

In the High Court of Judicature at Madras

Dated : 29.3.2019

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.1168 of 2019

& CMP.No.8214 of 2019

The Management, M/s.Bear
Shoes India Private Ltd., Ambur ...Appellant

Vs

G.Senthilkumar ...Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 20.12.2018 passed in W.P.No.34074 of 2018.

WP.No. No. 34074 of 2018: Writ Petition under Article 226 of the constitution of India praying that in the Circumstances stated therein and in the respective affidavits filed therewith the High court will be pleased to issue a Writ of Certiorari calling for records relating to C.P.No. 173/16 dated 18.04.2018 on the file of the Principal Labour Court, Vellore , Vellore District and quash the same and to order any other remedy.

For Appellant : Ms.S.Thamizharasi

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard the learned counsel for the appellant. Considering the fact that we are inclined to take up the main writ appeal itself for disposal, notice to the respondent is dispensed with.

2. This appeal is filed challenging an interim direction issued by the learned Single Judge in a writ petition filed by the appellant management as against the order passed by the Principal Labour Court, Vellore in C.P.No.173 of 2016 dated 18.4.2018.

3. The direction issued by the learned Single Judge is two fold. The first limb of the directions is to deposit the entire amount as computed by the Labour Court in C.P.No.173 of 2016. In fact, this amount was ordered to be deposited by the appellant management to the credit of the said claim petition. The second limb of the directions is to permit the respondent - workman to withdraw 50% of the amount so deposited. The appellant is aggrieved by the same and has filed this appeal.

4. The learned counsel for the appellant has vehemently contended that the respondent was suspended from service on 14.9.2015, that the domestic enquiry was conducted on various dates and in such circumstances, only Na.Ka.No.782/2015 was filed by one of the unions and that the respondent was under suspension and was receiving the subsistence allowance. He has further contended that the petition either under Section 2(A)(2) or under Section 2(k) was not maintainable for a suspended employee, who was receiving subsistence allowance and that the said stand was affirmed by G.O.(D).No.759 dated 26.12.2016 Labour and Employment Department, which was marked as Ex.P.20. He has also contended that an individual suspension dispute would not become a dispute of the union, that the respondent took part in the domestic enquiry, that the charges against him were 20 in number and that all were serious charges of misconduct. On the above grounds, he would further contend that the respondent - workman should not be permitted to withdraw the amount.

5. In our considered view, the learned Single Judge has exercised his discretion while granting an interim stay in the said writ petition. Unless and until it is shown that there is any perversity in the discretion exercised, this Court cannot interfere with the order passed by the Writ Court. Furthermore, the respondent - workman has been successful before the Labour Court, which computed the monetary benefits, for which, the respondent - workman is legally entitled to. The order passed by the Labour Court is a conditional order and the grounds canvassed before us are all grounds, which the appellant ought to have canvassed before the Writ Court.

6. At this stage, those issues cannot be taken note of, that too for the purpose of interfering with the order passed by the learned Single Judge. The learned Single Judge has perfectly balanced both the interests of the appellant management and the respondent workman. In any event, the withdrawal of 50% of the amount so deposited by the respondent workman is without prejudice to the rights and contentions of the appellant in the said writ petition. For the above reasons, we find no good grounds to interfere with the order passed by learned Single Judge.

7. Accordingly, the above writ appeal is dismissed.
Consequently, the connected CMP is also dismissed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

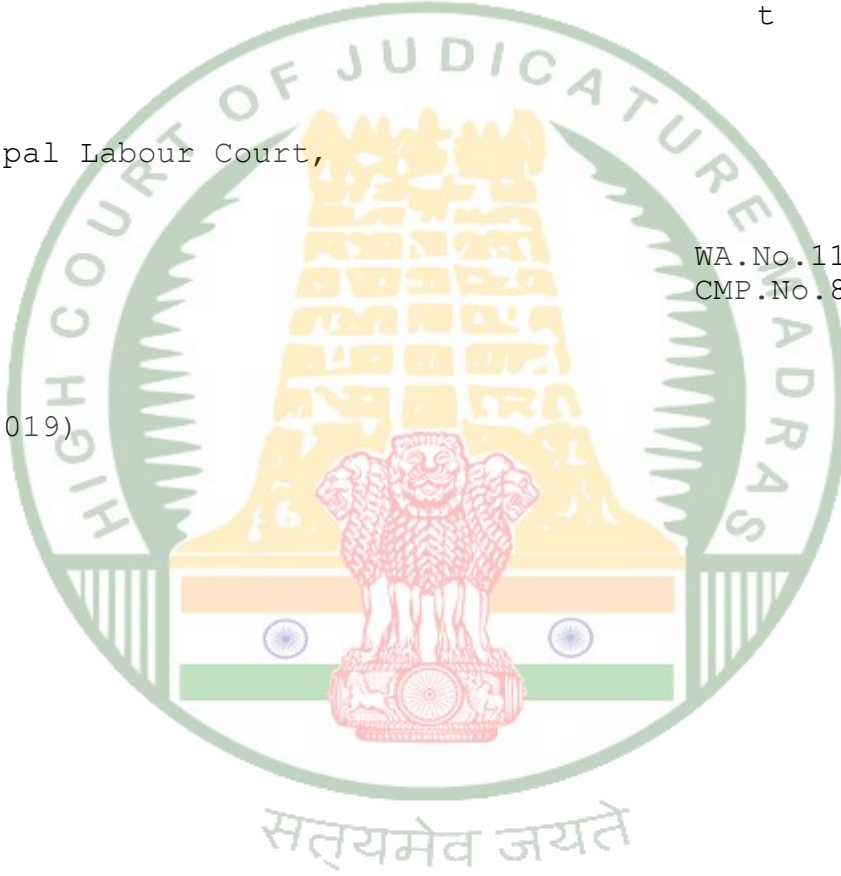
RS
To

t

The Judge,
The Principal Labour Court,
Vellore.

WA.No.1168 of 2019&
CMP.No.8214 of 2019

PPA (CO)
GN (04/06/2019)



WEB COPY