



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2018

Coram

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

Rev.Aplc(Md)No.13 of 2017

&

W.P. (MD) .No.11682 of 2016

W.M.P.No.13321 of 2016

Orders reserved on 27.03.2018	Orders pronounced on 27.04.2018
---	------------------------------------

A.M.D.Leenus

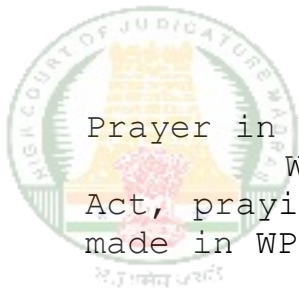
... Review Applicant/
1st Appellant

Vs

1. The Management of Tuticorin Stevedores Association (Labour Pool) Administrative Body, Rep., by its Secretary, Tuticorin Stevedores Association, Chevalier C.I.R.Machado Plaza, 5-A, World Trade Avenue, Tuticorin - 628004.
2. The Management of Tuticorin Port Trust, Cargo Handling Labour Pool, Tuticorin Port Trust, (Now renamed as VOC Port Trust) Tuticorin - 628 004.
3. The Presiding Officer, Labour Court, Tirunelveli.
- 4.E.Pascal Fernando
- 5.D.Balaji
- 6.E.Sahayam Fernando

...Respondents

Prayer:- Review Application filed under Order XLVII Rule 1 read with Section 114 of CPC, to review the order passed in W.A.(MD). No.99 of 2015, by allowing the Review Application.



Prayer in WA(MD).No. 99/ 2015 :

Writ Appeal is filed under section 15 of Letter Patent Act, praying this Hon'ble Court against the order dated 05/06/2014 made in WP(MD). NO. 9519/11.

Prayer in WP(MD).No. 9519/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI MANDAMUS, calling for the records pertaining to the Award in C.P.135/92 dated 23-03-2005 on the file of the Labour Court, Tirunelveli and quash the same, and direct the Respondents to pay the amount as claimed in the Claim Petition filed by the Petitioners, together with interest at the rate of 12% per annum calculated from the date of claim till date of payment and to award cost.

W.P. (MD).No.11682 of 2016

The Management of VOC Port Trust
Rep., by its Chairman,
Bharathi Nagar,
Tuticorin - 628 004.

... Petitioner

vs.

1.The Presiding Officer,
Central Government Industrial
Tribunal cum Labour Court,
Chennai - 600 002.

2.J.Jayaraj
3.P.M.Benjamin

4.The Management of Tuticorin Stevedores Associations,
Rep., by its Secretary,
No.5A, World Trade Avenue,
Bharathi Nagar, Tuticorin - 628 004.

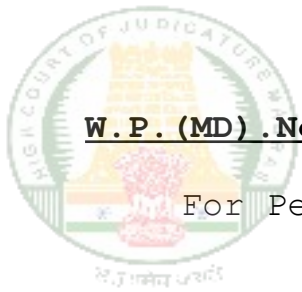
...Respondents

Prayer in W.P. (MD).No.11682 of 2016:-Petition filed Under Article 226 of the Constitution of India praying for issuance of a Writ of Prohibition forbearing the first respondent from proceeding further in C.P.No.3 of 2015, pending on the file of the Central Government Industrial Tribunal cum Labour Court, Chennai.

Rev.Aplc. (MD).No.13 of 2017

For Applicant	..	M/s.Abisha Isaac for Isaac Chamber
For Respondents	..	Mr.S.Yaswanth for R1

Mr.Veerakathiravan Sr., Counsel for
Mr.A.Arivuchandran for R2
Mr.B.Charmurugen for RR4 to R6

**W.P. (MD).No.11682 of 2016**

For Petitioner

.. Mr.Veerakathiravan Sr., Counsel for
Mr.A.Arivuchandran

For Respondents

.. M/s.Abisha Isaac
for Isaac Chamber for RR2&3

Mr.V.Sakthivel for R4

C O M M O N O R D E R**T.S.SIVAGNANAM. J. ,**

This application has been filed to review the judgment and order in W.A(MD).No.99 of 2015, dated 02.12.2016, filed by the Review Petitioner and three others.

2. The said appeal was filed against the common order in W.P. (MD).Nos.9519 & 9520 of 2011, wherein the petitioners challenged the order passed by the Labour Court, Tirunelveli in C.P.Nos.135 & 155 of 1992, dated 23.03.2005, and for a direction to pay the amount claimed in the claim petition together with interest at 12%. The Writ Appeal was dismissed by the judgment dated 02.12.2016, primarily on the ground that the appellants/petitioners are guilty of laches and there has been no plausible explanation offered for the delay.

3. The facts leading to the filing of this Review Application is briefly stated as hereunder:-

The representatives of the Stevedores, Port Handling Agents, Steamer Agents and other users of the Tuticorin Port Trust entered into a memorandum of settlement with the representatives of the Stevedores Association of Tuticorin Port Trust regarding introduction of incentive scheme for cargo handling operation at the Port. The settlement was entered into on 08.06.1983, under Section 12(3) of the Industrial Disputes Act, 1947, (hereinafter referred to as "I.D., Act"). The applicant and 74 similarly placed persons filed C.P.No.155 of 1992 and C.P.No.135 of 1992, before the Labour Court to compute the arrears of incentive to be paid to each of the petitioner from 01.01.1984 to 31.03.1992. The Labour Court, by order dated 08.12.1994, rejected the claim petition filed under Section 33(c) (2) of the I.D.Act on the ground that the claim is disputed and it is not a pre-existing right and therefore, cannot be adjudicated in a computation petition. This order was put to challenge by the petitioners before the Principal Bench of this Court in W.P.Nos.10832 & 10833 of 1996. The Writ Petitions were allowed by order dated 08.11.2004, setting aside the order passed by the Labour Court and remanded the matter for fresh consideration with an observation that the Labour Court is vested with jurisdiction to interpret the settlement on which the claim is based. On remand the Labour Court by order, dated



23.03.2005, held that the claim of the petitioners is unresolved, disputed claim and cannot be adjudicated under Section 33(3)(c) of the I.D.Act. Six of the workmen challenged the said order before this Court by filing W.P.(MD).Nos.9519 & 9520 of 2011. The Writ Petitions were dismissed on the ground of delay and laches and observing that the petitioners having accepted the benefits under the subsequent settlements, cannot seek for a raise in the incentive rates. Challenging the said order, the petitioner filed W.A.(MD).No.99 of 2015, and three other petitioners filed W.A.(MD) No.100 of 2015, by common judgment, dated 02.12.2016, both the appeals were dismissed, confirming the order passed by the Writ Court, rejecting the prayer on the ground of delay and laches. The first appellant in W.A.(MD)No.99 of 2015, is the review applicant before us.

4. Ms.Abisha Isaac, learned counsel appearing for the Review Applicant submitted that the applicants should not be non-suited on the ground of delay and laches, as the chain of events will clearly show that the applicant and others have been agitating their rights ever since 1992 and there have been six rounds of litigation and among the six rounds of litigation only at one stage, there has been a delay and delay is not wanton nor that the applicant and others were not diligent or lethargic and considering the facts and circumstances of the case and the poor economic condition of the applicant and others, they should be permitted to pursue the litigation and contest the matter on merits. By relying upon the decision of the Hon'ble Supreme Court in the case of **State of Jammu & Kashmir vs. Dr.Ashok Kumar Gupta & Ors., [(1996) 2 SCC 82]** and **Esha Bhattacharjee Managing Committee of Raghunathpur Nafar Academy & Ors., [(2013) 12 SCC 649]**, it is submitted that when grave injustice has been caused, it is an exception and delay and laches does not bar the High Court from exercising jurisdiction under Article 226 of the Constitution. Therefore, it is submitted that the Court may consider the matter on merits and not reject the application on the ground of delay and laches. On the merits of the application, it is submitted that the settlement entered into in the year 1983, is a exclusive settlement between the workmen and the Stevedores Association of the Tuticorin Port Trust, with regard to the scheme of payment of incentive alone, whereas the settlement entered into in the year 1984 and in the year 1999 and other settlements were between the Government of India and All India Port & Dock Workers Federation and others and those settlements have no bearing or effect on the incentive scheme agreed upon by Tuticorin Port Trust Workmen and Stevedores Association. Further, the other settlements pertain to different issues, such as wage revision and liberalisation of terms and conditions of employment etc. This fact is evident on perusal of the short recital in every settlement and it will show that there is not even a single reference to the settlement entered into in the year 1983. It is further submitted that the



daily notified wage stated under the 1983 settlement, can be understood only as minimum wages, as notified from time to time under the Minimum Wages Act and it cannot be construed as a constant factor. It is further submitted that though the subsequent settlements from 1984 to 2011, stipulate revision of percentage of incentive scheme, the base rate, which was fixed in the year 1983, has been taken into consideration. In the 1983 settlement, the list basic wage is the basis for the same and hence, it was made clear that the same cannot be constant factor, but a variable one, which changes will increase over the year. Therefore, it is submitted that the 1983 settlement, cannot be interpreted, as a constant factor even after several decades and therefore, Rs.13.77ps., stated in the 1983 settlement is only a mere example. Further, if the wage of Rs.13.77ps., which was fixed in the year 1983, has to be construed as a constant factor, then it will be against the public policy.

5. Mr.Veerakathiravan, learned Senior counsel appearing for Mr.A.Arivuchandran, learned counsel for the Management of the Tuticorin Port Trust submitted that the settlement, dated 08.06.1983, was arrived at between the representatives of the Stevedores, Port Handling, steamer agents and other users and the representatives of the cargo handling workers in the erstwhile Tuticorin Port Trust regarding the introduction of incentive scheme for cargo handling operations and the incentive earnings are calculated as per clause 15 of the said settlement. The learned Senior counsel referred to the various clauses in the settlement and in particular, clauses 15, 23, 28. It is further submitted that on 12.06.1989, a settlement was arrived at between the Management of the Port Trust and Dock Labour Board and representatives of the Federation of Port Workers at New Delhi, on the issues of wage revision and liberalisation of the terms and conditions of employees on Port and Dock workers at 10 major Ports and seven Dock Labour Ports. Clause 18 of the said settlement states that demand for revision of piece-rate and incentive scheme under the existing payment by results scheme will be discussed and settled separately. The Tuticorin Stevedores Association (Labour Pool), is a registered body under the Societies Registration Act, which manages the cargo handling workers and have implemented the various settlements. The petitioners filed C.P.No.155 of 1992, before the Labour Court to pay the amount as claimed by them contending that incentive has to be revised based on the revised basic pay as and when changed, since the original notified basic wage of Rs.13.77ps., based on prevalent basic wage of shore worker, cannot be a constant factor. It is submitted that the interpretation given by the petitioner is incorrect, since the piece-rate incentive is a constant factor and is not variable for every revision of wages on subsequent wage revision settlement. The learned counsel referred to the memorandum of settlement, dated 06.12.1994, between the Federation of Workers of Port Unions, over the demand of wage revision and



various clauses contained therein and in particular clause 25, which aims at improving the piece-rate suitably by improving the revised datum with due relevance to the average productivity level achieved in three years.

6. The Management of the Tuticorin Stevedores Association, (Labour Pool) has the increased base ton per rate periodically till 31.01.2000. It is further submitted that a memorandum of Settlement was arrived at on 22.12.1999, between the five Unions representing Cargo Handling Workers, the Management of Tuticorin Stevedores Association and the Management of erstwhile Tuticorin Port Trust, wherein Cargo Handling Workers and Staff shall be brought under a separate scheme, known as 'Tuticorin Port Trust Cargo Handling (Labour Pool)' and it will be operated by an officer effective from 01.01.2000. It is further submitted that nearly 1926 workers in various categories and 64 administrative staffs came under the newly formed Tuticorin Port Trust Cargo Handling (Labour Pool). The agreement, dated 22.12.1999, provided for various benefits and also piece-rate benefits, as the scheme available to them earlier. It is further submitted that a settlement was arrived at on 27.07.2011, between five Unions representing Cargo Handling Workers and the Management of the Port Trust over the issue of merger of Tuticorin Port Trust Cargo Handling (Labour Pool) with V.O.Chidambaranar Port Trust as per approval of the scheme of merger by Ministry of Shipping, Government of India, dated 18.02.2011. The benefits, which accrued to the workers on account of the said settlement, were highlighted by the learned Senior counsel by referring to the affidavit filed by the Law Officer of the respondent Port Trust. Thus, it is submitted that the respondent Port Trust is noway responsible any past disputes between the private labour pool management and their workmen prior to 01.01.2000.

7. It is submitted that the base factor of Rs.13.77ps., as per the settlement in 1983 for the purpose of piece-rate scheme is a constant factor till the next settlement. It is submitted that from 1981 till 01.01.2000, the listed Labour Pool of the workers was managed by the private body of Tuticorin Stevedores Association (Labour Pool) Management and depending on their resources, ability to pay, level of mechanization and quantum of cargo handled by them, implemented the piece-rate/incentive settlement as per the agreement with the local unions before the conciliating authority. This is as per the direction of the clause 21 of the wage revision settlement as mention ibid and as such will not have any incremental effect on the rate fixed. It is further submitted that any disputes arising out of the piece-rate/incentive settlement was disposed off then and there through the appropriate authority as per clause-16 of the settlement dated 1983. It is further submitted that as per clause 16 of the annexure I of the 1983 settlement,



the claim for the revision of base factor by the Trade Union was rejected by the Chairman of the respondent Port Trust in the year 1984 and such order of rejection was approved by the Government of India, by letter dated 08.06.1984. Thus, the claim having attained the finality, it cannot be adjudicated by the claim petition under Section 33(C)(2) of the ID Act and therefore, the claim petition is not maintainable.

8. Heard the learned counsels appearing for the parties and carefully perused the materials placed on record.

9. Three issues arise for consideration in this review application, the first being whether the judgment and order passed in W.A.(MD).No.99 of 2015, dated 02.12.2016, suffers from any error apparent on the face of the record warranting review. If this question is answered in the affirmative, then the following questions would arise for consideration, namely, (2) whether the Labour Court was right in rejecting the CP.Nos.135 & 155 of 1992, by order dated 23.03.2005, on the ground that the claim of the petitioners is unresolved and disputed claim and cannot be adjudicated under Section 33(C)(2) of the ID Act, in spite of the directions and observations issued/made in W.P.Nos.10832 & 10833 of 1996; (3) whether the order passed by the Writ court in W.P.(MD).No.9519 of 2011, dismissing the Writ Petition on the ground of delay and laches as confirmed by the Hon'ble Division Bench, is just and proper.

10. We have taken up for consideration issue No.(1) and examined as to whether the impugned judgment suffers from any error apparent on the face of the judgment. As pointed out earlier, the Writ Appeals were dismissed on the ground of delay and laches. The Division Bench observed that unless it is shown that the learned Single Judge was palpably wrong, it is not at all possible for the Division Bench to interfere with the order of the learned Single Judge. The Division Bench observed that the learned Single Judge has held that the appellants are guilty of laches, that the award of the Labour Court was passed on 23.03.2005, which was challenged only in the year 2011, i.e., after six years. While accepting the plea raised by the appellants that provisions of Limitation Act are not applicable, it was observed that there is a vast difference between the period of limitation prescribed under the statute and the principles of laches. Thus, the Division Bench affirmed the order passed by the learned Single Judge and dismissed the appeal confirming the findings that the applicant was guilty of delay and laches. Physical running of time alone is not the test while considering as to whether a litigant is guilty of delay and laches. As pointed out by the Hon'ble Division Bench the provision of the Limitation Act are not applicable. Nevertheless a litigant, who comes to Court seeking for a relief should approach the Court within a reasonable time. Strict interpretation of this doctrine



has been given in cases pertaining to service disputes, where the litigant comes to Court challenging a seniority list after several decades which if accepted, would result in serious consequences and accrued rights of other employees would be affected. Similarly, claims made by the litigants have been rejected on the grounds of acquiescence, on the grounds of having spelt over matter and in certain other cases, where the litigant does not approach the Court, but waits for some other person to initiate the process and after a long drawn battle if that person succeeds, then the litigant approaches the Court seeking for similar relief after several decades. Claims made by such litigants, were thrown out, as they have been termed as persons sitting on the fence and watching. What is important to note in the present litigation is that it is the claim made by workmen regarding an incentive payable to them. The conduct of the parties has to be looked into to examine as to whether there has been lethargy on their part in approaching the Court. As mentioned earlier, physical running of time is not the safe test in all cases. If the litigant has a reasonable explanation, has shown sufficient cause for not having approached the Court earlier, such plea has been entertained, as the doctrine of delay and laches has to be interpreted liberally, especially when, it pertains to claims of workmen, which are collectively.

11. Admittedly, there is no allegation of *malafides* against the applicant or that he has wilfully failed to approach the Court at the appropriate time. Admittedly, the applicant does not stand to gain by approaching the Court belatedly. That apart, the issue has been agitated by the workers through their Union as well as individually from 1992. The orders passed by the Labour Court on two occasions and the Writ Petition, which was filed in the year 1996 and would go to show that the applicants have been agitating their rights diligently.

12. It may be true that the challenge to the order of the Labour Court, dated 23.03.2005, was made only in the year 2011, i.e., after six years. In the affidavit filed in support of the Writ Petition, in paragraphs 6 & 7, the following explanation has been given as to why the Writ Petition was not preferred earlier:-

6. I humbly submit that the petitioners are workmen and on their behalf, claim petitions came to be filed. Whenever we approach the union leader, he was replying that the matter is under trial. The petitioners bonafidely and completely belived him and awaited for the results. In fact, he is one of the prominent powerful efficient General Secretary in AITUC. The status of the Union, viz AITUC and their officer bearer's need not be said in so many words. Therefore, the poor workers will have to depend upon them and take their words for granted. This



is how we were all having bonafide belief and expectation that one day or other, favourable awards will be obtained by the leader. Our bonafide and confidence which we impose on him reflected and gave strong support to our moral belief from his successful adjudication on various Industrial Disputes and Claim Petitions. In fact, in our claim claim petition itself, originally almost of the workers fed up and frustrated; and nevertheless encouraged us and filed Writ Petition before this Hon'ble Court, spending union funds and got the earlier order of the Labour court set aside and this Hon'ble Court was pleased to remand. This is how we blindly and genuinely believed him and imposed confidence on him. We also know whenever labour disputes are entertained, it will take its own course of time to see finality. Unless it is settled it will run for years together. This is how we believed him.

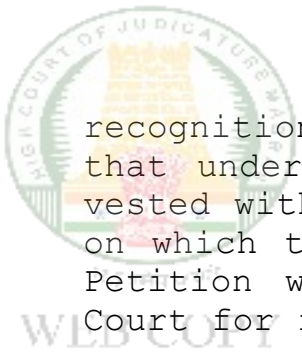
7. I submit that out of curiosity when we wanted to verify the status, to our surprise we learnt that our claim petition were dismissed in 2005 itself. Immediately we applied for certified copy of the claim petition order and going through the order, it is humbly submitted the Labour Court has not considered and interpreting the agreement and terms of the settlement incorporated and the benefits flowing on the workers. Therefore, we were advised to approach this Hon'ble Court seeking to set aside the award of the Labour Court. Though the award of the Labour Court was dismissed in Claim Petition in 2005, in view of our innocence and the belief we imposed upon the General Secretary, we kept quite. After getting the information, when we approached him to take up the matter before this Hon'ble Court by way of filing a writ petition, he has not shown evincing interest. Further, in view of the intervention of the Parliament and the Assembly Elections, he has been busy and we understand that he has not applied for the copy of the order. I humbly submit that since he is not taking any steps, we are approaching this Hon'ble Court and filing the present writ petition. The delay / laches in approaching the Hon'ble Court is condoned and the Writ Petition is entertained on merits, no prejudice would be caused to anyone. If the delay / laches are not condoned, the petitioners will be losing their total amount of benefits which has been conferred under 12 (3) Settlements. Moreover the delay / laches could not be attributed against the petitioner. The



petitioners were not personally adjudicating the claim petition. They were adjudicating through their union leader, in the sense personal knowledge and following the hearings.

13. The said averments have not been denied nor controverted by the respondents before the Writ Court and the contention was that the Writ Petition is not maintainable on the ground of delay and laches and referred to five judgments to support the said contention. Thus, the above averments, which were placed before the Writ Court was never tested for its correctness, as it appears that the respondents did not controvert such a claim, but projected their case by stating that the petitioner is guilty of delay of six years in approaching the Court. In our considered view, the endeavour should have been to examine the genuineness of the claim made by the petitioners in the aforementioned paragraphs and then to test their conduct as to whether there has been wilful delay and negligence on their part in approaching the Court. This exercise having not been done by the Writ Court and not considered by the Hon'ble Division Bench, we are of the opinion that the judgment and order of the Division Bench suffers from errors, which are apparent on the face of the judgment warranting review of the same. Accordingly, the issue No.1 is answered in favour of the Review Applicant.

14. Moving on to the other issues, it has to be seen as to whether the Labour Court was justified in rejecting the claim petitions by order dated 23.03.2005. At this juncture, it would be relevant to take note of the order passed in W.P.Nos.10832 & 10833 of 1996, dated 08.11.2004. In the said Writ Petitions, the applicant and other similarly placed persons, challenged the order passed by the Labour Court in computation petitions, which were rejected by order dated 08.12.1994. The Labour Court, while rejecting the claim petitions observed that the dispute between the workmen and the employer in regard to the interpretation of any provisions of the award or settlement can be resolved only by following the procedure prescribed under Section 36A of the Act by way of reference to the Tribunal. Before the Writ Court, the learned counsel appearing for the applicants placed reliance on the decision of the Hon'ble Supreme Court in the case of **Central Bank of India vs. Rajagopalan [1960-2LLJ-89]**, which was followed in the case of **Municipal Corporation of Delhi and Ors., vs. Ganesh Razak [(1995) 1 SCC 235]**. After taking note of the said decision, the Court observed that the power of the Labour Court under Section 33(C)(2), extends to interpret the award or settlement on which the workmen's right rest, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim, if there being no prior adjudication or



recognition of the same by the employer. Thus, the Court held that under Section 33(C)(2), of the ID Act, the Labour Court is vested with the jurisdiction to interpret the award or settlement, on which the claim is based and having failed to do so, the Writ Petition was allowed and the matter was remanded to the Labour Court for fresh consideration.

15. On remand the Labour Court took up the matter for consideration and by order dated 23.03.2005, rejected the petition. Four points were framed for consideration by the Labour Court, which are as follows:-

- (i) Whether these petitions are maintainable in this Court?*
- (ii) Whether the claims of the newly added parties can be computed in this proceedings?*
- (iii) Whether the petitioners are entitled for the amount claimed?*
- (iv) To what order the petitioners are entitled to?*

16. In our considered view, the Labour Court misdirected itself in framing the first question, since the Writ Court has already decided the said question and held that the petitions are maintainable. Therefore, the Labour Court could not have made any observations or even taken up the question for consideration, since the claim petitions were held to be maintainable and the directions issued by the Writ Court was to take up the matter for fresh consideration. The remand made by the Court after setting aside the earlier order was with an observation that the Labour Court is vested with the jurisdiction to interpret the order or the settlement on which the claim is based and having failed to do so, the Writ Petition was allowed and the earlier order was set aside. Therefore, the findings given by the Labour Court on the point No.1, has to be out rightly rejected and it has to be held that the claim petitions are maintainable.

17. So far as the Point No.2 is concerned, in our considered view, the Labour Court adopted a very narrow approach to the issue with regard to the claims made by newly added parties. Most of whom are legal representatives of the deceased workmen. If the Labour Court takes a decision on merits as to whether Rs.13.77ps, is a constant factor or a variable factor, then such decision can be automatically made applicable to the legal representatives of the deceased workmen. Therefore, the plea raised by the newly added parties need not have been rejected, but could have been kept pending subject to the ultimate result of the computation petitions. Therefore, we are not agreeable with the reasons given by the Labour Court in point No.2.

<https://hcservices.courts.gov.in/hcservices> 18. Point No.3, as framed by the Labour Court is the only issue, which should have been considered by the Labour Court. On a perusal of the order passed by the Labour Court, though it



appears that while discussing the point No.3, the Labour Court has touched upon the merits of the matter, but on a closer reading of paragraphs 13 to 20 indicates that the Labour Court has set out the contentions raised by the respondents objecting to the claim made by the Workmen. Though there may be stray references, where the Labour Court has rendered an opinion, but on a reading of paragraphs 13 to 20, it is not decipherable as to which are findings rendered by the Labour Court. Ultimately, in paragraph 21, the Labour Court came to the conclusion, the claim made by the Workmen has been disputed and cannot be decided in a petition under Section 33(C)(2) of the I.D.Act. As pointed out earlier, the Labour Court could not have come to such findings after especially when the Writ Court in the earlier Writ Petition in W.P.Nos.10832 & 10833 of 1996, dated 08.11.2004, held that the claim petition is maintainable. The respondents have not filed any appeal against the said order. Therefore, it binds the respondents. The respondents cannot raise a plea with regard to maintainability of the petition under Section 33(C)(2) of the I.D.Act. At this juncture, it would be worthwhile to refer to the operative portion of the order dated 08.11.2004, in W.P.Nos.10832 & 10833 of 1996:-

"5.Learned counsel for the petitioners Mr.Hariparanthaman brought to the notice of this Court the judgment of the Supreme Court reported in 1963 (II) L.L.J. 89 (Central Bank of India vs. Rajagopalan), wherein, it is held as follows:

"It is however, urged that in dealing with the question about the existence of a right set up by the workman, the labour court would necessarily have to interpret the award or settlement on which the right is based, and that cannot be within its jurisdiction under S.33C(2), because interpretations of awards or settlements have been specifically and expressly provided for by S.36A. We have already noticed that S.36A has also been added by the Amending Act 36 of 1956 along with S.33C, and the appellant's argument is that the legislature introduced the two sections together and thereby indicated that questions of interpretation fall within S.36A and, therefore, outside S.33C(2). There is no force in this contention. Section 36A merely provides for the interpretation of any provision of an award or settlement where any difficulty or doubt arises as to the said interpretation. Generally, this power is invoked when the employer and his



WEB COPY

employees are not agreed as to the interpretation of any award or settlement, and the appropriate Government is satisfied that a defect or doubt has arisen in regard to any provision in the award or settlement. Sometimes, cases may arise where the awards or settlements are obscure, ambiguous or otherwise present difficulty in construction. It is in such cases that S.36A can be invoked by the parties by moving the appropriate Government to make the necessary reference under it. Experience showed that where awards or settlements were defective in the manner just indicated, there was no remedy available to the parties to have their doubts or difficulties resolved and that remedy is now provided by S.36A. But the scope of S.36A is different from the scope of S.33C (2), because S.36A is not concerned with the implementation or execution of the award at all, whereas that is the sole purpose of S.33C(2). Whereas S.33C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, S.36A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under S.36A. Besides, there can be no doubt that when the labour court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well-settled that it is open to the executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provisions of the decree. These limitations apply also to the labour court; but like the executing Court, the labour court would also be competent to interpret the award or settlement on which a workman bases his claim under S.33C(2). Therefore, we feel no difficulty in holding that for the purpose of making



the necessary determination under S.33C(2), it would, in appropriate cases, be open to the labour court to interpret the award or settlement on which the workman's right rests."

6. The abovesaid judgment of the Supreme Court was followed by the Supreme Court in the decision reported in 1995 (1) S.C.C. 235 (Municipal Corporation of Delhi vs. Ganesh Razak), wherein the Supreme Court held as follows:

"8. Reference may be made first to the Constitution Bench decision in Central Bank of India Ltd. v. P.S.Rajagopalan (1964 (3) SCR 140 : AIR 1964 SC 743 : 1963 (2) L.L.J. 89) on which Shri Rao placed heavy reliance. That was a case in which the question of maintainability of proceedings under Section 33-C(2) of the Act was considered in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the applicability of Section 33-C(2) of the Act. It was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of Section 33-C(2) because interpretation of awards or settlements has been expressly provided for by Section 36-A. This objection was rejected. This Court pointed out the difference in the scope of Section 36-A and Section 33-C(2) indicating that the distinction lies in the fact that Section 36-A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33-C(2); and whereas Section 33-C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36-A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under Section 36-A. In this context, this Court also indicated that the power of the Labour Court in a proceeding under Section 33 -C(2) being akin to that of



WEB COPY

the Executing Court, the Labour Court is competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2), like the power of the Executing Court to interpret the decree for the purpose of execution. Relevant extract from that decision is as under: (SCR pp. 154-155).

"Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the Executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the Executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests."

This decision itself indicates that the power of the Labour Court under Section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned counsel for the respondents."

<https://hcservices.ecourts.gov.in/hcservices/7>. It is seen from the abovesaid judgments that under Section 33-C(2), the Labour Court is vested with the jurisdiction to interpret the award or the



by dividing the minimum daily basic wage of the shore labourer by the base output tonnage.

Example:

Cargo : MOP, Rock Phosphate, Sulphur
Ammonium Sulphate in bulk

Base Output : 90 MT

Basic wage at base output : Rs.13.77

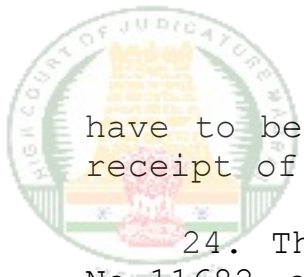
Base per tonne rate = 15.30 paise"

21. The contention of the workmen is that the basic wage at base out put was fixed at Rs.13.77ps., in the settlement and this cannot be a constant factor, but it is a variable factor and this amount was fixed at the relevant time taking into consideration the minimum wage prevalent at that time. The further arguments being that the settlement itself shows this figure under the column "example", i.e., to say that it is by way of illustration. Therefore, it is contended that this Rs.13.77ps., should not be a constant factor, but should be a variable factors. This is resisted by the respondents by primarily relying upon the subsequent settlements and also by contending that the past dispute between the private labour pool management and their workmen is not the responsibility of the respondent Port Trust. Simultaneously, they seek to justify that Rs.13.77ps., is a constant factor. Therefore, all that the Labour Court is expected to do is to interpret the terms of settlement and examine as to whether base wage of Rs.13.77ps., is a constant factor or a variable factor. If this exercise had been done in a proper manner atleast after the order of remand passed by this Court in 2004, much of the judicial time, would not have been wasted. Therefore, on this aspect alone, the matter has to be remanded to the Labour Court for fresh consideration.

22. In the result, the Review Application is allowed and the judgment passed in W.A.(MD).No.99 of 2015, confirming the order passed in W.P.(MD).Nos.9519 & 9520 of 2011, dated 05.06.2014, are set aside and the order passed by the Labour Court in C.P.Nos.135 & 155 of 1992, dated 23.03.2005, is set aside and the matter is remanded to the Labour Court to decide the following question:-

Whether the base wage at base output of Rs.13.77ps., as mentioned in clause 15 of the settlement, dated 08.06.1983, is a constant factor or a variable factor.

23. The Labour Court is at liberty to frame other subsidiary questions relateable to and arising out of the above question and take an early decision in the matter, as the claim petitions were filed by the Workmen in the year 1992 and the parties are directed to extend their cooperation for early decision in the matter and the Labour Court shall pass orders based on the documentary evidence placed before the Court and if it is absolutely necessary additional documents may be permitted to be marked by either side. The matter shall be concluded and the final orders



have to be passed within a period of four months from the date of receipt of a copy of this order.

24. The Management of the VOC Port Trust has filed W.P.(MD). No.11682 of 2016 and in the said Writ Petition, the petitioner Port Trust has sought for a Writ of prohibition to prohibit the first respondent namely, the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court (CGIT) from proceeding further in C.P.No.3 of 2015 filed by the two individuals namely two individuals, J.Jayaraj, and P.M.Benjamin, who are the respondents 2 and 3 in the Writ Petition. The Writ Petition had been filed on the ground that the issue raised in C.P.No.3 of 2015, before the CGIT has been decided in favour of the Port Trust and the Writ Petitions filed by the workers in W.P.(MD).Nos.9519 & 9520 of 2011, were dismissed by order dated 05.06.2014. Therefore, the petitioner Port Trust sought for a prohibition not to proceed with the adjudication of C.P.No.3 of 2015.

25. In the light of the orders passed in Rev.Aplc.(MD)No.13 of 2017, the prayer sought for by the petitioner for issuance of a Writ of prohibition has to be necessarily rejected. Since, the Review Petition has been allowed and the judgment in W.A.(MD). No.99 of 2015, has been set aside, consequently, the orders passed in Writ Petitions were set aside as well as the orders passed by the Labour Court in C.P.Nos.135 & 155 of 1992, were set aside and the matter has been remanded to the Labour Court to decide the matter afresh in terms of the directions contained in the order. However, since the Labour Court, Tirunelveli, has been directed to reconsider the matter and that being the substantive litigation, the first respondent CGIT is directed to keep the C.P.No.3 of 2015, pending on its file till a decision is arrived at in C.P.Nos.135 & 155 of 1992, pursuant to the order of remand passed in Rev.Aplc.(MD).No.13 of 2017. Accordingly, the Writ Petition is dismissed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

The Presiding Officer,
Labour Court,
Tirunelveli.

WEB COPY

- + 2 ccs TO Mr.A.Arivuchandran , Advocate in SR No. 64300,64827
- + 1 cc TO M/S.Isaac Chambers , Advocate in SR No.64610
- + 2 ccs TO Mr.B.Char Murugan , Advocate in SR No. 64309

pbn

AE/SV MMS/SAR1/18.05.2018/19P/7C

O r d e r i n
Rev.Aplc(Md)No.13 of 2017
&
W.P. (MD) .No.11682 of 2016
27.04.2018