



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD) Nos.1336, 2078 and 2114 of 2012

and

W.P. (MD) Nos.1, 2 and 2 of 2012

W.P. (MD) No.1336 of 2012:

The Management,
The Sri Ganapathy Mills Co., Ltd.,
Madurai Road,
Sankarnagar Post,
Tirunelveli District,
represented by its Personnel Manager. ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.P.Alagarsamy ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records relating to the impugned award, dated 25.07.2011 (received on 30.11.11) passed by the first respondent in I.D.No.73 of 2004 and quash the same as illegal.

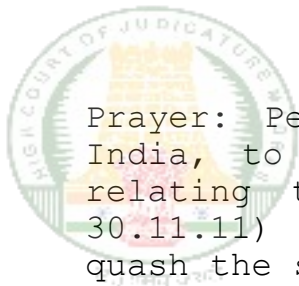
W.P. (MD) No.2078 of 2012:

The Management,
The Sri Ganapathy Mills Co., Ltd.,
Madurai Road,
Sankarnagar Post,
Tirunelveli District,
represented by its Personnel Manager. ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.V.Chelladurai ... Respondents



Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records relating to the impugned award, dated 25.07.2011 (received on 30.11.11) passed by the first respondent in I.D.No.78 of 2004 and quash the same as illegal.

W.P. (MD)No.2114 of 2012:

The Management,
The Sri Ganapathy Mills Co., Ltd.,
Madurai Road,
Sankarnagar Post,
Tirunelveli District,
represented by its Personnel Manager. ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.S.Ramasamy ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records relating to the impugned award, dated 25.07.2011 (received on 30.11.11) passed by the first respondent in I.D.No.71 of 2004 and quash the same as illegal.

For Petitioner
in all petitions

: Mr.Jerin Mathew
for Mr.M.E.Ilango

For Respondents
in all petitions

: Mr.D.Saravanan
for R.2
: R.1 Court

* * * * *

COMMON ORDER

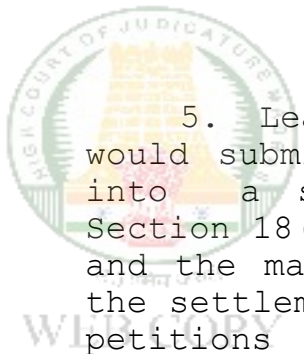
Since the issues involved in all these writ petitions are connected with each other, all the three writ petitions are disposed of by this common order.

2. Challenging the common award passed by the Labour Court in I.D.Nos.73, 78 and 71 of 2004, the petitioner Management filed all these writ petitions.



3. The case of the petitioner Management is that the petitioner is a spinning mill incorporated under the Companies Act, 1956 and has engaged in the manufacture of yarn and in the petitioner mill, there are 380 employees worked under various categories. There are 6 trade unions functioning in the petitioner mill and all of them are recognized by the management. The second respondent in all these writ petitions are the members of one Ganapathy Mills Employees' Association. While so, due to continuous and unprecedented recession in the textile industry, the petitioner management suffered huge cash loss and became sick and as a result, the unit became unviable and the management was not in a position to bear further loss. In these circumstances, the petitioner management negotiated with all the six trade unions functioning in the unit and as a result settlement under Section 18(1) of the Industrial Disputes Act, 1947, dated 12.10.2003 was entered into between the parties. As per the terms of the settlement, the workmen submitted their resignations and agreed to receive a sum of Rs.4,500/- for every remaining period of their service. Out of the total 380 workmen, all the workmen received the monetary benefits in terms of the settlement dated 12.10.2003, except the second respondent in all these petitions and other 12 workmen. The second respondent in all these petitions are the members of the Ganapathy Mills Employees' Association, which is a signatory to the settlement and as such, it is very much binding on them. Notwithstanding the above legal position, the second respondent workman in all these petitions, for the reasons best known to them, refused to receive the monetary benefits in terms of the settlement. Hence, left with no other option, the petitioner management had to retrench the second respondent workman in all these petitions by paying one month notice pay and the statutory compensation. While the cheque for notice pay was enclosed with the retrenchment notice, the second respondent workmen informed that they could receive the statutory dues by contacting the office.

4. It is further averred by the petitioner management that not satisfied with the action of the management, the second respondent workman in all these petitions and 12 others raised a separate industrial dispute before the Conciliation Officer, which were ended in failure. Thereafter, the workmen approached the Labour Court individually. After elaborate trial, the Labour Court by way of a common order, dated 25.07.2011, held that the retrenchment was illegal and while ordering reinstatement without back wages in respect of the second respondent workman in all these petitions, the Labour Court awarded a sum of Rs.2,00,000/- (Rupees Two Lakhs only) each, as compensation, since they attained the age of superannuation during the pendency of the industrial disputes. Against the order of Labour Court, the present writ petitions are filed by the petitioner Management.



5. Learned Counsel appearing for the petitioner Management would submit that already, the employees' trade union had entered into a settlement with the petitioner management in terms of Section 18(1) of the Industrial Disputes Act, 1947, dated 12.10.2003 and the majority of the workmen received the benefits in terms of the settlement. Further, the second respondent workman in all these petitions raised the industrial disputes on the ground that the procedure contemplated under Section 25N of the Industrial Disputes Act was not followed before retrenchment and on that sole ground, the award passed by the Labour Court is unsustainable one. Hence, the learned Counsel would pray for appropriate orders.

6. Per contra, learned Counsel appearing for the second respondent would submit that if the settlement was entered as per Section 18(1) of the Industrial Disputes Act, 1947, in between the petitioner management and the association, it could be accepted, however, the settlement entered between the petitioner management and some of the parties, which could not be acceptable by all and the petitioner management cannot force all the workman to accept the settlement entered as per Section 18(1) of the Industrial Disputes Act, 1947, dated 12.10.2003 and further, the procedure contemplated for retrenchment was not followed by the petitioner management. The Labour Court arrived at a conclusion that when more than 100 employees were employed, before retrenchment, the procedure contemplated under Section 25N of the Industrial Disputes Act has to be followed and three months notice is necessary before retrenchment. However, the petitioner management itself admitted that they have issued one month notice before retrenchment. Therefore, the learned Counsel would submit that after an elaborate discussion, the Labour Court arrived at conclusion that the order of retrenchment is unsustainable in law and hence, the workmen were directed to reinstatement into service, which is a justifiable one and it cannot be interfered with by this Court. Hence, the learned Counsel would pray for dismissal of these writ petitions.

7. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the second respondent workmen and perused the materials placed on record.

8. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court in a catena of decisions has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and



opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award.

9. The facts in the present case are not in dispute. Admittedly the petitioner is a spinning mill incorporated under the Companies Act, 1956 and there are 380 employees worked under various categories and there are 6 trade unions functioning in the petitioner mill and the second respondent in all these writ petitions are the members of one Ganapathy Mills Employees' Association. While so, due to continuous and unprecedented recession in the textile industry, the petitioner management suffered huge cash loss and became sick and as a result, the unit became unviable and the management was not in a position to bear further loss. In these circumstances, the petitioner management negotiated with all the six trade unions functioning in the unit and as a result settlement under Section 18(1) of the Industrial Disputes Act, 1947, dated 12.10.2003 was entered into between the parties. However, the second respondent workman in all these petitions refused to receive the monetary benefits in terms of the settlement. Hence the petitioner management had retrenched the second respondent workman in all these petitions by paying one month notice pay and the statutory compensation. Against the said order retrenchment, the workmen approached the Labour Court and after elaborate trial, the Labour Court by way of a common order, dated 25.07.2011, held that the retrenchment was illegal and while ordering reinstatement without back wages in respect of the second respondent workman in all these petitions, the Labour Court awarded a sum of Rs.2,00,000/- (Rupees Two Lakhs only) each, as compensation, since they have attained the age of superannuation during the pendency of the industrial disputes.

10. A perusal of the award of the Labour Court, it is made clear that before the order of retrenchment, the petitioner management did not follow the procedure contemplated under Section 25N of the Industrial Disputes Act and as per the provisions of the said Act, three months notice has to be issued in writing indicating the reasons for retrenchment. However, the petitioner management admitted itself that the workmen were retrenched by paying one month notice pay and the statutory compensation. Therefore, one month notice is contrary to the provisions under Section 25N of the Industrial Disputes Act prior to retrenchment. Therefore, the Labour Court, after elaborate discussion and considering the available material evidences, has come to the conclusion that the order of retrenchment is unsustainable in and therefore, awarded reinstatement into service in favour of the second respondent workmen and also awarded a compensation of Rs.2,00,000/- (Rupees Two Lakhs only) each to the workman, since they attained the age of superannuation during the pendency of the industrial disputes. This Court is of the considered view that there is no illegality or



second respondent workmen and it does not warrant any interference before this Court.

11. For the reasons aforesaid, all the Writ Petitions *san* merit and, accordingly, the same are dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. There shall be no order as to costs.

12. It is also brought to the knowledge of this Court that as per the earlier order of this Court, the petitioner Management has deposited a sum of Rs.2,00,000/- (Rupees Two Lakhs only) each, before the Labour Court.

13. In view of the above, the second workman in all these petitions are permitted to withdraw their respective sum of Rs.2,00,000/- (Rupees Two Lakhs only) along with accrued interest, before the Labour Court.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-12823[F] dated 22/03/2021)
+3 CC to M/s.D.SARAVANAN, Advocate (SR-12879[F],12880,12883 dated 23/03/2021)

W.P(MD)Nos.1336, 2078 and 2114 of 2012
22.03.2021

—
KK(19.05.2021) 6P 6C