HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.26893 of 2005

ORDER:

This writ petition is filed seeking a Writ of Certiorari to call for the records relating to and connected with the orders passed by the 1st respondent in M.P.No.60 of 2003 dated 29.10.2005, as illegal, arbitrary and unjust and to quash the same holding it as arbitrary, illegal, contrary to law, perverse and without jurisdiction.

Heard Sri A.K. Jaya Prakash Rao, learned counsel for the petitioner, and the learned Government Pleader for Labour.

It has been contended by the petitioner that the 2nd respondent had filed M.P.No.60 of 2003 under Section 33 (c) (2) of the Industrial Disputes Act (for short, 'the Act'), claiming various benefits totalling to Rs.2,04,400/-, and the 1st respondent had partly allowed the same directing the respondent therein to pay an amount of Rs.72,900/- to the petitioner therein i.e., the 2nd respondent herein. Challenging the same, the present writ petition is filed.

The petitioner had contended that the 2nd respondent had worked with the petitioner as Helper from 1989 to 31.07.2003 and thereafter the 2nd respondent has left the service on his own accord and, after quitting the job with the petitioner, the 2nd respondent has requested the petitioner to issue a service certificate showing him as a Supervisor, so that the 2nd respondent can get a better employment in other establishments. Believing the 2nd respondent and in good faith, the petitioner issued service certificate as per the request of the 2nd respondent on humanitarian grounds. The petitioner issued the service certificate showing that the 2nd respondent was working as Supervisor. All the dues to which the 2nd respondent was

claiming in M.P.No.60 of 2003 were all settled, but the 2nd respondent had filed the M.P claiming enhanced wages in the cadre of Supervisor, and the 1st respondent had erroneously allowed the M.P vide orders dated 29.10.2005 holding that the 2nd respondent is entitled for an amount of Rs.72,900/-.

Learned counsel for the petitioner submitted that the 1st respondent had not appreciated any of the contentions raised by the petitioner and it mechanically allowed the M.P preferred by the 2nd respondent. Learned counsel further submitted that as there is dispute between the petitioner and the 2nd respondent concerning the engagement of the 2nd respondent as Supervisor and also his termination, the 1st respondent had no jurisdiction to adjudicate the matter under Section 33 (c) (2) of the Act, as the issues which are already decided in the form of settlement or agreement only can be adjudicated under Section 33 (c) (2) of the Act, therefore, the order dated 29.10.2005 in M.P.No.60 of 2003 passed by the 1st respondent is without jurisdiction and the same is liable to be set aside.

Learned counsel appearing for the petitioner had relied upon a judgment rendered by the Honourable Supreme Court in **Municipal Corporation of Delhi v. Ganesh Razak**[1], wherein the Supreme Court has categorically held as under:

> "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 recognized 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

[1] (1995) 1 SCC 235

power under Section 33-C (2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."

Relying upon the above judgment, learned counsel for the petitioner contended that the 1st respondent ought not to have allowed the M.P vide orders dated 29.10.2005.

Learned Government Pleader appearing for the respondents had submitted that the 1st respondent has relied upon G.O.Ms.No.33 dated 06.03.1991 and calculated the minimum wage in favour of the workman and it was also observed by the 1st respondent that all establishments including that of the petitioner were to implement G.O.Ms.No.33 dated 06.03.1991. Learned Government Pleader further submitted that based upon the vested right of the 2nd respondent in terms of the said G.O., the 1st respondent has rightly adjudicated the matter and passed the order holding that the 2nd respondent is entitled to an amount of Rs.72,900/- as per the statutory laws, however the total claim of the 2nd respondent was not accepted. Therefore, there are no merits in the writ petition and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions made by learned counsel for both parties, is of the considered view that the 1st respondent has rightly passed the impugned orders in favour of the 2nd respondent, relying upon G.O.Ms.No.33 dated 06.03.1991 and other statutory benefits to which the 2nd respondent is entitled. Further, the 1st respondent, on its own, has not adjudicated the matter on disputed facts and based upon the service certificate and the statutory Rules, it had allowed the M.P preferred by the 2nd respondent and held that the 2nd respondent was rightly entitled to an amount of Rs.72,900/-. The judgment relied upon by learned counsel for the petitioner has no application in the present case. Thus, there

are no merits in the writ petition and the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

28th June 2019
v v