

IN THE HIGH COURT OF JUDICATURE AT MADRAS

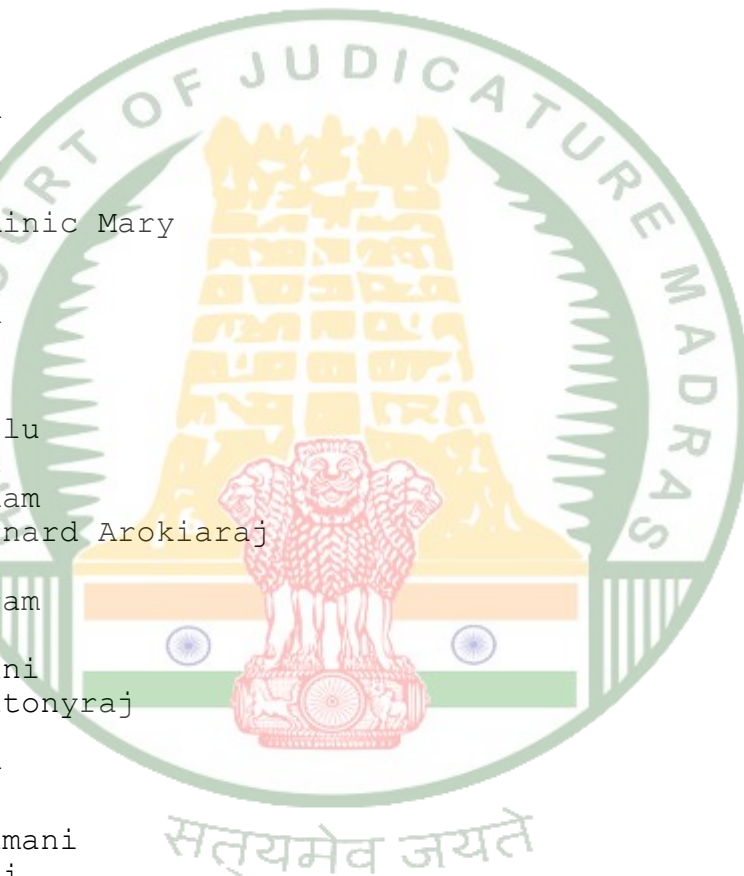
Date : 20.11.2020

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.22133 of 2019

- 1.A.Maria John Bosco
- 2.P.Rajagopal
- 3.T.Jothimani
- 4.T.Manoj
- 5.T.Rajesh
- 6.N.Krishnasamy
- 7.V.N.Natarajan
- 8.A.Nagarajan
- 9.Victoriya Dominic Mary
- 10.N.Ramasamy
- 11.N.Raghavan
- 12.R.Palanisamy
- 13.A.Alexander
- 14.S.Manoharan
- 15.V.Kulandaivelu
- 16.A.Loganathan
- 17.B.Rajamanickam
- 18.A.Joseph Bernard Arokiaraj
- 19.M.Prabakaran
- 20.R.Somasundaram
- 21.S.Narayanan
- 22.R.Kothandapani
- 23.A.Ubakara Antonyraj
- 24.E.Easwaran
- 25.R.Chinnasamy
- 26.P.Govindaraj
- 27.S.Theivasigamani
- 28.V.Karunanidhi
- 29.G.Kanirajaperumal
- 30.R.Palanisamy
- 31.P.Vasagan
- 32.A.Vincent
- 33.A.Muthusamy
- 34.P.Mohanbabu
- 35.A.Xavier
- 36.A.Lakshmanasamy
- 37.R.Narayanasamy
- 38.V.Palanisamy
- 39.R.Balasubramaniam
- 40.A.Murugesan



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41.P.Chandrasekaran
42.R.Senthilkumar
43.M.Ponnusamy
44.R.Prabaharan
45.C.Manoharan
46.P.Natarajan
47.R.Stephen Arokiadass

..... Petitioners

Vs.

The Management,
Dhanalakshmi Mills Limited,
Tiruppur - 641 601.

..... Respondent

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned common order passed by the Presiding Officer, Additional Labour Court, Coimbatore in E.P.Nos.5/2017 to 49 of 2017 dated 03.11.20218 and quash the same so far as the petitioners are concerned and allow the Execution Petition Nos.5/2017 to 49/2017 on the file of the Learned Presiding Officer, Additional Labour Court, Coimbatore.

For Petitioner : Mr.V.Sivakumar

For Respondent : Mr.S.Ravi
for M/s.Gupta & Ravi

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus calling for the entire records connected with the impugned common order passed by the Presiding Officer, Additional Labour Court, Coimbatore in E.P.Nos.5/2017 to 49 of 2017 dated 03.11.20218 and quash the same sofaras the petitioners are concerned and allow the Execution Petition Nos.5/2017 to 49/2017 on the file of the Learned Presiding Officer, Additional Labour Court, Coimbatore.

2.The facts in nutshell which leads to file this writ petition are as follows:

(i) that these petitioners are the erstwhile workers/employees of the respondent Mill. The respondent Mill suspended its operation on 26.02.2007 and according to the Mill, they closed the factory on 31.12.2008. However, it is the stand of the employees that, it was not the closure and these employees were continued to be the employees of the Mill. Therefore, they are entitled to get full salary, accordingly, in order to get the same, these employees filed Computation Petition in C.P.No.72 of 2010 to C.P.No.133 of 2010 before the

second respondent/Labour Court.

(ii) The Labour Court, while its common order dated 27.06.2013, ordered the said C.Ps. whereby given directions to the respondent Mill to pay the total arrears of salary for the period from 26.02.2007 to 31.12.2009. Felt aggrieved over the said common order passed by the Labour Court, the first respondent Mill filed a writ petition in W.P.No.32520 of 2013.

(iii) Initially, in the said writ petition, interim order of stay was granted, by thus, the operation of the common order passed by the Labour Court in group of C.Ps. as set out above, was stayed. When the vacate stay petition was filed on behalf of the employees and which came up for hearing before Writ Court, it was offered on behalf of the Mill that, without prejudice their contention on the main issue raised in the writ petition, they wanted to deposit the closure and gratuity compensation payable to the workers/employees as well as the notice pay, which, if it is calculated would come more than 50% of the amount now calculated and quantified by the Labour Court through the order passed, which was impugned in the writ petition. A learned Judge of this Court, having heard both sides, passed an interim order in M.P.No.1 of 2013 and M.P.No.1 of 2014 in W.P.No.32520 of 2013, where, the learned Judge has passed the following order:

"2.Mr.S.Ravi, learned counsel for the writ petitioner - Management fairly submitted that since the gratuity amount had already been paid to all the workmen for the entire period of service till 31.12.2008, in addition thereto, he is prepared to deposit the entire amount of notice pay and closure compensation, that work out to more than 50% of the amount decided by the Labour Court, Coimbatore, in respect of the 60 respondents-workmen.

3.As the matter requires consideration by this Court and accepting the statement made by Mr.S.Ravi, learned counsel for the petitioner - Management, this Court directs the petitioner-Management to deposit the entire notice pay amount and also the closure compensation amount, as offered by the learned counsel, before the Labour Court, Coimbatore in respect of all the workmen covered in the claim petition, namely, 60 in number, within a period of three weeks from the date of receipt of a copy of this order. On such deposit, it is open to the respondents-workmen to move appropriate applications for withdrawal of the said amount and the Labour Court, Coimbatore also will consider and pass appropriate orders on the withdrawal applications after verifying the identity of the workmen. With this observation and direction, the miscellaneous petitions

are disposed of accordingly. Registry is directed to post the writ petition for final hearing after three months."

(iv) It seems that, pursuant to the said interim order passed by the Writ Court, the employees had withdrawn the entire amount deposited by the Management/Mill in respect of each of the employees. When the matter stood thus, the main writ petition i.e., W.P.No.32520 of 2013 came up for final hearing and it was decided by the orders of this Court dated 05.10.2015. In the said order dated 05.10.2015, the Writ Court, after having gone through the relevant merits of the case as projected by both sides, has ultimately concluded thus:

"7.At the time of admission, this Court directed the Management to deposit the entire notice pay amount and also the observance compensation amount before the Labour Court, Coimbatore, in respect of all the workmen i.e. all the 60 workmen. Further, this Court observes that after such a deposit being made, it is open to the workmen to move before the Labour Court with necessary applications for the withdrawal of the said amounts.

8.From the above discussions, this Court is of the view:

(1) The employees have claimed due arrears of salary for the period from 26.02.2007 to 31.12.2009. As per the additional typed set of papers filed by the Management, 8 employees have been since retired. One of the employees namely S.Gunasekaran had, retired on 07.07.2005, as such the said employees Computation Petition No.102 of 2020 and claimed arrears of salary a sum of Rs.2,20,555/- is not maintainable, besides other employees have been retired on various dates i.e. on or before 31.12.2009, as such there is irregularity in the common order passed by the Labour Court unless the same is rectified the impugned order it is not suitable for execution.

(2) This Court imposed a condition on 21.03.2014 to deposit the entire notice pay amount and also to close the compensation amount as offered by the learned counsel and before the Labour Court. Accordingly, the deposit made by the Management before the Labour Court as per this Court's direction, it is open to the eligible workmen to withdraw their said amounts without prejudice among themselves in accordance of immediate settlement and accountability.

9.Considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either sides, on perusing the typed set of papers, the view of this Court as given (1) and (2) as

above, the above writ petition is allowed, the eligible employees are at liberty to withdraw their said amounts as per this Court's 2nd view.

10. In the result, the writ petition is allowed with the above direction. No costs."

(v) Pursuant to this order dated 05.10.2015 passed in the said writ petition, it seems to be the case of the employees that, in the said writ petition whatever order has been passed by this Court, it has dealt with only the amount deposited already on behalf of the Management/Mill before the Labour Court, which was subsequently been withdrawn by the employees, therefore, insofar as the remaining amount payable by the Management/ Mill, pursuant to the common order passed by the Labour Court in a group of Computation Petitions, as referred to above, it can very well be agitated by the employees.

(vi) Based on this assumption, it seems that, the employees have gone to the Labour Court by second round, filing a group of E.Ps. in E.P.Nos. 5 of 2017 to 49 of 2017 seeking to execute the common order passed in the C.Ps. dated 27.06.2013. The Labour Court, having gone into the said plea made on behalf of the employees in the group of E.Ps. as well as on hearing the Management side, who was the sole respondent before the Labour Court in the said group of E.Ps., has passed a common order in all these E.Ps. on 03.11.2018. In the said order, the Labour Court, on considering the operative portion of the order passed by the Writ Court in W.P.No.32520 of 2013 dated 05.10.2015, has come to the conclusion that, nothing more either has to be deposited by the Management/Mill or to be withdrawn by the employees, as claimed by them through the E.Ps. Therefore, the Labour Court has come to the conclusion that, the E.Ps. are liable to be rejected, accordingly, all the E.Ps. were dismissed by the said order of the Labour Court dated 03.11.2018. Aggrieved over the said order passed by the Labour Court dated 03.11.2018, the employees joined together and filed this single writ petition with the aforesaid prayer that is how the writ petition has come up for hearing before this Court.

3.Mr.V.Sivakumar, learned counsel appearing for the petitioners/ employees has drawn the attention of this Court on two orders passed by the Writ Court in the earlier writ petition No.32520 of 2013. The first order, he relied upon is an interim order passed by the Writ Court in M.P.No.1 of 2013 and M.P.No.1 of 2014 dated 21.03.2014 and the relevant portion of the said order has already been extracted above. By relying upon the said order, the learned counsel appearing for the petitioners would submit that, it is not the order of the Court which directs the respondent/Mill to deposit 50% of the quantified award in the C.Ps., but it was the voluntary offer on behalf of the Management/Mill to deposit the said amount, which is more than

50% of the amount computed in the C.Ps. and that was permitted to be withdrawn by the employees as per the said interim order passed by the Writ Court. Therefore, the said order has been taken into account by the Writ Court, while disposing the writ petition in the final order dated 05.10.2015.

4.Hence, the learned counsel has also relied upon paras 7 to 9, which is operative portion of the order passed by the Writ Court dated 05.10.2015 in W.P.No.32520 of 2013. Relying upon the said operative portion of the order of the Writ Court, the learned counsel for employees would further contend that, there are two components in para 8 of the order and in respect of the second one, which the Writ Court says as the view of the Court i.e., the second view is concerned, the Court imposed condition dated 21.03.2014 to deposit the entire notice pay amount and also the closure compensation amount as offered by the counsel on behalf of the Management/Mill, which was deposited, was taken note of by the Writ Court and therefore, the Writ Court had permitted the employees to withdraw the same. However, in para 9 of the order, the Writ Court has stated that, though the Writ Petition was allowed, the eligible employees were at liberty to withdraw the said amount as per the Court's second view.

5.Interpreting the said directions issued by the Writ Court, Mr.V.Sivakumar, learned counsel appearing for the petitioners would contend that, in view of the said directions and findings, it cannot be construed that, the writ petition in entirety was allowed by defeating the lawful claim of the employees to get the remaining 50% of the amount which was quantified by the Labour Court in the C.Ps. and therefore, the learned counsel would further contend that, the entirety of the order passed by the Writ Court dated 05.10.2015 is not relates to the entire salary due which was quantified and directed to be paid by the Labour Court in the Computation Petitions. In that of his view of the matter, the learned counsel would vehemently contend that, merely because the writ petition filed by the Management was allowed by the order of this Court dated 05.10.2015, it cannot be construed that the entire door was closed for the employees to seek further indulgence from the Labour Court to execute its orders passed in the Computation Petitions dated 27.06.2013. Therefore, when the employees approached the Labour Court seeking for such execution in filing E.P.Nos.5 of 2017 to 49 of 2017, the said E.Ps. ought to have been entertained by the Labour Court, instead, since the same have been rejected through the impugned order, it requires interference from this Court accordingly, the learned counsel appearing for the petitioners prays for allowing this writ petition.

6.I have heard Mr.S.Ravi, learned counsel appearing for the

respondent Mill, who has stated that, no doubt these petitioners were erstwhile employees of the first respondent Mill and due to various reasons, the Mill was suspended its operation from 26.02.2007 and thereafter, since the Mill could not be revived, it was decided to close down the Mill, accordingly, the factory was closed on 31.12.2008. In view of the decision taken by the Mill/ Management to close the factory, they also decided to give closure-cum-gratuity compensation payable to each of the employees with notice pay and that was offered by the Management. However, the employees including the petitioners herein did not accept the said offer made by the Management, therefore, they have gone to the Labour Court by filing C.P.Nos.72 of 2010 to 133 of 2010.

7.The learned counsel for the respondent Mill would also contend that, before the Labour Court it was the case of the employees that, the Mill was not closed by 31.12.2008 and therefore, the employees are the continuing employees of the Mill and therefore, they would be entitled to get full salary, accordingly, they sought for computation of full salary payable to them from 26.02.2007 till 31.12.2009 and the said plea raised by the employees since was accepted by the Labour Court and a common order to that effect was passed on 27.06.2013 directing the Management of the Mill to pay the entire salary as quantified in the Computation Petitions by the Management, it has filed the writ petition in the first round i.e., in W.P.No.32520 of 2013.

8.He would further submit that, in the writ petition, interim order of stay was granted. Subsequently, when the vacate stay petition was filed by the employees side, it was offered on behalf of the Management, which, in fact, was the stand had always been taken by the Management even prior to the employees have gone to the Labour Court to file C.Ps., to pay the entire closure-cum-gratuity compensation as well as the notice pay and whatever the amount comes in respect of the each of the employees would be deposited in the Labour Court. This was accepted by this Court and therefore, a direction was given by this Court by an interim order dated 21.03.2014 to deposit the said amount in the Labour Court and it was also ordered permitting the employees to withdraw the said amount.

9.He would further submit that, accordingly, the entire amount as offered in the above said three heads viz., closure compensation, gratuity compensation and notice pay in entirety or in full settlement had been paid or deposited before the Labour Court which were subsequently withdrawn by the employees . These factors had been taken note of by the Writ Court at the time of final hearing apart from the merits of the

case in the writ petition, where, the stand of the Management of the Mill that it was suspended operation from 26.02.2007 and subsequently closed from 31.12.2008 was accepted and accordingly, the Writ Court allowed the writ petition filed by the Management thereby the common order in entirety passed by the Labour Court in the order of C.Ps. dated 27.06.2013 was set aside, of course with the liberty to withdraw the amount already deposited by the Management of the Mill, pursuant to the interim order dated 21.03.2014. Therefore, according to him, this itself was the concession given by the Writ Court to the employees to withdraw the entirety of the amount under the head of closure-cum-gratuity compensation as well as the notice pay and beyond which, since the employees were not entitled to get any other amount under any head, the issue was closed by allowing the writ petition filed by the Management, therefore, beyond which nothing could be claimed by the employees. Therefore, this aspect has been rightly considered by the Labour Court when the employees have gone in the second time by filing E.P.Nos.5 of 2017 to 49 of 2017 and accordingly, by the impugned order dated 03.11.2018 the Labour Court has rejected all the E.Ps. filed by the employees, which is a reasonable and well considered order, therefore, the said order does not require any interference from this Court, he contended.

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

11.The controversy in this writ petition, as has been projected by both sides, is in very narrow compass. The main issue was whether the respondent Mill was closed by 31.12.2008, after having been suspended the period between 26.02.2007 and 31.12.2008 or not. If this issue is accepted in favour of the Management what shall be the compensation payable to the employees can easily be ascertained. In this context, even though initially the Labour Court, having accepted the C.Ps. filed by the employees, directing the Management to pay the entire salary due from 26.02.2007 to 31.12.2009 by thus, not accepting the plea of the Management that the Mill was closed by 31.12.2008 and accepting the plea of the employees that, the Mill was continuously working and the employees was continuing for all practical purposes, subsequently, the Writ Court has gone into those aspects and has given its conclusion in its final order dated 05.10.2015 and the relevant portion of the order has already been extracted. During the pendency of the writ petition, the order passed by the Labour Court dated 27.06.2013 was stayed and on 21.03.2014 by interim order that the voluntary offer made on behalf of the Mill was accepted and a direction to that effect was given to the Mill to deposit the entire closure-cum-gratuity compensation as well as the notice

pay in the Labour Court and accordingly, the said amount also was deposited in each of the employees, who subsequently have withdrawn the same. Calculatively the amount deposited in those heads comes approximately beyond the 50% of the quantified amount made by the Labour Court in the C.Ps. by order dated 27.06.2013. Therefore, only for that purpose, it was mentioned in the order dated 21.03.2014 that, the said amount, if it is deposited under various heads, as referred to above, would come more than 50%, therefore, it was not the order of the Writ Court on 21.03.2014 to deposit 50% of the quantified amount towards the salary of the employees as claimed by them before the Labour Court.

12. Secondly, in the impugned order dated 05.10.2015 the Writ Court has taken all these developments into account and accordingly in para 8(2), the Writ Court has specifically stated that, on 21.03.2014 this Court has imposed a condition to deposit the entire notice pay amount and closure compensation amount, it did not say anything, anywhere that 50% of the quantified amount of the Labour Court dated 27.06.2013. In para 9, which is the penultimate para giving the result of the writ petition, the Writ Court has clearly stated that the writ petition is allowed and the eligible employees are at liberty to withdraw their said amounts as per the Court's second view, the second view is nothing but the interim order dated 21.03.2014.

13. The said order since has been passed by the Writ Court on 05.10.2015 to permit the employees to withdraw the amount already deposited and the said amount also has been withdrawn, it means that, the entire amount payable to employees under the heads viz., closure compensation, gratuity compensation as well as the notice pay in entirety has been deposited and has been withdrawn. This view taken by the Writ Court is only because it has accepted the plea of the Management of the Mill that the Mill was closed on 31.12.2008. Therefore, the employees if at all are entitled to get any compensation i.e., only closure-cum-gratuity compensation as well as the notice pay, in view of the notice period and therefore, beyond which, since the employees were not entitled to claim anything as they have claimed in their C.Ps., therefore, the writ petition was allowed with the said liberty to the employees to withdraw the said amount. However, the fact remains that, as observed or directed by the Writ Court dated 05.10.2015, the employees have withdrawn the said amount deposited, pursuant to the interim order of the Writ Court dated 21.03.2014.

14. In this circumstances, if the plea now raised by the

employees, as projected by Mr.V.Sivakumar, learned counsel appearing for the petitioners/ employees is accepted, then it will make the entire order passed by the Writ Court dated 05.10.2015 otiose, which is impermissible in law. If at all the petitioners got any grievance against the order passed by the Writ Court dated 05.10.2015 in W.P.No.32520 of 2013, they could have agitated the issue in the manner known to law, but admittedly they have not agitated the issue so far. Therefore, the order dated 05.10.2015 as of now has become final, therefore, beyond which nothing could be culled out by the employees and therefore, the common order passed in the C.Ps. dated 27.06.2013 got vanished by the orders of the Writ Court dated 05.10.2015, except the permission to withdraw the said amount, as referred to above. The said vanished order dated 27.06.2013 cannot be revived by merely filing Execution Petitions once again by these employees. Therefore, the said attempt now made by the employees by filing Execution Petitions in E.P.Nos.5 of 2017 to 49 of 2017 before the Labour Court has been rightly rejected by the Labour Court on 03.11.2018 through the impugned order. Hence, this Court feel that, the said impugned order is fully justifiable and sustainable, hence it does not require any interference from this Court.

15.In view of the above, this Court is of the considered opinion that, the Writ Petition deserves to be rejected as it fails completely, hence the same is dismissed accordingly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Presiding Officer,
Additional Labour Court,
Coimbatore

+1cc to Mr.V.Sivakumar , Advocate SR.No. 37616

+1cc to M/s.Gupta & Ravi , Advocate SR.No. 37427

W.P.No.22133 of 2019

A.SK(16.02.2021) .