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W.P.Nos.8365 to 8367 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.8365 to 8367 of 2018

B.Dasarathan	... Petitioner in W.P.8365/2018
P.Selvaraj	... Petitioner in W.P.8366/2018
M.Durai	... Petitioner in W.P.8367/2018

Vs.

1.The I Additional Labour Court Judge,
I Additional Labour Court,
High Court Campus,
Chennai 600 104.

2.The Management of
Axles India Limited
Rep. by the Managing Director ... Respondents in all the W.Ps.

Prayer in W.P.No.8365 of 2018:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus thereby calling for the entire records pertaining C.P.No.642 of 2014 dated 07.12.2017 passed by the first respondent and quash the same and thereby directing the second respondent to pay Rs.1,12,053.00 towards night shift allowance and special allowance to the petitioner in the time bound period.



W.P.Nos.8365 to 8367 of 2018

Prayer in W.P.No.8366 of 2018:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus thereby calling for the entire records pertaining C.P.No.643 of 2014 dated 07.12.2017 passed by the first respondent and quash the same and thereby directing the second respondent to pay Rs.35,546.67 towards night shift allowance and special allowance to the petitioner in the time bound period.

Prayer in W.P.No.8367 of 2018:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus thereby calling for the entire records pertaining C.P.No.641 of 2014 dated 07.12.2017 passed by the first respondent and quash the same and thereby directing the second respondent to pay Rs.35,546.67 towards night shift allowance and special allowance to the petitioner in the time bound period.

For Petitioners : Mr.K.Mohanamurali
For Respondents : R1 - Court
R2 - No Appearance

COMMON ORDER

The petitioners have filed these writ petitions seeking issuance of Writ of Certiorarified Mandamus thereby calling for the entire records pertaining C.P.Nos.642, 643 and 641 of 2014 respectively, dated



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07.12.2017 passed by the first respondent and quash the same and thereby directing the second respondent to pay Rs.1,12,053.00, Rs.35,546.67 and Rs.35,546.67 respectively, towards night shift allowance and special allowance to the petitioners in the time bound period.

2.Since the issue involved in these writ petitions are one and the same, they are heard together and disposed of by way of a common order.

3.The case of the petitioners is that the petitioners are members of the Registered Union of Axles India Workers Union and the second respondent factory comes under the Factories Act, 1948. The second respondent introduced a rival Union of INTUC in the second respondent factory in the year 2003 and entered into settlement under Section 18(1) of the Industrial Disputes Act with INTUC. On 21.07.2004 the second respondent Management issued a notice for shift, subjecting the production, quality and maintenance and it was challenged before this Court in W.P.No.22446 of 2004. Thereafter, the second respondent entered into settlement under Section 18(1) of the Industrial Disputes Act with INTUC on 03.09.2003 and the said



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settlement was decided to be put in force from 01.09.2003 to 31.08.2006.

4.The further case of the petitioners is that as per the settlement dated 03.09.2003, the members of the Axles India Workers Union are also entitled to shift allowance. The special allowance which was earlier paid to all the workers at Rs.1,000/- per month was increased to Rs.1,200/- per month from 01.09.2003, it was also agreed to further increase to Rs.1,400/- per month with effect from 01.09.2004, Rs.1,600/- per month from 01.09.2005, in addition it was agreed to pay third shift allowance of Rs.10/- per shift. Though settlement was arrived, it was challenged in W.P.No.22446 of 2004 and thereafter the said writ petition was disposed of on 29.09.2004.

5.The further case of the petitioners is that challenging the order dated 29.09.2004 made in W.P.No.22446 of 2004, writ appeal in W.A.No.3780 of 2004 was filed and the said appeal was disposed of, holding that the members of the Axles India Workers Union shall work three shifts as per the notice dated 21.07.2004. Thereafter, the members of the Axles India Workers Union started working in terms of



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three shifts and accordingly, they are entitled for shift allowance and third shift allowance. Accordingly, the petitioners are entitled for Rs.1,12,053.00, Rs.35,546.67 and Rs.35,546.67 respectively, towards night shift allowance and special allowance. Hence, the petitioners filed C.P.Nos.642, 643 and 641 of 2014 respectively, before the first respondent and the first respondent vide order dated 07.12.2017 dismissed the claim petitions. Challenging the same, the petitioners have filed these writ petitions.

6.The learned counsel appearing for the petitioners submitted that when the petitioners rendered service with the second respondent, the second respondent has no locus standi to deny the benefits of night shift allowance and special allowance and further submitted that the first respondent failed to note that the petitioners never accepted nor given up their claim on pro rata wages and they filed claim petitions. The learned counsel further submitted that the first respondent without considering the factual aspects, mechanically dismissed the claim petitions, which is not sustainable one.

7.Though the name of the learned counsel who entered appearance on behalf of the second respondent appeared in the cause



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list, today, when the matter is taken up for consideration, there is no representation for the second respondent. Considering the pendency of the writ petitions, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

8. Admittedly, there was series of disputes inbetween the petitioners and the second respondent. It is also equally undisputed fact that the second respondent entered into settlement under Section 18(1) of the Industrial Disputes Act with INTUC on 03.09.2003 and the said settlement was decided to be put in force from 01.09.2003 to 31.08.2006. As per the settlement dated 03.09.2003, the members of the Axles India Workers Union are also entitled to shift allowance. The special allowance which was earlier paid to all the workers at Rs.1,000/- per month was increased to Rs.1,200/- per month from 01.09.2003, it was also agreed to further increase to Rs.1,400/- per month with effect from 01.09.2004, Rs.1,600/- per month from 01.09.2005, in addition it was agreed to pay third shift allowance of Rs.10/- per shift.

9. Perusal of records disclose that the petitioners retired from



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service on 09.07.2010, 12.05.2013 and 11.04.2009, however, they have filed the claim petitions under Section 33 C (2) of the Industrial Disputes Act, 1947, claiming shift allowance during the year 2014 and this Court is not able to understand what prevented the petitioners to file the claim petitions as soon as they retired from service.

10.The petitioners have not established before the first respondent that they had given productivity required by the second respondent as per the annexure to the settlement under Section 12(3) of the Industrial Disputes Act from 08.11.2004 to 16.12.2006 and hence the first respondent dismissed the claim petitions filed by the petitioners on the ground that just because a memo was filed before this Court to report for three shifts working as per the notice dated 21.07.2004 and the members of the Axles India Workers Union started working from 08.11.2004, the petitioners cannot lay claim for special allowance and night shift allowance as a matter of routine and that the petitioners lack evidence to surface before the Court that the precondition for claiming the allowance were duly complied with, which needs no interference.



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M.DHANDAPANI,J.
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11.Further, this Court under Article 226 of the Constitution of India cannot re-appreciate the factual findings rendered by the Labour Court and hence this Court is not inclined to interfere with the order impugned in these writ petitions.

12.These writ petitions are dismissed. No costs.

12.09.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The I Additional Labour Court Judge,
I Additional Labour Court,
High Court Campus,
Chennai 600 104.

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