



W.P.(MD)Nos.964 & 2698 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.09.2022**

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)Nos.964 & 2698 of 2014

W.P.(MD)No.964 of 2014

The Management,
M/s.Sundram Fasteners Limited,
Krishnapuram, Aviyur.

... Petitioner

vs.

1. The Presiding Officer,
Labour Court,
Madurai.
2. The Management,
M/s.Sakthi Management Service Limited,
Contractor of Sundram Fasteners Limited.
3. A. Narayanan (Died)
4. Palaniammal
5. Chandra
6. Indradevi
7. Sakunthala

[R-4 to R-7 are impleaded as LR's of R-3, vide Court Order, dated 09.06.2022]

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, to call for the records of the 1st respondent relating to the order in C.P.No.80 of 2011 dated 30.07.2013 and quash the same.

For Petitioner	: Mr.K.Jayaraman
R-1	: Court
For R-2	: No appearance
For R-3	: Died
For R-4 to R-7	: Mr.S.Jayakumar

W.P.(MD)No. 2698 of 2014

The Management,
M/s.Sakthi Management Services.

... Petitioner

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1. The Presiding Officer,
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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Certiorari***, to call for the records of the 1st respondent relating to the order in C.P.No.80 of 2011 dated 30.07.2013 and quash the same.

For Petitioner	: Mr.B.Muruganandham
R-1	: Court
For R-2	: No appearance
For R-3	: Died
For R-4 to R-7	: Mr.S.Jayakumar

COMMON ORDER

These Writ Petitions have been filed for issuance of Writ of Certiorari, to quash the order, dated 30.07.2013 in C.P.No.80 of 2011 passed by the 1st respondent/The Presiding Officer, Labour Court, Madurai.

2. The brief facts as stated in the affidavit filed M/s.Sundram Fasteners Limited in W.P.(MD) No.964 of 2014 is that the petitioner company was registered under the Indian Companies Act and engaged in manufacturer of fasteners, mainly for Automobiles. The petitioner had engaged contractors, who in turn engaged their workmen. The workmen were employed only by the



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contractors and the workmen are not employed by the petitioner. There is no relationship of employer and workmen subsisted between them. The second respondent is one of such contractors and he had engaged the 3rd respondent as workmen only from the year 1999. This being a case, the 3rd respondent falsely claimed that he was employed by the petitioner and he has invoked the provisions of the Payment of Gratuity Act, and filed P.G.Case No.52 of 2008 before the Controlling authority, under the Payment of Gratuity Act, by impleading the petitioner's company as a party along with the 2nd respondent. After affording an opportunities to the parties, the Controlling authority, under the Payment of Gratuity Act, has held that the 3rd respondent never employed at any point of time directly by the petitioner establishment and further held that the 2nd respondent is liable for payment of gratuity, as per the Provisions of the Act, for the period from 1999 to 2005. The 3rd respondent has not challenged the said order, dated 28.04.2001, which has categorically held that the 3rd respondent was not a workman of the petitioner establishment, which was attained finality. Despite the same, the 3rd respondent by invoking Section 33(C) (2) of the Industrial Disputes Act, filed a case in C.P.No.80 of 2011 before the Labour Court, Madurai, against the petitioner establishment as well as the 2nd respondent for payment, totally a



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sum of Rs.4,51,388/-, by way of bonus, encashment of leave, salary for festival holidays as well as over time salary. In the claim petition, the 3rd respondent has stated that, he had worked for the period from 1982 to 1998 under the petitioner establishment and for the period from 1999 to 2005, under the 2nd respondent establishment.

3. The contention of the petitioner's company is that the Labour Court, despite the findings of the Controlling authority under Payment of Gratuity Act, wherein, it has held that the 3rd respondent never worked under the petitioner establishment and erroneously held that the workmen worked under the petitioner establishment and accordingly, held that the petitioner establishment is liable to pay a sum of Rs.1,09,858/-by way of bonus, encashment of leave salary as well as the salary for National and Festival Holidays. Aggrieved by the same, the petitioner establishment has filed this instant writ petition.

4. The facts narrated in Writ Petition in W.P.(MD) No.2698 of 2014 filed by Sakthi Management Services (herein after called Sakthi Management) has stated that the Controlling authority, under the Payment of Gratuity Act, has



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held that the workmen is not a workman under M/s.Sundarama Fastners Limited and passed an order for payment of gratuity against the Sakthi management only. The Sakthi management admitted that, during the period from 1999 to 2005 the workman worked under the Sakthi Management. The contention of the Sakthi Management is that, even though there are number of workmen worked from the year 1999 to 2005, it cannot be said that they were continuously working so as to entitle for encashment of leave, bonus as well as salary for National and Festival holidays. There is no provision under the enactment applicable to the establishment that the leave can be encashed. As far as the workmen is concerned, no bonus was declared. The workman has not established that, he was entitled to encashment of leave, bonus and salary for National and festival holidays and there is no provisions under the Industrial Disputes Act, for clubbing two employers and file a single application, whereas the aforesaid C.P. was filed against the 2nd respondent. According to the workmen, he was an employee till 1998 under M/s.Sundram Fasteners Limited and he has filed the said application against the Sakthi Management for the subsequent period from 1999. But there is no provision for clubbing together and file a single application, despite the same, the Labour Court has erroneously held that the application is maintainable and



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decided the case. Aggrieved over the order passed by the Labour Court, the Sakthi Management has filed this Writ Petition.

5. The workmen has not filed any counter but relied on the claim petition filed before the Labour Court.

6. Heard Mr.K.Jayaraman, the Learned Counsel appearing for the writ petitioner in W.P.(MD) No.964 of 2014, Mr.B.Muruganandham the Learned Counsel appearing for the writ petitioner in W.P.(MD) No. 2698 of 2014, Mr.S.Jayakumar, the Learned Counsel appearing for the legal heirs impleaded as respondents 4 to 7 in both the writ petitions and perused the material documents available on record.

7. The deceased 3rd respondent in both the writ petitions namely, A.Narayanan has not filed any separate claim petitions against the two companies, but has filed a single petition before the Labour Court. The claim of the said workman is that M/s.Sakthi Management Services, is the contractor, who supplied workmen to the principal employer namely M/s.Sundaram Fastners



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Limited. In fact, both the M/s.Sakthi Management as well as the M/s.Sundaram Fasteners are one and the same. The deceased workman claims that he was working in the Principal Employer Company through the said Sakthi Management from the year 1999 to 2005. The deceased workman has claimed that prior to 1999 he was directly engaged by the M/s.Sundaram Fasteners and hence he claims that he is entitled to file a single claim petition.

8. The claim of the said M/s.Sundaram Fasteners is that under the Payment of Gratuity Act, the said workman has not established that he was working before 1999 with the principal worker namely, M/s.Sundaram Fasteners and therefore, the Controlling authority has declined the payment of gratuity by the said M/s.Sundaram Fasteners. In fact, M/s. Sakthi management has accepted their liability in the affidavit that the deceased workman was working from 1999 to 2005 and hence the Controlling Authority had directed to pay gratuity for the period from 1999 to 2005 by the M/s. Sakthi Management alone.

9. The next plea that was raised by M/s.Sundaram Fasteners, is that no enquiry was conducted which is contemplated under Section 33C(2) of the



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Industrial Disputes Act. If an enquiry is conducted then the petitioner M/s. Sundaram Fasteners would have produced the order passed by the Gratuity Authority and would have proved the case that the employee was not employed during that period. The workman has filed the petition directly under section 33(C)2 and claiming to pay the amount, thereby claiming an illegal amount. The relevant provision is extracted hereunder:

"33-C: (2) Where any workman is entitled to receive from the employer any money or benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour



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Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case."

It has been specifically stated under sub clause 3 that for the purpose of computing the money value, the Labour Court shall appoint a Commissioner and the Commissioner by taking evidence if necessary, then ought to submit the report before the Labour Court. Thereafter, the Labour Court shall determine the amount. Hence the Learned Counsel appearing for the management submitted that the workman ought to have filed the petition under the Industrial Disputes Act and an independent authority ought to have ascertain the facts whether the workman had worked in M/s.Sundaram Fasteners, any employer and employee relationship existed prior to 1999 and if existed then the amount ought to have been quantified. But no such finding was rendered by any competent authority. Therefore, the petition filed before the Labour Court, Madurai, under Section 33C(2) of the Industrial Disputes Act, is illegal.

10. The plea of the management is absolutely right. The issue was considered in a judgment rendered by the Andhra Pradesh High Court in



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Rajendranagar Municipality Vs. B.V. Perraju and Others dated 14.07.1995 reported in 1995 (2) ALT 320 wherein it is stated in the said judgment that a benefit conferred on a workman in a statute even if denied, could be an existing right which could be entertained and determined under section 33(C)(2) of the Industrial Disputes Act. However, the benefits under section 33(C)(2) in such cases would have to be preceded by an enquiry into the existence of the right and such an enquiry is incidental to the main determination which has been assigned to the Labour Court by sub section (2). The phrase “preceded by an enquiry into the existence of the right” is covered under 33 (C) (3), wherein it has been clearly stated that for computing the money value of a benefit the Labour Court ought to appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case. Therefore, the determination under 33(C)(3) is sine qua non to allow the claim petition filed under 33(C)(2). Since this has not been followed by the Labour Court in the present case, then the case ought to be remitted back to the Labour Court.



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11. When these Writ Petitions are pending for consideration, the workmen / 3rd respondent died on 13.06.2021 and his Legal heirs were impleaded as R-4 to R-7, vide order of this Court, dated 09.06.2022. At this juncture, if the Legal heirs are directed to file a separate petition before the Labour Court, it would take another few years to complete the enquiry. This would make the legal heirs to run from pillar to post. Therefore, this Court on equity is of the considered opinion that the Sakthi Management is directed to pay Rs.23,528/-, the amount which is quantified by the Labour Court, under Section 33C(2) of the Industrial Disputes Act. The Labour Court has quantified a sum of 1,09,858/- against M/s.Sundaram Fasteners, however this Court is directing to pay a sum of Rs.50,000.

12. Accordingly, the Writ Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

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S.SRIMATHY, J

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Common Order in
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