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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.18990 of 2019 and
W.M.P.Nos.18335 of 2019 & 18948 of 2020

The Management,
The Vellore District Consumer,
Co-operative Wholesale Stores Ltd.,
rep. by its Managing Director,
No.14, Office line,
Vellore-632 001.

... Petitioner

-vs-

1. The Vellore and Tiruvannamalai District,
Consumer Co-operative Wholesale
Stores Employees Union,
rep. by its President,
R.Kothandan, AITUC,
Reg.No.43/NAT,
No.37, Thennamata Street,
Vellore, Vellore District.
2. The Presiding Officer,
Principal Labour Court,
Vellore, Vellore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the order passed by the second respondent in C.P. No.99 of 2017 dated 28.02.2019 and quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.Balan Haridas for R1

O R D E R

The Writ Petition has been filed, seeking to quash the order in C.P. No.99 of 2017 dated 28.02.2019, passed by the



second respondent / Principal Labour Court, Vellore, by which the Petitioner / Management was directed to pay Rs.65,70,600/- to employees of the Union listed in the calculation memo dated 28.11.2018 within three months.

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2. Learned counsel for the Petitioner / Union submitted that though the employees, who were represented through Union, claimed a sum of Rs.2,27,77,538/- from the Management, they have restricted their claim to Rs.65,70,600/- and the said claim was based on two settlements dated 26.06.2009 and 24.10.2011 (Ex.Ps.7 & 8), entered into between the Union and the Management under Section 12(3) of the Industrial Disputes Act, 1947.

3. Per contra, learned counsel for the Management contended that the Union cannot file a claim petition on behalf of the retired employees, as the claim should have been made by the individual retired employees either separately or jointly and Union has no locus to file computation petition under Section 33 (C) (2) of the Industrial Dispute Act, 1947. It is further contended that once an undertaking has been given by the employees, they have no right to claim any amount, much less the restricted amount mentioned supra. It is also contended that the claim has been raised by the Union only in the year 2017, which has been hit by limitation under which the employees are not entitled to the benefits.

4. Mr.Balan Haridoss, learned counsel appearing for the Union submitted that even though there is no provision for the Union to claim the benefits by filing the application under Section 33(C)(2) of the ID Act, Union has got every right to espouse the cause of Workmen and there was no undertaking given by the Workmen. The claim of the Workmen should not be deprived by the Management merely on the basis of the the indemnity bond, as no indemnity bond can take away the rights contemplated under the settlement entered into between the parties under the Industrial Dispute Act, 1947. He further submitted that there is no limitation for making a claim due to the employees under Section 33(C)(2) r/w 33(C)(5) of the ID Act and, the employees can, at the most, be deprived interest, but not the entire benefits.

5. Heard the learned counsel appearing on either side and perused the material documents available on record.

6. It is not in dispute that there are two settlement deeds, namely 26.06.2009 and 24.10.2011, which have been marked as Ex.Ps.7 and P8. The claim has been made in the year 2017. The argument of the Management that, the claim is barred by the principle of limitation appears to be fantasy, in view of the judgment of the Apex Court made in Bombay Gas Co. Ltd. vs. Gopal



Bhiva and Others, reported in 1963 (2) LLJ 608, in which the contention of the Management therein with regard to limitation was aspect was rejected, holding that limitation cannot be introduced by industrial adjudication on academic ground of social justice and the same can be introduced, if at all, by the legislature only. In yet another case, Apex Court in Chief Mining Engineer, East India Coal Co. Ltd. vs Rameswar and Others, reported in (1968) I LLJ 6 (SC), reiterated that the period of three years of limitation applies to applications for payment by the Commissioner from the deposit made in the treasury and has no application to claims under Section 33C(2) which makes no provision for limitation. Subsequent thereto, the Supreme Court in Town Municipal, Council, Athani vs. The Presiding Officer, Labour Courts, Hubli and Others, reported in 1969 II LLJ 651 went on to add that Article 137 of the schedule to the Limitation Act, 1963 does not apply to applications under Section 33C(2) of the Act.

7. From the judgments cited supra, it is amply clear that the plea of limitation cannot be accepted and is not available to the Management, so as to deprive the claim of employees and the Labour Court cannot restrict the claim of the Workman based on the undertaking / indemnity bond. It is no doubt true that the benefits accrued by means of settlement, except like gratuity, can be given up by the employees by way of entering into a subsequent settlement. But, in the present case on hand, there is neither a subsequent settlement nor there is a clause to the extent of giving up the benefits. At the same time, in case the dispute revolves around the payment of gratuity, no settlement or agreement can be entered into by giving up the benefits under the Payment of Gratuity Act, 1972, whereas the monetary benefits that may arise under the Award, can be given by the employees, provided there is a settlement or the agreement to that effect. In this case, there is no such agreement / settlement to the effect that the Workmen would not be entitled to claim the amount mentioned supra. However, the Workmen would not be entitled to interest on the computed amount from 2009 till the date of the claim petition, and they are entitled to interest only from the date of claim petition till the amount is actually paid with regard to the claim made by the Workers.

8. The contention of the Management that the claim made by the Union under Section 33(C)(2) is not maintainable, cannot be accepted. The main object of enactment of the provisions of the Industrial Dispute Act, being a social welfare legislature, is to render justice to both the Management and the Workmen, as the preamble of the Industrial Disputes Act, 1947 itself states that the purpose of the I.D. Act, 1947 is 'to make provisions for the investigation and settlement of industrial disputes and for



certain other purposes'. Merely because most of the employees retired from service, it does not mean that the Union is excluded from espousing the cause of the Workmen and the claim of Workmen cannot be restricted on technical grounds. The primary purpose of the section being to provide the aggrieved Workman with a forum similar to the Executing Courts, it calls for a broad and beneficial construction consistently with other provisions of the Act, which should serve to advance the remedy and to suppress the mischief.

9. This Court, in a case arising out of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter referred to as 'the Conferment of Permanent Status to Workmen Act') [Muthialpet Benefit Fund Ltd (Rep. by its Chief Executive), Madras vs. Muthialpet Benefit Fund Staff Union (Rep. by its Secretary) and another, reported in 2002 (2) LLN 427] had rejected the plea raised by the Management therein that the aggrieved employees alone need to file an application, seeking permanent status, holding that in case Union discloses the name of the employees, for whom the relief sought for, such application for permanent status is maintainable. That apart, a glance at Form-U r/w Rule 66 of The Tamil Nadu Industrial Disputes Rules, 1958 would make it clear that the Union is empowered to espouse the cause of Workmen for recovery of the amount. The purpose of the social enactment is to get redressal and not to throw the meritorious case on technical grounds.

10. For the foregoing reasons and in the light of the afore-stated judgments, this Writ Petition is dismissed, except interfering with the interest portion alone, as this Court do not find any merit or substance whatsoever in the contention raised by the Management. It is made clear that if the amount is not paid within a period of six months from the date of receipt of a copy of this order, the Management is liable to pay interest at 6% p.a. from the date of filing of this Writ Petition. No costs. Consequently, connected Miscellaneous Petitions are closed.

11. Before parting with this order, this Court wants to emphasize that Legislature must think of amending the I.D.Act, 1947, so as to restrict the period of making a claim under Section 33(C)(2) of the I.D.Act, 1947, as there is a provision under Section (C) (1) of the Act, 1947, prescribing limitation. Such amendment will ensure that the employees approach the Court within the time prescribed under the I.D.Act, 1947. Section 33 (C)(2) of the I.D.Act, 1947 must be amended, restricting the time limit as three years like the period of limitation prescribed under Section 2-A of the I.D.Act, 1947 with effect from 15.09.2010. Unless a time limit is stipulated in the Act by



the Legislature, several number of cases will get piled up in Courts with enormous delay. The Hon'ble Apex Court in the case of Krishna District Co-operative Marketing Society Limited vs. N.V.Purnachandra Rao, (1987) 4 SCC 99, too had suggested for amendment of the provisions of the Industrial Disputes Act.

Sd/-
Assistant Registrar (CS-VII)

// True Copy//

Sub Assistant Registrar

vum

TO:

The Presiding Officer,
Prl.Labour Court,
Vellore District.

+lcc to M/s. Balan Haridas, Advocate, S.R.No.23904

W.P.No.18990 of 2019

SV-I (CO)
SU (17/08/2021)