



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P. (MD) .No.321 of 2017

and

W.M.P. (MD) .No.217 of 2017

The Commissioner,
Nagercoil Municipality,
Office at Municipality Office Building,
Nagercoil Post,
Agastheeswaram Taluk,
Kanyakumari District. ... Petitioner

Vs.

1) The Presiding officer,
Labour Court,
Tirunelveli.

2) V.Kumar ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the proceedings of the 1st respondent in Claim Petition No.11 of 2016, dated 07.09.2016 and quash the same.

For Petitioner	: Mr.P.Athimoolapandian
For Respondent No.2	: Mr.R.Murugan
For R3	:No Appearance

O R D E R

This Writ petition has been filed challenging the order dated 07.09.2016, passed by the first respondent in Claim Petition No.11 of 2016.

2. It is the case of the petitioner Municipality that the second respondent filed C.P.No.11 of 2016, before the first respondent claiming a sum of Rs.4,34,325/- towards the wages payable till the date of retirement of the second respondent.

3. It is the case of the petitioner that subsequent to the labour court award dated 08.02.1994, passed in favour of the second respondent in I.D.No.186 of 1992, directing the petitioner to reinstate him into service, the said V.Kumar, did not approach the petitioner for reinstatement as per the said labour Court award. According to the petitioner, he filed Claim Petition No.292 of 1994, before the Labour Court, claiming a sum of Rs.1,05,909/- as unpaid wages which was allowed by the Labour Court on 24.07.2007. Thereafter, the petitioner has also paid the said amount of Rs.1,05,909/- to V.Kumar, on 24.07.2007. According



to the petitioner, the second respondent/ V.Kumar once again filed a claim petition, seeking payment of unpaid wages from the date of award to the date of retirement(08.02.1994 to 12.05.2009). But, the first respondent Labour Court, by the impugned order dated 07.09.2016, passed in Claim Petition No.11 of 2016, allowed the claim petition filed by the petitioner, who is the worker/second respondent, by directing the petitioner Municipality to pay a sum of Rs.4,34,325/-, within one month, failing which, directed the Municipality to pay interest at the rate of 6% p.a. till the date of realisation. Aggrieved by the impugned order dated 07.09.2016, passed by the first respondent in Claim Petition No.11 of 2016, the instant writ petition has been filed.

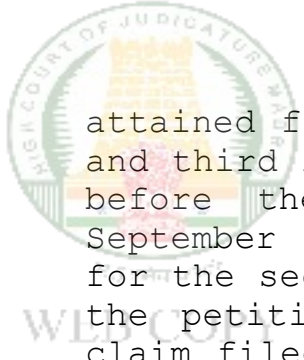
4.Heard Mr.P.Athimoolapandian, learned counsel for the petitioner and Mr.R.Murugan, learned counsel for the second respondent.

5.The learned Counsel for the petitioner drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of **A.K.Soumini Vs. State Bank of Travancore and another reported in (2003) 7 SCC 238** and referring to the said judgment submitted that the principle of "No Work No Pay" will apply to the facts of the instant case as the petitioner's employee V.Kumar, did not work with them subsequent to the award of the labour Court dated 08.02.1994, directing reinstatement of V.Kumar, into service of the petitioner. Further, the learned Counsel for the petitioner submitted that subsequent to the award of the Labour Court dated 08.02.1994, passed in I.D.No.186 of 1992, a sum of Rs.1,05,909/- was paid to V.Kumar, pursuant to the order passed in Claim Petition No.292 of 1994 by the Labour Court on 24.07.2007.

6. According to the learned Counsel for the petitioner, since V.Kumar has already been paid his unpaid wages pursuant to the order dated 24.07.2007 in Claim Petition No.292 of 1994, he is not entitled to file one more claim petition seeking for monetary unpaid wages payable to him, who has already been paid earlier by the petitioner.

7.Per contra, learned Counsel for the second respondent would submit that subsequent to the award dated 08.02.1994, passed by the Labour Court in I.D.No.186 of 1992, the petitioner filed a writ petition challenging the said award in W.P.[MD]No.6319 of 2009, which was dismissed by this Court on 10.06.2010 and the order of dismissal passed in the writ petition was also challenged by the petitioner before the Division Bench of this Court in W.A.[MD]Nos.1332 and 3333 of 2013, which also came to be dismissed on 03.01.2014. According to the learned Counsel for the second respondent, these facts have been suppressed in the writ petition.

8. After the Labour Court award passed in favour of V.Kumar



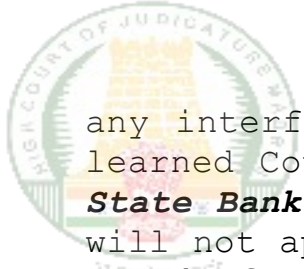
attained finality by the dismissal of the writ appeal, the second and third respondents filed a Claim Petition in C.P.No.11 of 2016, before the Labour Court for the unpaid wages payable from September 1994 to August 1998. According to the learned Counsel for the second respondent, the payment already made to V.Kumar, by the petitioner was only upto September 1994 and therefore, the claim filed by the second respondent for the balance period up to the date of award to date of retirement and he is entitled for the same. According to him, the Labour Court has rightly allowed the claim petition.

Discussion:

9. Admittedly, in the instant case, the unpaid wages were paid by the petitioner to V.Kumar, the employee subsequent to the passing of the Labour Court award dated 08.02.1994 passed in I.D.No.186 of 1992, only upto September 1994. The Labour Court award dated 08.02.1994 passed in I.D.No.186 of 1992 also attained finality by the dismissal of the writ petition as well as the subsequent dismissal of the writ appeal in the year 2014. V.Kumar, the petitioner's employee retired on 12.05.2009. But the unpaid wages were admittedly paid to him only up to September 1994. Since the unpaid wages were not paid from September 1994 to August 1998 being the month on which the second respondent retired, he filed the claim petition before the Labour Court in Claim Petition No.11 of 2016 for the payment of the balance unpaid wages for the period from September 1994 to August 1998.

10. As seen from the records, due to the pendency of the proceedings before this Court by way of writ petition and the subsequent writ appeal, the second and third respondents could not file the claim petition before the Labour Court seeking unpaid wages payable to V.Kumar, for the period from the date of award to the date of retirement (08.02.1994 to 12.05.2009), as the writ appeal came to be dismissed only in the year 2014. Even though, the claim petition was filed by him only in the year 2016, after the dismissal of the writ appeal in the year 2014, that delay is not an enormous delay and considering the fact that the Industrial Disputes Act is a welfare legislation and that too when several proceedings were initiated by the petitioner to challenge the labour court award dated 08.02.1994, the contention of the learned Counsel for the petitioner that there is two years unexplained delay in filing the claim petition cannot be countenanced by this Court. V.Kumar is only a scavenger doing menial work and he is an illiterate person.

11. For the foregoing reasons and considering the fact that it is an admitted case that unpaid wages payable to V.Kumar was not paid by the petitioner for the period from the date of award to retirement (08.02.1994 to 12.05.2009), the impugned order of the Labour Court directing the petitioner to pay a sum of Rs.4,34,325/- is a correct and valid order and does not call for



any interference by this Court. The judgment relied upon by the learned Counsel for the petitioner in the case of **A.K.Soumini Vs. State Bank of Travancore and another** reported in (2003) 7 SCC 238 will not apply to the facts of the instant case as admittedly, the award of the Labour Court attained finality only in the year 2014 and the petitioner had already paid the employee the unpaid wages subsequent to the Labour Court award upto January 1994 and for the balance period till the date of retirement (i.e.,) May 2009, the petitioner has not paid the unpaid wages payable to the V.Kumar/second respondent.

12.In the result, there is no merit in this Writ Petition. Accordingly, the **Writ Petition is dismissed**. However, there shall be no order as to costs. Consequently, the connected W.M.P.(MD). No.217 of 2017 is closed.

13. At this stage, it is represented by the learned counsel for the second respondent that the petitioner has deposited a sum of Rs.25,000/- to the credit of C.P.No.11 of 2016, pursuant to an interim order granted by this Court on 06.01.2017 in W.M.P.[MD] No.216 of 2017 in W.P.[MD]No.321 of 2017 and he seeks permission of this Court to withdraw the said amount. Accordingly, the second respondent is permitted to withdraw the said amount lying to the credit of the said Claim Petition and recover the balance amount from the petitioner as per the impugned order dated 07.09.2016 passed in C.P.No.11 of 2016 by the first respondent Labour Court.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar(CS)

To
The Presiding officer,
Labour Court,
Tirunelveli.

+1 CC to M/s.R.MURUGAN, Advocate (SR-60212[F] dated 10/04/2019)

+1 CC to M/s.P.ATHIMOOLAPANDIAN, Advocate (SR-60510[F] dated 11/04/2019)
STS

Order made in
W.P. (MD) .No.321 of 2017
10.04.2019

_KM/ (27.04.2019) 4P 4C