



W.A.No.899 of 2023

1/11

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 22-06-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.899 of 2023

N.M.R.Employees Union
(Reg.No.910 NAT)
Tiruppattur Co-operative Sugar Mills
Kethandapatti.

...

Appellant

-VS-

1.The Government of Tamilnadu,
rep. by its Secretary to Government,
Industries (Mic.2) Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Sugar,
No.474, Anna Salai,
Chennai-600 035.

3.The Managing Director,
Tirupattur Co-op.Sugar Mills Ltd.,
No.TS-01, Kethandapatti-635 815,
Vellore District.

...

Respondents



Appeal is filed under Clause 15 of the Letters Patent against the order, dated 19.09.2022, passed in W.P.No.754 of 2017, on the file of this Court.

For Appellant : Mr.J.Muthukumaran

For Respondents 1 & 2 : Mr.S.Silambanan,
Addl. Advocate General,
assisted by Mrs.C.Sangamithirai,
Special Govt. Pleader.

For Respondent 3 : Mr.R.Neethi Perumal

JUDGMENT

(By *S.Vaidyanathan,J.*)

This appeal has been preferred by the appellant Union, challenging the order of the learned single Judge, dated 19.09.2022, passed in W.P.No.754 of 2017.

2. Employees of Tirupattur Co-operative Sugar Mills Ltd., through their Union, have approached the Industrial Tribunal, Chennai, by means of a Reference with regard to grant of permanent status to them. The Tribunal has passed an award, dated 29.12.2016, in I.D.No.7 of 2015, granting relief to the Union. The relevant paragraphs viz., 47,48 and 49 of the Award are scanned below for reference :



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47. The petitioner union members and their family is entirely depend on this employment only and leaving the members of union service for more than 30 years and they have no other source of income except this job the petitioner. All the employees whose names are appeared in the list are engaged in addition to the employees who are already working in the management should not got in for fresh engagement of new workmen. The management witness has admitted in his cross-examination that the members of the petitioner union are entitled to regularization and they will be granted regularization as per seniority list (marked as Ex.M-1) and numerous members of the union have been appointed in regular vacancy as per seniority list which is marked as Ex.M-5 (the five proceedings of the appointment order). On adjudication of the dispute arise the management has no powers of relaxation for the rules or bye-laws

in so far as observing the daily wage employee in the vacancies that arise in the post which arose in the post of Mazdoors or any other eligible vacancy their postings as a Mazdoor also requires relaxation of the conditions to relax the rules is vested within the Government. The relaxation of the qualification to grant Government alone is the competent authority.

48. It is duly qualified person and duly sanctioned vacant post have been made on the employees have continue to work for 10 years or more, but un-interrupted, the question of regulation of the service of such employees may have to be considered on merits. It is necessary to state that State Government to set up an enquiry to find what further number of additional posts are required for regularizing such other daily rated workers, and after assessing it to create such additional posts for their absorption.

49. Holding the observations and findings of the above said case Laws and on considering the important aspects of witnesses examined and the documents marked this Court hold the view that the demand of the petitioner union is reasonable and justification. The points are answered accordingly.



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3. The Industrial Tribunal is empowered to create a new contract between the employer and the employee and it is not like a Civil Court, where it has got to restrict the relief, based on the contract between the parties. The Award, dated 29.12.2016, in the aforesaid I.D., has become final, as the same has not been questioned by the Mill. Barring 24 employees, all other employees have been taken into service and they are working. In so far as 24 employees are concerned, the Award has not been implemented and, hence, the Writ Petition was filed to implement the Award of the Tribunal. The learned single Judge has directed the Union to get the Award executed in the light of Section 11-B of the Industrial Disputes Act, 1947, in short, "the Act". Section 11-B of the Act reads as under :

"11-B. Power of Labour Court or Tribunal to execute its award by decree- A Labour Court or a Tribunal shall have the power of a civil court to execute its own award as a decree of a civil court and also to execute any settlement as defined in clause (p) of section 2 as a decree."

The Union was also given liberty by the learned single Judge to approach the Tribunal for execution of the Award by filing necessary application, and holding that, in the event of filing of such an application, the same shall be considered by the Tribunal as expeditiously as possible.



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4. Mr.S.Silambanan, learned Additional Advocate General, appearing for the respondents-Government would submit that identical issues are pending before this Court and that, as against an observation made by this Court, S.L.P.No.010350/2023 has been filed before the Supreme Court and the same is yet to be numbered and listed for hearing. He would further submit that these employees did not satisfy the requirement and hence they are not given employment, but, however, a meeting has been scheduled pursuant to the orders of this Court, dated 19.04.2023. He would also submit that even though S.L.P. has been filed, simultaneously, they are taking steps to resolve the issue to accommodate these employees, by finding out the feasibility of relaxing the Rules. He has also submitted that no writ petition has been filed against the Award of the Tribunal and the said Award has become final.

5. We have heard both sides.

6. The fact remains that the Reference made to the Tribunal by the State Government has been answered in favour of the employees. Based on the Award, dated 29.12.2016, in I.D.No.7 of 2015, all the employees, barring 24, have been taken into service and the said 24 individuals are yet to be given the benefit of the Award. Since the Award has become final, it has to be implemented in the light of the decision of the Supreme Court in *Tamil Nadu State Transport Corporation v. Neethivilangan, Kumbakonam*, 2001 (9) SCC 99. In that case, Tamil Nadu State Transport Corporation



was the appellant before the Supreme Court. In a case arising under the Act, for implementation of the order after rejection of the application under Section 33 (2) (b), the Supreme Court, in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma & Others*, 2002 (2) SCC 244, held that when the approval of the action of the management in dismissing the employee is not accepted by the Tribunal, the employee is deemed to be in service and the employee concerned could get that right enforced under Article 226 of the Constitution of India and he need not raise a new industrial dispute for that purpose and also that the alternative remedy is not a bar.

7. In this case, the Award of the Tribunal has got to be implemented.

8. In case of non-implementation of orders of this Court, it will be open for the employees to initiate steps to file contempt and establish that there is a wilful and deliberate disobedience. As for the portion of the relief granted by the learned single Judge, the employees can work out the remedy by claiming wages on par with their counterparts by filing an application under Section 33 (C) (1) of the Industrial Disputes Act, 1947, in the light of the decision of the Supreme Court in *Fabril Gasosa v. Labour Commissioner*, 1997 (3) SCC 150, with regard to the undisputed wages. It is open for the employees to approach the Tribunal under Section 33 (C) (2) read with Section 33 (C) (5) of the Act for the disputed wages. Proceedings in applications under Section 33 (C) (1) and 33 (C) (2) are independent of each other. As the claim under Section 33 (C) (1) is for undisputed wages, the claim under Section 33 (C) (2) is for disputed/difference



in wages, that has got to be computed by the Tribunal.

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9. It would be advantageous at this stage to notice Sections 33C (1), (2) and (5) of the Act, which read thus :

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

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government for is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the manner as an arrear of land revenue :

(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 a 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 :

(3) and (4) xxxxxx



(5) *Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen."*

10. Added to the above, as there is a specific Award, which has not been questioned, and that the same cannot be questioned after a delay of seven years, in the light of the decision of the Supreme Court in *The Life Insurance Corporation of India Ltd. v. D.J.Bahadur and Others*, 1980 AIR 2181 = 1981 (1) SCC 315, the Award will be in force till such time it is replaced by another award or settlement.

11. Since there is a continuous breach of the Award, an application under Section 29 of the Act can also be made by the Union or the employees concerned or a representative thereof for prosecuting the officials under Section 32 of the Act, in which case, the Government must sanction prosecution against the officials concerned. We also make it very clear that there is no need for the Union or the employees to make the Management a party, as Section 32 deals with only the officials and not the Management, as has been referred to under Section 141 of the Negotiable Instruments Act, 1881. Once the prosecution is sanctioned, the Criminal Court concerned is expected to proceed with the criminal case on day-to-day basis without adjourning the matter



beyond 15 working days at any point of time and bring the issue to its logical end. If the Government is not able to sanction prosecution within a period of 30 days from the date of receipt of a copy of this order, disciplinary action will have to be taken against the officials, who are responsible for not sanctioning the prosecution. Penal provisions of the Act cannot be only on paper, but they have to be given effect to efficaciously. Unless specific directions are issued by this Court, it is arduous for the employees to get the relief during their lifetime.

12. At the end, Mr.S.Silambanan, learned Additional Advocate General, submits that these employees are paid on par with regular employees, which fact we do not want to go into, as the same has been disputed by the other side.

13. Writ Appeal is allowed as above. No costs. Consequently, the connected C.M.P.No.8958 of 2023 is closed.

14. Disposal of this Writ Appeal is not a bar for the parties to arrive at a settlement.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
dixit

(S.V.N.,J.) (K.R.S.,J.)
22-06-2023



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W.A.No.027/2023

To

- 1.The Government of Tamilnadu,
rep. by its Secretary to Government,
Industries (Mic.2) Department,
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- 2.The Commissioner of Sugar,
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