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W.P.No.25353 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No.25353 of 2009
and M.P.No.1 of 2010

Shree Plastics,
242, Walltax Road,
Chennai 600 003.

...Petitioner

-Vs-

1.The Presiding Officer,
Second Additional Labour Court,
Chennai.

2.D.Kandasamy

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the II Additional Labour Court relating to its order dated 17.09.2009 passed in C.P.No.494 of 1999 and quash the same.

For Petitioner : Mrs.R.S.Lakshmi Priya
for M/s.Gupta and Ravi

For R1 : Court

For R2 : No appearance



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ORDER

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When the writ petition was earlier listed on 23.12.2022, there was no representation for the petitioner. Hence, this Court directed the Registry to list the writ petition under the caption “For Dismissal” today i.e. on 04.01.2023.

2. Even though the writ petition is listed today under the caption “For Dismissal”, the learned counsel appearing for the petitioner argued the matter whereas there was no representation for the respondents. Taking into account the fact that the writ petition is pending for more than 13 years, this Court is inclined to dispose of the writ petition on merits.

3. This writ petition is filed by the petitioner/management questioning the award passed by the Labour Court in the claim petition in C.P. No.494 of 1999 filed by the 2nd respondent/ employee under Section 33(c)(2) of the Industrial Disputes Act.

4. Brief facts that are necessary for the disposal of this writ petition are as follows:-

5. The 2nd respondent was an employee of the petitioner management.



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However for certain reasons, the writ petitioner dismissed the 2nd respondent from service in 1988. The 2nd respondent raised an Industrial Dispute in I.D.No.510 of 1989 and the Labour Court passed an award directing reinstatement with back wages. Subsequently 2nd respondent filed claim petition in C.P.No.785 of 1994 which was allowed by directing the petitioner to pay a sum of Rs.78,000/- to the 2nd respondent. Though petitioner challenged the order in C.P.No.785 of 1994, the writ petition filed by the petitioner in W.P.No.4982 of 1998 was dismissed by the Court on 28.03.2007. In the meanwhile, the petitioner issued a charge Memo for unauthorised absence of 2nd respondent on 08.04.1999. Thereafter the petitioner dismissed 2nd respondent from service on 14.08.1999. Though the 2nd respondent raised an Industrial Dispute, it is stated by the petitioner that it was not pursued and termination order became final. However, the Labour Court allowed C.P.No.494 of 1999 claiming wages for the period from 1994 to 1999. The said petition was ordered by directing the petitioner to pay a sum of Rs.57,600/-. The 2nd respondent has filed the above writ petition challenging the order dated 17.09.2009 passed by the Labour Court in C.P.No.494 of 1999 against the petitioner/management directing the petitioner to pay a sum of Rs.57,600/-.

6.It is the case of the petitioner that the 2nd respondent did not report to duty and was absent from 1994 to 1999. The communications and the exchange



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of notices indicates that the 2nd respondent kept on saying that he was not reinstated and that he was denied employment. From the typed set of papers, this Court finds several notices issued to the 2nd respondent calling upon him to report duty. The intention of the 2nd respondent was not to join the duty but to blackmail the petitioner and collect back wages without doing any work. In every communication in which the 2nd respondent was called upon to join duty within the specific period, the petitioner management strictly warned the 2nd respondent for unauthorised absence from 27.04.1994 to 27.04.1999.

7.It is seen that the petitioner/management issued a Charge Memo dated 08.04.1999 to the 2nd respondent for his unauthorised absence from 27.04.1994. An enquiry Officer was appointed and it was duly informed to the 2nd respondent. Even though the 2nd respondent agreed to appear before the Enquiry Officer and the Enquiry Officer gave a reasonable opportunity to the 2nd respondent, it is reported that the 2nd respondent did not appear before the Enquiry Officer. A further notice was issued to the 2nd respondent by the petitioner/management. Notice was issued by the Enquiry Officer himself on 25.05.1999 calling upon the 2nd respondent to present in the enquiry fixed on 05.06.1999. The 2nd respondent further informed that he will be set Ex parte if he does not participate in the enquiry. Thereafter, the 2nd respondent issued a



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reply notice to the Enquiry Officer questioning the legality of the enquiry.

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8. Thereafter, the 2nd respondent filed a claim petition under Section 33(c)(2) of the Industrial Dispute Act in C.P. No.499 of 1999 before the Labour Court. In the claim petition, it seen that the petitioner prayed for a sum of Rs.62,400/- towards salary and bonus for the period from 27.04.1994 to 27.04.1999. The contention of the 2nd respondent is that he was not given employment. As per the Enquiry Report given by the Enquiry Officer, the 2nd respondent remained unauthorisedly absent for more than 5 years and that he was gainfully employed. After finding that the petitioner was guilty of charges the management dismissed him from service with immediate effect by order dated 14.08.1999.

9. The 2nd respondent/employee did not successfully challenge the order of termination dated 14.08.1999. It is admitted that the 2nd respondent pursued his application in C.P. No.499 of 1999 under Section 33(c)(2) of the Industrial Dispute Act. The Labour Court accepted the case of the 2nd respondent that he was not allowed to join the duty and he is entitled to get back wages for the period of 1994 to 1999. The Labour Court held that the petitioner is liable to pay a sum of Rs.57,600/- towards salary for the period from 27.04.1994 to



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27.04.1999. Aggrieved by the same the above writ petition is filed.

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10.The short point that arise for consideration in the writ petition is whether the petitioner is entitled to the amount awarded by the Labour Court under Section 33(c)(2) of the Industrial Dispute Act.

11.The learned counsel appearing for the petitioner submitted that the petition filed by the 2nd respondent under Section 33(c)(2) of the Industrial Dispute Act is not maintainable before the Labour Court as the petitioner has no existing right to claim any money or monetary benefit from the employer. The learned counsel has also made a distinction between the existing right of the 2nd respondent and the claim based on the factual issues. The learned counsel submitted that the petitioner was terminated from service by order dated 14.08.1999 and the said order has become final. The termination of the 2nd respondent itself was for his unauthorised absence from 1994.

12.The learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of *State of Uttar Pradesh and another Vs. Brijpal Singh* reported in **2005 (4) L.L.N.338** wherein it is stated as follows:



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8. *The principles enunciated in the decisions referred by either side can be summed up as follows:*

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 33- C(2) of the Act. The benefit sought to be enforced under Section 33- C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing 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 33-C\(2\)](#) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi- judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant



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circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under [Section 10](#) of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages"

Thus it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding to whom a reference under [Section 10](#) of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right



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but which may appropriately be made the subject matter of an industrial dispute in a reference under [Section 10](#) of the I.D. Act. Therefore, the Labour Court has no jurisdiction to adjudicate the claim made by the respondent herein under [Section 33C\(2\)](#) of the I.D. Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent-workman cannot ask the Labour Court in an application under [Section 33C\(2\)](#) of the I.D. Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs. Shymala Pappu that the respondent-workman can file application under [Section 33C\(2\)](#) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28.10.1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under [Section 33C\(2\)](#) of the I.D. Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question



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which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of [Section 33C\(2\)](#) of the I.D. Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23.8.1995 and the order dated 9.1.2002 passed by the High Court in C.M.W.P. No. 36406 of 1995 as illegal and uncalled for. We do so accordingly.

13.From the judgment of the Hon'ble Supreme Court, this Court is of the view that the 2nd respondent is not entitled to maintain the claim petition. As pointed out earlier, the issue arise before this Court in the present writ petition and before the Labour Court is whether the 2nd respondent was denied employment or he is guilty of unauthorised absence. Since the decision depends upon a factual issue to be resolved by going into the disputed questions of facts, this Court is unable to sustain the order of the Labour Court allowing the claim application filed under Section 33(c)(2) of the Industrial Disputes Act by claiming salary and bonus. No pre- existing right could be construed from the facts so as to consider the claim application.

14.The Labour Court has failed to appreciate the crux of the issue as seen



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from the proceedings before the Labour Court. The termination of the petitioner is on the basis of the findings of the Enquiry Officer where the petitioner was held to be absent without permission or excuse from 27.04.1994 to 27.04.1999 for a period of 5 years.

15.For the reasons stated above, this Court is unable to sustain the order of the Labour Court allowing the application filed by the 2nd respondent under Section 33(c)(2) of the Industrial Dispute Act.

16.Therefore, the writ petition stands allowed and the order dated 17.09.2009 in C.P.No.494 of 1999 on the file of the II Additional Labour is hereby set aside. The learned counsel appearing for the petitioner states that the petitioner/management was directed to deposit 50% of the award as directed by the Labour Court and that the amount is still lying to the credit of the proceedings before the Labour Court. In view of the order of this Court by setting aside the award of the Labour Court impugned in the writ petition, the petitioner is entitled to withdraw the amount stated to have been deposited by the petitioner. No costs. Consequently, connected miscellaneous petition is closed.



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To



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