

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9/3/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.1053 of 2019

The Senior General Manager
Heavy Alloy Penetrator Project
Ministry of Defence
Trichy 25.

...Appellant /1st Respondent

Vs

1. The Central Government Industrial Tribunal
-cum-Labour Court
rep. By its Presiding Officer
Shastri Bhavan
Chennai.
2. S. Amalraj
3. R. Settu
4. M. Arumugam
5. K. Periyasamy (Deceased)
6. M. Joseph
7. A. Vellaismy
8. A. Philomindoss
9. K. Murugesan
10. M. Kumaravadivel
11. R. Christopher
12. S. Arumugam
13. Y. Selvaraj
14. C. Chinadurai
15. M. Padmanaban
16. R. Kamalakannan
17. E. Ganapathy (Deceased)
18. S. Marimuthu
19. V. Selvendiran
20. C. Ramalingam
21. T. Malarkolundu
22. N. Rajendran (Deceased)

23. S. Aris Yuvaraj
24. A. Rathinam
25. M. Thangaraj
26. Meenambal
27. Indira
28. Priyanka
29. Rajiv
30. Sonia

(R.R.26 to 30 were brought on record as LR of the deceased R.17, vide order of the Court dated 19/9/2019 made in C.M.P.No. 20455 of 2019 in W.A.No.1053 of 2019 by NKKJ and PVJ)

31. Sumathi
32. Prakash
33. Preethi
34. Aarthi

(R.R.31 to 34 were brought on record as LR of the deceased R.22, vide order of the Court dated 19/9/2019 made in C.M.P.No. 20458 of 2019 in W.A.No.1053 of 2019 by NKKJ and PVJ)

35. Abirami
36. Swetha
37. Manod
38. Valliammai

... Respondents

(R.R.35 to 38 were brought on record as LR of the deceased R.9, vide order of the Court dated 19/9/2019 made in C.M.P.No. 20463 of 2019 in W.A.No.1053 of 2019 by NKKJ and PVJ)

Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.34064 of 2012 dated 1/8/2018.

WP.No.34064 of 2012:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records from the 2nd respondent and quash the order of the 2nd respondent passed in CP : 04/2012 dated 26.10.12 consequently direct the 1st respondent to extend the benefits to the petitioners from 1998 to 2009 notionally and also direct to pay the wages from 8.5.2009 to 13.3.2012 on par with the regular employees

For appellant ... Mr.C.V.Ramachandramurthy
For respondents ... Mr.Ravikumar Paul
Senior Counsel
for Mr.N.Paul Sundar Singh
for R.R.2, 4, 6 to 15, 18 to
21, 23 to 25 and 26 to 38

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J U D G M E N T

SUBRAMONIUM PRASAD, J

Challenge in the writ appeal is to the order dated 1/8/2018, passed in W.P.No.34064 of 2012, by which a learned Single Judge has set aside the order dated 26/10/2012 passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai, which has rejected the claim petition of the respondents herein filed under Section 33 (C) of the Industrial Disputes Act.

2. Respondents/writ petitioners were working with the appellant. They were engaged as Sanitary and Cleaning workers on contractual basis. Advertisement was issued by the appellant inviting applications for recruitment to the very same post on which the petitioners were working. This Notification was challenged by the respondents workmen stating that their services should be regularised and they should be given the jobs rather than issuing advertisement for filling up the posts which were being occupied by them. Challenge was made before the Central Administrative Tribunal by filing O.A.No.489 of 1997.

3. By an order, dated 17/6/1998, the Central Administrative Tribunal, directed the appellants herein to evolve a scheme for absorption of the contract workers/workmen, who were working on contract basis. The Tribunal held that till a scheme is framed and the workmen are absorbed, the appellant herein is free to select workmen amongst the candidates sponsored by the employment exchange and that it should be made clear to the so selected workmen that continuance of their services in the organisation will be subject to the rights of the persons who are entitled to get absorption as permanent workers i.e., the workers who had approached the Tribunal.

4. This order was challenged in this Court in W.P.No.19713 of 1998. This Court by its judgment dated 5/11/2004, directed the Central Government to refer the matter under Section 10 of the Industrial Disputes Act to the Industrial Tribunal and directed the Industrial Tribunal to pass award. Accordingly,

the matter was referred to in I.D.No.9 of 2008, referring the following question to the Tribunal:-

"Whether the demand of Sri.S.Amalraj and 23 other workers, as per Annexure for absorption in the services of the management of M/s. Heavy Alloy Penetrator Project, Trichy, is legal and justified? If yes, to what relief the workmen are entitled to?"

5. Tribunal by an award dated 8th May 2009, answered the reference, directing the Management appellant herein to regularise the services of the workmen and to extend to them all the benefits at par with their counter part workmen who had been appointed on regular basis. The labour Court, directed the appellant to commence the process of regularisation of the workmen with immediate effect.

6. The order of the labour Court was challenged in W.P.No.20682 of 2009 in this Court. This Court, by judgment dated 5/3/2010, rejected the challenge and directed the appellant to implement the award within a period of two months from the date of receipt of a copy of the order. The matter was thereafter, taken up in W.A.No.473 of 2011, that was dismissed on 17/3/2011.

7. The appellant, thereafter, filed a Special Leave Petition being SLP (C) CC.No.16158 of 2011 and the Hon'ble Supreme Court, by its order dated 21/10/2011, rejected the SLP. Order of the Tribunal, dated 17/6/1998 has therefore, attained finality whereby the workmen were entitled to be regularised.

8. The Management did not comply with the order of the Tribunal, which resulted in Contempt Petition No.975 of 2011. Five workmen filed a Contempt Petition. The General Manager of the appellant, filed an affidavit stating that direction of the Tribunal has been complied with. Out of five employees, three employees, who have been directed to undergo medical initiation to assess their medical fitness. After disposal of the Contempt Petition, appellant issued appointment orders. It was stated in the appointment order that the workmen are being offered an appointment to the post of Semi Skilled (Labourer) under Group "C" category carrying initial pay of Rs.5200/- p.m., in the Pay Band PBI of Rs.5200-20200 + Grade Pay of Rs.1800/- with other allowances as admissible under the rules from time to time with effect from 8/5/2009 notionally as applicable for candidates meeting the prescribed minimum qualification as envisaged in 6th CPC recommendations and orders thereon. The said order was accepted by the workmen and consequently, they assumed charge.

9. The workmen/respondents herein filed a petition under Section 33 (C) (5) of the Industrial Disputes Act, claiming a sum of Rs.3,46,844/- each to the workmen accrued as per the order of the Tribunal in I.D.No.9 of 2008, dated 8/5/2009.

10. It was the stand of the respondents that they are entitled to notional benefits from 17/6/1998 to 7/5/2009 and thereafter, monetary benefits from 8/5/2009 to 13/3/2012 i.e., the date of appointment order. It is stated that the workmen are entitled to the benefit of the award which was passed from 8/5/2009 which has attained finality. It is the contention of the workmen that monetary benefits from 8/5/2009 could not have been denied to the workmen and the workmen could not have been denied the monetary benefit between the date of award to the orders of the actual appointment. Industrial Tribunal rejected the claim of the workmen stating that the petition under Section 33 (c) (2) was not maintainable apart from holding that the Tribunal also held that employees initially had been staking their claim for regularisation and their rights were accepted by the Tribunal in the award dated 8/5/2009. Industrial Tribunal also held that award does not contemplate regularisation from the date of passing of the award rather it only directs that the management will regularise the services of the workmen. The Tribunal was of the opinion that appointment order has been accepted by the workmen without any objection and after having accepted the appointment and after having come to serve the Management, they cannot now turn around and claim higher benefits.

11. This order was challenged by the workmen by filing W.P.No.34064 of 2012. The learned Single Judge reversed the award directing the appellant herein to workout the claim of entitlement from the date of regularisation/permanent absorption which was given notional i.e., from 8/5/2009. This order is under challenge in the instant appeal.

12. Heard Mr.C.V.Ramachandramurthy, learned counsel for the appellant and Mr.Ravikumar Paul, learned Senior Counsel for the respondents 2, 4, 6 to 15, 18 to 21, 23 to 25 and 26 to 38.

13. Learned counsel for the appellant would contend that the award dated 17/6/1998 directed only regularisation. According to him, orders of appointment were issued only on 13/3/2012 which was accepted by the workmen. He would further state that after having accepted the appointment, there was no question of entertaining a petition under Section 33 (c) (2) of the Industrial Disputes Act. He would state that the labour

Court was correct in rejecting the application on the ground that claim of the respondents workmen amounts to going behind the award, which was the correct view and a plausible one. It was not therefore, open to the High Court to interfere with the said finding while exercising its jurisdiction under Article 226 of the Constitution of India.

14. On the other hand, learned counsel for the workmen would contend that effect of the order of the Tribunal is that the workmen were entitled to be regularised at least from the date when the award was passed on 8/5/2009 and were therefore, entitled to all the monetary benefits with their counter parts who are in regular employment were getting from 8/5/2009. He would state that the order of the learned Single Judge is equitable and therefore, does not require any interference in this intra Court appeal.

15. The facts are not disputed. The operative portion of the order of the Tribunal reads as under:-

"I am to hold that there need not be any hesitation to direct the respondent to regularise the petitioners into their service and extend to them all the benefits on par with their counterpart regular labourers already employed under it with immediate effect."

16. This order has been upheld right upto the Hon'ble Supreme Court. When the Supreme Court has dismissed the Special Leave Petition, on 21/10/2011, the workmen were entitled to be regularised with immediate effect. Despite such a direction, the Management offered appointment to the workmen stating that they would be appointed notionally with effect from 8/5/2009 i.e., the date of the award of the Tribunal. The operative portion of the offer reads as under:-

"Pursuant to the Award dated 8/5/2009 of Central Government Industrial Tribunal-cum-Labour Court, Chennai in I.D.No.9 of 2008, the Hon'ble High Court order dated 5/3/2010 in W.P.No.20682 of 2009, Divisional Bench of Hon'ble High Court order dated 17/3/2011 in W.A.No.473 of 2011 and Hon'ble Supreme Court order dated 21/10/2011 in SLP (C) No.CC16158, you are hereby offered an appointment to the post of Semi Skilled (Labourer) under Group "C" category carrying initial pay of Rs.5200/- per month in the Pay Band PBI of Rs.5200-20200 _ Grade pay of Rs.1800/- with other allowances as admissible under the rules from time to time with effect from 8/5/2009 notionally as applicable for candidates

meeting the prescribed minimum qualification as envisaged in 6th CPC recommendations and orders thereon."

17. Material on record discloses that the said offer stands accepted by the workmen on 14/3/2012. Acceptance is unconditional. The employer-employee relationship therefore, commenced on 14/3/2012 i.e., the date when the workmen accepted the offer of employment. After accepting the employment, the workmen assumed charge on the very same day i.e., on 14/3/2012. After accepting the employment and after being posted in various places, the workmen have filed the application under Section 33 (C) (2) claiming Rs.3,46,844/- from the Management which is the monetary entitlement from 8/5/2009 i.e., the date of the award till the date of appointment i.e., 14/3/2012.

18. The short issue therefore which arises for consideration is as to after having accepted the appointment, would an application under Section 33 (C) (2) be maintainable for implementing the award.

19. The offer of appointment dated 13/3/2012 was issued in compliance of the award which was accepted by the workmen without demur. They did not accept the offer without prejudice to their challenge to the clause which gives appointment only notionally from 8/5/2009. After having accepted the same, it was not open to the workmen to file a petition under Section 33 (C) (2) of the Industrial Disputes Act.

20. Section 33 (C) (2) enables the workmen to recover any money which is due from the employer under settlement or an award. Award dated 8/5/2009 accepted the claim of the workmen and directed regularisation of the services. Though the award states that regularisation must take place with immediate effect, the workmen by their own choice accepted the offer of appointment which gives them monetary benefit only from the date of appointment and notional benefits from the date of the award without any demur. The claim of the workmen therefore, can be agitated only by raising a fresh Industrial Dispute and not by filing an application under Section 33 (C) of the Industrial Disputes Act. The scope of Section 33 (C) of the Industrial Disputes Act has been laid down in a number of judgments.

21. It is well settled that Section 33 (C) (2) is like execution of a settlement or an award. While deciding an application under Section 33 (C) (2), the labour Court cannot take into account other circumstances. It cannot take into account facts which have arisen subsequent to the award and

moreso, when parties to the award or to the settlement had decided to settle the dispute on certain other terms.

22. The Hon'ble Supreme Court in HAMDARD (WAKF) LABORATORIES Vs. DY. LABOUR COMMISSIONER AND OTHERS (2007) 5 SUPREME COURT CASES - 281, reads as under:-

"35. There is yet another aspect of the matter which cannot be lost sight of. A claim for bonus in the context of Section 22 of the Payment of Bonus Act can be raised only by raising an industrial dispute. It cannot be raised by way of an execution application. If a claim had been made under an award, the same attained finality when the amount payable thereunder had been calculated. Bonus was a subject-matter of claim in the first application filed under Section 6-H(1) of the Act. The amount payable thereunder had been determined. Another application under Section 6-H(1) of the Act for the purpose of enforcement of award, therefore, was, in our opinion, not maintainable.

37. Such an application was, thus, not maintainable under Section 6-H(1) of the Act which corresponds to Section 33-C(1) of the Industrial Disputes Act. Even the jurisdiction of a Labour Court in terms of Section 33-C(2) of the Industrial Disputes Act would be limited.

38. An application under Section 33-C(1) of the Industrial Disputes Act, 1947 must be for enforcement of a right. If existence of right, thus, is disputed, the provisions may not be held to have any application."

23. The workmen have agreed that their appointment from 8/5/2009 till the date of acceptance would be only notional and that they would only get monetary benefits from the date of appointment a fresh contract has been entered into between the workmen and the Management. In such a scenario, an application under Section 33 (C) could not be maintainable. The employees could only agitate their entitlement to get monetary benefit from the date of award only by raising a fresh Industrial Dispute.

24. The Hon'ble Supreme Court, in FABRIL GASOSA Vs. LABOUR COMMISSIONER AND OTHERS (1997) 3 SUPREME COURT CASES 150, reads as under:-

"19. Section 33-C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Sections 33-C(1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those sub-sections. The distinction between sub-section (1) and sub-section (2) of Section 33-C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two sub-sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf or his assignee or heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are due and payable to that workman. On that satisfaction being arrived at, the Government can initiate action under this sub-section for recovery of the amount provided the amount is a determined one and requires no "adjudication". The appropriate Government does not have the power to determine the amount due to any workman under sub-section (1) and that determination can only be done by the labour court under sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the labour court under sub-section (2) the amount so determined by the labour court, can be recovered through the summary and speedy procedure provided by sub-section (1). Sub-section (1) does not control or affect the ambit and operation of sub-section (2) which is wider in scope than sub-section (1). Besides the rights conferred under Section 33-C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Sections 33-C(1) and 33-C(2) shows that the difference between the two sub-sections is quite obvious. While the former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement, is predetermined and ascertained or can be arrived at by

any arithmetical calculation or simpliciter verification and the only inquiry that is required to be made is whether it is due to the workmen or not, recourse to the summary proceedings under Section 33-C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33-C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter V-A and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement, an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub-section (1) as only a calculation of the amount is required to be made."

25. In the present case, the issue that would arise regarding interpretation of the award is to whether the award stipulated or declared that workmen were regular employees of the appellant. A reading of the operative portion extracted in the foregoing paragraphs of the judgment would show that the labour Court had only directed the Management to regularise the petitioners. The action of the Management in regularising the workmen and to give monetary benefits from the date of actual regularisation came to be a matter which can be adjudicated under Section 33 (C) (2) of the Industrial Dispute Act, which only can be filed for recovering amounts due to the workmen arising out of obligations under settlement and the amount to be given is ascertained or can be computed on a simple verification. The Tribunal was therefore, justified in rejecting the claim under Section 33 (C) (2).

26. The Hon'ble Supreme Court in STATE BANK OF INDIA Vs. RAM CHANDRA DUBEY AND OTHERS (2001) 1 SUPREME COURT CASES - 73, has summarised the principles while entertaining an application under Section 33 (C) (2), which reads as under:-

"8. The principles enunciated in the decisions referred by either side can be summed up as follows:

"Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to

back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.

27. The dispute raised by the workmen therefore, cannot fall within the four corners of a claim under Section 33 (C) (2) of the Industrial Disputes Act. In MUNICIPAL CORPORATION OF DELHI Vs. GANESH RAZAK AND ANOTHER (1995) 1 SUPREME COURT CASES 235, the Hon'ble Supreme Court relied on the earlier decision of the Hon'ble Supreme Court in CENTRAL INLAND WATER TRANSPORT CORPORATION LIMITED Vs. WORKMEN (1974) 4 SCC - 696, held that where the very basis of the claim or the entitlement of a workmen to a certain benefit is disputed, then the dispute relating to entitlement is outside the scope of the proceedings under Section 33 (C) (2) of the Industrial Disputes Act. Paragraph Nos. 11 and 12 are being quoted.

11. The only question which arises for determination in this Court is whether the Labour Court had jurisdiction to adjudicate on the issues referred to it under Section 33-C(2) of the Industrial Disputes Act. Sub-section (2), which is part of Section 33-C dealing with "the recovery of money due from an employer" reads as follows:

"(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."

12. It is now well-settled that a proceeding under Section 33-C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being

computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. In Chief Mining Engineer East India Coal Co. Ltd. v. Rameshwar [AIR 1968 SC 218 : (1968) 1 SCR 140 : 1968 (1) Lab LJ 6] it was reiterated that proceedings under Section 33-C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the position of an executing court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer."

28. The learned Single Judge in our opinion has completely erred in not appreciating the scope and ambit of Section 33 (C) (2) of the Industrial Disputes Act. The learned Single Judge has interpreted the award dated 8/5/2009 and has come to a conclusion that the award declares as if the employees workmen must be regularised from the date of the award. The learned Single Judge further holds that offer of appointment is contrary to the terms of the award without appreciating that the workmen had accepted the offer of appointment without any demur. The effect of the acceptance of the offer letter and the consequences arising there from has not been appreciated correctly by the learned Single Judge. The order of the learned Single Judge is therefore, contrary to the law laid down by the Hon'ble Supreme Court. The judgment, dated 1/8/2018 of the learned Single Judge is therefore, set aside and the appeal is allowed. However, this does not preclude the respondents from raising a dispute under Section 10 regarding their entitlement of monetary benefits which according to them is payable from the date of the award dated 8/5/2009 and not from the date of appointment which is 13/3/2012. The fact that the dispute was the subject matter of the writ petition and then the writ appeal will be a relevant factor which should be considered by the labour Court if and when such claim is raised by the workmen. No costs.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

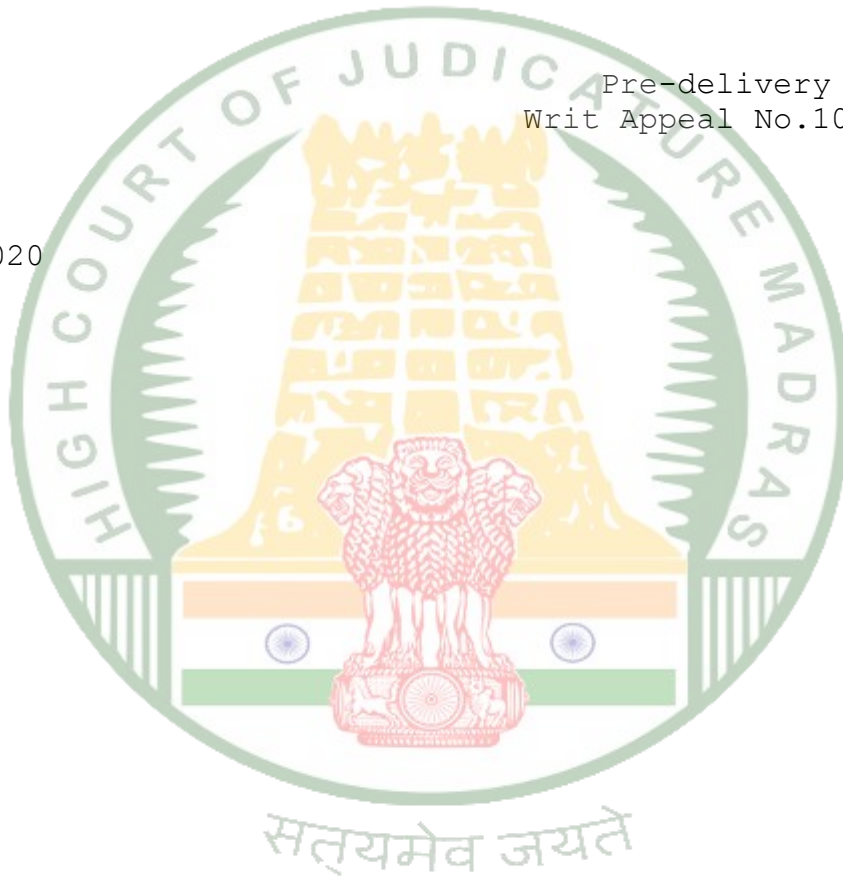
To

The Presiding Officer,
Central Government Industrial Tribunal
-cum-Labour Court
Shastri Bhavan
Chennai.

+1 cc to Mr.C.V.Ramachandramurthy Advocate sr20693
+1 cc to Mr.S.N.Paulsundar singh Advocate sr20836

Pre-delivery judgment in
Writ Appeal No.1053 of 2019

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