

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 13366 of 2019

M.Selvakumar

... Petitioner

-vs-

The Management,
M/s. Baer Shoes (India) Private Limited,
No. 90-93, Somalapuram Road,
Somalapuram,
Ambur.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records and quash the order dated 18.04.2018 passed in C.P. No. 172 of 2016 by the Presiding Officer, Principal Labour Court, Vellore and consequently direct the Respondent Management to pay wages from date of dismissal.

For Petitioner : Mr. E.Srinivasan

For Respondent : Ms. S.Thamizharasi

O R D E R

(through video conference)

Heard Mr. E.Srinivasan, Learned Counsel for the Petitioner and Ms. S.Thamizharasi, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was employed in the establishment of the Respondent, had been terminated from service by order dated 15.03.2016. According to the Petitioner, such termination had taken place during the pendency of the conciliation proceedings before the Labour Officer - II, Vellore, that had commenced pursuant to the petition dated 30.11.2015 filed by the Vellore Maavatta Anaithu Thozhilalar Sangam in which he is a member, relating to an industrial dispute between that Trade Union and the Respondent under Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for

short), which concluded on submission of failure report in Proceedings in Na. Ka. No. 782/2015 dated 08.07.2016 to the State Government.

3. The claim was made by the Petitioner under Section 33-C (2) of the Act in C.P. No. 172 of 2016 before the Principal Labour Court, Vellore (hereinafter referred to as the 'Labour Court' for short) for computation of the monetary benefits he was entitled by way of salary for the period from 15.03.2016 till 31.10.2016 relying on the ratio laid down by the Constitution Bench of the Hon'ble Supreme Court of India in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., -vs- Ram Gopal Sharma [(2002) 2 SCC 244] that termination from service during the pendency of the conciliation proceedings is ineffective from the date it was passed in the absence of obtaining the express permission in writing under Section 33(1)(b) of the Act. The Respondent contended that the name of the Petitioner had not been included in the list of employees in the matter which was then under conciliation and as such, the Petitioner cannot make any claim under Section 33-C(2) of the Act in the absence of any adjudication on the validity of the termination of the Petitioner from services of the Respondent.

4. The Labour Court by the impugned order dated 18.04.2018 in C.P. No. 172 of 2016 arrived at the conclusion that the Petitioner was not a party to the proceedings before the Conciliation Officer under Section 2(k) of the Act so as to claim the benefit of backwages as deemed to be in service as per the principles laid down in the aforesaid decision of the Hon'ble Supreme Court of India and dismissed the same. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging that order of the Labour Court.

5. It is the contention of the Learned Counsel for the Petitioner that the name of the Petitioner has been mentioned in the additional petition dated 19.05.2016 quoted at page 6 of the failure report dated 08.07.2016 submitted by the Conciliation Officer, which had been marked as Ex. P-3 by the Petitioner and Ex. R-20 by the Respondent, and would show that the Petitioner was a member of the Trade Union, which had filed the petition under Section 2(k) of the Act before the Conciliation Officer and was entitled to the benefits claimed.

6. Having regard to the only reason attributed by the Labour Court for declining the claim made by the Petitioner, it would be necessary to extract the relevant portion from the impugned order regarding the discussion on Ex. P-3, which reads as follows:-

"13.Ex-P3 is the Failure Report filed by the

Labour Officer in Na.Ka.No.782/2015. On going through Ex-P3 Failure Report, it goes to show that 2 (K) petition was filed by the Union. So, it may be understood that this union has filed this 2 (k) petition on behalf of the members of that union, who are deemed to be terminated from service. That apart, on seeing Ex-P3, Failure Report, this Union has filed the above petition U/s 2 (K) of the I.D. Act, on behalf of 32 employees, who have been terminated from service, dated 14.09.2015. In the Failure Report also the name of the petitioner does not find place. So, this court is not able to come to a conclusion that on behalf of this petitioner also, 2 (K) petition was filed by the Union."

It is evident on a perusal of the same that the mention of the name of the Petitioner at page 6 in the Failure Report (Ex. P-3) has not been taken into account while having arrived at the aforesaid conclusion. Learned Counsel for the Respondent has not been able to controvert the same. In Mukand Ltd., -vs- Mukand Staff & Officers' Association [(2004) 10 SCC 460], the Hon'ble Supreme Court of India has held as follows:-

"49. In our view, the material that was placed before the Tribunal was not considered or discussed and that there was, as such, no adjudication by the Tribunal. The whole award of the Tribunal, in our view, is liable to be set aside on the ground of non-application of mind by the Tribunal to the material on record...."

In that view of the matter, the impugned order, which cannot be sustained, is set aside and the matter remitted for fresh adjudication.

7. Though several other aspects have been raised by the Learned Counsel for the Respondent to deny relief, it would not be necessary to discuss the same in view of the fact that they were not the basis for passing the impugned order. Moreover, the Respondent is not precluded in canvassing the same before the Labour Court.

8. The proceedings under Section 33-C(2) of the Act in C.P. No. 172 of 2016 shall be listed for hearing before the Labour Court on 25.11.2020. The parties shall attend the hearing on the said date as well as on the subsequent dates to which it is adjourned and extend their co-operation for the expeditious disposal of the matter. It shall be incumbent upon the Labour Court to specifically examine the aforesaid germane aspects of the matter, afford full opportunity of hearing to all parties concerned following the prescribed procedure in consonance with the principles of natural justice and pass reasoned orders dealing with each of the contentions raised by the parties on merits and in accordance with law. Though obvious, it is made

clear that Labour Court shall not be inhibited or influenced by the impugned order, which has been set aside.

9. In the result, the Writ Petition is ordered on the aforesaid terms. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vjt

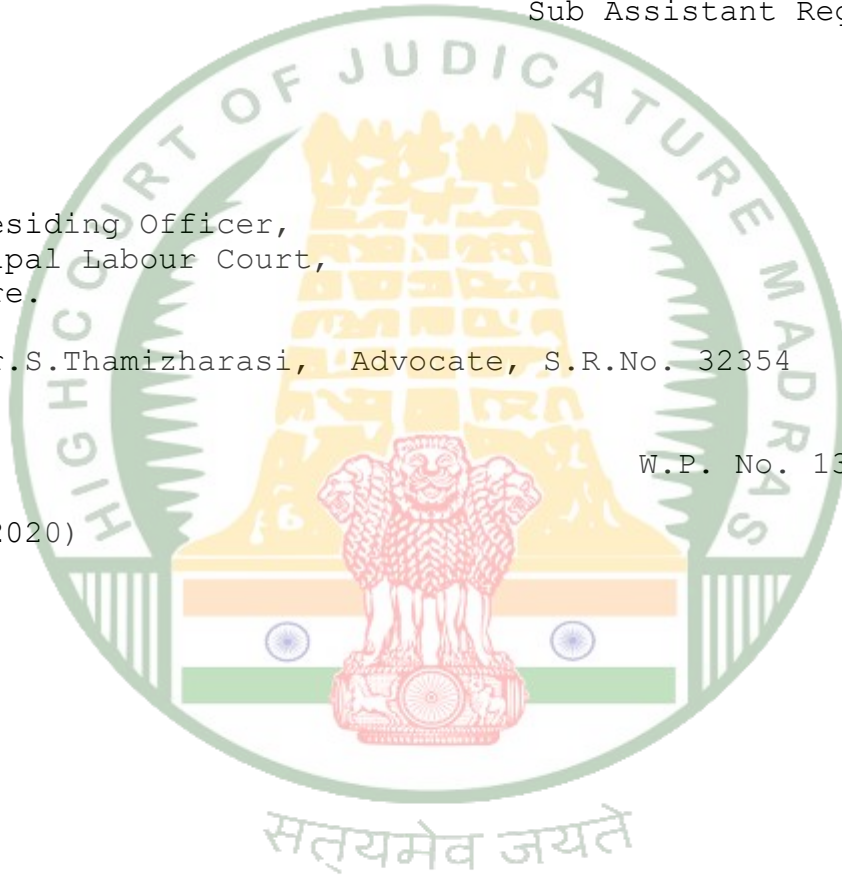
To

1. The Presiding Officer,
Principal Labour Court,
Vellore.

+1cc to Mr.S.Thamizharasi, Advocate, S.R.No. 32354

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PP(CO)
GN(15/10/2020)



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