitrator may proceed as if the party had duly attended or had been represented."

3.It is settled proposition that in such an event of one party being absent, the Labour Court can decide the matter on merits, calling for the records from the party representing the matter and also calling for the records from the Conciliation Officer. Such course has not been adopted in this case by the Labour Court and therefore, this Court is of the view that it is a fit case to interfere with the Award, as it cannot be termed as an Award at all. The Award would continue to be in force till such time, it is replaced by another Award or a settlement. However, the employee is entitled to wages and an application for wages can also be filed under Section 17B of the Industrial Disputes Act, 1947, during the pendency of the writ petition. Even if there is a delay in filing such application, the employer cannot be allowed to go scot-free.

4.If the Workmen file an affidavit that they are not in employment during the pendency of the writ petition, even though the Award is set aside, the Workmen would be entitled to wages from the date of the Award till it is set aside. If any such affidavit is filed by them, they should be paid wages from the date of the Award till it is interfered by this Court. It is needless to mention that it is open to the employer to produce necessary records to establish that the workmen were gainfully employed.

5. In the result, the Writ Petitions are allowed and the matter is remanded back to the Labour Court. The Labour Court is expected to issue notice to the parties fixing the date of hearing and decide the matter on merits. It is directed that the matter shall not be adjourned beyond seven working days at any point of time, as nearly nine years have gone by from the date of Award and the Industrial Dispute is more than 12 years old.

6. Instead of directing the Labour Court to decide the delay petition, as the award is not sustainable, the delay is considered on condition that during the pendency of the Industrial Dispute, the employer shall pay 50% of the last drawn wages every month from August, 2019, till the dispute is decided. If for any reason, the delay in proceeding with the Industrial Dispute is on the part of workman, the 50% wages

shall be reduced to 25% after six months. The adjournment shall be granted only on filing a petition before the Labour Court. If the employer establishes that the employee is gainfully employed, then he will not be entitled to any amount much less the one mentioned supra. No costs. Consequently, connected miscellaneous petitions are closed.

pnn

Sd/-  
Assistant Registrar(CS VIII)

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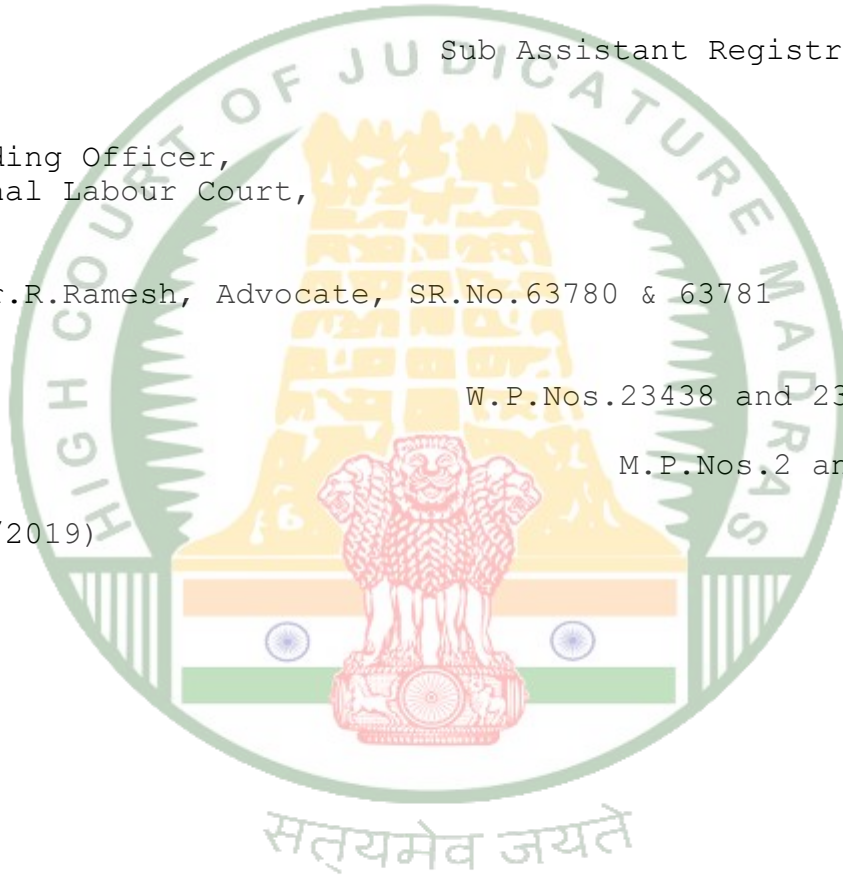
Sub Assistant Registrar

To  
The Presiding Officer,  
I Additional Labour Court,  
Chennai.

+2cc to Mr.R.Ramesh, Advocate, SR.No.63780 & 63781

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and  
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Kak(08/08/2019)



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