

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2019

CORAM

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

W.P.No.28827 of 2017
and
W.M.P.No.31033 of 2017
and
W.M.P.No.20175 of 2018

Kasthuri & Sons Ltd.,
859-860, Anna Salai
Chennai 600 002
Represented by its Vice President(Legal)

..Petitioner

Vs.

1. The State of Tamil Nadu
Rep.by Secretary to Government
Labour and Employment (I2) Department
Fort St.George
Chennai - 600 009
2. The Joint Commissioner of Labour,
(Conciliation)
DMS Compound
Teynampet, Chennai - 600 006
3. The Presiding Officer,
Principal Labour Court,
Chennai.
4. S.Madhavan
5. Ravi
6. S Sankaran
7. M Dhanushkodi
8. P Raghu
9. P Prabhu
- 10.P Venkatesan
- 11.S Srinivasan
- 12.K Rajendran
- 13.M S Arivodainambi

..Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for records from the First Respondent in respect of G.O.(ID).No.441 dated 21.07.2016, quash the same.

For Petitioner : Mr.G.Anand Gopalan
For M/s.T.S.Gopalan and Co.

For Respondents : Mr.J.Ramesh
Additional Government Pleader
[For R1 & R2]

R3 - Labour Court
R5 and R8 - given up
R4, 6, 7, 9 to 13 - Party-in-Person

O R D E R

The order passed by the 1st respondent in G.O(ID).No.441 dated 21.07.2016 is sought to be quashed in the present writ petition.

2. The writ petitioner is Kasthuri & Sons limited. The petitioner company states that they are in the business of publishing Newspapers for more than 142 years. The wages and benefits extended by the petitioner to its employees have always been very benevolent and in fact, the wages and benefits paid by the petitioners are often taken as a bench mark for fixation in the print media publishing Industry. The workmen of the writ petitioner Establishment is represented by a Union for more than 50 years.

3. The Recommendations of the Majithia Wage Boards for Working Journalists and Non-Journalist Newspaper Employees in Newspaper Establishments are submitted and the Award shall be deemed to have come into force on the first day of July 2010. As the award had contemplated effective date of revision as 01.07.2010. it has given an illustration, stating that the average of July 2009 to June 2010 should be taken to calculate the dearness allowance. However, the Hon'ble Supreme Court of India had held that the date of implementation of the Award would be 11.11.2011 and not 01.07.2010. As a result, the average of November 2010 to October 2011 had to be taken as the basis for calculation of dearness allowance instead of July 2009 to June 2010. The Hon'ble Supreme Court having adjudicated the matter, the matter having reached finality and all payments made by the petitioner to its employees in accordance with the

Supreme Court order, the third Respondent cannot be permitted to interpret the order of Hon'ble Supreme Court, is the contention raised on behalf of the writ petitioner.

4. The case of the workmen is that the 4th Respondent filed a petition before the Joint Commissioner of Labour (2nd Respondent), stating that even though effective date of implementation was moved to 11.11.2011, for the purposes of calculation of dearness allowance, the average of July 2009 to June 2010 should be reckoned. In other words, the claim of the 4th respondent was that the order of the Hon'ble Supreme Court of India as far as the dearness allowance is concerned should date back to 01.07.2010 and not 11.11.2011. The 2nd respondent did not entertain the dispute and informed that if there was a pre-existing right, he may approach the Labour Court for computation. The 4th respondent had stated that he had filed it on behalf of 181 persons.

5. Mr.M.Dhanushkodi / 7th respondent appearing in person, on behalf of the workmen, opposed the contentions of the writ petitioner by stating that they are not questioning the Award itself. They are not questioning the date of implementation determined by the Hon'ble Supreme Court of India which is 11.11.2011. The only grievances of these workmen are that the calculation of the Dearness Allowances has been erroneously made by the Management and therefore, they have filed an application before the Labour officer for Conciliation. Thus, it is made clear that the settled issues are not attempted to be re-opened by the workmen. Contrarily, they raised a grievance that the calculation of the Dearness Allowance is being erroneously made and that made the workmen to approach the Conciliation officer, which was accepted and a reference is made by the Government which is under challenge in the present writ petition.

6. The Hon'ble Supreme Court of India also passed an order in Writ Petition (Civil).No.246 of 2011 dated 7th February 2014, which reads as under:

"73. In view of our conclusion and dismissal of all the writ petitions, the wages as revised/determined shall be payable from 11.11.2011 when the Government of India notified the recommendations of the Majithia Wage Boards. All the arrears up to March, 2014 shall be paid to all eligible persons in four equal instalments within a period of one year from today and continue to pay the revised wages from April, 2014 onwards.

74. In view of the disposal of the writ petitions, the Contempt Petition is closed."

7. Thus, it is made clear that the wages as revised / determined shall be payable from 11.11.2011 onwards. The workmen are not disputing or raising any dispute with reference to the orders of the Hon'ble Supreme Court of India as well as date fixed by the Hon'ble Supreme Court of India. The said position is made clear before this Court by Mr.M.Dhanushkodi, representing the workmen.

8. The 7th respondent, in person, in clear terms reiterated that the grievances of the workmen are only with reference to the calculation to be made pursuant to the Award as well as the orders of the Hon'ble Supreme Court of India.

9. Let us now look into the impugned Reference made by the Government in G.O.(ID).No.441 dated 21.07.2016, which read as follows:

"2. As the quantum of dearness amount payable to the petitioner Thiru S.Madhavan and 181 other employees as per the recommendations of the Majithia Wage Board is disputed the Commissioner of Labour, in the letter second read above, has recommended that the following issue may be referred for adjudication to the Principal Labour Court, Chennai under Section 17(2) of the Working Journalists and other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

ISSUE OF REFERENCE

To decide whether the Petitioner Thiru S.Madhavan and 181 others are entitled for the difference of dearness allowance for the period from 11.11.2011 as per the Award of the Majithia Wage Board from the management of "The Hindu" Chennai. If so, to what remedy they are entitled to."

10. Reading of the issue of Reference, it is clear that the Government issued orders, to decide whether the Petitioner Thiru S.Madhavan and 181 others are entitled for the difference of dearness allowance for the period from 11.11.2011 as per the Award of the Majithia Wage Board from the management of "The Hindu" Chennai. If so, to what remedy they are entitled to. The issue of Reference is unambiguous that the Government also has not made any reference in respect of the issues decided in the Award and the orders passed by the Hon'ble Supreme Court.

11. Even, the period from which the Dearness Allowance is to be paid, is mentioned as 11.11.2011, which was upheld by the Hon'ble Supreme Court of India.

12. The learned counsel appearing on behalf of the writ petitioner raised an apprehension that Labour Court is not empowered to adjudicate the Award as well as the date fixed by the Hon'ble Supreme Court of India regarding the implementation of the Award. The 7th respondent / Workman, appearing in person, in clear terms, reiterated that they are not intending to adjudicate either the Award or the issues decided by the Hon'ble Supreme Court. Contrarily, the workman in person, made a submission that they are willing to adjudicate only with reference to the errors in the calculation and the reference is also restricted to that effect and there is no adjudication in respect of the Award or with reference to the findings of the Hon'ble Supreme Court of India.

13. Perusal of the Government order, it is also made clear that whether the petitioner is entitled for the dues of Dearness Allowance. Thus, the Labour Court is entitled to adjudicate the correctness or otherwise of the calculation of Dearness Allowance strictly in accordance with the Award and as stipulated in the Award as well as the findings of the Hon'ble Supreme Court of India in this regard. Thus, the Reference is restricted to the extent of adjudicating the correctness or otherwise of the calculation of Dearness Allowance, made by the Management, with reference to the Award as well as the findings of the Hon'ble Supreme Court of India.

14. This being the scope of the impugned order of Reference passed in G.O.(ID).No.441 dated 21.07.2016, this Court is not inclined to quash the order. The clarification now made in this order, shall be followed by the Labour Court strictly and the Labour Court is directed to confine the issues as clarified earlier.

15. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Labour and Employment (I2) Department
Fort St.George, Chennai - 600 009

2. The Joint Commissioner of Labour,
(Conciliation)
DMS Compound
Teynampet, Chennai - 600 006

3. The Presiding Officer,
Principal Labour Court,
Chennai.

+2cc to Mr.M.Dhanushkodi, Advocate, S.R.No.87528
+1cc to M/s.T.S.Gopalan and Co., Advocate, S.R.No.87502
+2cc to Mr.S.Madhavan, Advocate, S.R.No.87529
+1cc to the Government Pleader, S.R.No.87785

W.P.No.28827 of 2017

VGII (CO)
CS/28/11/2019