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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.40258 and 40259 of 2005 and
WMP.Nos.43175 and 43176 of 2005

W.P.No.40258 of 2005

The Park Town Cooperative
Wholesale Stores Ltd,
rep by its Special Officer,
1, Davidson Street,
Chennai.

...Petitioner

-vs-

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

2. D.Sekar

...Respondents

Prayer :Writ Petition filed under Article 226 of the
Constitution of India, praying for issuance of a Writ of
Certiorari to call for the records of the first respondent
Labour Court in relation to the order in C.P.No.478 of 1996
dated 31.03.2005 and quash the same.

W.P.No.40259 of 2005

The Park Town Cooperative
Wholesale Stores Ltd,
rep by its Special Officer,
1,Davidson Street,Chennai.

...Petitioner

-vs-

1. The Presiding Officer,
Second Additional Labour Court,
Chennai.

2. D.Sekar

...Respondents



Prayer in W.P.No.40259 of 2005: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the first respondent Labour Court in relation to the award in I.D.No.262 of 1991 dated 26.07.1995 and quash the same.

For Petitioner : Mr.A.Surya
(in both W.P.'s) for Mr.S.Anbarasan

For Respondents: No appearance
(in both W.P.'s)

C O M M O N O R D E R

W.P.No.40258 of 2005 has been filed challenging the order of the first respondent Labour Court in C.P.No.478 of 1996 dated 31.03.2005 and quash the same.

2. W.P.No.40259 of 2005 has been filed challenging the order of the first respondent Labour Court in relation to the award I.D.No.262 of 1991 dated 26.07.1995 and to quash the same.

3. Since, the issues involved in both these Writ Petitions are one and the same, they are disposed by the common order.

4. Heard the learned counsel for the petitioner. None appeared on behalf of the 2nd respondent.

5. The second respondent/workman joined services of the Petitioner Stores in the year 1969 and when he was working in Dunlop Branch-Cosmetic Division, Ambattur, he was deprived of employment, which resulted in raising a dispute and passing of an award dated 26.07.1995 in I.D.No.262/1991 by the II Additional Labour Court, Chennai, by which the Workman was ordered to be reinstated in service with backwages and continuity of service. Challenging the same, the W.P.No.40259 of 2005 has been filed by the Petitioner/Management.

6. The Petitioner did not implement the award inspite of several requests. The Workman's salary was not paid and at the time of termination, he was drawing a sum of Rs.1,000/- and that there was revision of wages. As he was not paid salary from February 1987, he filed a Computation Petition before the Principal Labour Court, Chennai, claiming a sum of Rs.2,17,000/- from the petitioner/Management. The Principal Labour Court vide order dated 31.03.2005, allowed the Computation petition and directed the petitioner to pay a sum of Rs.2,17,000/- to the second respondent/Workman. Challenging the said order W.P.No.40258 of 2005 has been filed by the petitioner.



7. Though it is contended by the petitioner before the Principal Labour Court, Chennai, that they have filed Interlocutory Application to set aside the exparte award dated 26.07.1995 in I.D.No.262 of 1991 and the same is pending, no evidence was produced to that effect. Hence, the Principal Labour Court, Chennai observed that in the absence of any proof and in the absence of any such order obtained to stay the exparte award dated 26.07.1995, the said award shall have a binding force on the petitioner on account of the reason that the Award attained finality.

8. The parties have let in evidence before the Labour Court. The Workman was examined as P.W.1 and he deposed that his last drawn monthly salary was Rs.1,000/- and he is claiming pay and other allowances from 1987 amounting to Rs.2,17,000/- and he marked Ex.P1- Award Published in Government Gazette, Ex.P2- Advocate's notice of the Workman to the petitioner and Ex.P3- Acknowledgment card.

9. On the side of the petitioner, Senior Assistant - R.W.1 was examined and he deposed that the employee, by way of letter dated 19.04.2000, consented to give up backwages and requested for employment. The petitioner, based on the said letter, vide order dated 21.09.2000, reinstated the workman in service and the actual date of his appointment as Salesman was 29.09.2000 and a subsequent order dated 18.10.2000 was issued, appointing the workman at the Mogapair Fair Shop. The said three orders were marked as Exs.R1, R2 and R3 respectively.

10. The Workman categorically deposed that he was threatened to give such a letter in writing for relinquishing backwages, as otherwise he would not be provided any job.

11. The Principal Labour Court, considering the oral and documentary evidence came to the conclusion that since the letters given by the Workman, relinquishing backwages and the letter for withdrawing C.P. were not given voluntarily and out of his free will, they will have no force and will not support the case of the petitioner and hence directed the petitioner to pay a sum of Rs.2,17,000/- as prayed for by the workman.

12. Insofar as W.P.No.40259 of 2005 is concerned, the Petitioner / Management has challenged the exparte Award dated 26.07.1995, passed by the Labour Court in I.D.No.262 of 1991. In my view, the Award passed by the Labour Court is not an Award at all in the eye of law. However, the Management also did not file any petition before the Labour Court to restore the Industrial Dispute on file, by invoking Section 11 of the I.D.Act, 1947 r/w Rule 48 of The Tamil Nadu Industrial Disputes Rules, 1958. The



Labour Court is bound to proceed with the industrial dispute on merits in terms of Rule 34 of the Rules, 1958, if anyone of the parties is absent, as if the party is present. By allowing the Award to come into effect by making the Tribunal functus officio, the Management cannot be permitted to knock at the doors of the Court after a distant point of time, as they had sufficient time to file an application to restore the I.D. on file, more so, in the light of the judgment of Apex Court in the case of Grindlays Bank Ltd., vs. Central Government Industrial Tribunal and others, reported in AIR 1981 SC 606.

13. The order of the Labour Court in the Computation Petition is a detailed one, whereas the Award passed in I.D. cannot be treated as one passed on merits, as the Award is not in consonance with the provisions of Rule 34 and 48. However, the said lapse on the part of the Labour Court will not inure to the benefit of the Management in getting the relief in the Writ Petition in W.P.No.40259 of 2005 filed against reinstatement, as, admittedly, the Management had not approached the Labour Court for recall of the exparte Award. The employee would be entitled to wages under Section 17-B of the I.D.Act, 1947 till such time the order is modified / set aside by the Higher Forum. In view of the same, this Court is inclined to partly interfere with the order of the Labour Court passed in the Computation Petition, granting a sum of Rs.2,17,000/-. Accordingly, the employee is entitled to only 50% of the amount already deposited before the Labour Court to be withdrawn by the employee together with accrued interest. In case the employer has not deposited the amount, then the Workman will be entitled to 50% of the amount determined by the Labour Court together with interest @ 6% from 31.03.2005 till it is actually disbursed.

14. With the above observation, W.P.Nos.40258 of 2005 is partly allowed and W.P.No.40259 of 2005 is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

arr/ar
To

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



2.The Presiding Officer
Second Additional Labour Court
Chennai

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+1 CC to Mr.P. Anbarasan, Advocate sr 33748.

W.P.Nos.40258 and 40259 of 2005

PA(CO)
SP(18/10/2021)