



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No25599 of 2013

The Management of
United India Shoes Upper Pvt. Ltd.
M.C.Road,
Solur, Ambur - 635814
Rep.by A.R.Vijayakumar
DGM - HR

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour (Appeals)
DMS Compund, Anna Salai, Chennai - 600006.

2.T.Afzal

... Respondents

[Cause title amended as per order dated 01.04.2016 by T.S.S.J.
in M.P.No.1 of 2015 in W.P.No.25599 of 2013]

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records and quash the order dated 27.12.2012 passed in A.P.1 of 2009 by the first respondent, Special Deputy Commissioner of Labour (Appeals), DMS Compound, Anna Salai, Chennai - 600006 insofar as it relates to payment of back wages and other benefits.

For Petitioner : Mr.Venkatesh Kumar
for M/s.Gupta and Ravi

For Respondents : Mr.E.Veda Bhagat Singh
Special Government Pleader [R1]
Mr.K.M.Ramesh [R2]

ORDER

On 29.11.2008, the second respondent was dismissed from service pursuant to an enquiry based on some charges leveled against him. After about 13 months from the date of dismissal, the petitioner/Management had filed an application under Section 33(2)(b) of the Industrial Disputes Act, seeking for approval of the action taken.



2. Among the other reasons, the Authority had rejected the petitioner's Approval Petition on 27.12.2012 to the impugned order by stating that a belated filing of the petition under Section 33(2)(b) after about 13 months cannot be sustained. This apart, the Authority had also found that there was no prima facie case and the domestic enquiry was not conducted in a fair and proper manner.

3. This apart, the Hon'ble Supreme Court of India in the case of 'Lalla Ram Vs. D.C.M. Chemical Works Ltd. & another' reported in '(1978) 3 Supreme Court Cases 1' has held that the Authority under the Act would be empowered to go into the merits of the case to ascertain whether a prima facie case has been made out and whether the domestic enquiry was conducted in a fair and proper manner. Based on the records available, the Authority had come to a conclusion that there was no prima facie case and that the enquiry was in a fair and proper manner and hence, I do not find any infirmity in the impugned order.

4. At this juncture, it is brought to the notice of this Court that pursuant to the interim orders passed, the petitioner/Management had deposited the backwages payable to the second respondent before the Special Deputy Commissioner of Labour, Chennai amounting to Rs.2,40,990/-. The learned counsel for the Management submitted that the Company is under Moratorium. In view of the present order, the second respondent would be entitled to withdraw the amount deposited by the Management along with accrued interest.

5. The second respondent is at liberty to make an appropriate application before the first respondent herein, seeking for withdrawal of a sum of Rs.2,40,990/- and on receipt of the same, the first respondent shall endeavor to pass appropriate orders permitting the second respondent to withdraw the said sum together with accrued interest preferably within a period of two days from the date of receipt of such an application.

6. In the result, the Writ Petition stands dismissed. It is needless to point out that in view of the rejection of the dismissal of present writ petition, the second respondent is deemed to have been in service from the date of dismissal and consequently, would be entitled to all the monetary benefits. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar



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To

The Special Deputy Commissioner of Labour (Appeals)
DMS Compound,
Anna Salai, Chennai - 600006.

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.10570

+1cc to the Government Pleader, S.R.No.11108, 11585

W.P.No25599 of 2013

SPD(CO)
SB(16/03/2022)