IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

W.P.No.1437 of 2010
and
M.P.No.1 of 2010

Management of
The Tamil Nadu Co-op. Textile
Processing Mills Ltd.,
Erode – 638 004
represented by its Managing Director ... Petitioner

Vs.

1.The Presiding Officer,
Industrial Tribunal, Tamil Nadu,
Chennai – 600 104.

2.Kovai Periyar Mavatta Dravida
Panchalai Thozhilalar Munnetra Sangam
(LPF) represented by its Secretary,
69, Tatabad, Street No.3, Coimbatore – 12.

3.Kovai Mavatta Mill Thozhilalar Sangam (AITUC)
Represented by its Secretary
99, R.K.Street, Kattur, Coimbatore.

4.Kovai Erode Mavatta Dravida Panchali
Thozhilaler Maturm Nirvaha Ooliyargal
Munnetra Sangam (LPF)
Represented by its Secretary, 53/7, Priya Complex,
2nd Street, Gopalapuram,
Coimbatore – 18.

5.A.T.P.Thozil Sangam,
Represented by its Secretary,
Muthukaruppan Lane,
Opp : Government Hospital,
Near Tennis Club, Erode – 9.

6.Kovai Mavatta Panchalai Thozhilalar Sangam (HMS)
Represented by its Secretary,
NGR Mahal, 2212, Trichy Road, Singanallur,
Coimbatore – 5.

7.Erode Mavatta Podu Thozhilalar Sangam (CITU)
Represented by its Secretary,
48/5, Subbaraya Gounder Kadu,
NGGO Colony, Erode – 9.

8.Desiya Panchalai Thozhilalar Sangam (INTUC)
Represented by its Secretary,
13, Tatabad, Street No.3,
Coimbatore – 12. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 1st respondent in ID No.25/2005 and quash its award dated 30.06.2009.

For Petitioner	:	Mr.Anand Gopalan for M/s.T.S.Gopalan & Co.
R1	:	Tribunal
For R2 to R8	:	No appearance

ORDER

This writ petition is directed against the Award, dated 30.06.2009, in I.D.No.25 of 2005 on the file of the Industrial Tribunal, Chennai.

2.Brief facts that are necessary for the disposal of the writ petition are as follows :

2.1.The petitioner is the Management of Tamil Nadu Co-operative Textile Processing Mills Limited. The workmen, represented by several trade unions, filed a claim before the Industrial Tribunal for getting bonus at the rate of 8.33% and ex-gratia at the rate of 11.77% from the petitioner Management. A specific allegation was made by the labour unions to the effect that the Management failed to pay bonus in favour of all the employees who are the members of trade unions.

2.2.The respondents' claim for a sum of Rs.12,30,000/- towards bonus and ex-gratia was contested by the Management on the ground that the employees are receiving salary more than Rs.3,400/- and that therefore, they are not eligible for the said benefits. It is further stated that the Management has suffered a loss for the year 2002-03 and that therefore, the Management cannot be compelled to pay bonus in view of the admitted position that the Management had incurred loss.

2.3.However, the Industrial Tribunal allowed the claim holding that the claim of workmen for bonus as paid to them in the previous year is justified and that bonus is payable at 20% of the wages for the accounting year 2002-03.

3.Aggrieved by the Award, the Management has filed the above writ petition.

4.Learned counsel appearing for the petitioner Management submitted that the petitioner has produced all the documents before the Industrial Tribunal after serving copies of the same to the counsels for the trade unions. The learned counsel then pointed out that the Industrial Tribunal has allowed the claim only on the ground that the petitioner Management has not proved by documents that the Management was suffering loss. The observation of the Industrial Tribunal in Para No.14 of the Award is relevant and the same is extracted hereunder :

> ***"14.****It is contended that the burden of proof is upon the petitioner to show the availability of allocable surplus. Under normal circumstances this contention may be correct. But in this case the respondent himself is having the custody*

of documents. Moreover he is duty bound to provide bonus within the time frame fixed by the enactment. The respondent has to maintain the following documents.

1.A register showing the computation of the allocable surplus referred to in clause (4) of section 2, in form A.

2.A register showing the set-on and set-off of the allocable surplus, under section 15, in form B.

3.A register showing the details of the amount of bonus due to each of the employees, the deductions under section 17 and 18 and the amount actually disbursed, in form C. (Section 26 Rule 4).

The respondent has not chosen to mark the documents. The Inference is that the documents if marked would be detrimental to the case of the respondent. Under the stated circumstances this tribunal hold that the claim of the petitioner has to be upheld.

In the case reported in 2002(1) LLN 1045 MANAGEMENT OF TAMILNADU GEARS AND SHAFT CORPORATION VS. PRESIDING OFFICER ADDITIONAL LABOUR COURT, it has been held that the direction for 20% bonus is justified under the following circumstances:

i)The observation of the Labour court that the demand of the workmen for three months bonus has to be countenanced by the management by placing related documents before the workmen, which the management *failed to do;*

ii)If the management really wanted to give 8.33% bonus. they should have had talks with the union before the Labour Officer,

iii)Profit and loss account of the company for the relevant year should have been placed before the workmen and the dispute and the dispute should have been solved.

The case cited is applicable to the facts of this case.

In the result award is passed holding that the claim of workmen for bonus as paid to them in the previous year is justified. Bonus is payable at 20% of the wages in respect of the accounting year 2002-03. The Management is directed to pay the same to all the eligible workmen/Employee. No costs."

5.Learned counsel appearing for the petitioner Management, relying upon the order of the Tribunal, submitted further that the documents were produced by the Management before the Tribunal after serving copies of the same on the counsels appearing for the unions and that therefore, the respondents cannot take advantage of the mistake of the Industrial Tribunal. The learned counsel also submitted that the Advocate, who appeared for the Management in I.D.No.25 of 2005 before the 1st respondent/Tribunal, has filed an affidavit before this Court, dated 11.01.2010, informing this Court that he had filed documents on behalf of Management, numbering five, and the details of the documents are now furnished. In the affidavit, the Advocate who appeared before the Tribunal has stated as follows :

> ***"1.****I appeared for Petitioner in ID 25/2005 before the 1st Respondent. In June 2008, I had filed documents on behalf of the Petitioner numbering five. I had assumed that the Petitioner workmen before the Tribunal would have no objection to mark the said documents and they were marked as exhibits. In fact, I had filed written arguments in which I referred to the documents on the assumption that they were marked. However, after the receipt of the award, I find that the documents filed before the Tribunal were not marked as exhibits. It was purely by oversight on my part. It is a fit case where an opportunity may be provided to the Petitioner herein to lead evidence and mark the documents for which appropriate orders may be passed by this Hon'ble Court.*
>
> ***2.****I affirm that whatever I have stated above are based on my personal knowledge and they are true.*
>
> ***3.****I pray for indulgence of this Hon'ble Court that the Petitioner herein should not be adversely affected by reason of the documents filed before the Tribunal on behalf of the Petitioner herein not being marked and hence, impugned award be set aside, the matter remanded to the Tribunal to*

provide an opportunity for the Petitioner herein to lead evidence and mark the documents and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

6.However, it is admitted that the documents were not marked. The learned counsel states that it was due to oversight, the documents were not marked, even though they were filed. Learned counsel appearing for the petitioner Management further submitted that the learned counsels for the respondents/trade unions are also aware of the documents filed by the Management.

7.Despite notice being served on the respondents/trade unions, there is no representation on behalf of the respondent unions.

8.Having regard to the sequence of facts that the counsels who appeared for the employees were all having the copies of the documents, the finding of the Industrial Tribunal that the petitioner Management failed to discharge their burden may not be appropriate. However, the burden lies on the petitioner to prove the financial position. This Court is of the view that an opportunity has to be given to petitioner. Hence, the matter should be remitted to the Industrial Tribunal for passing fresh orders giving opportunity to the petitioner Management to mark the documents.

9.Therefore, the Award of the Industrial Tribunal, Chennai, in I.D.No.25 of 2005, dated 30.06.2009, is set aside and the matter is remitted to the Industrial Tribunal, Chennai, for fresh consideration giving opportunity to the petitioner Management to lead evidence and to mark the following documents :

i. *Trading account for the financial year 2002-2003, dated 31.03.2003.*
ii. *Profit and Loss account for the financial year 2002-2003, dated 31.03.2003.*
iii. *Balance sheet for the financial year 2002-2003, dated 31.03.2003.*
iv. *G.O.Ms.No.421 of 2003, dated 20.10.2003.*
v. *G.O.(D) No.1003, dated 18.07.2005.*

10.Accordingly, this writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

23.02.2023

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***Note* : Registry is directed to send back the records to the Industrial Tribunal, Chennai.**

S.S. SUNDAR, J.

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Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

To

The Presiding Officer,
Industrial Tribunal, Tamil Nadu,
Chennai – 600 104.

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