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W.P.No.21064 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21064 of 2018
and
W.M.P.No.24718 of 2018

The Executive Engineer,
Tamilnadu Water Supply and Drainage Board,
(TWAD Board)
Project Division,
Krishnagiri – 635 001

...Petitioner

Vs.

R.Thirumalai Kumar

..Respondent

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in R.E.P.No.138 of 2015 in I.D.No.351 of 1998 on the file of Hon'ble Presiding Officer, Labour Court, Salem and quash the order dated 07.03.2018 as illegal.

For Petitioner : Mr.S.Ravichandran
Senior counsel
For Mrs.S.Mekhala

For Respondent : Mr.K.V.Shanmuganathan



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ORDER

The writ on hand had been instituted, challenging the order dated 07.03.2018 passed in R.E.P.No.138 of 2015 in I.D.No.351 of 1998 on the file of the Hon'ble Presiding Officer, Labour Court, Salem.

2. The petitioner is the Tamil Nadu Water Supply and Drainage Board. The respondent-workman was employed as NMR in the writ petitioner Board and raised an Industrial Dispute in I.D.71 of 1995. The Labour Court, Salem, adjudicated the issues and passed an award on 23.10.1998. It is an exparte award passed by the Labour Court. The writ petitioner-Management was directed to reinstate the respondent-workman with backwages and continuity of service as prayed for in the petition. Pursuant to the award passed by the Labour Court, the respondent-workman filed R.E.P.No.138 of 2015 in I.D.No.351 of 1998. The said Execution Petition was allowed by the Labour Court, Salem, with a finding that the backwages as calculated by the workman in the Execution Petition i.e., a sum of Rs.23,97,600/-(Rupees Twenty Three Lakh Ninety Seven Thousand and Six Hundred only) is to be paid by the writ petitioner-Management.



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3. The learned Senior counsel appearing on behalf of the writ petitioner-Management mainly contended that the Execution Petition filed under Section 11-B of the Industrial Disputes Act is not maintainable against an award, wherein there is no specification regarding the quantum of amount to be settled by the Management.

4. In the present case, the Labour Court, Salem, passed an award to reinstate the workman with backwages and continuity of service. While so, the course of action left open to the workman to file a Computation Petition under Section 33 (C) (2) of the Industrial Disputes Act.

5. However, in the present case, the workman filed an Execution Petition with a calculation in a unilateral manner, which was allowed by the Labour Court and thus, the order passed in the Execution Petition is liable to be set aside.

6. The learned Senior counsel appearing on behalf of the writ petitioner-Management relied on the judgment of the Hon'ble High Court of Madras in the case of *Management, Jaimurugan Textiles Ltd., Vs. Presiding Officer, Labour Court, Salem* reported in *2020 (2) LLN 723*



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(Mad), wherein, this Court made the following observations:

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“10. Unless an Award quantifies the amount and the said amount is reflected in the Award, recovery proceedings are not maintainable. The Labour Court will have to compute the amount on an Application filed by a workman under Section 33-C(2) or by a group of workers under Section 33-C(2) read with Section 33-C(5) of the Act and only after determination of the amount, Execution Petition can be maintained.”

7. In the present case, the Execution Petition was filed for the payment of a sum of Rs.23,97,600/-. However, the award of the Labour Court was for reinstatement with backwages and for the purpose of adjudication of the quantum of backwages to be paid, the workman has to file a Computation Petition under Section 33 (C) (2) of the Industrial Disputes Act. Contrarily, the workman in the present writ petition unilaterally calculated the backwages and filed an Execution Petition. The procedures as contemplated for deciding an Execution Petition under Section 11-B of the Industrial Disputes Act cannot be compared with the procedures to be followed with reference to the petition filed under Section 33 (C) (2) of the Industrial Disputes Act. The procedures are entirely different and an adjudication is required in respect of



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the petition filed under Section 33 (C) (2) of the Industrial Disputes Act.

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8. In view of the distinguishable procedures contemplated in the above two provisions, it is significant to understand that in the event of non-specification of a definite relief in an award, the course of action left open to the beneficiary of the award is to opt for a petition under Section 33 (C) (2) of the Industrial Disputes Act and certainly not under Section 11-B of the Industrial Disputes Act.

9. This being the principles to be followed, the Labour Court had not considered these aspects with reference to the provisions of the Act and allowed the Execution Petition filed in entirety with a direction to settle a sum of Rs.23,97,600/-, (Rupees Twenty Three Lakh Ninety Seven Thousand and Six Hundred only) which is perverse and not in consonance with the provisions of the Industrial Disputes Act.

10. In view of the facts and circumstances, the order dated 07.03.2018 passed in R.E.P.No.138 of 2015 in I.D.No.351 of 1998 on the file of the Hon'ble Presiding Officer, Labour Court, Salem stands quashed. The petitioner-Management is permitted to withdraw the deposited amount along



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with the accrued interest by filing an appropriate petition before the Labour Court, Salem. In the event of filing any such application, the Labour Court, Salem, is directed to disburse the deposited amount with accrued interest within a period of four weeks from the date of filing of such application.

11. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes
Speaking order: Yes
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To

The Presiding Officer,
Labour Court, Salem.



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S.M.SUBRAMANIAM, J.

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