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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH

W.P.NOS.29274 TO 29283 OF 2002

The Superintending Engineer,
Dharmapuri Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Dharmapuri.

...Petitioner in all WPs

Vs.

The Presiding Officer,
Labour Court,
Salem.

...1st Respondent in all WPs

A.Mohamed Sherif	...2 nd Respondent in W.P.No.29274 of 2002
T.Natarajan	...2 nd Respondent in W.P.No.29275 of 2002
C.Shenbagavally	...2 nd Respondent in W.P.No.29276 of 2002
P.Jothi	...2 nd Respondent in W.P.No.29277 of 2002
J.Meena	...2 nd Respondent in W.P.No.29278 of 2002
V.Ammani	...2 nd Respondent in W.P.No.29279 of 2002
N.Kumar	...2 nd Respondent in W.P.No.29280 of 2002
P.Palani	...2 nd Respondent in W.P.No.29281 of 2002
D.Sakthivelan	...2 nd Respondent in W.P.No.29282 of 2002
S.Kumarasamy	...2 nd Respondent in W.P.No.29283 of 2002

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the first respondent relating to his Common Order dated 20.07.2001 passed in C.P.No.909, 894, 898, 895, 897, 896, 915, 910, 906, 907 of 1998 and quash the same as illegal and without jurisdiction.



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For Petitioner : Mr.Anand Gopalan
in all WPs for M/s.T.S.Gopalan & Co.

For Respondents : R1 - Court
in all WPs No Appearance [R2]

COMMON ORDER

Heard Mr.Anand Gopalan, learned counsel for the petitioner.
There is no representation for the second respondent.

2. Based on the petitioner/Board's proceedings, claims were made by the workmen under Section 33-C(2) of the Industrial Disputes Act, 1947, for payment of ex-gratia based on the number of days employed. The Management had objected to such claims before the Authority. However, the Authority had chosen to adjudicate the workmen's entitlement for the ex-gratia payment and accordingly, had computed various amounts in favour of the workmen.

3. This Court in various orders had held that adjudication on disputed claims under Section 33-C(2) of the Industrial Disputes Act is impermissible. In one such order passed in a batch of Writ Petitions in the case of 'The Superintending Engineer, D.E.D.C Vs. The Presiding Officer, Labour Court, Salem' passed in W.P.Nos.32553 to 32565 of 2002 dated 13.09.2021, this ratio was ratified in the following manner:-

".....

3. The issue as to whether the Authority can adjudicate the disputed claim under Section 33-C(2) of the Industrial Disputes Act, 1947 has come up for consideration in various cases before the Hon'ble Supreme Court and in one such case, viz., The Municipal Corporation of Delhi Vs. Ganesh Razak reported in 1995 (1) SCC 235, it was held that the Labour Court has no jurisdiction to adjudicate the claims made under Section 33-C(2) of the ID Act, when the claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute. The relevant portion of the order in Ganesh Razak's case (supra) reads as follows:-

"12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or



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recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C (2) like that of the executing court's power to interpret the decree for the purpose of its execution.

13. In these matters, the claim of the respondent workmen who were all dailyrated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of 'equal pay for equal work' being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other



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workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C (2) of the Act by these respondents."

4. The aforesaid decision came to be relied upon by a learned Single Judge of this Court in the case of The Superintending Engineer Vs. The Presiding Officer, Labour Court, Vellore and another passed in W.P.No.14045 of 2004, dated 25.09.2019, whereby the learned Single Judge had held that the Labour Court had no jurisdiction to entertain a Claim Petition on disputed claims. In view of the aforesaid decisions, the impugned awards passed by the Labour Court, cannot be sustained. Accordingly, the order of the Labour Court dated 20.07.2001 stands quashed. However, at this juncture, it is pertinent to point out that the Claim Petitions were made way back in the year 1997-1998 and the awards are of the year 2001. In case, the petitioner herein/Electricity Board had already made payment to the concerned contract labourers pursuant to the impugned awards, the Board shall refrain from recovering the payment already made to the concerned contract labourers."

4. Incidentally, the aforesaid extract pertains to a similar claim made by the Contract Labourers for payment of ex-gratia. In view of the wordings in Section 33-C(2), as well as the decision extracted above, the adjudication made by the Authority thereby, computing the ex-gratia payment, cannot be sustained.

5. Accordingly, the impugned orders dated 20.07.2001 passed in C.P.Nos.909, 894, 898, 895, 897, 896, 915, 910, 906 & 907 of 1998 respectively, by the first respondent/Labour Court, are quashed. As a result, all these Writ Petitions are allowed. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

Sni



To

The Presiding Officer,
Labour Court,
Salem.

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+1cc to M/s.T.S.Gopalan & Co., Advocate Sr.No.11131

W.P.Nos.29274 to 29283 of 2002

PPA (CO)
RVM(16/03/2022)