

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.28043 of 2015

and

M.P.No.1 of 2015

and

W.M.P.No.31030 of 2016

Binny Ltd  
(B&C Mills),  
No.1, Cooks Road,  
Otteri, Perambur,  
Chennai 600012,  
Rep. by its CFO & Company Secretary. ....Petitioner

vs.

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

2.K.Jayapal,  
No.44, Alathur Subramania Achary Street,  
Choolai, Chennai 600 112. .... Respondents

PRAYER: Writ Petition filed under Article 226 of the  
Constitution of India praying to issue a Writ of Certiorari,  
calling for the records of the 1st respondent in C.P.No.2 of  
2003 and quash its order dated 23.2.2011.

For Petitioner : Mr.S.Haroon Ah.Rasheed  
for M/s.T.S.Gopalan and Co.

For Respondents : R1 - Labour Court  
Mr.K.Bharath for R2

O R D E R

The relief sought for in the present writ petition is to  
quash the order dated 23.02.2011 passed in C.P.No.2 of 2003.

2.The learned counsel appearing on behalf of the writ  
petitioner made a submission that a batch of employees filed

claim petitions, which came to be ordered by the Labour Court. Challenging the said order, the Management filed writ petition. In the writ petition, the Management was directed to deposit the awarded amount. Challenging the interim order, the Management preferred W.A.No.1973 of 2004. The Division Bench of this Court passed an order on 17.12.2008 which is reported in 2009 1LLN 340. The Hon'ble Division Bench decided the main writ petition itself and the relevant paragraphs are extracted hereunder:

"3.The only question that has to be considered in the writ petition is, as to whether the Principal Labour Court would be justified in computing the monetary benefits in the absence of any pre-existing right on each of the respondents for filing such application under S.33C(2) of the Act. The Apex Court had considered a similar issue in many cases and we may usefully refer to few of the judgments.

6.An analysis of the above law laid down by the Supreme Court would lead to the following settled positions of law, viz:

(1)there must be a pre-existing right on the workman to file an application under S.33C(2) of the Act;

(2)While dealing with an application under S.33C(2) of the Act, the Labour Court is in position of an executing Court:

(3)the Labour Court is called upon to compute and calculate the monetary benefit only on the basis of pre-existing right of the workman;

(4)the Labour Court cannot entertain and adjudicate upon a petition under S.33(C) when the entitlement itself is in dispute; and

(5)an application under S.33C(2) is not maintainable, if the petition is filed on disputed facts which require adjudication by the Labour Court.

7.In view of the above settled position, in the absence of any pre-existing right to file application under S.33C(2) of the Act, the Labour Court ought not to have entertained the petition and computed the monetary benefits. A perusal of the award also does not indicate as to how the Principal Labour Court arrived at or determined the quantum. Hence, for the, above reasons, the award of the Principal Labour Court is set aside and the writ petition is allowed. We however, make it clear that the dismissal of the writ petition will not stand in the way of the respondents to workout their remedy under the provisions of the Act in regard to their right. In view of the order passed in the writ petition, the writ appeals stand closed. No costs. Consequently, the connected miscellaneous petitions are closed."

3.The Division Bench held that the writ petition as well as the writ appeal stands closed. The Division Bench made an observation that the dismissal of the writ petition will not stand in the way of the respondents to workout their remedy under the provisions of the Act in regard to their right .

4.Thus, this Court is of the opinion that in the present writ petition, the respondent/workman is also entitled to work out his remedy as granted by the Hon'ble Division Bench of this Court in Writ Appeal no.1973 of 2004. Accordingly, the order dated 23.02.2011 passed in C.P.No.2 of 2003 is quashed and the second respondent is at liberty to workout his remedy in the manner known to law.

5.The writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,  
III Additional Labour Court,  
Chennai.

+1cc to M/s.T.S.Gopalan & Co, Advocate Sr.99555

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vsn II[co]  
srg 31/01/2020

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