



W.P. Nos.8634/2003, etc. Batch

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
19.07.2023	03.08.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.8634 & 8790 OF 2003

W.P. NO. 7994 OF 2005

W.P. NO. 25872 OF 2018

AND

W.M.P. NO.30071 OF 2018

The Management
India Cements Ltd.
Sankari West
Salem 637 303.

.. Petitioner in all WPs

- Vs -

1. The Presiding Officer
Labour Court, Salem.

.. R-1 in all the WPs

2. K.R.Madheswaran

.. R-2 in all WPs

3. M.Arunachalam
4. K.Palanisamy
5. S.Poormannan
6. M.Ramasamy
7. V.Kandasamy
8. C.Gopal
9. R.Raman



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10. M.Natarajan
11. V.Natesan
12. S.Panneer Selvam
13. P.Thangaraj
14. P.Palanisamy
15. K.Subramani
16. N.Kaliappan
17. N.Vadivel
18. P.Munian
19. P.Manickam
20. S.Kumarasamy
21. S.Srirangan
22. G.Swaminathan
23. I.Varadaraj
24. S.Nallathambi

25. V.Kaveri

.. Respondents in all

WPs

W.P. No. 8634 of 2003 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records from the file of the 1st respondent herein in C.P. Nos.158 to 166, 168 to 173, 175, 176 and 178 to 183/1999 on its file and to quash the common order dated 18.12.2001.

W.P. No.8790 of 2003 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records from the file of the 1st respondent herein in C.P. Nos.369 to 391 of 2000 on its file and to quash the common order dated 18.12.2001.

W.P. No.7944 of 2005 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records from



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the file of the 1st respondent herein in C.P. Nos.14 to 36 of 2002 on its file and to quash the common order dated 31.05.2004.

W.P. No.25872 of 2018 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records from the file of the 1st respondent herein in C.P. Nos.202 to 212 of 2013 on its file and to quash the common order dated 17.08.2017.

For Petitioner : Mr. s.Ravindran, SC, for
M/s. S.Bazeer Ahamed

For Respondents : Mr. S.Ayyathurai for RR-3 to 25
No Appearance for R-2

COMMON ORDER

Assailing the respective orders passed by the 1st respondent in allowing the respective computation petitions filed by respondents 3 to 25 claiming wages, the present writ petitions have been filed.

2. The respondents herein have filed computation petitions for various periods between October, 1998 and February, 2013, claiming wages from the petitioner, on account of the termination of their services. The respective computations were allowed by the 1st respondent/Labour Court vide the aforesaid impugned orders by holding that workmen/respondents 3 to 25 are entitled to receive the compensation amount.



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3. For the sake of brevity, the petitioner and the respondents 3 to 25 will be referred to as 'petitioner' and 'workman'.

4. It is the case of the petitioner that it is an industrial unit engaged in the manufacture of cement. The petitioner had entered into a contract arrangement with the 2nd respondent, who is a registered contractor under the Contract Labour (Regulation and Abolition) Act, and the 2nd respondent had engaged the services of respondents 3 to 25 with the petitioner. It is the further case of the petitioner that all the payments towards wages for the aforesaid workmen were paid by the 2nd respondent and the petitioner, in no way, was associated with the workman.

5. It is the further case of the petitioner that voluntary retirement scheme was floated by the petitioner for its employees, who were employed in the unit as well as at the mines as a means of cost cutting measure due to financial implication, which had the approval of the Union as well and, accordingly, many employees had opted for VRS. Due to the economic



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condition and the viability to run the unit, the petitioner, after discussion with the 2nd respondent and also their Union, VRS for the contract workers, who were employed by the 2nd respondent was also discussed and in terms with the arrangement with the 2nd respondent, the contract workers were given VRS on payment of ex-gratia amount along with terminal and statutory benefits and out of the 171 contract workmen, 148 workmen opted for VRS barring the 23 persons, who are the respondents here.

6. It is the further case of the petitioner that the contract workmen had signed an agreement u/s 18 (1) of the ID Act and also submitted resignation letter and opted for VRS scheme and all the contract workmen were paid the terminal benefits by the 2nd respondent. It is the case of the petitioner that the terminal benefits were paid by the 2nd respondent to the contract workmen including respondents 3 to 25 and not by the petitioner.

7. It is the further case of the petitioner that the workmen herein, who were employed under the contractor and receiving wages from the contractor, raised an industrial dispute before the Deputy Commissioner of



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Labour, Salem, seeking continuity of employment as contract workmen under the contractor. Thereafter, the industrial dispute was withdrawn by the work by memo dated 13.1.1999 on the ground that they will pursue the remedy by way of civil suit. However, the interlocutory application filed in the civil suit was dismissed, whereinafter, the workmen filed claim petition before the 1st respondent claiming arrears of wages for the periods, as evidenced by the various claim petitions, during the period October, 1998 and February, 2013 on the ground that the letter dated 14.11.1998 of the 2nd respondent disengaging their services is illegal and unjustified. Different amounts were claimed by the respective workman based on the monthly wages earned by them. So also, for differing periods between October, 1998 and February, 2013, claim petitions were filed by the workmen, which had resulted in the abovesaid four impugned orders in and by which the 1st respondent had ordered the computation petitions directing the petitioner to pay the sums claimed by the respective respondents towards wages for the said period. Aggrieved by the said orders, the present writ petitions have been filed.



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8. Learned senior counsel appearing for the petitioner submitted that the 2nd respondent is the licenced contractor, who had offered the services of the workmen on contract basis. The workmen, viz., respondents 3 to 25 herein, are employees under the 2nd respondent and there is no relationship of employer-employee between the petitioner and the workmen.

9. It is the further submission of the learned senior counsel that the petitioner had terminated the contract of the 2nd respondent as early as on 4.11.1998 and, in turn, the said 2nd respondent had terminated the services of the workmen, who were functioning on contract basis with the petitioner on 14.11.1998 by paying the closure compensation and other legal dues. The mere fact that the workmen had received the compensation under protest without prejudice to their rights in law with regard to their absorption as regular employees under the petitioner would not clothe the workmen with any right to seek for regularisation/absorption with the petitioner as all along, there was no relationship between the petitioner and the workmen.



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10. It is the further submission of the learned senior counsel that the agreement between the petitioner and the 2nd respondent, viz., the principal employer and the contractor, is valid in terms of Section 7 and 12 of the Contract Labour (Regulation and Abolition) Act, 1970. It is the further submission of the learned senior counsel that the contract between the petitioner and the 2nd respondent cannot be said to be sham and nominal and in no case, the courts have held that such a contract between the principal employer and the contractor is sham and nominal.

11. It is the further submission of the learned senior counsel that the definition of 'workman' as defined u/s 2 (s) of the ID Act does not include contract workman. Though the workmen is entitled to money value by computing u/s 33-C (2) of the ID Act, the dispute regarding the entitlement cannot form the subject matter of adjudication u/s 33-C (2) and the 1st respondent has no jurisdiction to decide disputed facts u/s 33-C (2).

12. It is the further submission of the learned senior counsel that the workmen cannot divest their association with the contractor for the purpose



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of claiming relief by invoking the jurisdiction u/s 33-C (2) of the ID Act. It is the further submission of the learned senior counsel that the contract cannot be attacked by the workmen as sham for the purpose of claiming relief u/s 33-C (2) of the ID Act. It is the further submission of the learned senior counsel that it is even the admission of the workmen in cross examination that no order of appointment had been issued by the petitioner to the workmen. In fact, in cross examination, it is the further admission of the workmen that the compensation and other statutory benefits were sent by the 2nd respondent which were received by the workmen and, thereafter, the workmen had not raised any dispute either against the 2nd respondent or to make the workmen a permanent employee under the petitioner or even for doing away with the contract labour appointment.

13. It is the further submission of the learned senior counsel that the relief u/s 33-C (2) could be sought for only in respect of rights that have stood accrued and in the absence of any right, which has accrued on the workmen, the 1st respondent was not justified in allowing the computation petitions, more so, when it is the categorical admission of the workmen that they are



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not employees under the petitioner and that no appointment orders have been issued to them by the petitioner.

14. The appreciation of the materials with regard to the association between the petitioner and the workmen, but also the appreciation of u/s 33-C (2) by the 1st respondent is not only perverse and illegal, but it is wholly misconceived and necessarily it warrants interference at the hands of this Court.

15. Per contra, learned counsel appearing for the workmen submitted that the termination of their contract by the 2nd respondent by paying the compensation would clearly reveal that the amount, which has been paid as compensation is the amount which has been paid by the petitioner and not by the 2nd respondent. This would clearly prove that all along it was the petitioner, who was paying the workmen and to shield itself from absorbing the workmen, the contractor was pushed into the picture.

16. It is the further submission of the learned counsel that the contractual establishment, which was formed by the petitioner, for enlisting



the services of the workmen, were closed on 4.11.1998 at the behest of the petitioner and the 2nd respondent had paid the compensation to the workmen, which were received under protest as the workmen were entitled for payment u/s 33-C (2) of the ID Act.

17. It is the further submission of the learned counsel that for the closure of an establishment, it is necessary that the provision of Section 25-O of the ID Act to be followed. However, without following the said provision, which has been rightly been appreciated by the 1st respondent to grant relief to the workmen by ordering payment of the wages to which they were legally entitled to.

18. It is the further submission of the learned counsel that the 2nd respondent/contractor, had not questioned the act of the petitioner in terminating the contractor, which clearly goes to prove that the petitioner and the 2nd respondent were hand in glove and that it is the petitioner, who was all along paying the workmen under whom the workmen were functioning and the 2nd respondent was merely projected as a contractor so as to enable the



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petitioner to circumvent the provisions of Section 25-O. This would be evident from the fact that the 2nd respondent has not chosen to challenge the order passed by the 1st respondent, as the 1st respondent had fastened the liability of payment of the computed amount of compensation equally on the petitioner and the 2nd respondent jointly and severally. The act of the 2nd respondent in not challenging the order of the 1st respondent clearly peels off the mask from the face of the 2nd respondent to show that it is only the petitioner, who was acting behind the cloak of the 2nd respondent and, therefore, the workmen were rightly entitled to the compensation u/s 33-C (2). The aforesaid aspects have been appreciated in proper perspective by the 1st respondent while passing the impugned order and, therefore, no interference is warranted with the order passed by the 1st respondent.

19. In support of the aforesaid submission, learned counsel for the workmen relied on the decision of the Apex Court in ***S.G.Chemicals & Dyes Trading Employees Union – Vs – S.G.Chemicals & Dyes Trading Ltd., & Anr. (1986 (1) LLN 986)***.



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20. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

21. The respective computation petitions have been filed by the workmen u/s 33-C (2) of the ID Act. Therefore, to find the correctness of the orders, it is but necessary to advert to the aforesaid provision of law and for ready reference, the same is extracted hereunder :-

“33C. Recovery of money due from an employer.-

.....

(2) Where any workman is entitled to receive from the employer any money or any 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; 1[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.]”



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22. From the above, it transpires that the money or any benefit, which could be computed in terms of money, to which a workman is entitled to receive from the employer, could be decided in a dispute by the Labour Court. From this it is evident that insofar as there exists the relationship of employer-employee between the warring parties, the Labour Court has jurisdiction to entertain the dispute and compute the benefit, money-wise u/s 33-C (2) of the ID Act.

23. In this backdrop, it becomes necessary for this Court to consider the issue of relationship of employer-employee between the petitioner and the workmen, viz., respondents 3 to 25.

24. There is no dispute even on behalf of the workmen that they were under the contractual employment of the 2nd respondent, but the claim is that the 2nd respondent is an establishment of the petitioner and, therefore, in turn, the workmen are employees of the petitioner. In fine, it is the contention of the workmen that the petitioner and the 2nd respondent were



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hand in glove, acting to the detriment of the workmen to negate the claim of wages to which the workmen are otherwise entitled to.

25. In the computation petitions, the workmen have filed a bunch of exhibits, which have been marked. But there is nothing in the said materials to show that such a nexus exists between the petitioner and the 2nd respondent. However, it has been the consistent stand of the petitioner that the 2nd respondent is a licenced contractor, who supplies contractual workers to the petitioner for which payment is made to the contractor upon agreed terms, which is, in turn, paid by the contractor to the workmen. The nexus between the 2nd respondent and the petitioner, as alleged by the workmen, is inferred by the workmen only on the basis of the 2nd respondent not filing any petition against the orders of the Labour Court, as the order of the 1st respondent is to the effect that the settlement has to be meted out by the petitioner and the 2nd respondent jointly and severally.

26. It is to be pointed out that the mere non-filing of a petition against the orders of the 1st respondent could not be inferred by this Court that there



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exists a nexus between the 2nd respondent and the petitioner. Once the workmen claim that they are entitled to wages and that the 2nd respondent is merely acting on behalf of the petitioner, the order for payment jointly and severally by the 2nd respondent and the petitioner would pale into insignificance as it would only be the petitioner, who would have to pay and the 2nd respondent would not have any role to play in that, as the allegation is that he is acting on behalf of the petitioner. Therefore, the said contention cannot form the basis to establish that there exists a relationship of employer-employee between the petitioner and the workmen.

27. Coming to the issue proper, it is the claim of the workmen that they were employed for more than 20 years under the 2nd respondent and were working with the petitioner and all of a sudden they were terminated from the employment. However, to establish employer-employee relationship between the petitioner and the workmen, no material whatsoever such as order of appointment or salary slip issued by the petitioner have been placed before the 1st respondent.



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28. It is also evidenced from the materials available on record that even at the time when the contractual employment of the workmen were terminated, the 2nd respondent had paid them their dues, which the workmen have accepted, though with some demur. Barring the above workmen, the other persons, who were employed as contractual labour with the 2nd respondent and doing work for the petitioner, numbering to about 148 persons, they had received the payment and had not raised any dispute with regard to their employment.

29. In fact, the deposition of the workmen in cross-examination assumes significance and the very admission in cross examination demolishes the case of the workmen. In cross-examination, the workmen have admitted that the petitioner herein had not issued any appointment order to the workmen and that on 14.1.1998, the 2nd respondent herein had sent the compensation towards termination and other amounts, which were due to the workmen by means of a cheque, which was received by the workmen. It is also the further deposition of the workmen that they have not raised any dispute nor have they claimed that they were employees of the petitioner.



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30. From the aforesaid deposition of the workmen, it is evident that even at the earliest point of time when the compensation was paid to the workmen, they have never claimed any relationship with the petitioner. In fact, only under protest they have received the amount paid as compensation by the 2nd respondent herein and they have not claimed any relationship with the petitioner.

31. In this backdrop, Section 33-C (2) of the ID Act assumes significance. The said provision clearly stipulates that only insofar as any entitlement of the employee from the employer, which could be computed money-wise on which benefit would enure to the employee, such disputes could be entertained and decided by the Labour Court.

32. In the case on hand, the relationship of employer-employee between the petitioner and the workmen has not been established through any materials. There is no material connecting the workmen as an employee under the petitioner. The mere fact that the workmen were doing some work



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at the place of the petitioner cannot be taken to mean that there exists a relationship of employer-employee between the workmen and the petitioner. When all along the workmen were under the employment of the 2nd respondent and had been receiving the amounts towards their monthly payments and also the final payment of compensation on they being relieved from their work, which they were discharging on contract basis, being paid by the 2nd respondent, the workmen lay any claim on the petitioner for deriving the benefit u/s 33-C (2) of the ID Act.

33. Further, the claim of the workmen that Section 25-O of the ID Act has not been followed with regard to closure of undertaking cannot be raised by the workmen as the said workmen have no lien over the petitioner insofar as being considered as an employee and in such a scenario, there being no relationship between the petitioner and the workmen, the claim of violation of the provisions of Section 25-O cannot be raised by the workmen.

34. This Court is at a loss to understand as to the basis on which the 1st respondent had arrived at a finding that the workmen were indeed employees



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under the petitioner. Further, this Court is also is unable to comprehend as to where the question of VRS would come insofar as respondents 3 to 25 herein are concerned, as the said workmen were daily wage labourers, employed by the contractor with the petitioner. If any scheme of VRS is offered by the petitioner for its regular employees, the said scheme would not enure to respondents 3 to 25, as they are not employees of the petitioner. The respondents 3 to 25, being contract labourers under the 2nd respondent herein, cannot claim any benefit of the closure of the undertaking of the petitioner by offering VRS to its employees, as the respondents 3 to 25 would have no right to claim any benefit from the petitioner.

35. Further, in the absence of the workmen satisfying the provisions of Section 33-C (2) of the ID Act with regard to employer-employee relationship, the finding arrived at by the 1st respondent with regarding to the contract between the petitioner and the 2nd respondent being sham and nominal is wholly misconceived and erroneous.



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36. Further, the finding of this Court is strengthened by the decision, relied on, on behalf of the petitioner, in ***Bombay Chemical Industries – Vs – Deputy Labour Commissioner (2022 (1) LLN 66 (SC))***, wherein the Apex Court, in identical circumstances, held as under :-

“6. At the outset it is required to be noted that respondent No.2 herein filed an application before the Labour Court under Section 33(C)(2) of the Industrial Disputes Act, demanding difference of wages from 01.04.2006 to 31.03.2012. It was thus the case on behalf of respondent No.2 that he was working with the appellant as a salesman. However, the appellant had taken a categorical stand that respondent No.2 was never engaged by the appellant. It was specifically the case on behalf of the appellant that respondent No.2 had never worked in the establishment in the post of salesman. Therefore, once there was a serious dispute that respondent No.2 had worked as an employee of the appellant and there was a very serious dispute raised by the appellant that respondent No.2 was not in employment as a salesman as claimed by respondent No.2, thereafter, it was not open for the Labour Court to entertain disputed questions and adjudicate upon the employeremployee relationship between the appellant and respondent No.2. As per the settled proposition of law, in an application under Section 33(C)(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or



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settlement on which the claim is based. As held by this Court in the case of Ganesh Razak and Anr. (supra), the labour court's jurisdiction under Section 33(C)(2) of the Industrial Disputes Act is like that of an executing court. As per the settled preposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33(C)(2) of the Industrial Disputes Act. (See Municipal Corporation of Delhi Vs. Ganesh Razak and Anr. (1995) 1 SCC 235).

In the case of Kankuben (supra), it is observed and held that whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C (2) of the ID Act. It is further observed that the benefit sought to be enforced under Section 33C (2) of the ID Act is necessarily a preexisting benefit or one flowing from a preexisting right. The difference between a preexisting right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33C (2) of the ID Act while the latter does not.

7. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, when there was no prior adjudication on the issue whether respondent No.2 herein



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was in employment as a salesman as claimed by respondent No.2 herein and there was a serious dispute raised that respondent No.2 was never in employment as a salesman and the documents relied upon by respondent No.2 were seriously disputed by the appellant and it was the case on behalf of the appellant that those documents are forged and/or false, thereafter the Labour Court ought not to have proceeded further with the application under Section 33(C)(2) of the Industrial Disputes Act. The Labour Court ought to have relegated respondent No.2 to initiate appropriate proceedings by way of reference and get his right crystalized and/or adjudicate upon. Therefore, the order passed by the Labour Court was beyond the jurisdiction conferred under Section 33(C)(2) of the Industrial Disputes Act. The High Court has not appreciated the aforesaid facts and has confirmed the same without advertting to the scope and ambit of the jurisdiction of the Labour Court under Section 33(C)(2) of the Industrial Disputes Act.”

37. Further, this Court is also at a loss to understand as to the basis in which the 1st respondent has returned a finding that the workmen have been under the employment of the petitioner, but controlled by the 2nd respondent herein. When there are clear materials to establish that the workmen were



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under contractual employment of the 2nd respondent herein, the finding to the contra clearly reveals sheer non-application of mind on the part of the 1st respondent. Further, the mere permission granted to the workmen to withdraw a sum of Rs.1 Lakh from the amount which is under deposit cannot be the basis to hold that this Court had *prima facie* held that the workmen were under the employment of the petitioner. Even a perusal of the order reveals that solvent security was directed to be furnished for the like amount, which is sought to be withdrawn by the workmen. Such being the case, the said order having been passed subject to certain conditions, the said order cannot be the basis for the workmen to claim that the Division Bench had held in their favour.

38. The decision relied on by the learned counsel for the workmen in *S.G.Chemicals case (supra)* would not in any way be of assistance to the workmen, as in the said case, there existed a relationship of employer-employee between the Management and the workmen and in that backdrop, it was held that the right of the workmen would stand protected and that Section 25-O will come into play. However, in the case on hand, the workmen



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are not employees under the petitioner and such being the case, the application of Section 25-O of the ID Act would not come into play in the present case and the workmen, viz., respondents 3 to 25 in this case cannot have any grievance, even if any undertaking in an establishment is closed.

39. For the reasons aforesaid, the orders passed in the respective computation petitions by the 1st respondent is wholly perverse, illegal, arbitrary and unreasonable and, accordingly, the said orders deserve to be interfered with. Accordingly, all the writ petitions are allowed and the orders impugned therein are set aside. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs. The petitioner is permitted to withdraw the amount, which has been in deposit to the credit of the computation petitions, by filing appropriate petition before the 1st respondent.

03.08.2023

Index : Yes / No

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The Presiding Officer
Labour Court, Salem.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
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