

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.20882 of 2017

The Secretary,
Chennai Port & Dock Workers Congress,
No.87, (45), Royapettah High Road,
Chennai 600 014.Petitioner

Vs.

1.The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
Sasthri Bhavan, Haddows Road,
Chennai 600 006.

2.The General Manager,
Food Corporation of India,
Regional Office,
8, Sathyamurthy Salai,
Chennai 600 031.Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus to call for the records relating to the impugned order passed by the first respondent dated 18.04.2017 made in complaint 1 of 2016 in ID 23/2015 and quash the same and consequently direct the second respondent to restore the old formula of payment of wages to the FCI Departmental Labourers (now re-deployed as Watch and Ward) of calculating monthly wages by taking into account 26 days instead of 30 days.

For Petitioner : Mr.K.M.Ramesh

For Respondents: R1-Court
Mr.M.Imthias for R2

O R D E R

This writ petition is filed challenging the order of the Labour Court dated 18.04.2017 made in Complaint 1 of 2016 in I.D.No.23 of 2015. The said complaint was made under Section

33-A of the Industrial Disputes Act. The complainant is the petitioner in I.D.No.23 of 2015. The Labour Court dismissed the said complaint by holding that the complainant is not entitled to an adjudication of a matter under Section 33-A of the Industrial Disputes Act.

2. The case of the petitioner, in short, is as follows:

The petitioner is a registered trade Union and represents the workmen employed in the FCI Departmental side. The petitioner raised an industrial dispute regarding certain demands, which includes non-extension of Benevolent Fund Scheme to the departmental workers by the second respondent Management. The first respondent has taken up the reference as I.D.No.23 of 2015. During the pendency of the I.D., the Management unilaterally took a decision to modify the formula for calculation of wages which is in practice ever since 1955. The old formula of calculating monthly wages is by taking into account daily wages and multiply the same for 26 days in a month and multiplied 30 and divided by 26 was adopted. However, the second respondent Management, without any prior notice unilaterally changed the old formula by adopting a new formula, calculating Basic Pay for 26 days and DA for 30 days. By virtue of calculating DA for 30 days, the monthly wages of the departmental workers have been drastically reduced. The reduction of wages is covered by item No.1 of Fourth Schedule to the Industrial Disputes Act, 1947 which requires issuance of notice. The respondent Management did not issue any notice as required under Section 9-A of the Act. As the new procedure/formula adopted by the Management amounts to change of existing service condition of Departmental labour, the second respondent Management ought to have applied for prior permission before the first Respondent Tribunal. The second respondent Management did not comply with the mandatory provisions under Section 33 of the Industrial Disputes Act, 1947. Therefore, the petitioner was forced to file a complaint before the first respondent. The first respondent, however passed the impugned order dismissing the complaint on an erroneous view. Hence, the present writ petition.

3.The second respondent field a counter affidavit, wherein it is stated as follows:

Even though the terms of the reference made to the Labour Court is with regard to the non-implementation of 11 agreed demands by the Management, at the time of adjudication, only the issue raised by the petitioner Union was in respect of non-extension of Benevolent Fund Scheme to the departmental workers. The Management has taken into the account all the procedures followed in various District in Food Corporation of India

wherever departmental Labour is in force and payment of Port Allowance of DL at Chennai/Vizag is one such example. Adhering to the instructions communicated vide Circular No.11/2013 under letter dated 29/30.08.2013, the process of calculation of wages has been changed by switching over from Port Labour to Departmental Labour. At the time of implementation of the new accounting package from 01.08.2015, I.D.No.23 of 2015 was raised by the petitioner's Union for extension of Benevolent Fund Scheme for the departmental workers and therefore, the complaint filed by the petitioner will not come within the purview of Section 33 of the Industrial Disputes Act.

4. Learned counsel for the petitioner Mr.K.M.Ramesh, after reiterating the contentions raised in the affidavit filed in support of the writ petition, submitted that altering the service condition is in violation of Section 33 of the Industrial Disputes Act, 1947 and therefore, the complaint made by the petitioner before the Labour Court is maintainable. He further submitted that the respondent Management did not take any permission from the Labour Court to alter such service condition during the pendency of the I.D. In respect of his contention, the learned counsel relied on the decisions reported in 1995(1) MLJ 148, The Automobile Products of India Ltd., vs. Rukmaji and AIR 1958 (Allahabad) 317, Imperial Tobacco Co. of India Ltd., vs. Ishwar Das.

5. Per contra, learned counsel for the second respondent submitted that the only dispute, which was pending before the Labour Court was in respect of non implementation of the Employees Benevolent cum Welfare Fund Scheme to the concerned workmen and therefore, the change of formula of calculating the monthly wages is not a dispute or an issue in connection with the dispute pending before the Labour Court and therefore, the complaint filed by the petitioner was rightly rejected. He invited this Court's attention to sub Section (2) Sub Clause (a) of Section 33 to contend that the Management is entitled to alter the conditions of service in regard to any matter not connected with the dispute. Therefore, he submitted that the petitioner has not made out a case for interference against the order passed by the Labour Court.

6. Heard both sides.

7. There is no dispute to the fact that a reference was made to the Labour Court to adjudicate as to whether the action of the Management of Food Corporation of India, Chennai regarding non implementation of 11 agreed demands were justified or not. It is also not in dispute that though such reference was made, in view of the fact that the Management has agreed in respect of 10 demands and only one demand was left to be adjudicated viz.,

non implementation of the Employees Benevolent cum Welfare Fund Scheme to the concerned workmen, only such issue was pending before the Labour Court for adjudication.

8. Under the above stated circumstances, this Court has to see as to whether the modification or changing the calculation method of monthly wages is in anyway an issue in connection with the dispute, which was pending before the Labour Court viz., non implementation of Employees Benevolent cum Welfare Fund Scheme to the concerned workmen. In my considered view, as rightly pointed out by the Labour Court, these two issues are not connected with each other and on the other hand, as rightly pointed out by the learned counsel for the second respondent, Section 33(2)(a) specifically contemplates that during the pendency of any such proceedings in respect of an industrial dispute, as in the present case, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to a workman. Therefore, the method adopted for calculation of monthly wages in this case is not an issue which was pending before the Labour Court. On the other hand, it is the matter not connected with the dispute in the said I.D. However whether such alteration is a valid or not, is a different issue which has to be considered and decided by separate proceedings, if the workman or the Union has chosen to challenge the same before the appropriate forum.

9. The only point for consideration in this writ petition is as to whether the complaint filed by the petitioner would fall under the purview of Section 33 (2) (A) of the I.D.Act.

10. As I indicated supra, the said complaint is certainly outside the purview of scope and ambit of Section 33(2)(a) and therefore, I am of the view that the order passed by the Labour Court need not be interfered with. Learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court reported in 1995(1) MLJ 148, The Automobile Products of India Ltd., vs. Rukmaji, and AIR 1958 (Allahabad) 317, Imperial Tobacco Co. of India Ltd., vs. Ishwar Das. Perusal of the said decisions would show that the Apex Court has observed that the relevant provision under Section 33 is introduced with an object to protect workman concerned in disputes which form the subject matter of pending proceedings against victimisation by the employer on account of their having raised industrial disputes or their continuing the pending proceedings. In this case, I have already pointed out that it is not a matter, which was pending before the Industrial Tribunal. Therefore, the above decisions are not helping the petitioner in any manner. Accordingly, I find no merit in this writ petition. Hence, the writ petition is dismissed. However dismissal of the writ

petition shall not be taken to mean that this Court has expressed any view on the alteration of the service conditions viz., method of calculation of monthly wages by the Management, since it is left open to be agitated before the appropriate forum. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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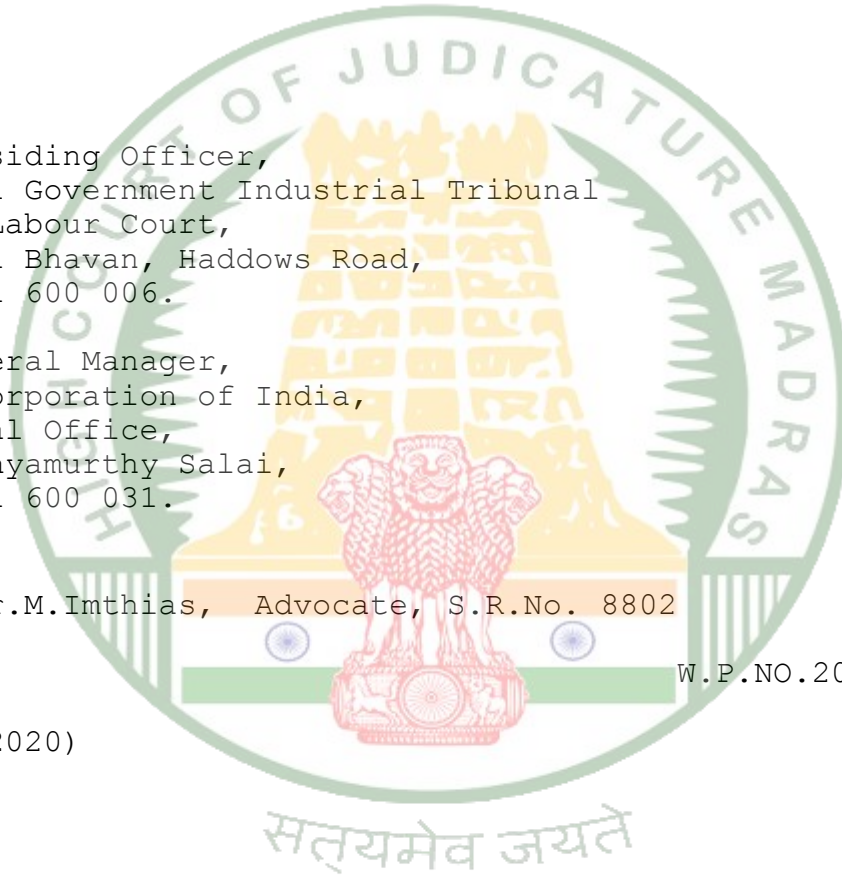
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+lcc to Mr.M.Imthias, Advocate, S.R.No. 8802

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