

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 15.11.2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.39320 of 2015
and
MP.1 and WMP.24849 of 2019

The Management,
Tamilnadu Khadi and Village,
Industries Board,
Represented by its Assistant Director,
No.11, Industrial Estate,
Guindy, Chennai- 32

..Petitioner

vs

1. The Workman,
Represented by the Secretary,
Industrial Estate General Workers Union,
No.11, Lawyer Jaganathan Street,
Guindy, Chennai- 32.

2. The Presiding Officer,
II Additional Labour Court,
Chennai- 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ, order or direction particularly in the nature or writ of certiorari to call for the record in I.D.No.629 of 2003, dated 05.03.2015 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr. S.K. Bose
For Respondents : Mr. R. Vaigai,
Sr. Counsel for
Mr. S. Sakthivel for R1
R2- Labour Court

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O R D E R

The award dated 05.03.2015 passed in I.D.No.629 of 2003 is under challenge in this present Writ Petition.

2. The petitioner is the Management, Tamilnadu Khadi and Village Industries Board. The learned counsel for the writ petitioner made a submission that the first respondent Union raised an industrial dispute before the second respondent seeking permanent status in respect of 10 piece rate workers on the ground that they are working as piece rate workers for a considerable length of time.

3. The learned counsel for the petitioner states that the Labour Court without considering the plea and real fact allowed the dispute against which the present Writ Petition is filed.

4. The other factual details and the grounds raised in this Writ Petition deserve no elaborate consideration in view of the fact that this Court considered all the said grounds in a similar Writ Petition filed by the same Writ Petitioner in W.P.No. 1160 of 2019 challenging the similar award passed in ID.No.489 of 2004 dated 25.07.2008. The Tamil nadu Khadi & Village Industries Board, challenged the said award in W.P.No.1160 of 2009 and against that order the review application was also filed. This Court considered all the facts and circumstances as well as the legal grounds raised by the writ petitioner and passed an order on 04.01.2016. The relevant portions of the order are extracted hereunder:

" 28. As the award of the Labour Court has been affirmed and that the Labour Court has answered the reference in favour of the workers, the employees would be entitled to permanent status on completion of 480 days, in a period of 24 calendar months from the date of their respective initial date of engagement. The employees are deemed to be reinstated into service as permanent employees. Those who are alive and those who have attained the age of superannuation are entitled to backwages and in the case of those who have passed away, their legal heirs are entitled to backwages till the date of death of those employees. As the money value has gone down the employees covered under the Industrial Dispute are entitled to interest

at 12% p.a. On the backwages from the date of reference of the industrial dispute.

29. Accordingly, taking note of the guidelines laid down by the Apex Court in Jaipur Zilla case and the decision of the Supreme Court in Fabril Gasosa Case Vs. Labour Commissioner and others [1997 (3) SCC 150], the Management/Khadi Board is directed to pay the employees/legal heirs of the employees entire backwages based on the last drawn wages, as this Court is of the view that at this distant point of time relegating them to invoke the remedy under Section 33-C(1) of the I.D. Act, 1947 is not going to help anyone and the last drawn wages cannot be a dispute at all. Also, it is open to the employees to invoke Section 33-C(2) of the I.D. Act to claim revision of wages, if any and Section 29 for prosecution. In case, the award of the Labour Court is not implemented by the Management, the Government will have to sanction prosecution against the erring officials falling under Section 32 of the I.D. Act, 1947, taking officials falling under Section 32 of the I.D. Act, 1947, taking note of the principles laid down by the Apex Court in the case of Raj Kumar Gupta V. Lt. Governor, Delhi and another (1997 (1) LLJ 994), authorizing a person identified by the Union to initiate a complaint before the appropriate Criminal Court to bring the issue to a logical conclusion."

5. Even in paragraph 24, this Court made an observation that the management will act as model employer. However the management preferred Appeal in W.A.No.758 of 2016 and the honourable Division Bench of this Court passed a Judgment on 24.07.2018 confirming the order passed by the learned Single Judge and the operative portion of the order of the Division Bench is extracted hereunder:

"21. In fact the Hon'ble Supreme Court in Hari Nandan Prasad & Another Vs. Employer I/R to Management of F.C.I. and another reported in 2014 (2) SCALE 399 had again pointed out the distinction between the powers of the Constitutional courts under Article 32 and Article 226 and the powers of

the Labour Court under specific provisions of the Welfare legislations. We therefore, see no reason to interfere with the conclusions of the learned Single Judge. Once the Labour Court had found that the employees had worked the workmen have in fact worked for 480 days in 24 calendar months, the conferment of permanent status is almost automatic, in view of the provisions of Section 3 of the Tamil Nadu Industrial Establishments (Conferment of permanent status to workmen) 1981 Act.

22. For the foregoing reasons, the Writ Appeal has no merits and hence it is dismissed."

6. The writ petitioner management filed SLP in SLP.No.28541 of 2018 and the Hon'ble Supreme Court dismissed the SLP on 16.11.2018. Thereafter the first respondent workmen filed a Contempt Petition in Cont.P.No.554 of 2019 and in the Contempt Petition the Division Bench passed an order stating that 25 % of the backwages shall be paid to 11 workers who have been reinstated and joined duty at various stations within a period of two weeks and in respect of 15 % of the backwages, the said amount shall be settled within a period of three months.

7. The learned Senior Counsel appearing on behalf of the first respondent workmen made a submission that the workmen are now allowed to report for duty and working with the management, however the current salary as applicable has not been paid and the employees are unable to receive the salary even after reinstatement. Under these circumstances appropriate relief is to be granted to safeguard the livelihood of these workers who have suffered for a considerable length of time on account of pending writ petitions.

8. In view of the facts and circumstances the following orders are passed. The award dated 05.03.2015 passed in I.D.No.629 of 2003 is confirmed. As the workmen were reinterated in service and working, the writ petitioner management is directed to pay each Rs.5,00,000/- to five workmen and to the legal heirs in respect of four workmen within a period of four weeks from the date of receipt of a copy of this order. The balance amount of backwages is directed to be settled within a period of three months from the date of receipt of a copy of this order.

9. The Writ Petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

mrn

To

1. The Presiding Officer,
II Additional Labour Court,
Chennai- 104.

2. The Secretary to Workman
Industrial Estate General Workers Union,
No.11, Lawyer Jaganathan Street,
Guindy, Chennai- 32

3. The Management,
Tamilnadu Khadi and Village,
Industries Board,
Represented by its Assistant Director,
No.11, Industrial Estate,
Guindy, Chennai- 32

+1 cc to Mr.S.K.Bose Advocate sr95655

+1 cc to Mr.S.Sakthivel Advocate sr95318

W.P.No.39320 of 2015
and

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gj (co)
aa09/12/2019