

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Wednesday, the Twenty Third day of December Two Thousand Twenty

PRESENT

THE HON`BLE MR JUSTICE R. SURESH KUMAR

W.M.P. NOS. 93, 95, 97, 99 AND 101 OF 2018

IN

W.P. NOS. 14207, 14208, 14209, 14210 AND 14212 OF 2017

AND

W.P.NOS.32684/2017, 32685/2017, 32552/2017, 32663/2017, 32667/2017,
32727/2017 AND 14211 OF 2017

AND

CONNECTED MISCELLANEOUS PETITIONS

SHANTHA ... PETITIONER in WMP No.93 of 2018
C.LACHUMI ... PETITIONER in WMP No.95 of 2018
LATHA ... PETITIONER in WMP No.97 of 2018
RADHAMANI ... PETITIONER in WMP No.99 of 2018
CHINNA GOUNDER ... PETITIONER in WMP No.101 of 2018
LATHA ... PETITIONER in WP No.32684 of 2017
1 RADHAMANI ... PETITIONERS in WP No.32685 of 2017
2 NAGARAJ
RADHAMANI ... PETITIONER in WP No.32552 of 2017
CHINNA GOUNDER ... PETITIONER in WP No.32663 of 2017
SHANTHA ... PETITIONER in WP No.32667 of 2017
C.LACHUMI ... PETITIONER in WP No.32727 of 2017
THE MANAGEMENT ... PETITIONER in WP No.14211 of 2017
T.P.S PLANTATION GREEN GARDEN 'B'
REP. BY MR. S.SELVARAJ K.PUTHUR POST
YERCAUD TALUK SALEM DISTRICT

Vs

1 THE MANAGEMENT ... RESPONDENTS in WMP No.93 of 2018
T.P.S PLANTATION GREEN GARDEN 'B'
REP. BY MR.S.SELVARAJ K.PUTHUR POST
YERCAUD TALUK SALEM DISTRICT

2 THE PRESIDING OFFICER
THE LABOUR JUDGE LABOUR COURT DISTRICT
COURT CAMPUS SALEM-636 007

1 THE MANAGEMENT ... RESPONDENTS in WMP No.95 of 2018
T.P.S PLANTATION GREEN GARDEN 'B'
REP. BY MR. S.SELVARAJ K.PUTHUR POST
YERCAUD TALUK SALEM DISTRICT

2 THE PRESIDING OFFICER
THE LABOUR JUDGE LABOUR COURT DISTRICT
COURT CAMPUS SALEM-636 007

1 THE MANAGEMENT ... RESPONDENTS in WMP No.97 of 2018
T.P.S PLANTATION GREEN GARDEN 'B'
REP. BY MR.S.SELVARAJ K.PUTHUR POST
YERCAUD TALUK SALEM DISTRICT

2 THE PRESIDING OFFICER
THE LABOUR JUDGE LABOUR COURT DISTRICT
COURT CAMPUS SALEM-636 007

1 THE MANAGEMENT ... RESPONDENTS in WMP No.99 of 2018
T.P.S PLANTATION GREEN GARDEN 'B'
REP. BY MR. S.SELVARAJ K.PUTHUR POST
YERCAUD TALUK SALEM DISTRICT

2 THE PRESIDING OFFICER
THE LABOUR JUDGE LABOUR COURT DISTRICT
COURT CAMPUS SALEM-636 007

1 THE MANAGEMENT ... RESPONDENTS in WMP No.101 of 2018
T.P.S PLANTATION GREEN GARDEN 'B'
REP. BY MR.S.SELVARAJ K.PUTHUR POST
YERCAUD TALUK SALEM DISTRICT

2 THE PRESIDING OFFICER
THE LABOUR JUDGE LABOUR COURT DISTRICT
COURT CAMPUS SALEM-636 007

1 THE PRESIDING OFFICER ... RESPONDENTS in WP No.32684 of 2017
LABOUR COURT SALEM- 636007

2 THE MANAGEMENT
T.P.S.PLANTATION GREEN GARDEN 'B'
REP BY S.SELVARAJ YERCAUD TALUK
SALEM DISTRICT

1 THE PRESIDING OFFICER ... RESPONDENTS in WP No.32685 of 2017
LABOUR COURT SALEM-636 007

2 THE MANAGEMENT
T.P.S.PLANTATION GREEN GARDEN 'B'
REP BY S.SELVARAJ YERCAUD TALUK SALEM DISTRICT

1 THE PRESIDING OFFICER ... RESPONDENTS in WP No.32552 of 2017
LABOUR COURT SALEM 636 007

2 THE MANAGEMENT
T.P.S.PLANTATION GREEN GARDEN 'B'
REP. BY MR.S.SELVARAJ YERCAUD TALUK
SALEM DISTRICT

1 THE PRESIDING OFFICER ... RESPONDENTS in WP No.32663 of 2017
LABOUR COURT SALEM 636 007

2 THE MANAGEMENT
T.P.S. PLANTATION GREEN GARDEN 'B'
REP.BY S.SELVARAJ YERCAUD TALUK
SALEM DISTRICT

1 THE PRESIDING OFFICER ... RESPONDENTS in WP No.32667 of 2017
LABOUR COURT SALEM-636 007

2 THE MANAGEMENT
T.P.S.PLANTATION GREEN GARDEN 'B'
REP BY S.SELVARAJ YERCAUD TALUK SALEM DISTRICT

1 THE PRESIDING OFFICER ... RESPONDENTS in WP No.32727 of 2017
LABOUR COURT SALEM- 636 007

2 THE MANAGEMENT
T.P.S.PLANTATION GREEN GARDEN 'B'
REP BY S.SELVARAJ YERCAUD TALUK
SALEM DISTRICT

1 THE PRESIDING OFFICER ... RESPONDENTS in WP No.14211 of 2017
THE LABOUR JUDGE LABOUR COURT DISTRICT
COURT CAMPUS SALEM-636 007

2 VENKATACHALAM (DECEASED)

3 **RADHAMANI**

4 **NAGARAJ**

**R3& R4 ARE SUBSTITUTED AS LR'S (R2-DECEASED AS PER COURT ORDER
DATED 19.03.2020 BY MGRJ VIDE IN WMP.NO.102/2018.**

Petition praying that in the circumstances stated therein and
in the affidavit filed therewith the High Court will be pleased to

(1) WMP No.93 of 2018

To direct the 1st respondent/ Writ Petitioner Management to pay the
petitioner her Last Drawn Salary of Rs.3,875/- per month every
month from the date of filing of the above writ petition till its
disposal

(2) WMP No.95 of 2018

To direct the 1st respondent/ Writ Petitioner Management to pay the petitioner her Last Drawn Salary of Rs.3,875/- per month every month from the date of filing of the above writ petition till its disposal

(3) WMP No.97 of 2018

To direct the 1st respondent/ Writ Petitioner Management to pay the petitioner her Last Drawn Salary of Rs.3,875/- per month every month from the date of filing of the above writ petition till its disposal

(4) WMP No.99 of 2018

To direct the 1st respondent/ Writ Petitioner Management to pay the petitioner her Last Drawn Salary of Rs.3,875/- per month every month from the date of filing of the above writ petition till its disposal

(5) WMP No.101 of 2018

To direct the 1st respondent/ Writ Petitioner Management to pay the petitioner her Last Drawn Salary of Rs.3,875/- per month every month from the date of filing of the above writ petition till its disposal

(6) WP No.32684 of 2017

Writ petitions under article 226 of the Constitutions of India praying that in these circumstances stated therein and in the respective affidavits filed their with the High Court will pleased to issue a writ, order or direction, more particularly a writ in the nature of writ of certiorari calling for the records from the files of the 1st Respondent in I.D. No.145 of 2008 and quash the impugned award made therein dated 28.06.2016 insofar as it denies the petitioner relief of full back wages

(7) WP No.32685 of 2017

Writ petitions under article 226 of the Constitutions of India praying that in these circumstances stated therein and in the respective affidavits filed their with the High Court will pleased to issue a writ, order or direction, more particularly a writ in the nature of writ of certiorari calling for the records from the files of the 1st Respondent in I.D. No.9 of 2009 and quash the impugned award made therein dated 28.06.2016 insofar as it denies the husband of the 1st petitioner the relief of full back wages

(8) WP No.32552 of 2017

Writ petitions under article 226 of the Constitutions of India praying that in these circumstances stated therein and in the respective affidavits filed their with the High Court will pleased to issue a writ, order or direction, more particularly a writ in the nature of writ of certiorari calling for the records from the files of the 1st respondent in I.D.No.146 of 2008 and quash the impugned award made therein dated 28.6.2016 in so far as it denies the petitioner relief of full back wages

(9) WP No.32663 of 2017

Writ petitions under article 226 of the Constitutions of India praying that in these circumstances stated therein and in the respective affidavits filed their with the High Court will pleased to issue a writ, order or direction, more particularly a writ in the nature of writ of certiorari calling for the records from the filed of the 1st respondent in I.D.No.10 of 2009 and quash the impugned award made therein dated 28.6.2016 insofar as it denies the petitioner relief of full back wages

(10) WP No.32667 of 2017

Writ petitions under article 226 of the Constitutions of India praying that in these circumstances stated therein and in the respective affidavits filed their with the High Court will pleased to issue a writ, order or direction, more particularly a writ in the nature of writ of certiorari calling for the records from the files of the 1st Respondent in I.D. No.142 of 2008 and quash the impugned award made therein dated 28.06.2016 insofar as it denies the Petitioner relief of full back wages

(11) WP No.32727 of 2017

Writ petitions under article 226 of the Constitutions of India praying that in these circumstances stated therein and in the respective affidavits filed their with the High Court will pleased to issue a writ, order or direction, more particularly a writ in the nature of writ of certiorari calling for the records from the files of the 1st respondent in I.D. No.144 of 2008 and quash the impugned award made therein dated 28.06.2016 insofar as it denies the petitioner relief of full back wages

(12) WP No.14211 of 2017

Writ petitions under article 226 of the Constitutions of India praying that in these circumstances stated therein and in the respective affidavits filed their with the High Court will pleased to issue a writ certiorari Calling for entire records relating to the impugned order dated 28.6.2016 in I.D. No.09 of 2009 passed by the 1st respondent/ Labour Court, Salem herein and to quash the same

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.K.M.RAMESH, Advocate IN W.M.P. NOS. 93, 95, 97, 99 AND 101 OF 2018 AND W.P.NOS.32684/2017, 32685/2017, 32552/2017, 32663/2017, 32667/2017, 32727/2017 AND OF MR.V.SEKAR, Advocate in WP.NO. 14211 OF 2017 for the petitioner and RESPONDENTS IN W.M.P. NOS. 93, 95, 97, 99 AND 101 OF 2018 the court made the following order:-

These Miscellaneous Petitions have been filed by the respective respondents employees seeking 17-B wages. The Labour Court, in the impugned award, which is mainly challenged in all these Writ Petitions filed by the Management, has directed the petitioners Management to reinstate the employees with 75% backwages within a period of three months. The said award was

passed on 28.06.2016, as against which only the main Writ Petitions were filed, where, interim order of stay was granted and the stay is still in force.

2. In that circumstances, M.Ps also have been filed by these employees to vacate the interim order of stay. When these cases came up for hearing before the learned Judge on 19.03.2020 who has passed the following order:

*"The Management in each writ petitions is directed to deposit 25% of the backwages to the credit of I.D. Nos. 142, 144, 145, 146, 142, 145, 144 of 2008 and 09, 10, 10, 9 of 2009 on the file of Labour Court, Salem, respectively, within a period of six weeks from the date of receipt of a copy of this order.
Post the matter after four weeks."*

3. However Mr. K.M. Ramesh, learned counsel appearing for the employees, who filed these 17-B wages petitions, would contend that, the direction to deposit 25% of the backwages, as has been issued by this Court on 19.03.2020, has not even been deposited thereafter and also the employees have not been reinstated because of the pendency of the Writ Petitions, where there is a stay. Therefore, he would submit that, these employees without any backwages have filed the present 17-B wages petitions and without being reinstated, are struggling a lot to meet both ends, therefore, for their survival, the 17-B wages petitions should be ordered. Therefore, all these M.Ps may be ordered in the interest of justice.

4. However, Mr.V.Sekar, learned counsel appearing for the petitioner Management in the main Writ Petitions, who is the 1st respondent in these M.Ps, would submit that, insofar as the reinstatement is concerned, stay has been granted by this Court, therefore, the question of reinstatement does not arise. Insofar as the deposit of 25%, as has been directed by this Court dated 19.03.2020, is concerned, though the order was passed as early as on 19.03.2020, the certified copy of the order was not received immediately due to COVID-19 situation. From 3rd week of March 2020, there was a complete pandemic situation, therefore, 25% of backwages as directed by this Court on 19.03.2020, is yet to be deposited and shortly it would be deposited.

5. Insofar as 17-B wages is concerned, the learned counsel appearing for the Management would contend that, they want to file counter in each of the applications opposing the plea made by the employees against the 17-B wages.

6. I have considered the said submissions made by the learned counsel appearing for both parties and perused the materials placed before this Court.

7. The Labour Court in the year 2016, has passed the impugned award, directing the Management to reinstate the employees with back wages, as against which, the main Writ Petitions were filed. In view of the stay granted by this Court in these Writ Petitions, the employees have not been reinstated and insofar as the backwages is concerned, though a specific direction was given by this Court to deposit 25% backwages, the same has not been deposited so far, of course on the reasons stated by the learned counsel appearing for the Management.

8. With regard to the 17-B wages, it is the stand of the Management that, they want to file counter. In this regard, it is to be noted that, all these applications were filed in the year 2018, therefore, it stood pending for nearly about two years or more and in all these long period, the Management has not chosen to file counter in these petitions. Now they come forward to say that, they want to file counter.

9. It is a definite case on the part of the employees, who filed these 17-B wages applications that, they have not been working anywhere gainfully. Therefore, they are very much entitled to get 17-B wages based on last drawn salary, without which, they cannot survive. Even though the Management has got a right to explore as to whether these employees are gainfully working all these periods and to that effect, if they come forward with proof to establish the fact, certainly, that matter can be considered by the Court at the time of granting 17B wages.

10. However, in these cases, for the past two years, no such attempt has been made on behalf of the Management and nothing has been filed before this Court to establish that, these employees are gainfully working all these years.

11. When that being so, in order to give a meaningful effect to the provisions of 17-B of the Industrial Disputes Act, 1947 as has been indicated to see that, the employees having become successful in the Labour Court cannot be made to suffer during the pendency of the Writ Petitions or other litigations in the higher forum without getting reinstatement as well as the 17-B wages, as that would become the minimum requirements even for survival of such employees, this Court is of a consistent view that, in these 17-B wages petitions, none of the petitioners / employees seem to have been gainfully working.

12. In that view of the matter, this Court is inclined to dispose of these petitions with the following orders:

"(i) That the 1st respondent Management, who is the petitioner in the main Writ Petitions respectively, shall pay the 17-B wages to all these petitioners employees from the month of January 2021.

(ii) Insofar as the arrears of 17-B wages from the date of award till December 2020, the same shall be calculated and be paid in one lumpsum within a period of two months from the date of receipt of a copy of this order."

13. With these directions, all these Miscellaneous Petitions in W.M.P. Nos.93, 95, 97, 99 and 101 of 2018 are allowed.

14. Post all the main Writ Petitions along with the pending M.Ps during the second week of February 2021.

15. The Registry is directed to verify whether the certified copy of the order dated 19.03.2020 made in W.P. Nos.14207, 14212, 41208, 14209, 14210, 14211, 32552, 32663, 32667, 32684, 32685 and 32727 of 2017 have been made ready and dispatched, if not so far, the same shall be made ready and be dispatched immediately.

-sd/-

23/12/2020

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE MANAGEMENT
T.P.S PLANTATION GREEN GARDEN B,
REP. BY MR.S.SELVARAJ, K.PUTHUR POST, YERCAUD TALUK,
SALEM DISTRICT

2 THE PRESIDING OFFICER
THE LABOUR JUDGE, LABOUR COURT,
DISTRICT COURT CAMPUS, SALEM-636 007

+5 C.C. to M/S.V.SEKAR Advocate SR.NO.6526,6527,6528,6529,6530

+5 C.C. to M/S.K.M.RAMESH Advocate SR.NO.6506,6507,6508,6509, 6513

Order

in

W.M.P. NOS. 93, 95, 97, 99 AND 101 OF 2018

IN

W.P. NOS. 14207, 14208, 14209, 14210 AND 14212 OF 2017

AND

W.P.NOS.32684/2017, 32685/2017, 32552/2017, 32663/2017,
32667/2017, 32727/2017 AND 14211 OF 2017

AND

CONNECTED MISCELLANEOUS PETITIONS

Date :23/12/2020

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format

VC (05/01/2021)

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