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WP.36892 to 36896 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.Nos.36892, 36893, 36894, 36895 and 36896 of 2004

and

WMP.Nos.44301, 44393, 44305 of 2004

The Superintending Engineer
Tamil Nadu Electricity Board
Mettur Electricity Distribution Circle
Mettur Dam-1

... Petitioner
in all the above Writ Petitions.

Vs.

1.The Presiding Officer
Labour Court, Salem.

...Respondent No.1 in all the
above Writ Petitions.

2.R.Kandasamy

... Respondent No.2
in W.P.No. 36892 of 2004

3.M.Arumugam

...Respondent No.2
in W.P.No.36893 of 2004

4.K.Selvam

...Respondent No.2
in W.P.No.36894 of 2004

K.Madeswaran

...Respondent No.2
in W.P.No.36895 of 2004

K.Anbalagan

...Respondent No.2
in W.P.No.36896 of 2004



WP.36892 to 36896 of 2004

PRAYER in WP.36892 of 2004: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records of the first respondent relating to order dated 27.02.2003 passed in C.P.No.232 of 2000 and quash the same.

PRAYER in WP.36893 of 2004: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records of the first respondent relating to order dated 27.02.2003 passed in C.P.No.297 of 2000 and quash the same.

PRAYER in WP.36894 of 2004: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records of the first respondent relating to order dated 27.02.2003 passed in C.P.No.230 of 2000 and quash the same.

PRAYER in WP.36895 of 2004: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records of the first respondent relating to order dated 27.02.2003 passed in C.P.No.240 of 2000 and quash the same.

PRAYER in WP.36896 of 2004: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records of the first respondent relating to order dated 27.02.2003 passed in C.P.No.222 of 2000 and quash the same.

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

For respondents : R1- Court
R2- No appearance.



WP.36892 to 36896 of 2004

WEB COPY

COMMON ORDER

The above Writ Petitions are filed for issuance of a Writ of Certiorari, to call for the records of the first respondent relating to his order dated 27.02.2003 passed in C.P.Nos.232, 297, 230, 240 and 222 of 2000 and to quash the same.

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:-

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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 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.



WEB COPY



WP.36892 to 36896 of 2004

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 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*



WEB COPY



WP.36892 to 36896 of 2004

29.11.2022

Index:Yes/No
Speaking/Non-speaking order
nvsri

To

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Mettur Dam-1
- 2.The Presiding Officer, Labour Court, Salem.



WEB COPY



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J.NISHA BANU,J.

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