

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.29870 of 2013

M.P.No.1 of 2013

The Management of
Southern Structural Limited,
Pattabiram,
Chennai-600 072.
Rep.by its Authorised
signatory

...Petitioner

vs.

1. Presiding Officer,
First Additional Labour Court,
Chennai.

2.P.Gunasekaran

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the 1st respondent/1st Additional Labour Court, Chennai from proceeding with E.P.No.4 of 2010 in I.D.No.592 of 1999 without prior adjudication of the dues under Section 33-C(2) of the Industrial Disputes Act.

For Petitioner : Mr.Anand Gopalan

For Respondents : M/s.KoviRamalingam
for R2.

सत्यमेव जयते
O R D E R

The relief sought for in the present writ petition is to forbear the 1st respondent/1st Additional Labour Court, Chennai from proceeding with E.P.No.4 of 2010 in I.D.No.592 of 1999 without prior adjudication of the dues under Section 33-C(2) of the Industrial Disputes Act.

2. The learned counsel appearing on behalf of the writ petitioner/Management contended that the Labour Court entertained the execution petition filed under Section 11B of the Industrial Disputes Act, without adjudicating the claims of the workman under Section 33-C(2) of the Industrial Disputes Act. Admittedly, the Labour Court has passed an award in

I.D.No.592 of 1999 dated 28.09.2004 and the same has not been challenged by either of the parties in the present writ petition. Thus, the award passed in I.D.No.592 of 1999 has become final. The Labour Court has passed an award, directing the respondent to pay backwages and all other attendant benefits and also differential terminal benefits, if any, till the date of actual retirement of the petitioner on 30.06.2002 since the petitioner has crossed the age of superannuation on 30.06.2002.

3. The writ petitioner/management claims that the differential terminal benefits are to be paid from 30.11.1998 to 30.06.2002, which is the date of superannuation. However, these issues were not adjudicated and the quantum of liability was also not crystallized. The workman has also not filed petition under Section 33(C)(2) of the Industrial Disputes Act for the purpose of ascertaining the quantum of amount to be paid by the writ petitioner/Management.

4. The learned counsel for the writ petitioner/Management contends that the workman is entitled for the differential terminal benefits from 30.11.1998 to 30.06.2002 and the same was quantified as Rs.3,05,412/-. Even in the affidavit filed in support of the writ petition, the writ petitioner/Management in paragraph No.11, has admitted that the second respondent/workman would be entitled to a sum of Rs.3,05,412/- and the petitioner has been willing at all times to pay the said amount. It is further contended that the petitioner/management is even now willing to deposit the amount if the Court so directs. Thus, the writ petitioner/management in clear terms admitted the amount of Rs.3,05,412/- to be paid to the second respondent/workman towards the differential terminal benefits for the period from 30.11.1998 to 30.06.2002, which is the date of superannuation of the second respondent/workman.

5. In respect of the relief sought for in the present writ petition, this Court is of the considered opinion that, when the award was passed in I.D.No.592 of 1999, the workman ought to have filed a claim petition under Section 33(C)(2) for ascertaining the quantum of amount to be settled by the management in favour of the workman. Admittedly, no such adjudications were done.

6. Under those circumstances, the execution petition was proceeded without ascertaining the amount to be settled in favour of the workman. In the absence of any such adjudication, the Labour Court would not be in a position to pass an order regarding the quantum of amount to be settled. In view of the fact that the writ petitioner/Management has admitted the differential terminal benefit amount of Rs.3,05,412/- mentioned in the affidavit filed in support of the writ petition, this

Court is of the considered opinion that the said admitted amount is to be settled in favour of the workman, along with interest at the rate of 6% per annum from the date of filing of the writ petition till the date of settlement. In respect of the balance amount if any due, the second respondent is at liberty to approach the Competent Court for the purpose of ascertaining the quantum under Section 33(C)(2) of the Industrial Disputes Act. In other words, the second respondent/workman is at liberty to approach the Competent Court by filing a claim petition under Section 33(C)(2) of the Industrial Disputes Act, for the purpose of ascertaining arrears, if any, to be paid. In this view of the matter, the following order is passed:

(i) The writ petitioner/management is directed to pay the differential terminal benefit amount of Rs.3,05,412/- along with interest at 6% per annum from the date of filing of the writ petition till the date of settlement within a period of 8 weeks from the date of receipt of a copy of this Order.

(ii) The second respondent/workman is at liberty to approach the Labour Court by filing a claim petition under Section 33-C (2) for adjudication of the issues in relation to the balance terminal benefits amount, if any, which is to be settled by the writ petitioner/Management.

(iii) The Execution Petition proceedings pending before the 1st respondent in E.P.No.4 of 2010 in I.D.No.592 of 1999 is quashed.

7. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ssb

To

Presiding Officer,
First Additional Labour Court,
Chennai.

+2 ccs to M/s.Kovi Ramalingam Advocate sr77131

+1 cc to M/s.T.S.Gopalan & Co Advocate sr76441

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nrl(co)

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