

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on	Pronounced on
22.03.2021	29.03.2021

CORAM**THE HONOURABLE MR. JUSTICE M.DHANDAPANI****W.P. (MD)NO.15205 OF 2011****AND****M.P. (MD) NO. 1 OF 2011**

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M/s. Subburaj Spinning Mills (P) Ltd.
Madurai Road, Shankar Nagar Post
Tirunelveli District 627 357
rep. By its Director

.. Petitioner

- Vs -

1. The Presiding Officer
Labour Court, Court Complex
Tirunelveli.

2. K.Natrajan

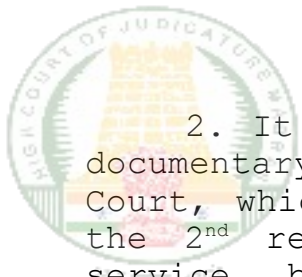
.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the impugned award dated 8.8.2011 in ID No.23/2008 on the file of the 1st respondent and quash the impugned award.

For Petitioner : Mr. G.Arunachalam
For Respondents : Mr. D.Saravanan for R-2

ORDER

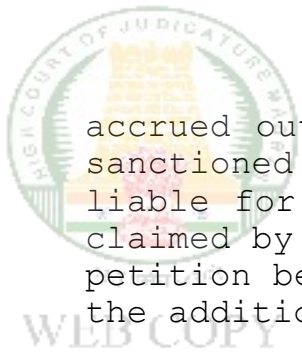
It is the case of the petitioner that the 2nd respondent was employed as supervisor for a short spell in the petitioner mill and he refrained from attending office from 1.9.1999. The date of birth of the 2nd respondent is 11.04.1953 and as on 10.4.2011, the petitioner has attained 58 years, viz., the age of superannuation. Though the 2nd respondent, on his own volition stopped attending office, however, after a span of 9 years, the 2nd respondent raised an industrial dispute before the 1st respondent alleging oral termination of his service by the petitioner on 1.2.2008 and claiming that he has been in service of the petitioner since 1994 and further averred in the dispute that the watchman of the petitioner informed him that he would not be given any work. The 2nd respondent, in the industrial dispute, claimed reinstatement and backwages alleging oral termination and the said stand of the 2nd respondent was resisted by the petitioner.



2. It is the further averment of the petitioner that oral and documentary evidence was adduced by either side before the Labour Court, which, by award dated 8.8.2011, partly allowed the claim of the 2nd respondent and ordered reinstatement with continuity of service, but without backwages. On receipt of the award, the petitioner, vide letter dated 7.10.2011 and 22.11.2011 called upon the 2nd respondent to report for duty, while reserving its right to seek judicial remedy before the appropriate forum, which was rejected by the 2nd respondent citing that he would join duty only if the award is implemented in full. Since the 2nd respondent had crossed the age of 58 years even during April, 2011, the award of the Labour Court on 8.8.2011 ordering reinstatement is legally unsustainable and not executable. Therefore, the petitioner has filed the present petition for quashment of the said award passed by the 1st respondent.

3. Though very many grounds have been raised by the petitioner in support of its stand, it is brought to the notice of this Court that pending the writ petition, the petitioner company had filed application before the National Company Law Tribunal (for short 'NCLT') in CP 655/IB/2017 and the same was admitted into the Corporate Insolvency Resolution Process (for short 'CIRP') under Section 9 of the Insolvency and Bankruptcy Code, 2016. Pursuant to the same, Resolution Professional was appointed and Information Memorandum was submitted inviting bids and finally one HM Textiles had come out as the successful resolution applicant and the same has been approved by the NCLT and the affairs of the petitioner had been taken over by the successful resolution applicant on the basis of the Information Memorandum submitted by the Resolution Professional, which had been accepted and approved by the NCLT, vide its order dated 12.3.2019. It is further averred in the additional affidavit that very many clauses have been incorporated by the NCLT and one of which pertains to satisfactory discharge of any claims/proceedings including the claim made in the present petition, which was the subject matter of the impugned award in ID No.23/08 dated 8.8.2011.

4. It is therefore the submission of the petitioner that the Information Memorandum prepared by the Resolution Profession took into consideration all the claims and liabilities of the petitioner and any legal proceedings and claims not made and specifically provided for stood extinguished and abated as per the express provisions of the Resolution Plan and the order of NCLT and, therefore, it is submitted that the successful resolution applicant having taken over the affairs strictly in terms of the sanctioned resolution plan, the petitioner is not liable for any liabilities allegedly accruing from the impugned award in ID No.23/2008 dated 8.8.2011 and the demand for reinstatement by the 2nd respondent or any attempt to enforce the impugned award would be illegal and violative of the order of NCLT and would be *per se* be contemptuous. Therefore, it is submitted that the rights which is sought to be

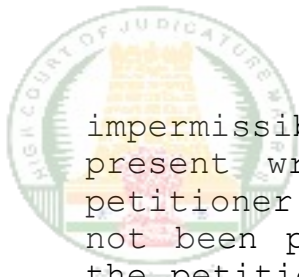


accrued out of the impugned award stood abated in the light of the sanctioned resolution plan and that the petitioner cannot be held liable for reinstatement, continuity of service or any other rights claimed by the 2nd respondent. Therefore, it is prayed that the writ petition be allowed in the light of the above developments by taking the additional affidavit on file.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6. Before advertng to the present situation and the stand of the petitioner in relation to the NCLT order and the resolution process and finding out as to whether the petitioner would stand absolved of all its liabilities to the 2nd respondent in view of the order passed by NCLT in the CIRP and the legal position of the 2nd respondent with respect to his entitlement for enforcement of the award of the Labour Court, it is the undisputed position, as is revealed by the affidavit filed in support of the petition that the industrial dispute raised by the petitioner in the year 2008 resulted in the award being passed in the August, 2011 and the same being challenged by filing the present writ petition. An award has been passed in favour the 2nd respondent directing reinstatement of the 2nd respondent with continuity of service, however without backwages. It is borne out by record that the said award was passed on 8.8.2011 and the affidavit of the petitioner further disclosed that subsequent to the receipt of the order, vide communication to the 2nd respondent dated 7.10.2011 and 22.11.11, the petitioner had called upon the 2nd respondent to report for duty, but the 2nd respondent had not reported for duty.

7. Be that as it may. It is the stand of the petitioner that even as on 10.04.2011, the petitioner had attained the age of superannuation, by crossing the age of 58 years and, therefore, the award of the Labour Court dated 8.8.11 is legally unsustainable insofar as direction for reinstatement is concerned. Though such a stand has been taken by the petitioner in the affidavit filed in support of the petition, yet, the petitioner, by its very own admission, had called upon the 2nd respondent to report for duty vide its communication dated 7.10.2011 and 22.11.2011. This Court is at a loss to understand as to how the contradictory stand of the petitioner could be accepted. On the one hand, the petitioner avers that as early as on 10.4.2011, the 2nd respondent had crossed 58 years, viz., the age of superannuation and on the other hand, had sent out communications on 7.10.2011 and 22.11.2011 calling upon the 2nd respondent to report for duty. It is not open to the petitioner to blow hot and cold, on the one hand calling upon the 2nd respondent to report for duty and on the other hand contend that the 2nd respondent had crossed the age of superannuation even as on 10.04.2011 and, therefore, the order for reinstatement is



impermissible. The main ground urged by the petitioner in the present writ petition is only on the above aspect, though the petitioner has also taken stand that the documentary evidence have not been properly appreciated. However, the main ground urged by the petitioner relating to the 2nd respondent having crossed the age of superannuation and, therefore, the award of reinstatement passed by the Labour Court is unsustainable does not merit acceptance.

8. Coming to the present scenario, it is the stand of the petitioner that the petitioner mill had underwent CIRP and Resolution Professional was appointed resulting in the filing of Information Memorandum and based on the Resolution Plan, which has since been approved, the successful resolution applicant had taken over the affairs of the petitioner mill and that the petitioner mill, in consonance with the Information Memorandum, which contained all the liabilities of the petitioner mill, had cleared the entire dues and, therefore, the petitioner mill cannot be burdened with any claim or litigation not disclosed in the Information Memorandum. It is therefore submitted that in view of the order of NCLT, the claim of the 2nd respondent not forming part of the Information Memorandum, the same stood abated in terms of the Insolvency and Bankruptcy Code and, therefore, the award passed in the industrial dispute by the Labour Court cannot be enforced against the petitioner mill and the petitioner mill is not liable for reinstatement, continuity of service and other rights claimed by the 2nd respondent.

9. The moot question that arises for consideration is whether any right is available to the 2nd respondent to enforce the award passed in ID No.23/08 dated 8.8.11.

10. It is to be pointed out that even before the CIRP was put in action in the year 2017 by filing CP No.655/IB/2017 before the NCLT, the award had come to be passed on 8.8.11 and the 2nd respondent was also called upon to report for duty vide the communication of the petitioner dated 7.10.2011 and 22.11.2011. Though the petitioner had reserved its right to file writ petition before this Court assailing the order passed by the 1st respondent, which resulted in the filing of the present petition, however, it is to be pointed out that this writ petition was admitted as early as on 2.1.2012, but no interim order was passed by this Court. Therefore, for all purposes, it is only the proceedings in the present writ petition at the behest of the petitioner, which was pending.

11. In this backdrop, the initiation of the CIRP u/s 9 of the Insolvency and Bankruptcy Code assumes significance. The Resolution Professional appointed for this purpose had, vide letter dated 28.4.2018, addressed to the Manager, Indian Overseas Bank, had informed about the initiation of CIRP and specific attention was drawn to Section 14 of the Insolvency & Bankruptcy Code, wherein a



moratorium had been declared in view of the order passed by NCLT, which prohibited the following :-

"(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

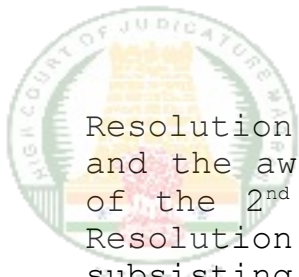
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12. Reference has been drawn by the petitioner to Clause 4.8 of the Resolution Plan, which is as under :-

"the proposal to run the company by retaining the existing workforce. The details of workmen and the terms of service as would apply on the Effective Date shall be set out in Schedule 'C' hereto..."

13. A conjoint reading of the above extracted provisions clearly reveal that there was no suit/proceeding or execution petition at the behest of the 2nd respondent, which was pending and that the proceeding pertained only to the present writ petition filed by the petitioner, which would at best stand abated, which in essence means that it cannot be proceeded with any further. But the abatement of the present petition would not defeat the rights of the 2nd respondent, which stood accrued by the order of the 1st respondent. Further, Clause 4.8 of the Resolution clearly stipulates that the proposal is to run the company by retaining the existing workforce, the 2nd respondent having been directed to be reinstated in service by the the 1st respondent and the petitioner having accepted the same and called upon the 2nd respondent to report for duty, now cannot turn back and say that the 2nd respondent should lie remediless just because, the petitioner had not included the 2nd respondent as a workman in the resolution plan drafted by the Resolution Professional in the Information Memorandum. By the award passed by the Labour Court, the claim of the 2nd respondent as workman of the petitioner, stood established and it was only a matter of formality for the petitioner to execute the award, unless an order otherwise has been obtained by the petitioner from a higher forum. Therefore, the stand of the petitioner that the 2nd respondent cannot claim any right to employment/reinstatement at the hands of the petitioner as the petitioner mill had already been subject to the process of CIPR cannot be sustained.

14. However, it is no doubt true that CIPR has been put in action and the successful resolution applicant is running the mill on the basis of the Resolution Plan approved by NCLT and that the entire issue is in the hands of the Resolution Professional. However, it is to be pointed out that the petitioner mill, while submitting itself to the Information Memorandum finalized by the Resolution Professional, ought to have placed all its details to the



Resolution Professional, including the fact about the 2nd respondent and the award passed in his favour. In spite of the order in favour of the 2nd respondent, if the same had not been placed before the Resolution Professional by the petitioner, when the order was subsisting without there being an order of stay by this Court, it is nothing but concealing of factual aspects by the petitioner mill to the Resolution Professional.

15. Further, it is to be pointed out that the 2nd respondent in terms of the Insolvency & Bankruptcy Code is a secured creditor, in view of the order passed by the Labour Court and in such circumstances, the 2nd respondent cannot be left in lurch without relishing the fruits of the award passed by the 1st respondent, which is still subsisting. Relegating the 2nd respondent to a remediless situation, as prayed for by the petitioner in the additional affidavit would not only be making a mockery of the justice delivery system, but also negating the affirmative order obtained by the 2nd respondent, which enures to his benefit till date, by scuttling the said order under the guise of CIRP and Resolution Plan. This Court cannot be rendered a mute spectator to such an act sought to be perpetrated by the petitioner to wriggle out of the scenario. At the same time, in view of the order passed by NCLT, the matter needs to be placed on the table of the Resolution Professional and not to be delegated to the petitioner so that a quietus can be given to the issue.

16. In such backdrop, this Court is of the view that the entire issue relating to reinstatement of the 2nd respondent along with continuity of service, as ordered by the Labour Court in its award dated 8.8.2011 should be placed before the Resolution Professional, as the 2nd respondent is a secured creditor, whose interests have to be safeguarded by the Resolution Professional and should be provided with the benefits as conferred to him by the award passed by the Labour Court.

17. For the reason aforesaid, this writ petition is dismissed with a direction to the petitioner to place all the materials, including the award passed by the 1st Respondent before the Resolution Professional within a period of four weeks from the date of receipt of a copy of this order. The 2nd respondent is also granted permission to forward all the material particulars relating to his employment with the petitioner mill to the Resolution Professional along with a copy of this order within the abovesaid period. On receipt of the particulars forwarded by the petitioner mill, the Resolution Professional is directed to take into account all the aspects and grant the necessary relief to the 2nd respondent in terms with the award passed by the 1st respondent in ID No.23/2008 vide order dated 8.8.2011 within a period of eight weeks thereafter. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.



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Sd/-

Assistant Registrar (RTI ACT)

/ /2021

Sub Assistant Registrar(CS)

To

1. The Presiding Officer
Labour Court, Court Complex
Tirunelveli.
2. Mr.Gopalsamy Ganesh Babu
Insolvency Resolution Professional
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Choolaimedu, Chennai 600 094.

+1 CC to M/s.D.SARAVANAN, Advocate (SR-14382[F] dated 30/03/2021)

W.P. (MD)NO. 15205 OF 2011
29.03.2021

MJ(CO)

KB(29.04.2021) 7P 4C