



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No.3129 of 2021

The Management,
Micro Labs Limited,
92, SIPCOT Industrial Complex, Phase I,
Hosur 635 126,
Represented by its Senior Vice President.
...Appellant/1st Respondent, Petitioner

Vs

1. Patil Veershetty
2. The Assistant Commissioner of Labour,
(Conciliation)
Krishnagiri. ... Respondents/Petitioners/2nd Respondents

Appeal filed against the order passed by this Court dated 01.11.2021 in W.M.P.No.3730 of 2021 in WP No.10833 of 2020.

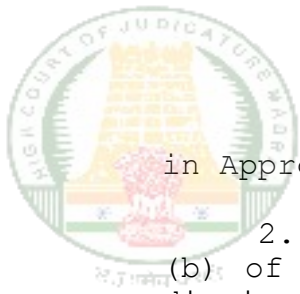
Prayer in WP No.10833 of 2020 : Petition filed under Section 17B of the Industrial Disputes Act 1947 to direct the 1st Respondent Management to pay Rs.30,780/- every month to the Petitioner under Section 17B Industrial Disputes Act, 1947.

For Appellant : Mr. Anand Gopalan
for M/s. T.S. Gopalan and Co.

For Respondents : M/s. R. Kamatchi Sundaresan

J U D G M E N T
(made by M.DURAI SWAMY, J.)

Challenging the order passed in W.M.P.No.3730 of 2021 in W.P.No. 10833 of 2020, the management has filed the above writ appeal. The appellant filed the writ petition to issue a writ of certiorari to call for the records of the second respondent



in Approval Petition No. 169 of 2018 and to quash the same.

2. The appellant filed an application under Section 33 (2) (b) of the Industrial Dispute Act, 1947 seeking approval of the dismissal order dated 15.03.2018 of the first respondent, and the second respondent by order dated 22.05.2020, rejected the approval petition. Challenging the rejection order, the appellant has filed the writ petition in W.P.No. 10833 of 2020. In the said writ petition, the first respondent filed a miscellaneous petition in W.M.P. 3730 of 2021, seeking for the payment of the last drawn wages under Section 17B of the Industrial Dispute Act.

3. It is the case of the appellant that on 15.07.2020, they had ordered for reinstatement and directed the workmen to report for duty at their Puducherry factory. Further, it is the case of the appellant that since the first respondent failed to report for duty at Puducherry, he is not entitled for the wages payable under Section 17B of the Act.

4. The first respondent contended that the order directing him to report for duty at Puducherry cannot be construed as an order of reinstatement, hence the appellant management is liable to pay 17B wages.

5. The learned Single Judge taking into consideration the ratio laid down by the Hon'ble Supreme Court in the judgments of 'P.D. Sharma Vs. State Bank of India reported in [AIR 1968 SC 985]' and 'Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahyavidyalaya (D.ED) and Others reported in [2013 (10) SCC 324]' and also the judgment of the Division Bench of this court Lakshmi Mills, Ltd., Coimbatore Vs. Labour Court, Coimbatore and another reported in 1997 (3) L.L.N. 354, rightly observed that the order of dismissal itself became ab initio void, in view of the rejection of approval petition, reinstating the first respondent, however by transferring him to some other place other than his original place of employment, and the same is an illegal action, contrary to the ratio laid down in the said judgments.

7. The learned Single Judge also observed that the decision of the appellant management to reinstate the workmen by transferring him from Hosur to Puducherry through a transfer order dated 15.07.2020 cannot be deemed to be a 'reinstatement order at all'. When the first respondent was not reinstated at the original place of employment, the question of him not reporting for duty at the transferred place does not arise.



8. In such circumstances, the first respondent shall be entitled for the payment of the last drawn wages, under Section 17B of the ID Act. It is also not in dispute that the first respondent has not been gainfully employed from the date of rejection of the approval petition. So far as the contention of the first respondent with regard to the mala fide intention of the appellant management and also with regard to the victimization, we are not adverting any finding on them for the reason that the writ petition is pending before the learned Single Judge. The said issue can be decided by the learned Single Judge in accordance with law.

9. As already stated, the first respondent is entitled to 17B wages, which was drawn by him at the original place of employment. The learned Single Judge taking into consideration all these aspects has rightly directed the appellant to pay the first respondent his last drawn wages under Section 17B of the ID Act commencing from 04.08.2020, i.e. the date of filing of the writ petition and continue to pay the same till the disposal of the writ petition.

10. We do not find any ground to interfere with the order passed by the learned Single Judge, the writ appeal is devoid of merits and the same is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

mrn

To

1. The Assistant Commissioner of Labour,
(Conciliation)
Krishnagiri.

+1cc to M/s. T.S. Gopalan and Co, Advocate SR.No.4076

+1cc to Mr.Balan Haridas, Advocate SR.No.4562

W.A.No.3129 of 2021

KK (CO)
GMY (10/02/2022)