



Review Appln.(Writ).No.112 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Review Appln.(Writ).No.112 of 2023

and

W.M.P.No.21919 of 2023

The Managing Director,
Salem Co-Operative Sugar Mills Ltd.,
Mohanur (Post), Namakkal Taluk and District. .. Applicant

Vs.

1.Rajambal

2.Devika

3.Gayathri

4.Mathibharthi

5.Sivasankarai

6.The Commissioner of Sugar Mills,
No.690, Anna Salai,
Periyar EVR Building,
2nd Floor, Nandanam,
Chennai – 600 035. .. Respondents

Prayer: Review Application is filed under Section 114 of CPC, to
review the order dated 13.08.2021 passed in W.P.No.21623 of 2017.



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For Applicant : Mr.R.Balaramesh
For R1 : Mrs.S.Rajeni Ramadass
for M/s.Rajeni Associates
For R6 : Mr.Neelakandan
Additional Advocate General
Assisted by
Mr.P.Ganesan
Additional Government Pleader

ORDER

The petitioner has filed this Review Application to review order dated 13.08.2021 passed in W.P.No.21623 of 2017.

2. There is no scope for reviewing the order passed by this Court on 13.08.2021, as admittedly there are conflicting circulars issued by the Commissioner of Sugar.

3. By circular dated 08.01.2003, the amount towards earned leave cannot be given to an employee, who resigns. However, the same circular was modified in the case of one G.Devendran by another circular dated 13.10.2004 bearing Reference ந.க.எண் 9315/த(ம) ஆ.1/2004, நாள் 13/10/2004. Thereafter, another circular has been issued on



08.12.2006, whereby the representation of some of the employees, who had resigned was considered and the decision in circular dated 08.01.2003 was reiterated. These circulars that have been issued are contrary to the provisions of The Factories Act, 1948.

4. Section 79(3) of The Factories Act, 1948, makes it clear that if a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death calculated at the rates specified in sub - section (1), even if he had not worked for the entire period specified in sub - section (1) or sub - section (2) making him eligible to avail of such leave, and such payment shall be made.

5. Relevant portion of the Section reads as under:

“79. Annual leave with wages:-

(3) If a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during



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the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death calculated at the rates specified in sub - section (1), even if he had not worked for the entire period specified in sub - section (1) or sub - section (2) making him eligible to avail of such leave, and such payment shall be made

(i) where the worker is discharged or dismissed or quits employment, before the expiry of the second working day from the date of such discharge, dismissal or quitting; and

(ii) where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.”

6. The circulars of the Commissioner of Sugar issued contrary to the provisions of The Factories Act, 1948 cannot be enforced against employees. In any event, there are also no statutory basis on which such circulars can be issued either granting or rejecting. As such review of order based on circulars cannot be allowed.

7. The Review Application stands dismissed with the above



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observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

22.08.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

C.SARAVANAN, J.



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