



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.2115 of 2012 against W.P.No.15640 of 2007

1 V.SUGUMARAN
2 N.KRISHNAMURTHY
3 V.ARAVAMUTHAN
4 P.SOMASUNDARAM
5 P.KRISHNAMURTHY
6 G.SHANTHA
7 M.MEENAKSHI
8 K.SRIDHARAN
9 M.R.GOWRI
10 S.K.SRINIVASAN
11 S.GOTHANDAM
12 S.NEELAKANDAN
13 O.P.SUBRAMANIAN
14 S.JAYASREE
15 L.SHEIK HASKIM
16 V.SEKAR
17 C.SRINIVASAN
18 S.SIVAKUMAR
19 J.KRISHNAN
20 N.SANKARAN
21 R.RAJU
22 S.SUBRAMANIAM
23 D.SIVAKUMAR
24 R.PARTHASARATHY
25 A.SUDHAKAR
26 A.DHANAPAL
27 V.SELVARAJ
28 V.ARUMUGAM
29 P.NATARAJAN
30 D.VELAPPAN
31 G.CHANDRASEKAR
32 S.MUNINAGARATHINAM
33 S.SUNDARASEKARAN
34 S.PALANI
35 K.JAYAKUMAR
36 K.DEVAN
37 K.MANI



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38 Y. JAYAKUMAR
39 S. R. CHANDRASEKARAN
40 T. MANI
41 D. SANTHANAM
42 M. ROSEBAI
43 V. PALANISAMY
44 M. RAMACHANDRAN
45 R. VASUDEVAN
46 V. GOVINDASAMY
47 R. MAGENDRAN
48 B. POONGOTHAI
49 S. ARUNACHALAM
50 S. RAVIKUMAR
51 K. SHANKARAN
52 N. MUVAR SULTANA
53 P. THANGARAJ
54 P. DHANALAKSHMI
55 N. RAMANATHAN
56 K. BHARATHI
57 M. SELVARAJ
58 P. R. RAJESWARI
59 S. KANNAN
60 K. SOMASUNDARAM
61 A. VELAYUTHAM
62 T. R. KALYANI
63 R. NAGARATHINAM
64 E. RAJESWARI
65 V. SUNDARI
66 S. R. RAVISANKAR
67 P. N. RAGHURAMAN
68 K. DAYALAN
69 S. HEMALATHA
70 S. JAYAM
71 S. MOHAN
72 T. SRINIVASAN
73 S. V. SANKAR
74 C. S. SRINIVASAN
75 USHARANI VENKATESAN
76 V. SEKAR
77 D. DHANAPALAN
78 P. P. RAMANATHAN
79 K. SRINIVASAN

.. Appellants/Respondent 2,4 to 12,
15,16,19 to 22, 24 to 29, 32 to
50, 52 to 67, 71 to 74, 76 to
80, 82 to 83, 86, 87, 92 to 94,
96 to 100 and 102



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Versus

1 THE MANAGING DIRECTOR
M/S PENTAFOUR PRODUCTS LTD REGD OFF CHITRA
TOWERS NO.120/C ARCOT ROAD KODAMBAKKAM CH-24
REP BY ITS CHAIRMAN AND MD

... 1st Respondent/Petitioner

2 THE PRESIDING OFFICER
FIRST ADDITIONAL LABOUR COURT CHENNAI

... 2nd Respondent/ 1st Respondent

3 A.P.SANTHANAM
4 G.SWATHANTHRA
5 N.KUTTY
6 K.PADMAVATHI
7 S.KATHIRVEL MURUGAN
8 S.ABDUL HAKKIM
9 T.SUBRAMANIAN
10 C.R.RAMA RAO
11 S.SUKUMAR
12 R.BASKARAN
13 N.VASU
14 E.SAMUEL
15 VELAYUTHAM
16 J.NAGARAJAN
17 N.VENKATASUBRAMANIAM
18 R.DAYALAN
19 R.BHARATHAN
20 R.PARTHASARATHY
21 JEBARAJ
22 G.SRINIVASAN
23 N.VIJAYAN
24 P.RAMANATHAN
25 M.THANGARAJ

.. Respondents/Respondent
3,13,14,17,18,23,30,31,51
,68,69,70,74,75,81,84,85,
88,89,90,91,95 and 101

Prayer: Writ Appeal has been filed under Section 15 of Letter of Patent against the order dated 05.06.2012 passed in W.P.No.15640 of 2007 by the learned Single Judge of this Court.

Prayer in W.P.No.15640 of 2007 : Petition filed under Article 226 of Constitution of India praying to issue writ of certiorari to call for records in C.P.No.724 of 2002 on the file of the 1st Respondent, I Additional Labour Court, Chennai. and to quash the order dated 13/02/2007 made therein.



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For Appellants : Mr.K.S.Viswanathan

For R1 : Mr.Shivathanu Mohan
for M/s.S.Ramasubramaniam & Associates

For R2 : Court

For R3 to R25 : Given up

JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

The appellants have filed this writ appeal challenging the impugned order dated 05.06.2012 passed by the learned Single Judge in W.P.No.15640 of 2007, by which, the order passed by the I Additional Labour Court, Chennai, in C.P.No.352 of 2001, dated 24.10.2001 directing the first respondent/Pentafor Products Limited, Auto Division, Chennai, to pay certain arrear amount to the workmen/appellants herein, was reversed.

2. Heard the learned counsel appearing on either side and perused the materials available before us.

3. The first respondent is a company registered under the Indian Companies Act. The appellants and the respondents 3 to 25 were working as employees of the respondent company for the past several years. Whiles, since the respondent company had incurred huge loss, it had declared suspension of operation on 01.08.2001. Therefore, it was referred to BIFR as a sick company for providing a rehabilitation scheme. Pending proceedings, Madras-Chenglepet General Workers' Union, in which, the appellants were also members, raised an industrial dispute on 12.03.2001 stating that the suspension of operation was illegal. Thereafter, after the failure report dated 22.08.2001 submitted by the Assistant Commissioner of Labour-II, Chennai, the State Government referred the dispute for adjudication before the Industrial Tribunal at Chennai, on 14.02.2003. The Tribunal, by its award dated 21.02.2006 passed in I.D.No.32 of 2003, held that suspension of operation was illegal and void and further held that workmen were entitled to get reinstatement together with wages as well as other attendant benefits from the date on which the management gave the notice for suspending its operation i.e., on 01.08.2001. Subsequent to the award, a settlement under Section 12(3) of the Industrial Disputes Act (in short "ID Act") was reached on 19.04.2006 between the first respondent management and the appellants' union, in which, Clause 3 of the Terms of the Settlement dated 19.04.2006 reads as follows:-



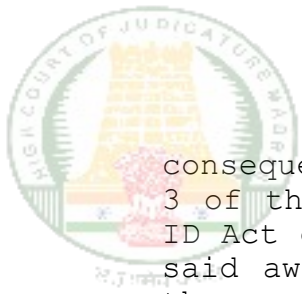
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"3. That the amount specified in the annexure shall be accepted and is received by each workmen as full and final settlement of all claims due from the company on the clear understanding that there will be no claim whatsoever by any worker or workmen against the management thereafter as the claim proceedings initiated before the Labour forum are withdrawn and the Court award in I.D.No.32 of 2003 is treated as not pressed and settled."

The above said document was marked as Ex.R4 and during the course of examination, the first appellant, who was examined as PW.1 has admitted the existence of settlement. Learned Single Judge, by taking note of the above said document and also citing various legal precedents of the Hon'ble Apex Court, held that the Labour Court is not competent to exercise the jurisdiction under Section 33-C(2) of the ID Act to arrogate to itself the functions of an Industrial Tribunal, and accordingly, learned Single Judge reversed the order passed by the Labour Court in C.P.No.724 of 2002, dated 13.02.2007.

4. It is contended by the learned counsel for the appellants that since the Labour Court had already passed an award in I.D.No.32 of 2003, dated 21.02.2006, holding that the suspension of operation by the respondent company was illegal, which also became final and concluded, it goes without saying that pre-existing rights adjudicated upon by the appellants have been once for all decided. Therefore, it is not open to the learned Single Judge to hold that without having pre-existing rights, they cannot lay their claims under Section 33-C(2) of the ID Act. In addition thereto, he has also contended that settlement reached under Section 12(3) on 19.04.2006 clearly says that there was a pre-existing rights and therefore, it is not correct to say that the appellants are not having pre-existing rights to lay their claim under Section 33-C(2) of the ID Act.

5. But we are unable to find any merits therein. At the outset, it may be mentioned that after the suspension of operation on 01.08.2001, there was a dispute between the appellants' union and the first respondent management and thereafter, the matter was conciliated before the Conciliation Officer/Assistant Commissioner of Labour-II, Chennai, but, since it was ended in failure, the Government, by order dated 14.02.2003, referred the dispute before the Industrial Tribunal at Chennai for adjudication. The Tribunal, after hearing both parties, by award dated 21.02.2006 passed in I.D.No.32 of 2003, held suspension of operation was illegal and void and further held that workmen were entitled to get reinstatement along with



consequential backwages. Whiles, as could be seen from Clause 3 of the Terms of Settlement reached under Section 12(3) of the ID Act on 19.04.2006 extracted supra, it is to be noted that the said award dated 21.02.2006 deciding the pre-existing rights of the workmen was already withdrawn by the workmen. This being the factual position, it is not known how the learned counsel for the appellants say that the application filed under Section 33-C(2) of the ID Act before Labour Court is based on the pre-existing rights. We wish to make it clear that had the award passed in I.D.No.32 of 2003, dated 21.02.2006, been allowed to stay without getting it withdrawn, then he was right. But, unfortunately, the said award was subsequently withdrawn and thereby there was no any pre-existing right available to move application under Section 33-C(2) of the Act.

6. Secondly, learned Single Judge has also framed an issue that whether the impugned order passed by the Labour Court is legally sustainable and whether the labour Court can go into the question of validity of settlement under Section 12(3) in a proceeding under Section 33-C(2) of the Industrial Disputes Act? Taking support of the judgment of Hon'ble Apex Court in the case of State of U.P. vs. Brijpal Singh reported in [(2005) 8 SCC 58], learned Single Judge held that the Labour Court cannot go into the correctness of settlement reached under Section 12(3) of the ID Act. Therefore, in our considered view, the Labour Court has messed up without knowing the basic issue that in an application filed under Section 33-C(2) of the ID Act, the Labour Court cannot go into the question whether the workman is entitled to any benefit and that the workmen must have a pre-existing right to the benefits which can be computed in terms of money (A reference can be had from Municipal Corporation of Delhi Vs. Ganesh Razak and another [1995 (1) SCC 235]). In the case on hand, as stated above, the award dated 21.02.2006 passed by the Industrial Tribunal was subsequently withdrawn by the workmen in a settlement reached under Section 12(3) of the ID Act on 19.04.2006. Therefore, there was no any pre-existing right available, hence, we are of the considered view that the Labour Court cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the workmen which is not based on a pre-existing right. Hence, the Labour Court had no jurisdiction to adjudicate the claim made by the workmen herein under Section 33-C(2) of the I.D. Act in an undetermined claim. Thus, on this score, we do not find any reason to interfere with the well-reasoned order passed by the learned Single Judge.



In fine, for the reasons stated above, the writ appeal fails and it is dismissed by confirming the order passed by the learned Single Judge. No Costs.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rkm

To

1. THE PRESIDING OFFICER,
FIRST ADDITIONAL LABOUR COURT,
CHENNAI.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.S.Ramasubramaniam, Advocate, S.R.No.29784
+1cc to Mr.V.Sudhakar, Advocate, S.R.No.29953

W.A.No.2115 of 2012

GML(CO)
HS(22/07/2021)