

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2020

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.16783 of 2020 and W.M.P.Nos.20794 & 20795 of 2020

1.K.Mani
2.K.Kalimuthu
3.K.Paramasivam
4.A.Palanisamy ... Petitioners

-Vs-

1 The Secretary to Government
Labour and Employment Department
secretariat St george Fort Chennai 9

2 The District Collector
Coimbatore District

3 The Management
B.V.V. Paper Industries Unit II 662/2
Marichinackenpalayam Ambarampalayam Post
Pollachi Coimbatore district Head Office at
B.V.V. Krishnaprasath 46, Soundaraja Krishnamoorthi
Street, Gandhi Nagar, Udumalpet, Thiruppur District.

4 The Karur KCP Packaging Limited
Represented by its Managing Director 662/2
Marichinackenpalayam Ambarapalayam post
Pollachi Taluk Coimbatore District. ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus directing the respondents 1 and 2 to take appropriate action under Section 33C of the Industrial Disputes Act, 1947 to recover the award amount passed in I.D.No.28,30,35 and 36 of 2008 dated 27.03.2018 on the file of Labour Court, Coimbatore against the respondents 3 and 4 within an appropriate time.

For Petitioner : Mr.B.Nalliyappan
For Respondents : Ms.R.J.Radhika, Government
Advocate
for Respondents 1 and 2

O R D E R

The prayer sought for herein is to direct the respondents 1 and 2 to take appropriate action under Section 33-C of the Industrial Disputes Act, 1947 to recover the award amount passed in I.D.No.28,30,35 and 36 of 2008 dated 27.03.2018 on the file of Labour Court, Coimbatore against the respondents 3 and 4 within an appropriate time.

2. Heard Mr.Nalliyappan, learned counsel for the petitioner and Ms.R.J.Radhika, learned Government Advocate appearing for respondents 1 and 2. In view of the order going to be passed in this writ petition at the admission stage, notice to the third and fourth respondents is hereby dispensed with.

3. The case of the petitioners is that, they were working under the third and fourth respondents, where there has been an industrial dispute, which was raised as I.D.Nos.28,30, 35 and 36 of 2008 respectively before the Principal Labour Court, Coimbatore. The labour Court, after trying the said industrial dispute, passed an Award on 27.03.2018, where the Labour Court, though found that, the employees were entitled for reinstatement, in lieu of the same, in the said Award, directed the employers to pay lump sum compensation which is also quantified in the said Award.

4. In this context, having accepted the said verdict by way of the Award passed by the Labour Court, the petitioners / employees, in order to get the lump sum compensation as awarded by the Labour Court, seems to have approached the second respondent District Collector by making separate representations dated 21.10.2020 and 27.10.2020 respectively. In the said representations, these petitioners / employees wanted the second respondent / District Collector to act upon to recover the lump sum compensation from the employer by invoking the provisions of the Revenue Recovery Act. Since the District Collector has not acted upon the representations submitted by the petitioners, they have filed this writ petition with the aforesaid prayer.

5. Mr.Nalliyappan, learned counsel for the petitioners would contend that, in the Labour Court Award, instead of reinstatement since the labour Court passed an award for lump sum compensation payable to the employees and the said Award since has become final as no further appeal by way of writ petition seems to have been filed by the respondent Management, therefore the petitioners are entitled to get the lump sum compensation. Accordingly, as per Section 33-C of the Industrial Disputes Act, 1947, they approached the District Collector / second respondent to recover the said amount from

the respondent Management by invoking the provisions of the Revenue Recovery Act. Since the second respondent has not acted upon, these petitioners / employees approached this Court by filing the present writ petition with the aforesaid prayer.

6. I have heard Ms.R.J.Radhika, learned Government Advocate appearing for respondents 1 and 2, who would submit that, though representations have been submitted to the second respondent District Collector by the petitioners, insofar as the representations are concerned, as the petitioners / employees sought for a prayer to recover the amount as has been quantified through the labour Court Award, the said exercise cannot be straight away undertaken by the second respondent District Collector, in view of the legal position, where first of all the District Collector cannot straight away act upon under Section 33-C of the Industrial Disputes Act and in this context whatever the amount quantified by the Labour Court, if at all to be recovered, for which, the beneficiary / employee should approach the appropriate Government and the Government, after having taken note of those aspects has to pass orders giving Certificate, and based on that certification only the District Collector can act upon to recover that amount and the said stage has not reached in this case. Therefore, the second respondent / District Collector cannot be expected to act upon the representations submitted by the petitioners.

7. Learned Government Advocate would also submit that, insofar as the State of Tamil Nadu is concerned, in view of the State amendment made in Section 11B of the Industrial Disputes Act, there is a provision available for the worker to approach the Labour Court by filing an Execution Petition and unless and until the petitioners / workmen approach the Labour Court and get the award passed by the Labour Court executed, the employees cannot straight away approach the second respondent / District Collector for executing the award passed by the Labour Court, as the said job being a judicial work, has already been entrusted to the Labour Court by the Statute under Section 11-B of the Act. Therefore, on that ground also the present mandamus sought for by the petitioner cannot be issued to the District Collector to act upon the representations of the petitioners.

8. I have considered the submissions made by the learned counsel for the petitioners and the learned Government Advocate appearing for the respondents 1 and 2 and also perused the materials placed on record.

9. Under Section 33-C of the Industrial Disputes Act, the following has been stated.

"33-C. Recovery of money due from an employer - (1) Where any money is due to a workman from an employer under a settlement or any award or under the provisions of [Chapter V-A or Chapter V-B], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer.

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period."

9. On a reading of Section 33-C(1) of the Industrial Disputes Act, it is clear that, without prejudice to any other mode of recovery, the workman can make an application to the appropriate Government for the recovery of money due to him and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate to that amount the District Collector, who shall proceed to recover the same in the same manner as an arrear of land revenue.

10. Therefore, the aspects that have to be noted by reading the above provision ie., Section 33-C(1) are; firstly, without prejudice to any other mode of recovery, the employee can make an application to the appropriate Government. Secondly, such an application has to be made only to the appropriate Government. Here, in this case the appropriate Government is the State Government. Once the appropriate Government is satisfied that any money is due to the employee, then only it would issue a certificate for that amount to the Collector and only thereafter, the role of the Collector would arise, where he can proceed to recover the money by invoking the provisions of the Revenue Recovery Act.

11. In this context, it is to be further noted that, Section 11B of the Industrial Disputes Act, which is a State insertion or amendment of the State of Tamil Nadu reads thus,

"Insertion of new section 11-B. - After section 11-A of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the following section shall be inserted, namely:-

"11B. Power of a Labour Court or Tribunal to execute its award by decree.- A Labour Court or a Tribunal shall have the power of a civil court to execute its own award as a decree of a civil court and also to execute any settlement as defined in clause (p) of section 2 as a decree."

12. In view of the said amendment having been made by the State Government of Tamil Nadu, another mode of recovery of the quantified sum or to be quantified sum, for an employee, is rightly available, under which, the employee can very well approach the labour Court by filing an Execution Petition.

13. When the Act under the said provision empowers or gives a right to the worker to approach the labour Court by filing an Execution Petition for the recovery of the amount, normally the Executive Authorities would not exercise their power conferred under the legislation, as the judicial remedy is explicitly available under the provisions of the very same legislation.

14. In this context, the submission made on behalf of the first and second respondents that, the petitioners have to only approach the labour Court by filing Execution Petition and in that case, the question of approaching the appropriate Government may not arise, would be appealing to this Court and in fact, it is in consonance with the provisions of both Section 33-C(1) and Section 11-B of the Industrial Disputes Act, 1947.

15. Moreover, the petitioners since have got an Award, where the amount has also been quantified as lump sum compensation payable by the respondent employer to the petitioners / employees, in order to recover the said amount, they can very well file Execution Petition, where the respondents / employers also will get a chance to contest the said petition, if they are advised to do so and after hearing both sides, the Execution Petition would be decided by the Labour Court and since that judicial remedy is available for the petitioners, they cannot straight away approach the District Collector for invoking the

provisions of the Revenue Recovery Act, which, in the considered opinion of this Court, as has been rightly pointed out by the learned Government Advocate appearing for the respondents 1 and 2, may not be available to the petitioners at this juncture.

16. In view of the aforesaid legal position as has been discussed, the prayer presently sought for by the petitioners to issue a mandamus to the second respondent to consider the request / representations made by them for recovering the money by invoking the provisions of the Revenue Recovery Act may not be granted. Therefore, to that extent this writ petition fails.

17. However, learned counsel for the petitioners has expressed one difficulty that, the third and fourth respondents are trying to sell away the properties belonging to them and once it is transferred, as apprehended by the petitioners / employees, the learned counsel would contend that, the chance of recovering the amount as awarded by the Labour Court by way of lump sum compensation in lieu of reinstatement to the petitioners, would be a difficult job and therefore in order to protect the interest of the employees, due to the said urgency, the learned counsel seeks some indulgence from this Court.

18. In view of the aforesaid discussion and the factual matrix, this Court is inclined to dispose of this writ petition with the following observations / directions.

- (a) The prayer sought for in this writ petition cannot be granted. Therefore, to that extent the writ petition is dismissed. However, it is open to the petitioners to approach the labour Court for filing appropriate Execution Petition and in that case, if they choose to file such Execution Petition within a period of two weeks from the date of receipt of a copy of this order, till such time the second and third respondents are precluded from creating any third party right on the properties belonging to them.
- (b) It is made clear that, in the Execution Petition to be filed, it is also open to the petitioners to make a request by way of miscellaneous application, to get any interim protection against the third and fourth respondents.

(c) It is further made clear that, within the two weeks period as indicated above, if the petitioners / employees do not come forward to file Execution Petition, the orders made above precluding the third and fourth respondents to exploit the properties belonging to them by creating a third party right, shall not stand in the way.

19. With the above observations and directions, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1 The Secretary to Government, Labour and Employment Department
secretariat, St.George Fort Chennai 9.
- 2 The District Collector, Coimbatore District.
- 3 The Management, B.V.V. Paper Industries Unit II 662/2,
Marichinackenpalayam
Ambarampalayam Post Pollachi Coimbatore district Head
Office at B.V.V.
Krishnaprasath 46, Soundaraja Krishnamoorthi Street, Gandhi
Nagar,
Udumalpet, Thiruppur District.
- 4 The Karur KCP Packaging Limited, Represented by its Managing
Director 662/2
Marichinackenpalayam Ambarapalayam post, Pollachi Taluk
Coimbatore District.

+1cc to the Government Pleader Sr.39300

W.P.No.16783 of 2020

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