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Writ Petition No.37958 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.37958 of 2016

and

W.M.P.No.32554 of 2016

The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai - 600 005.

... Petitioner

Vs.

1.The Presiding Officer,
The Hon'ble II Additional Labour Court,
High Court Buildings,
Chennai - 600 104.

2.Chithra

W/o.Late A.Appavoo

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for records of the first respondent relating to the impugned order passed in C.P.No.132 of 2009 dated 25.02.2016 and quash the same as illegal.

For Petitioner : Mr.S.Ravindran, Senior Counsel
for Mrs.S.Mehala
For Respondents : Labour Court [R1]
Mrs.G.P.Arivuchuder
for M/s.Law Square

ORDER



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The order dated 25.02.2016 passed in C.P.No.132 of 2009 is under challenge in the present writ petition.

2. The Tamil Nadu Water Supply and Drainage Board is the petitioner.

Learned Senior Counsel appearing on behalf of the petitioner mainly contended that in the absence of any adjudication under the relevant provisions of the Industrial Disputes Act [in short "Act"], no claim u/s.33(C)(2) of the Act is entertainable. In the present case, the second respondent workman herself calculated the salary and accepting the said calculation, the award has been passed by the Labour Court and therefore, it violates the basic procedure contemplated under the scheme of the Act. The provisions u/s.33(C)(2) of the Act is entertainable only if there is a due or an award or otherwise. In the present case, there was no adjudication of disputed issues regarding the salary arrears and other benefits sought for by the second respondent workman in the claim petition. In the absence of any such adjudication, the Labour Court cannot form an opinion merely based on the claim set out in the petition.

3. The second respondent workman was appointed in Board's service on 03.10.1974 and dismissed from service on 11.02.2022. In between, she was placed under suspension on two occasions and she was not in service for about



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ten years. In this context, the second respondent has stated that she was not sanctioned any increment during the entire period due to unavailability of her service book and other administrative reasons. The submission in the petition is untenable. In view of the facts that the second respondent workman was placed under suspension for about ten years and further, the second respondent workman calculated the scale of pay at her choice, it cannot be accepted by the petitioner Board. Such disputed issues are to be adjudicated on merits and in accordance with law and based on the eligibility and pay revision applicable to the Board. In the absence of any such elaborate adjudication on disputed issues, the Labour Court ought not to have accepted the claim of the second respondent workman.

4. This Court is of the considered opinion that disputed issues are to be adjudicated by following the procedure. A perusal of the claim petition reveals that no such adjudication was done in the case of second respondent workman. The second respondent workman has calculated the arrears in her own manner and in the absence of any adjudication. Thus, the Labour Court has committed a basic error in entertaining a claim petition u/s.33(C)(2) of the Act and passed an award. There is no finding in this regard. The finding of the Labour Court

S.M.SUBRAMANIAM., J



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reveals that the calculation made in the claim petition was taken into account in its entirety for the purpose of passing the award and thus, the findings in the award are perverse and are liable to be set aside.

Accordingly, this Writ Petition is allowed and the impugned order passed in C.P.No.132 of 2009 dated 25.02.2016 is quashed and the second respondent workman is at liberty to adjudicate the issues in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

17.11.2022

Index : Yes
Speaking order
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