

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2022

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6063 of 2014 &
M.P.No.1 of 2014

M/s.Unity Overseas,
No.7, T.S.Puram,
Valipalayam,
Tirupur-641601,
represented by its partner
Mr.A.Gopalakrishnan

...Petitioner

..Vs..

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.N.K.Ramaswamy

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records relating to C.P.No.236 of 2008 on the file of the 1st respondent, the presiding officer, Labour Court, Coimbatore and quash the impugned order dated 07.05.2013 made therein.

For Petitioner : Mr.K.Manikandan

For Respondents : Labour Court (for R.1)
Mr.C.K.Chandrasekar (for R.2)

ORDER

The award passed in C.P.No.236 of 2008, dated 07.05.2013 is under challenge in the present writ petition.

2. The petitioner is a M/s.Unity Overseas and the second respondent / workmen filed C.P.No.236 of 2008, under Section 33(c)(2) of the Industrial Dispute Act, claiming incentive for the year 2006-07 and a leave salary for 108 days. The writ

petitioner filed a counter statement and contested the statement reverting the claim of the second respondent / workmen. The Labour Court adjudicated the issue elaborately with reference to the documents marked by the respective parties and based on the pleadings.

3. The learned counsel for the petitioner mainly contended that the Labour Court has partly allowed the claim petition regarding the incentive and regarding the leave salary for 108 days. The labour Court rejected the claim of the workmen, even for incentive the workmen has not established his entitlement by properly pleading in the petition and by filing documents. The learned counsel for the petitioner reiterated that the Labour Court proceeded merely on the basis that some other workmen had been paid incentive previously and the said basis cannot be a ground to grant incentive in the case of the second respondent / workmen. In the absence of any award crystallizing the right of the 2nd respondent to get incentive, the labour Court ought not to have granted incentive in a claim petition filed under Section 33(c) (2) of the Industrial Dispute Act.

4. The learned Counsel appearing on behalf of the 2nd respondent / workmen opposed the said contention by stating that the workmen filed document which is marked as Ex.W.2 which establishes that the writ petitioner / management had announced incentive to the petitioner for the years 2006-07, at Rs.1,65,089/-. When the workmen filed a document before the labour Court and such a document was marked, which was not disputed by the writ petitioner / management. There is no reason to interfere with the findings of the labour Court in this regard and thus contempt petition is to be rejected.

5. Perusal of the award reveals that the Labour Court adjudicated two issues, one pertains to the leave salary for 108 days and secondly the incentive for the year 2006-07. With reference to the leave salary, the Labour Court found that the petitioner admitted in his petition that the writ petitioner / management is covered by the Tamil Nadu Shops and Establishments Act. As per Section 25(1) of the Tamil Nadu Shops and Establishments Act, holidays with wages can be accumulated upto a maximum period of 24 days only. So, the petitioner is not entitled to accumulate for 108 days. Based on the said finding, the claim of the workmen for leave salary for 108 days was rejected.

6. With reference to the other issue relating to grant of incentive for the year 2006-07, the labour Court categorically

made a finding that as per Ex.M.3 the incentive was paid to the employees of the writ petitioner firm from 24.02.1997. Ex.W2 shows that the respondent has announced incentive for the years 2006-07 at Rs.1,65,089/-. For the said amount tax also was deducted. Subsequently, the respondent has withdrawn Rs.1,53,595/- from the account of the workmen as forward contract closing charges. With reference to the documents filed both by the writ petitioner / management and the 2nd respondent / workmen, the labour Court formed an opinion that writ petitioner / management announced incentive to the employees of the writ petitioner firm from 24.02.1997. As per Ex.M.3 and Ex.W.2, the writ petitioner / management announced incentive to the petitioner for the years 2006-07 at Rs.1,65,089/-.

7. Thus, relying on the principles, the Labour Court arrived at a conclusion that the 2nd respondent / workmen is entitled for the incentive based on the document marked as Ex.W.2. Thus, the award has been passed confirming the entitlement of the workmen to recover a sum of Rs.1,53,595/- being the incentive for the year 2006-07.

8. The findings of the labour Court to affirm the entitlement of workmen for incentive is based on the documents filed both by the management and by the 2nd respondent / workmen. This being the factum, there is no other reason whatsoever to interfere with the award as there is no infirmity or perversity.

9. Consequently, the award passed by the Labour Court in C.P.No.236 of 2008, dated 07.05.2013 stands confirmed and the writ petition stands dismissed. The second respondent / workmen is entitled to withdraw the amount already deposited before the Labour Court to credit of C.P.No.236 of 2008 by filing an appropriate application. The balance amount is to be paid by the writ petitioner / Management within a period of three (3) months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

mrm/psa

To

The Presiding Officer,
Labour Court,
Coimbatore.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.C.K.Chandrasekhar, Advocate SR.No.38133

+2cc to Mr.S.Muktha, Advocate SR.No.37453

W.P.No.6063 of 2014

KK(CO)

CB(13/07/2022)