

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.Nos.5774 to 5779 of 2016

The Management,
Jaimurugan Textiles Ltd.,
rep. By its Director, M.Vigneshraj,
Navani Village,
Puduchatram,
Namakkal - 637 018 ... Petitioner in all W.Ps.

vs.

The Presiding Officer,
Labour Court,
Salem. ... 1st Respondent in all W.Ps.

G.Balu ... R2 in W.P.No.5774 of 2016
M.Vadivel ... R2 in W.P.No.5775 of 2016
S.Thirumalai Kumar ... R2 in W.P.No.5776 of 2016
R.Rajendran ... R2 in W.P.No.5777 of 2016
A.Tamilarasu ... R2 in W.P.No.5778 of 2016
M.Kuppusamy ... R2 in W.P.No.5779 of 2016

Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of writ of Certiorari, to call for the records of the 1st Respondent in REP No.110 of 2015 in I.D.No.9 of 2004; REP No.111 of 2015 in I.D.No.11 of 2004; REP No.112 of 2015 in I.D.No.457 of 2004; REP No.113 of 2015 in I.D.No.458 of 2004; REP No.114 of 2015 in I.D.No.8 of 2004 and REP No.115 of 2015 in I.D.No.459 of 2004, respectively, and quash its order dated 11.01.2016.

For Petitioner in all W.Ps. : Mr.S.Ravindran,
Senior Counsel,
for Mr.S.Bazeer Ahamed

For 2nd Respondent in all W.Ps.: Mr.K.V.Shanmuganathan

C O M M O N O R D E R

Challenging the orders dated 11.01.2016 passed by the 1st Respondent/Labour Court in REP No.110 of 2015 in I.D.No.9 of 2004; REP No.111 of 2015 in I.D.No.11 of 2004; REP No.112 of

2015 in I.D.No.457 of 2004; REP No.113 of 2015 in I.D.No.458 of 2004; REP No.114 of 2015 in I.D.No.8 of 2004 and REP No.115 of 2015 in I.D.No.459 of 2004, respectively, the Management has come up with these Writ Petitions.

2. As the issue involved in all these cases is one and the same, the Writ Petitions are taken up for disposal by a common order.

3. According to the Petitioner/Management, on 01.08.2012, workmen, who are arrayed as 2nd Respondent in the above Writ Petitions, were directed to be reinstated in service with 25% backwages. But, the workmen, without reporting for work, initiated recovery proceedings and the Labour Court passed an order of attachment and recovery.

4. It is the case of the Petitioner/Management that their Company has been wound up and the matter is now before the Official Liquidator and that without computing the amount due to the workmen, bypassing the provisions of computation as contemplated under Section 33(c)(2) of the Industrial Disputes Act, 1947 (in short 'the Act'), proceedings under Section 33(c)(1) of the Act is not maintainable. It is their further contention that after passing of the Award, the workmen did not report for work and hence, they are not entitled to any benefits, muchless wages from the date of the Award.

5. Refuting the allegation of the Petitioner/Management that they did not report for work after passing of the Award, the workmen submitted that they have been discharging their duties without any interruption and by an Award dated 01.08.2012, they have been directed to be reinstated with 25% backwages, however, they have been deprived of 75% backwages. It is their contention that the Labour Court cannot straightaway pass orders in Execution Proceedings and it could have ordered execution confining itself to the last drawn wages.

6. Heard the learned counsel for the parties and perused the material documents available on record.

7. The issue for consideration in the case on hand is as to whether the Application under Section 33(c)(1) for recovery of the amount can be filed bypassing Section 33(c)(2) of the Industrial Disputes Act, 1947.

8. It is not in dispute that the workmen before this Court have been directed to be reinstated in service with 25% backwages by an Award dated 01.08.2012 in I.D.Nos.8/2004, 9/2004, 11/2004, 457/2004, 458/2004 and 459/2004, respectively. As the Petitioner/Mill is not functioning with effect from

31.05.2014, the Official Liquidator has taken charge of it. When there is an order of reinstatement with full backwages or proportionate backwages, unless the amount is quantified in the Award, the Application under Section 33(c)(1) is not maintainable. After the introduction of Section 11-B of the Industrial Disputes Act, all the Applications under Section 33(c)(1) will have to be filed only before the Labour Court and the powers of the Government have been vested with the Labour Court for the purpose of execution of the Award, as if, it is a Decree passed by the Civil Court.

9. For the sake of convenience, Sections 11-B, 33(c)(1) and 33(c)(2) of the Industrial Disputes Act, 1947 are extracted hereunder:

"11-B. Power of Labour Court or Tribunal to execute its award by decree. A Labour Court or a Tribunal shall have the power of a civil court to execute its own award as a decree of civil court and also to execute any settlement as defined in clause (p) of section 2 as decree.

33C.Recovery of money due from an employer:

3*[33C. Recovery of money due from an employer.- (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of 4*[Chapter VA or Chapter VB], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had

sufficient cause for not making the application within the said period.

(2) 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; [within a period not exceeding three months:]

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

10. Unless an Award quantifies the amount and the said amount is reflected in the Award, recovery proceedings are not maintainable. The Labour Court will have to compute the amount on an Application filed by a workman under Section 33(c)(2) or by a group of workers under Section 33(c)(2) read with Section 33(c)(5) of the Act and only after determination of the amount, Execution Petition can be maintained.

11. The only exception is that if the claim of the workmen is based on the last drawn wages, they can bypass the proceedings under Section 33(c)(2) and file an Application under Section 33(c)(1) of the Act for the admitted amount or the quantified amount, in terms of the Award or an Application, as the case may be. Proceedings under Section 33(c)(1) read with Section 11-B, Section 33(c)(2) read with Section 33(c)(5), Sections 29 and 31 of the Industrial Disputes Act, are independent of each other. For computation of amount, workmen, either individually or as a group, can file an Application as contemplated under Section 33(c)(2) or Section 33(c)(5) of the Industrial Disputes Act. Recovery of the admitted amount under Section 33(c)(1) can be invoked bypassing Section 33(c)(2) of the Act.

12. Dehors the above two provisions, it is needless to state that if any complaint is made by the workmen under Section 29 of the Industrial Disputes Act, 1947, persons falling under Section 32 of the Act need to be prosecuted and the Government shall sanction prosecution taking note of the decision of the

Apex Court in the case of Raj Kumar Gupta vs. Lieutenant Governor, Delhi reported in 1997 (1) LLJ 994. It is further made clear that if the admitted amount is not paid, it is open to the workmen to seek remedy under Section 33C(1) of the Industrial Disputes Act, 1947 in view of the decision of the Apex Court rendered in the case of Fabril Gasosa vs. Labour Commissioner reported in (1997) 3 SCC 150.

13. It is seen that the Petitioner/Management has deposited a sum of Rs.1,00,000/- to the credit of I.D.Nos.8/2004, 9/2004, 11/2004, 457/2004, 458/2004 and 459/2004, respectively, payable to each of the workmen in the case on hand and after the computation is decided, including the fact as to whether the employees reported for work or not, which has got to be decided only after tendering evidence, straightaway invoking the recovery proceedings under Section 33 (c)(1) is not maintainable. Now, that the matter is pending before the Official Liquidator, it is open to the workmen herein to make necessary Application under the Companies Act and seek for adjudication. It is made clear that the amount already deposited need not be paid to the workmen by the Official Liquidator, till a decision is taken in this regard.

14. In view of the above, the impugned order dated 11.01.2016 passed in REP No.110 of 2015 in I.D.No.9 of 2004; REP No.111 of 2015 in I.D.No.11 of 2004; REP No.112 of 2015 in I.D.No.457 of 2004; REP No.113 of 2015 in I.D.No.458 of 2004; REP No.114 of 2015 in I.D.No.8 of 2004 and REP No.115 of 2015 in I.D.No.459 of 2004, respectively, are set aside and the Writ Petitions are allowed with the above direction and observation. No costs. Consequently, connected W.M.P.Nos.5112 to 5117 of 2016 are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.S.Bazeer Ahamed, Advocate Sr.73069

+1cc to Mr.K.V.Shanmuganathan, Advocate Sr.72830

W.P.Nos.5774 to 5779 of 2016

jp[co]
srg 03/10/2019