

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2019

CORAM

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1085 of 2018
and WMP.No.1310 of 2018

The Management of
Bimetal Bearings Limited,
Rep. By its Whole Time Director,
Perandapalli,
Hosur - 635 109.
Krishnagiri District.Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Salem.

2. P. Krishna reddy
3. R. Pannir Selvam
4. A. Pannir Selvam
5. N. Thirumoorthy
6. P. Ravi Kumar
7. P. Palani samy
8. R. Venugopal
9. S. R. Murugan
10. G. Karunakaran
11. N. Karunakaran
12. J. Saravanan
13. B. Thiruvavukarasu
14. K. Nallathambi
15. M. Chinanan
16. S. K. Murugesan
17. P. Jegadisan
18. R. Saminathan
19. D. Karunanidhi
20. S. Vijayakumar
21. K. Velmurugan
22. R. Ravi
23. P. Ramalingam
24. A. Palanisamy
25. K. Sekar
26. P. Thangaraj
27. K. Ammachi

28. C. Kaliyappan
29. K. Ganapathy
30. A. Pushpam
31. G. Mathiyalagan
32. G. Muruganandam
33. C. Perumal
34. V. Balaji
35. B. Subramani
36. B. Balasubramani
37. C. Singamani
38. M. Varadaraji
39. S. Raja Gnanaguru
40. V. Murugesadu
41. S. Palanisamy
42. R. Ravindran
43. R. Palanisamy
44. P. Ramadu
45. A. Appaiyappa
46. R. Srinivasan
47. M. Babu
48. A. Jeyakumar

Respondents 2 to 48

C/o. Bimetal Bearings Employees Union,
Perandapalli,
Hosur - 635 109.
Krishnagiri District

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in C.P.No.30 of 2016 and quash its order dated 14.11.2017.

For Petitioner : Mr.S. Ravindran, Senior counsel for
Mr.S. Bazeer Ahamed

For Respondent : R1 - Labour Court
Mr. N.G.R. Prasad for
M/s. Row and Reddy [R2 to R48]

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O R D E R

The order dated 14.11.2017 passed by the first respondent in C.P.No.30 of 2016 is under challenge in the present writ petition.

2. The writ petitioner is the Management of Bimetal Bearings Limited. The learned Senior counsel appearing on behalf of the writ petitioner made a submission that the petitioner factory is covered under the provisions of the Factories Act, 1948 and Tamil Nadu Industrial Establishment (National and Festival Holidays) Act, 1958. The petitioner factory operates on one general shift and three continuous shifts. The general shift working hours is from 8.30 a.m to 5.00 p.m. The first shift working hours is from 7.30 a.m to 4.00 p.m. The second shift working hours is from 4.00 p.m to 12.30 a.m. and the third shift working hours is from 12.30 a.m to 7.30 a.m.

3. In terms of Section 52 of the Factories Act, the petitioner factory should grant weekly holiday on the first day of the week to the worker. In terms of Section 79 of the Act, in respect of a worker, who has worked for a period of 240 days or more in a calendar year, the petitioner should grant one day leave with wages to the said worker for every 20 days worked by him during preceding calendar year. Section 3 of the Tamil Nadu National and Festival Holidays Act, 1958, provides for 4 National Holidays and 5 festival holidays in each calendar year to the workmen working in the factory. It is further submitted that there is no other Labour Legislation which provides for holiday/leave to be granted by the employer to the workmen working in the factory.

4. It is contended that on the demise of the former President of India, Dr.A.P.J. Abdul Kalam on 27.07.2015, the Government of Tamil Nadu issued G.O.Ms.No.1005 Public (Protocol -I) Department dated 28.07.2015 announcing that 30.07.2015 was declared as a public holiday for all Educational Institutions and for all Government/Private Establishments under the Negotiable Instruments Act, 1881 as a mark of respect to the former President. The said notification issued under Negotiable Instruments Act, 1881, is not applicable to the petitioner's factory.

5. The object of the Negotiable Instruments Act, 1881 is only to define and amend the law relating to promissory notes, bills of exchange and cheques. Section 2(22) of the Negotiable Instruments Act, 1881, defines "Maturity" as follows:

"The maturity of a promissory note or bill of exchange is the date at which it falls due."

6. Section 24 of the Negotiable Instruments Act, 1881, deals with calculating the days for maturity of bill or note payable. Section 25 of the Negotiable Instruments Act, 1881, deals with a situation when the day of maturity is a holiday by stating that "When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed

to be due on the next preceding business day".

Explanation:- The expression "public holiday" includes Sundays and any other day declared by the Central Government, by notification in the Official Gazette, to be a public holiday.

7. A combined reading of preamble, Section 2(22), 24 and 25 of the Negotiable Instruments Act, 1881, would reveal that the power of the Government to declare public holiday under the Negotiable Instruments Act, 1881, is applicable only to Banks and Financial Institutions, by which the maturity date of an instrument would be postponed to the next day of the public holiday by the Government.

8. The learned Senior Counsel while enumerating this position made a submission that on the morning of 30.07.2015, the petitioner factory informed the office bearers of the Bimetal Bearings Employees' Union that it was granting holiday with wages to the workmen who should report for working during general shift and first shift only and that the concerned workmen should report for work for the second shift and third shift. The union office bearers requested that the second shift and third shift should also be granted holiday with wages as well. The petitioner declined the said request, but offered an alternate that if the workmen of the second shift and third shift agreed to work on 02.08.2015, which is a weekly holiday for them, it would exempt these workmen from reporting from work on 30.07.2015. However, the union office bearers did not accept the suggestion of the petitioner factory. 47 workmen (respondents 2 to 48) of the second shift and third shift did not report for work either on 30.07.2015 or on 02.08.2015. By notice dated 03.08.2015, informed that the concerned workmen who did not report for work during the second shift and third shift of 30.07.2015 would not earn wages on the principle of "No work No pay".

9. The learned Senior Counsel reiterated by stating that such a dispute would not attract Section 33C (2) of the Industrial Disputes Act. There was no pre-existing right, which is established by the workmen before the Labour Court. Thus, the Labour Court had erroneously entertained the claim petition under Section 33C(2) of the Industrial Disputes Act. In respect of a disputed issue, the claim petition cannot be entertained as decided by the Courts on several judgments. Thus, the respondents 2 to 48 had not established any pre-existing right so as to entertain a claim petition under Section 33C(2) of the Industrial Disputes Act.

10 The learned Senior Counsel solicited the attention of this Court regarding the notice issued by the petitioner

Management factory on 03.08.2015, which reveals that on 30.07.2015 at about 8.30 a.m, the Management had orally communicated to the office bearers of the union that they will be in a position to declare a holiday only for the first and general shifts as a mark of respect to the former President of India Shri. A.P.J. Abdul Kalam. The request made by the office bearers to declare a holiday for second and third shifts was declined and an alternate suggestion was that in the event of availing the holiday on 30.07.2015, they are bound to work on 02.08.2015. In view of the fact that these workmen had neither attended duty on 30.07.2015 nor on 02.08.2015, the wages were not paid on the principle of "No work No pay".

11. With reference to the award of the Labour Court, the learned Senior Counsel urges this Court by stating that the workmen had not examined any witness before the Labour Court so as to disprove the contentions of the writ petitioner/Management. In the absence of any disproof before the Labour Court, the Labour Court ought not to have relied upon the version of the workmen for the purpose allowing the claim petition. At the outset, it is contended that the Government order declaring holiday would not be applicable to the factory and the writ petitioner Management is governed under the provisions of the Factories Act and therefore, the writ petition deserves to be allowed.

12. The learned Senior Counsel cited the judgment of the High Court of Madras dated 13.04.2007 passed in W.P.Nos. 46533 & 46534 of 2006 in the case of Tamil Nadu Petroproducts Employees Union and Ors. Vs. The Secretary to Government, Rural and Panchayat Raj Department and Ors. The Court observes as follows:

"10. Before going into the maintainability of the writ petition, it must first be ascertained whether there is a right on the part of any employee to avail leave on the date of election in the absence of any statutory guarantee. As already referred to, the leave and holidays for employees working in a private industry is governed by the provisions of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 and so far as the weekly off and the Earned leave are concerned, the same is governed by the Factories Act and the Sick Leave is governed by the Employees' State Insurance Act. Admittedly, the provisions of the N.I. Act have no application to a private industry such as the third respondent. Even the Government Circular, which was further communicated by the second respondent Commissioner has only reference to

the R.P. Act, and, therefore, that has no relevance to local body elections. The constitutional provisions creating the State Election Commission and the relevant legislature and local bodies also do not contain any provision with reference to the right to have a holiday on the day of local body polls and the only question remains is that in the absence of law, whether the workmen are entitled to avail the leave on their own accord and thereafter, question the action of the Management treating the said leave taken by some workmen as leave on loss of pay, then approaching this Court under Article 226 of the Constitution of India against any such deduction, is not permissible."

13. In the case of State Bank of India Vs. Ram Chandra Dubey and Ors [reported in 2001 (1) L.L.N. 58], the Supreme Court considered the scope of claim petition under Section 33C(2) of the Industrial Disputes Act, 1947. The Supreme Court in unequivocal terms held that "the difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered, just and fair on the other hand is vital. The former falls within the jurisdiction of Labour Court exercising powers under Section 33C(2) of the Industrial Disputes Act while the latter does not".

14. Citing these two judgments, the learned Senior counsel is of an opinion that the petition under Section 33C(2) of the Industrial Disputes Act entertained by the Labour Court is not maintainable as the workmen had not established any pre-existing right as well as the Government Order issued declaring holiday would not be applicable to the writ petitioner/Management directly unless the holiday was declared under the Factories Act. In the present case, undoubtedly, the writ petitioner/Management themselves have given a concession in respect of the workmen for general shift and first shift. However, the benefit was not extended to the second and third shifts as the second shift commences from 4.00 p.m and the third shift commences from 12.30 a.m, thus the concession was not extended to these workers. However, an alternate concession was given by asking these workmen to work in a weekly holiday so that the wages can be provided even for the workmen, who worked on second and third shifts.

15. The learned counsel appearing on behalf of the respondents 2 to 48 disputed the contentions of the writ petitioner/Management by stating that once the Government declared the holiday under the Negotiable Instruments Act, 1881, the same should be made applicable to the petitioner

establishment also. The learned counsel for the respondents 2 to 48 relied on the copy of the Government Order wherein, the same was marked to all recognized Service Institutions/ All Chamber of Commerce. Therefore, the said Government Order must be implemented by all concerned including the writ petitioner/Management.

16. The learned counsel for the respondents 2 to 48 further states that the benefit of holiday was extended to the workers who are supposed to work in the general shift as well as the first shift. In view of the fact that the leave was granted to the workmen of the general shift and first shift, the said benefit should be extended to the workmen for the second and third shifts also. The writ petitioner/Management discriminated the workmen based on the shift, which is impermissible. When the benefit of the holiday was extended to the general shift and first shift, it must be extended to the second and third shifts also. In spite of the specific request of the office bearers of the Union, the Management declined the benefit and suggested for an alternate, which was not acceptable as the absolute benefit was extended to the general shift and first shift.

17. The learned counsel for the respondents 2 to 48 relied on the judgment of the Division Bench of this Court in the case of Voltas Volkart Employees Union (rep. by its General Secretary), Madras Vs. Voltas Ltd. (rep. by its Branch Manager), Madras [reported in (1999) 4 L.L.N. 1107] wherein, the Division Bench observed as follows:

"9. A perusal of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958, hereinafter called the Tamil Nadu Act, shows that under Section 3 of the Tamil Nadu Act apart from three National holidays, five other holidays for such festivals as the Inspector may in consultation with the employer and the employees, specify in respect of any establishment, the number of holidays. But the number of holidays is made flexible subject to the rights and privileges to which an employee may become entitled by virtue of any other law, contract, custom, usage etc., which may be more favourable to an employee vide Section of the Tamil Nadu Act. Though the memorandum of settlement, dated 29 April 1983, executed between the management and the union does not specifically deal with how the holidays have to be fixed. Cl.(d) of the Record Note of Understanding reached between the management and the union on 28 December 1984, states as follows:

"The quantum of holidays applicable

to godown and service station will be 12 days a year. In addition, one extra day for the year, if declared under N. I. For extraordinary situation, will be allowed. Any other holiday, under N. I. if declared and made applicable to godown and service station will be fully compensated."

No other material is placed before the Court by either side which may be termed as binding terms in the matter of process of fixation of holidays. There are no specific terms as regards the process by which the holidays are to be fixed and as to whether Saturdays and Sundays could be excluded while fixing holidays. Therefore, the line of enquiry has to be to find out the actual practice which had been in vogue during the past and to see whether such practice could assume the character of a condition of service."

18. It is contended that once the Government issued an order declaring holiday then the rights are established and therefore, the contentions of the writ petitioner/Management that there is no pre-existing right is incorrect. The rights accrued on account of the issuance of the Government order in G.O.(Ms). No.1005 Public (Protocol-I) Department dated 28.07.2015. Thus, the Labour Court is right in entertaining the claim petition under Section 33C(2) of Industrial Disputes Act and there is no infirmity.

19. Relying on the deposition of the Management witness, the learned counsel for the respondent states that the Government order was admitted and further the witness deposed that the benefit of holiday was extended to general shift and first shift. In view of such admission, the benefit of the holiday to be extended to second and third shifts also. In other words, once the holiday is declared to general shift and first shift, the same has to be extended to second and third shifts and there cannot be any discrimination amongst the workers, who all are working on various shifts on the same day. Relying the deposition, the learned counsel for the respondents 2 to 48 states that it is a fit case for dismissal of the writ petition and the award of the Labour Court is to be confirmed.

20. The words of Dr.A.P.J. Abdul Kalam is cited as he said that "Don't declare holiday on my death, instead work an extra day, if you love me".

21. In his book "Pride of Nation Dr. A.P.J. Abdul Kalam" Author Mahesh Sharma states as follows:

"Kalam's Departure from earth: While delivering his lecture at the Indian Institute of Management Shillong on "The Livable Planet Earth", Kalam fainted at around 6.30 p.m on 27 July 2015. Immediately he was taken to Bethania Hospital in a critical condition and was admitted in the intensive care unit. They confirmed that his death was due to a massive cardiac arrest. He has left us at his 83rd age but he will live in hearts of million people forever. Once he said that "Don't declare holiday On My Death, Instead Work an Extra Day, If You Love Me:. To obey his words Government of India announced that there will be seven-day State mourning for the tribute of Dr.A.P.J.Abdul Kalam but there will be no holiday. Let's take a pledge to fulfill all his dreams that he had for our nation and youth."

22. Let us now examine the rights of the workmen with reference to the Government order issued declaring holiday. It is an admitted fact that the Government declared holiday on 30.07.2015, however, the holiday was not declared under the Factories Act or under the provisions of the Tamil Nadu Industrial Establishment (National and Festival Holidays) Act, 1958. The holiday being declared under the Negotiable Instruments Act, the same would not be applicable directly to the factories, which are all governed under the provisions of Factories Act. In this regard, the judgment of this Court dated 13.04.2007 cited supra, enumerates that the leave and holidays for employees working in a private industry is governed by the provisions of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 and so far as the weekly off and the earned leave are concerned, the same is governed by the Factories Act and the sick leave is governed by the Employees' State Insurance Act. This Court earlier observed that the provisions of the Negotiable Instruments Act have no application to the private industry.

23. Even, in case the respondents 2 to 48/workmen claim that they are entitled for wages then it is a disputed issue, which is to be adjudicated by way of an Industrial Dispute and the claim petition cannot be entertained under Section 33C(2) of the Industrial Disputes Act.

24. The adjudication of merits and demerits cannot be undertaken by the Labour Court in a petition filed under Section 33C(2) of the Industrial Disputes Act. The Section 33C(2) stipulates that "where any workman is entitled to receive from the employer any money or any benefit which is capable of being

computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government". Thus, there must be an entitlement and pre-existing right, which is the pre-condition for entertaining a petition under Section 33C(2) of the Industrial Disputes Act. In the absence of any such pre-existing right or entitlement, no petition can be entertained for the purpose of computing the monetary value or the benefits. In this regard, it is relevant to cite the judgment of the 3 judges of the Supreme Court of India in the case of State of U.P and Another vs. Brijpal Singh [2005-III-LLJ 1003]. The relevant paragraphs-10 and 12 of the judgment are extracted as under:

"10. It is well settled that the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages (P) Ltd. v. Suresh Chand [(1978) 2 SCC 144 : 1978 SCC (L&S) 165] held that a proceeding under Section 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows: (SCC p. 150, para 4)

"It is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-

matter of an industrial dispute in a reference under Section 10 of the Act."

In the case of Municipal Corpn. of Delhi v. Ganesh Razak [(1995) 1 SCC 235 : 1995 SCC (L&S) 296 : (1995) 29 ATC 93] this Court held as under: (SCC pp. 241-42, paras 12-13)

"12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the executing court's power to interpret the decree for the purpose of its execution.

13. In these matters, the claim of the respondent workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by

adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of 'equal pay for equal work' being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents."

12. Thus, it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a

proceeding before a forum to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the ID Act. Therefore, the Labour Court had no jurisdiction to adjudicate the claim made by the respondent herein under Section 33-C(2) of the ID Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent workman cannot ask the Labour Court in an application under Section 33-C(2) of the ID Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs Shyamla Pappu that the respondent workman can file application under Section 33-C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28-10-1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33-C(2) of the ID Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33-C(2) of the ID Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23-8-1995 and the order dated 9-1-2002 passed by the High Court in CMWP No. 36406 of 1995 as illegal and uncalled for. We do so accordingly."

25. In the case of Tara and Others vs. Director, Social Welfare and Others [(1998) 8 SCC 671], the Hon'ble Supreme Court observed as follows:-

"2. There is no infirmity in the conclusion reached by the Labour Court on the basis of the decision of this Court in Ganesh Razak [(1995) 1 SCC 235 : 1995 SCC (L&S) 296 : (1995) 29 ATC 93] that the claim made by the appellants is not maintainable under Section 33-C(2) of the Act. This is obvious from the fact that the status and nature of employment of the appellants is itself disputed and unless there is a prior adjudication on merits of the status which is the foundation for making the claim for wages at the specified rates, the question of moving an application under Section 33-C(2) for computation of the wages does not arise. We find that the Labour Court has recorded some findings which may be relevant for the disputed status of the appellants as anganwadi workers/helpers even though it has rightly reached the conclusion that the applications do not lie under Section 33-C(2) of the Act. It is clear that the question of maintainability of the applications under Section 33-C(2) was required to be determined at the threshold and the question of examining the appellants' claim on merits relating to their status could have been gone into thereafter if the applications were held to be maintainable under Section 33-C(2). In view of the conclusion rightly reached by the Labour Court that the applications were not maintainable under Section 33-C(2), its other findings relating to the status and nature of employment of the anganwadi workers/helpers were wholly uncalled for. All such findings are, therefore, not to be construed as deciding any point relating to the status of the appellants."

26. With reference to the facts presented in the lis on hand, admittedly, the Government declared a holiday in G.O.Ms.No.1005, Public (Protocol-I) Department, dated 28.07.2015. However, the said Government Order is inapplicable to the Private Companies, which all are otherwise governed under the provisions of the Factories Act. The writ petitioner-Management even on 30.07.2015, orally informed to the Office

Bearers of the Union that they would be able to declare a holiday only for the general shift and first shift as a mark of respect to the former President Shri A.P.J.Abdul Kalam. As far as the workers of the second shift and third shift, an alternate suggestion and a concession was provided for in the event of agreeing to work on 02.08.2015, the Management was prepared to declare holiday for second shift and third shift on 30.07.2015.

27. Considering the facts and the circumstances, this Court is of the considered opinion that declaring a holiday by the Government under the Negotiable Instruments Act, would not be directly applicable to Private Companies falling under the Factories Act. Thus, it is to be construed that the management granted a concession for the workers of the second shift and third shift, enabling them to avail holiday on 30.07.2015, provided they agree to work on 02.08.2015. It is only an alternate concession provided to the workmen of second shift and third shift. Such a concession can never be construed as a legal right, so as to arrive a conclusion that the workers of the second shift and third shift are entitled for a holiday as per the Government Orders, which was issued under the Negotiable Instruments Act. So also the said concession would not form a pre-existing right for the purpose of filing a claim petition under Section 33-C(2) of the Industrial Disputes Act, 1947.

28. A concession is a form of "privilege". A concession is nothing but a conditional right. A "privilege" or a "concessional right" cannot be interpreted as an absolute right, which alone would constitute a right to file a claim petition under Section 33-C(2) of the Industrial Disputes Act, 1947. The term "right" in Civil Society is defined to mean that "which a person is entitled to have or to do or to receive from others, within the limits prescribed by law". Thus, such a concession or conditional right offered cannot be construed as an absolute right for the purpose of claiming a pre-existing right, enabling the workers to file the claim petition under Section 33-C(2) of the Industrial Disputes Act, 1947.

29. The writ petitioner-Company, admittedly, extended concession in the form of a conditional right. The writ petitioner-Management was ready to accept the request made by the employees' Union to declare a holiday for the workers of the second shift and third shift. However, they imposed a condition that in the event of availing a holiday, then the workers should attend for duty on 02.08.2015. Such a conditional right extended in the form of privilege had admittedly not availed by the Union and the workers. Thus, they have no right to claim wages for the period in which they have not worked. The principles of "No Work, No Pay" would be applicable in all respects.

30. Under these circumstances, the award dated 14.11.2017 passed by the first respondent in C.P.No.30 of 2016 is quashed, the writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

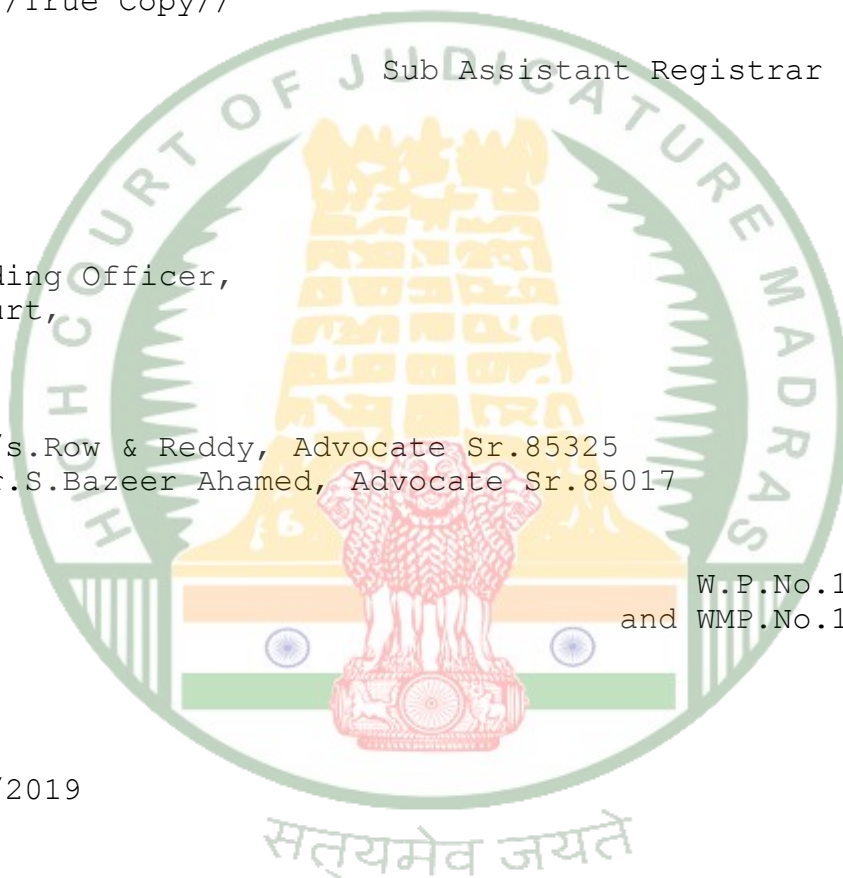
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The Presiding Officer,
Labour Court,
Salem.

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W.P.No.1085 of 2018
and WMP.No.1310 of 2018

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