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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.08.2021

PRONOUNCED ON : 03.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.NO.40333 OF 2002

- 1.Abdul Jaleel
- 2.R.Sundaram
- 3.C.Ramachandran
- 4.T.Ranganathan
- 5.A.Nagarajan
- 6.S.Ramalingam
- 7.C.Thambiah
- 8.N.Rathakrishnan
- 9.L.Mohammed Kasim
- 10.M.K.Gobindarajan
- 11.Perumal
- 12.C.Manoharan
- 13.M.Pakkiri
- 14.A.M.Ghouse
- 15.M.N.Subramanian
- 16.M.Thandapani
- 17.J.Rajaram
- 18.R.Raman
- 19.K.Pazhani



20.S.K.Sivakozhundu

21.C.Rajamanickam

22.K.Selvam

23.P.Krishnan

24.K.Ananthavelu

25.S.Masi

26.V.Pandurangan

27.M.Sundarrajan

28.D.Paramasivam

29.P.Hariharan

30.R.Natarajan

31.G.Kuppusami

32.R.Govindarajalu

33.T.Seetharaman

... Petitioners

.Vs.

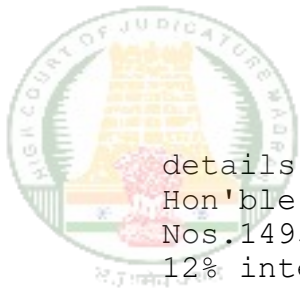
1. The Management of E.I.D. Parry (I) Ltd.,
Sugar Factory,
Nellikuppam.

2. The Presiding Officer,
Labour Court,
Cuddalore.

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the second respondent Labour Court in C.P.No.17/98, 42/99, 43/99, 45/99, 44/99, 50/99, 51/99, 63/99, 67/99, 68/99, 70/99, 71/99, 72/99, 75/99, 76/99, 78/99, 79/99, 80/99, 81/99, 82/99, 93/99, 103/99, 104/99, 2/2000, 3/2000, 5/2000, 6/2000, 228/2000, 230/2000, 256/2000, 257/2000, 273/2000 dated 09.04.2001 and to quash the same and consequently direct the first respondent to pay the personnel allowance payable to the petitioners as per the



details given in the typed set of papers as per the order of the Hon'ble Supreme Court in W.P.Nos.8698-99/83, Civil Appeal Nos.1495-96/84 and SLP.(CIVIL) No.3482/84 dated 26.02.1985 with 12% interest per annum, award costs.

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For Petitioners : Mr.N.G.R.Prasad
for M/s.Row & Reddy
For Respondent-1 : Mr.Anand Gopalan
Asst. by Mr.T.S.Akash

R2-Labour Court : M/S.T.S.Gopalan and Co for
R1

O R D E R

The present Writ Petition is heard through Video Conferencing on 16.08.2021.

2. The brief facts of the case are as follows:-

a) When the sugar factory of the first respondent herein at Nellikuppam intended to close their unit, the Hon'ble Supreme Court had interfered through its interim order in paragraph 3 in W.P.Nos.8698-99 of 1983 [E.I.D., Parry (India) Ltd., & Others Vs. State of Tamil Nadu & Others], dated 10.08.1983, by permitting termination of 950 workmen and allowing the Management to run the factory with a reduced strength of 952 workmen. While ordering so, these reduced labour force were protected with continuance of pay on the higher existing quantum of wages paid to the workmen in the month of August 1983. Subsequently, when final orders were passed on 26.02.1995, the Hon'ble Supreme Court observed that there will be no reduction in the wages of workmen, who have been continuing in employment in terms of the interim order dated 10.08.1983, but the operation of paragraph 3 of the order dated 10.08.1983, was stopped with effect from 01.01.1984 and the emoluments of those reduced strength was ordered to be governed as per the terms of the operative settlements. In the same order, the existing workmen were directed to be placed as per the Sugar Wage Board Recommendations (SWBR) pattern of wages with effect from 01.03.1985, in order to facilitate future recruitment on the SWBR pattern of wages. The excess payment, over and above the SWBR as applicable to the other workmen in other sugar factories in Tamil Nadu was directed to be treated as "Personal Allowance", which was to be paid continuously, till the cessation of service of these workmen. In this background, three settlements came to be arrived between the Management and the Trade Union. In the meantime, since the wages as per the



SWBR became higher than the wages as per the operative settlements, the payment of the personal allowance came to be discontinued from the year 1990 onwards. Ultimately on 21.12.1995, a settlement providing introduction of Voluntary Retirement Scheme (VRS) was introduced. As per the Scheme, the payment to the workmen opting for VRS was termed as "full and final settlement with no claim for any further amount". The petitioners herein are members of the trade union, who had opted for VRS and received the settlement amount in the year 1996.

b) In this background, the petitioners had filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 [hereinafter referred to as "ID Act"], claiming that since the Hon'ble Supreme Court in its final order dated 26.02.1985 had directed payment of "personal allowance" to them until their retirement, cessation or superannuation from services, they were entitled for such allowance till the date of discontinuance from services.

c) The Labour Court through its common order dated 09.04.2001, rejected the claim of these petitioners by holding that there was no difference of wages between the operative settlements and the SWBR wage pattern and therefore the payment of "personal allowance", as ordered by the Hon'ble Supreme Court, did not arise. It was further held that the workers were not entitled for payment of Rs. 297.24/-, which is the difference between the payment under the operative settlements and the SWBR wage pattern, based on the evidence before it. The order of the Labour Court passed under Section 33-C(2) of the Act is put under challenge in the present Writ Petition.

3. While Mr.N.G.R.Prasad, learned counsel appearing for the petitioners would submit that as per the orders of the Hon'ble Supreme Court dated 26.02.1985, the "personal allowance" payable as on 01.03.1985 should be continued to be paid till retirement or cessation of the services of the workers, irrespective of whether the Sugar Board revised its wages or not, Mr.Anand Gopalan, learned counsel appearing for the Management would submit that the union and the workmen, including the petitioners herein, had not made any claim for "personal allowance" in the petition for the past 13 years and since the Trade Union was a party to the proceedings before the Special Leave Petition and had understood the orders of the Hon'ble Supreme Court, their claim is to be rejected on the ground of laches. It is also his submission that though the personal allowance was stopped in the year 1990, none of the 950 workmen including the petitioners had made a claim for the payment of personal allowance for all these years.



4. Apart from the aforesaid grounds raised by the learned counsel for the petitioners with regard to their entitlement for payment of personal allowance and the counter arguments of the learned counsel for the Management, the maintainability of application under Section 33-C(2) of the ID Act was also raised by the Management, on the ground that, issues that require interpretations or disputed questions cannot be a subject matter of a computation petition under Section 33-C(2). Simultaneously, the delay and laches on the part of the petitioners in claiming personal allowance, particularly, when they had given up their rights to make any claim in view of receiving the full and final settlement under the VRS offered by the Management, apart from the ground that the petitioners cease to be workmen after accepting voluntary retirement, were also raised.

5. On due consideration of the submissions made by both the learned counsels, I am not inclined to consider the merits of the claim made by the petitioners with regard to their entitlement for personal allowance and which is disputed by the Management, for the reasons assigned in the following portions of the order.

6. The scope of Section 33-C(2) of the Act that has been dealt in various decisions by the Hon'ble Supreme Court whereby it has been held that the dispute of entitlement or basis of a claim by the workmen, cannot be adjudicated under this provision. In Central Bank of India Vs. P.S. Rajagopalan reported in AIR 1964 SC 743, it was held that the power of the Labour Court under Section 33-C(2) extends to interpretations of the award or settlement on which the workmen's rights like execution of Court's power to interpret the decree for the purpose of execution, where the basis is referable to the awards or settlements. However, it was clarified that such powers of the Labour Court does not extend to determine disputes of entitlement or the basis of the claim, if there is no prior adjudication or recognition of the same by the employer.

7. In Bombay Gas Company Ltd., Vs. Gopal Bhiva reported in AIR 1964 SC 752, the same proposition was reiterated. The aforesaid two decisions were referred by the Hon'ble Supreme Court in Chief Mining Engineer, East India Coal Company Ltd., Vs. Rameswar reported in AIR 1968 SC 218 and held that the right to the benefit which is sought to be computed under Section 33-C (2) must be an existing one, that is to say, already adjudicated upon, or provided for or must arise and in the course of and in relation to the relationship between the industrial workmen and the employer. The ratio laid down in all the aforesaid decisions were also relied upon in the case of Municipal Corporation of Delhi V. Ganesh Razak and another reported in



1995 (1) Supreme Court Cases 235 and ultimately, the scope of Section 33-C(2) was restricted to exclude the powers of the Court to adjudicate disputed entitlements or claims of the workmen. It was further clarified therein that the Labour Court was only entitled to interpret the award or settlements on which the workmen based their claim. The relevant portion of the order 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 recognition 5 (1968) 1 LLJ 589 : 38 Comp Cas 400 (SC) 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 recognised by tile 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."

8. In the background of the aforesaid legal propositions, the facts of the present case, as projected before the Labour Court in the proceedings under Section 33-C(2) of the Act, were perused. While the workmen had claimed entitlement to receive the "personal allowance", in view of the orders passed by the Hon'ble Supreme Court in the Special Leave Petition (SLP), the Management had denied their entitlement by stating that though the "personal pay" was paid between the period from May 1985 to 1990, in accordance with the directions of the Hon'ble Supreme Court, the same was stopped in the year 1990. The Management had also disputed the claim by stating that the trade union, to which the petitioners herein belonged, was a party in the SLP before the Hon'ble Supreme Court and since they were aware that they were not entitled to receive "personal allowance" continuously, they are not now entitled for such allowance. Their claim for "personal allowance" was also objected on the



ground that neither the trade union nor these petitioners had made a claim for "personal allowance" for the past 13 years, which indicates that they were aware of the terms of the settlements signed between the trade union and the Management with regard to wages and conditions of service after 1985, more particularly, when the first petitioner was the signatory to the settlement.

9. The petitioners herein are now effectively trying to interpret the order of the Hon'ble Supreme Court passed in the year 1985 and claim "personal allowance". Since their entitlement has not been adjudicated earlier in any awards nor has been crystallized by the Management and more particularly, when their very entitlement to claim "personal allowance" is denied by the Management, the Labour Court will not have jurisdiction to determine these disputed facts in the proceedings under Section 33-C(2) of the Act. Thus, by applying the ratio laid down by the Hon'ble Supreme Court in all the aforesaid decisions, this Court is of the view that the Labour Court was justified in rejecting the petitioners' claim.

10. It was also contended by the learned counsel for the Management that since the workmen had voluntarily retired pursuant to the Scheme offered by the Management and had accepted all the benefits of such voluntary retirement, there cannot be any scope to construe that there is a settled dispute leading to a claim, which could be raised by the petitioners, who have ceased to become a workmen.

11. In the case of Everestee Vs. District Labour Officer reported in 1999 (3) LLN 678, a Hon'ble Division Bench of the Kerala High Court had held that a person who has opted for voluntary retirement, cannot be treated as "workmen". Likewise, a Hon'ble Division Bench of this Court in the case of E.I.D. Parry Vs. M.N.Padmanabhan and another reported in 2008 (3) CTC 746 had held that in view of the voluntary retirement, the claimants ceased to be a workmen and therefore, cannot raise a claim. The relevant portion of the order reads as follows:-

"14. In the case on hand, the first respondent, having opted for VRS and after entering into the Settlement having fully understood the terms of Settlement and particularly Clause 9 thereof and also encashing the amount of Settlement arising thereon, claimed further benefits in the name of pension. If the first respondent is permitted to raise such a grievance even after he has opted for Voluntary Retirement Scheme and accepted the amounts paid



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to him thereunder, the very object and the purpose of introducing the Scheme will be defeated. As the first respondent has already ceased to be a workman and on cessation of the jural relationship and on claiming the entire amount of settlement and receiving the same, there cannot be any scope to construe that there is a dispute still existing to raise a claim under Section 2-A of the Act. Therefore, this Court has no reason to believe that there exists any dispute in this case. However, the learned single Judge, without going into the entire facts and circumstances of the case, has come to the conclusion that pension being an amount which would be payable only to an ex-employee has an intimate link with termination and, therefore, the reference under Section 2-A cannot be rejected, which, in our considered opinion, cannot be sustained."

12. The learned counsel for the petitioners/workmen placed reliance on the decision of the Hon'ble Supreme Court in the case of A.Satyanarayana Reddy and others Vs. Presiding Officer, Labour Court reported in 2016 (9) SCC 462 and submitted that when a Voluntary Retirement Scheme (VRS) does not cover the past dues of "personal allowance", the workmen would be entitled to approach the Labour Court under Section 33-C(2). The same decision was also relied upon by the learned counsel for the Management.

13. The ratio laid down in Satyanarayana Reddy's case (supra), arise from the peculiar facts of that case, which is clearly distinguishable from the facts of the case in hand. In Satyanarayana Reddy's case, the dispute arose when the workmen were transferred from one company to another. Among these transferred employees, some came to be absorbed back, while others were offered "lay-off compensation". When these workmen had expressed their willingness to continue to work, a special compensation package (VRS) was extended to them, in lieu of their employment with the company. The terms of the VRS did not make any provision for "lay-off compensation". It is in this background, the High Court had granted liberty to these workmen to approach the Industrial Tribunal by way of a claim petition under Section 33-C(2) of the Act. The Labour Court dismissed the claims on the ground that since the workmen had received all the benefits under VRS, they ceased to be a workman as defined under Section 2(s) of the Act. The High Court had upheld the findings of the Labour Court and in this background, the matter was dealt by the Hon'ble Supreme Court.



14. While analysing the scope of a petition under Section 33-C(2) of the Act, in the factual matrix of that case, the Hon'ble Supreme Court found that the terms of the VRS did not deal with the past dues of "lay-off compensation" and therefore held that the workers had a legal right to claim the "lay-off compensation" under Section 33-C(2). The relevant portion of the order reads as follows:

"15. We need not refer to the other clauses as they do not really provide for any kind of benefit but stipulate the various aspects for implementation of VRS and the procedure to be adopted. On a perusal of VRS, it is clear as day that it did not deal with the lay-off compensation.

16. As has been laid down in National Buildings Construction Corporation V. Pritam Singh Gill [1972 (2) SCC 1], a claim pertaining to non-payment of suspension allowance could be agitated under the said provision inspite of the employee being dismissed from service. In A.K.Bindal Vs. Union of India [2003 (5) SCC 163], the two-Judge Bench has held that after acceptance of the scheme and availing of benefits under VRS an employee could not claim higher wages. The controversy was different. If the VRS had mentioned about the lay-off compensation, needless to say, the claim would have been covered and the amount received by the workmen would have been deemed to have been covered by the quantum of lay-off compensation. That is not the factual position. Therefore, the controversy that arose in Pritam Singh Gill and the dispute that emanated in A.K.Bindal are quite different. Hence, we are disposed to think that there exists no conflict between Pritam Singh Gill and A.K.Bindal.

17. We think it appropriate to say that though there is cessation of relationship between the employee and the employer in VRS but if it does not cover the past dues like lay-off compensation, subsistence allowance, etc., the workman would be entitled to approach the Labour Court under Section 33-C(2) of the Act. If it is specifically covered, or the language of VRS would show that it covers the claim under the scheme, no forum will have any jurisdiction."



15. In the facts of the present case in hand, the Hon'ble Supreme Court in its interim order dated 10.08.1983, had protected the continuance of pay to the reduced labour force on par with the workmen, who had received the wages in the month of August, 1983. Subsequently, when these workmen were brought under the SWBR pattern of wages, the excess payment, over and above the SWBR pattern of wages, was directed to be treated as "personal allowance" and the emoluments of these workmen was further ordered to be governed as per the terms of the Operative Settlements. In this background, the wages determined as per the SWBR became higher than the wages fixed under the Operative Settlements, which wages included the "personal allowance". In view of this, the payment of "personal allowance" came to be discontinued from the year 1990 onwards. After about five years, the VRS was introduced and the petitioners herein had received the VRS settlement amount in the year 1996 itself. While the workers claim entitlement to receive "personal allowance" by relying upon the Hon'ble Supreme Court's order, the Management disputes the same. Thus, on the facts of the present case, the workers entitlement to claim "personal allowance" itself, remains to be a disputed question.

16. Whereas, in Satyanarayana Reddy's case (supra), the VRS did not cover the past dues of the workmen, owing to which the Hon'ble Supreme Court held that they would be entitled to claim such past dues under Section 33-C(2) of the Act. Thus, when the petitioners had already received the full and final settlement under the VRS and their claim for "personal allowance" is disputed and has not been adjudicated, they will not be deemed to be a "workman" within the meaning of Section 2(s) of the Act for the purpose of making a claim under Section 33-C(2) of the Act. In this factual background, the ratio laid down by the Hon'ble Supreme Court in Satyanarayana Reddy's case (supra) may not assist the petitioners in any manner.

17. For all the foregoing reasons, I do not find any merits on the claim made by the petitioners before the Labour Court in their application under Section 33-C(2) of the Act. As such, the Labour Court was justified in rejecting the petitioners' claim through the impugned award dated 09.04.2001. Accordingly, the Writ Petition stands dismissed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

DP

Sub Assistant Registrar



To

The Presiding Officer,
Labour Court,
Cuddalore.

+lcc to M/s.Row & Reddy, Advocate, S.R.No.211
+lcc to Mr.T.S.Gopalan and Co, Advocate, S.R.No.155

W.P.No.40333 of 2002

SR(CO)
PM/12/01/2022