



W.P.No.8114 of 2006

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.8114 of 2006

M/s.Sri Ambal Mills Ltd.,
89, Rathinasabapathy Street,
Co-operative Colony, Coimbatore
Rep.by C.D.Menan,
Director

... Petitioner

Vs.

1. The Secretary
Labour & Employment Department
Government of Tamil Nadu
Fort St.George,
Chennai 600 009.

2. Subramanian

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorari to call for the records and quash G.O.D.No.143 dated 01.03.2006 passed by the first respondent Secretary, Labour & Employment Department, Government of Tamil Nadu, Fort St.George, Chennai 600 009.

For Petitioner : Mr.M.R.Raghavan
for M/s.S.Jayaraman

For Respondents : Mr.M.Murali
Government Advocate for R1
M/s.K.J.Parthasarathy for R2



W.P.No.8114 of 2006

WEB COPY

ORDER

This writ petition has been filed to quash the order dated 01.03.2006 passed by the first respondent in G.O.D.No.143 whereby the first respondent has accorded sanction to prosecute the petitioner under Section 29 of the Industrial Disputes Act, 1947 for non-implementation of the Award dated 31.05.2004 passed in I.D.No.341 of 1999 by directing the Inspector of Labour, Conoor to file a complaint against the Management of the petitioner Mill, K.N.Menan, C.D.Menon and D.Chandran, Directors of the petitioner company in the Judicial Magistrate Court, Tiruppur.

2. The learned counsel for the petitioner submitted that the petitioner Mill was established in the year 1957 and commenced commercial production on 12.12.1960. The main activity of the petitioner company was to manufacture 100% Viscose yarn and polyester viscose blended yarn and the petitioner Mill was doing well till 1994-95 and thereafter due to shortage of major raw materials viz., viscose fiber, there was under utilisation of the installed capacity as a result of which the Mill suffered heavy financial loss. Thereafter the entire manufacturing activities were stopped with effect from 13.04.1998 and till date the Mill remains closed. There were about 365 workers engaged in the



W.P.No.8114 of 2006

petitioner Mill and in view of the stoppage of manufacturing activities from 13.04.1998 the petitioner was not in a position to provide work to any of the employees and on the principle of “No work No Pay” none of the employees were paid their wages, salaries and other benefits from 13.04.1998 to till date of filing the writ petition.

3. The second respondent was terminated from his service on 02.04.1997 and raised a dispute in conciliation, since the Conciliation Officer could not bring any settlement he forwarded his failure report to the parties. Based on the failure report the second respondent filed a case before the Labour Court, Coimbatore and the same was taken on file as I.D.No.341 of 1999. After completion of the trial an award was passed in I.D.No.341 of 1999 dated 31.05.2004 whereby the Labour Court, Coimbatore directed the petitioner Management to reinstate the second respondent with back wages and continuity of service and the Award passed in I.D.No.341 of 1999 was also published in the gazette on 05.07.2004. The second respondent after passing of the Award filed a petition dated 18.08.2004 before the Labour Court, Coimbatore seeking for a direction to the petitioner Company for implementation of the Award passed in I.D.No.341 of 1999 and in the event of petitioner Mill failing to



W.P.No.8114 of 2006

WEB COPY

implement the Award, action should be initiated against the petitioner Company in the manner known to law. The second respondent filed C.P.No.447 of 2005 on 09.11.2005 before the Labour Court, Coimbatore claiming wages and other benefits for the period from April 1997 to till October 2005 claiming for a sum of Rs.6,91,475/-. The said claim was based on the Award passed in I.D.No.341 of 1999. In the mean time, the second respondent filed a petition under Section 29 of the I.D.Act, 1947 for prosecution of the Directors of the petitioner Company for non-implementation of the Award. The first respondent vide its letter dated 25.07.2005 issued a show cause notice to the petitioner and its Directors to show cause as to why action should not be taken against them under Section 29 of the I.D.Act 1947 for non-implementation of the Award dated 31.05.2004 passed in I.D.No.341 of 1999. Thereafter the first respondent vide the impugned G.O.D.No.143 dated 01.03.2006 has accorded permission to prosecute the Directors and Managing Director of the petitioner Mill for non-implementation of the Award passed in I.D.No.341 of 1999 dated 31.05.2004. Challenging the above Government Order the petitioner Mill has come forward with the present writ petition.

4. The learned counsel for the petitioner further submitted that since



the petitioner Mill stopped the manufacturing activities with effect from 13.04.1998 and subsequently closed the Mill on the principle of “No work No pay” none of the employees were paid their salaries, wages and other benefits with effect from 13.04.1998 to till date. He further submitted that the second respondent was not terminated by the petitioner Mill he only resigned from the service of the company on his own and his resignation was to take effect from 10.09.1997. The second respondent raised I.D.No.341 of 1999 on the file of the Labour Court, Coimbatore and the Award dated 31.05.2004 was passed directing the petitioner Management to reinstate the second respondent with back wages and continuity of service. Since the petitioner Company suffered heavy financial loss it was not in a position to challenge the Award dated 31.05.2004 passed in I.D.No.341 of 1999.

5. The learned counsel further submitted that the Union had raised a dispute for rehabilitation of the Mill and arrears of wages since Government of Tamil Nadu granted interim relief of Rs.250/- p.m. and also stopped the same with effect from 2001. In respect of the dispute raised by the Union the Assistant Commissioner of Labour forwarded his failure report to the appropriate Government and the Assistant Commissioner of Labour pointed out



WEB COPY

that there is no scope for rehabilitation of the Mill. Thus, in view of the failure report dated 02.07.2004 passed by the Assistant Commissioner of Labour it was pointed out that the factor of closure of the petitioner Mill is not disputed and in fact the same has been admitted by the Government authorities.

6. The learned counsel further submitted that in view of the heavy financial loss suffered by the petitioner, the net worth of the petitioner company got completely eroded as a result of which the petitioner Mill was referred to BIFR on 12.08.1998 under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 and the reference made to BIFR was registered as case No.242 of 1998. The award passed in I.D.No.341 of 1999 dated 31.05.2004 and the order passed in C.P.No.447 of 2005 dated 03.07.2006 could not be implemented by the petitioner company due to heavy financial loss and as a result petitioner company was closed with effect from 13.04.1998. Hence the petitioner company has come forward challenging the prosecution order passed by the first respondent by way of filing the writ petition.

7. Per contra the learned counsel for the second respondent submitted that the Award was passed as early as on 31.05.2004 directing the petitioner



W.P.No.8114 of 2006

WEB COPY

Company to reinstate the second respondent with back wages and continuity of service and the same was also published in the Gazette on 05.07.2004. The second respondent also filed a petition dated 18.08.2004 before the labour Court, Coimbatore seeking for a direction to the petitioner company for implementation of the award passed in I.D.No.341 of 1999 and in the event of failure on the part of the petitioner company to implement the award, action should be initiated against the petitioner Company in the manner known to law. The second respondent also filed a claim petition in C.P.No.447 of 2005 on 09.11.2005 before the labour Court, Coimbatore claiming wages and other benefits for the period from April 1997 to till October 2005 and the said claim was based on the Award passed in I.D.No.341 of 1999. Order dated 03.07.2006 was passed in C.P.No.447 of 2005 directing the petitioner Management to pay a sum of Rs.3,24,016/- to the second respondent herein. Since the Award in I.D.No.341 of 1999 dated 31.05.2004 and the order passed in C.P.No.447 of 2005 dated 03.07.2006 were not complied the second respondent filed a petition under Section 29 of the Industrial Disputes Act, 1947 for prosecution of the Directors of the petitioner company for non-implementation of the Award and the first respondent has passed G.O.D.No.143 dated 01.03.2006 and accorded permission to prosecute the Directors and Managing Director of the



petitioner Mill for non-implementation of the Award dated 31.05.2004 passed in I.D.No.341 of 1999. The relevant portion of the Section 29 of the Industrial Disputes Act, 1947 is extracted as below:-

“ Penalty for breach of settlement or award – Any person who commits a breach of any terms of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both [and where the breach is a continuing one with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first] and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach”.

8. Heard the learned counsel for the petitioner, learned Government Advocate appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

9. On perusal of the records, it is crystal clear and evident that the petitioner Mill was closed with effect from 13.04.1998 and the Award was passed in I.D.No.341 of 1999 on 31.05.2004 after 7 years from the date of closure of the petitioner Mill. Hence the question of granting the reinstatement of the second respondent with back wages and continuity of service does not



W.P.No.8114 of 2006

WEB COPY

arise. The labour Court, Coimbatore by order dated 03.07.2006 in C.P.No.447 of 2005 directed the petitioner company to pay a sum of Rs.3,24,016/- to the second respondent. **It is also admitted by both side that the petitioner company is not in existence as on date. It is also brought to the notice of this Court by the learned counsel appearing for the petitioner Company that a sum of Rs.3,24,016/- was ordered by the labour Court, Coimbatore and the same was also paid to the second respondent on 19.08.2021 by way of Bank of Baroda, pay order No.774484 dated 12.08.2021 for a sum of Rs.1,50,000/- and a sum of Rs.6,016/- by way of cash and in total received a sum of Rs.3,24,016/-. A copy of the stamp receipt dated 19.08.2021 to that effect is also produced before this Court and the same is not disputed by the learned counsel appearing for the second respondent.**

10. Now, the learned counsel appearing for the second respondent has confined his argument only in respect of the interest to be paid from the date of order passed in C.P.No.447 of 2005 dated 03.07.2006 to till date. It is an admitted fact and the same is not in dispute that the petitioner Mill company is not in existence as on date. This Court cannot direct the petitioner Mill to pay the interest to the second respondent for a sum of Rs.3,24,016/- awarded in



W.P.No.8114 of 2006

WEB COPY

CP.No.447 of 2005. This Court cannot pass a direction to the petitioner to pay interest, being the fact that the Mill was closed in the year 1998 and the same is not in dispute and also admitted by both sides.

11. At present the learned counsel for the second respondent has confined his argument only in regard to the interest payable from the date of award in the year 2006 to till date.

12. **The claim petition No.447 of 2005 was filed based on the Award passed in I.D.No.341 of 1999 and a sum of Rs.3,24,016/- was ordered in the claim petition and the same was also paid to the second respondent on 19.08.2021.** Having received the above stated amount there is no necessity to prosecute the Managing Directors and the Directors of the petitioner company for non-implementation of the Award. The petition filed under Section 29 of the Industrial Disputes Act, 1947 is to prosecute the Managing Director and Directors of the petitioner Mill for non implementation of the award. The award passed in ID.No.341 of 1999 is to direct the petitioner Mill to reinstate the second respondent with full back wages and continuity of service. Since the petitioner Mill was closed with effect from 13.04.1998 the



W.P.No.8114 of 2006

WEB COPY

question of reinstatement and continuity of service of the second respondent does not arise and in regard to the payment of back wages, the C.P.No.447 of 2005 was also filed based on the Award passed in I.D.No.341 of 1999 and a sum of Rs.3,24,016/- was ordered by the labour Court, Coimbatore and the same was also received by the second respondent on 19.08.2021. In regard to the interest payable from the date of award to till date of payment it is not possible for this Court to entertain the plea for the reason that the petitioner Mill is not in existence and the same is closed as early as on 13.04.1998. In view of the above fact that the award has been complied with by the petitioner on 19.08.2021 there is no necessity for prosecution of the petitioner Company under Section 29 of the ID.Act, 1947.

13. In view of the above factum of the case this Court is inclined to quash the order dated 01.03.2006 passed by the first respondent in G.O.D.No.143 and the same is hereby quashed.

14. In the result this writ petition stands allowed. No costs.

03.03.2023

dpq

Index : Yes /No

Speaking Order : Yes/No



W.P.No.8114 of 2006

WEB COPY

To

1. The Secretary
Labour & Employment Department
Government of Tamil Nadu
Fort St.George,
Chennai 600 009.



WEB COPY



W.P.No.8114 of 2006

J. SATHYA NARAYANA PRASAD, J.

dpq

W.P.No.8114 of 2006

03.03.2023