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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

Writ Appeal No.2314 of 2021

1. A.Maria John Bosco
2. P.Rajagopal
3. T.Jothimani
4. T.Manoj
5. T.Rajesh
6. N.Krishnasamy
7. V.N.Natarajan
8. A.Nagarajan
9. Victoriya Dominic Mary
10. N.Ramasamy
11. N.Raghavan
12. R.Palanisamy
13. A.Alexander
14. S.Manoharan
15. V.Kulandaivelu
16. A.Loganathan
17. B.Rajamanickam
18. A.Joseph Bernard Arokiaraj
19. M.Prabaharan
20. R.Somasundaram
21. S.Narayanan
22. R.Kothandapani
23. A.UbakaraAntonyraj

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24.E.Easwaran
25.R.Chinnasamy
26.P.Govindaraj
27.S.Theivasigamani
28.V.Karunanidhi
29.G.Kanirajaperumal
30.R.Palanisamy
31.P.Vasagan
32.A.Vincent
33.A.Muthusamy
34.P.Mohanbabu
35.A.Xavier
36.A.Lakshmanasamy
37.R.Narayanasamy
38.V.Palanisamy
39.R.Balasubramaniam
40.A.Murugesan
41.P.Chandrasekaran
42.R.Senthilkumar
43.M.Ponnusamy
44.R.Prabaharan
45.C.Manoharan
46.P.Natarajan
47.R.StephenArokiadass .. Appellants

Vs.

The Management, Dhanalakshmi Mills Limited,
D.No.130, B.S.Sundaram Road,
Tiruppur 641 601. .. Respondent

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Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 20.11.2020 in WP.No.22133 of 2019 passed by the Single Judge of this Court.

For appellants : Mr.Mukund, Senior Counsel
for Mr.V.Sivakumar

For respondent : Mr.Ravi, Senior Counsel,
for M/s.Gupta & Ravi

JUDGMENT

(The Judgment of the Court was delivered by S.VAIDYANATHAN, J)

The present Writ Appeal has been preferred by the workmen challenging the order passed by a learned Single Judge of this Court in WP.No.22133 of 2019 dated 20.11.2020, rejecting the prayer to quash the order in EP.Nos.5 to 49 of 2017, dated 03.11.2018.

2. The employees, who were working in the respondent Mill, could not be provided with employment on account of closure of the Factory with effect from 31.12.2008. Subsequently, Computation Petition Nos.72 to 133 of 2010 have been filed by the workers for payment of salary from

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26.02.2007 till 31.12.2009 i.e., one year after the closure of the Factory, contending that they have not been paid wages on account of suspension of operation of work from 26.02.2007 till the closure on 31.12.2008.

3. The Labour Court, on 27.06.2013, ordered Computation Petitions directing the Management to pay the amount, which was questioned by the Mill, by way of a Writ Petition in WP.No.32520 of 2013. Initially, an interim order was granted and when the stay petition was subsequently heard, the Court permitted the employees to withdraw the entire amount that was deposited pursuant to the interim order of this Court.

4. The learned Single Judge, while passing the final order dated 05.10.2015, has also referred to the interim order of this Court, wherein, it has been stated that the Management was directed to deposit the entire amount, which shall be payable to the 60 workmen concerned in the dispute. The relevant paragraph of the order dated 05.10.2015 is extracted below:

> *"7. At the time of admission, this Court directed the Management to deposit the entire notice pay amount and also*

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the observance compensation amount before the Labour Court, Coimbatore, in respect of all the workmen i.e. all the 60 workmen. Further, this Court observes that after such a deposit being made, it is open to the workmen to move before the Labour with necessary applications for the withdrawal of the said amounts."

5. Pursuant to the order of this Court, the amount payable to the workmen, viz., notice pay, gratuity and closure compensation, was deposited and also permitted to be withdrawn by the workmen. The employees, presuming that the said amount is only 50% of the amount due to them, had made another round of litigation by filing Execution petitions contending that the entire amount due to them have not been paid.

6. One of the main contentions of the employees in this case is that the Mill has employed more than 100 employees and hence, they should have taken prior permission from the authority concerned as contemplated under Section 25-O of the Industrial Disputes Act and in the absence of the same, the employees would be entitled to the benefits in terms of Section 25-O (6), as if there is no closure at all.

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7. It is no doubt true that in case of not complying with the provisions of Section 25-O, the employees would be entitled to the benefits as per Section 25-O (6). However, in the present case on hand, employees have not produced any evidence to show that the employer employed more than 100 workmen and the claim was only with regard to 60 workmen. Whether there were 100 workmen or only 60 workmen is a disputed question of fact, which cannot be gone into by the Execution Court. That apart, in the present case on hand, the entire amount mentioned supra, viz., the notice pay, gratuity and closure compensation have been received by the employees and therefore, trying to open the case as if they are entitled to get much more monetary benefits in terms of Section 25 (O) of the Act cannot be accepted, more so, when there is a disputed question of fact. The Labour Court, after hearing both the parties, dismissed the Execution Petitions on 03.11.2018 on merits and that has been upheld by the learned Single Judge stating that the employees are not entitled to any relief.

8. Now, the employees cannot contend that they are entitled to benefits up to 31.12.2009. More so, it was an admitted case that the Mill

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was closed on 31.12.2008. Pursuant to the interim order of this Court as observed by the learned Single Judge, closure compensation, gratuity and notice pay that were deposited have already been withdrawn by the employees. The order questioning the Computation Petitions had already become final in WP.No.32520 of 2013 on 05.10.2015, but the same has not been challenged. When that being the case, by means of Execution Petition, trying to reopen the entire issue as if the employees are entitled to the benefit in terms of Section 25-O is not correct as observed by us earlier, as there is a disputed question of fact regarding the number of workmen.

9. This Court cannot go into the same, more so, at the appellate stage, apart from the fact, that the issue has already attained finality in WP.No.35250 of 2013 on 05.10.2015. Hence, we are of the view that the employees are not entitled to any relief and the order of the learned Single Judge is affirmed. Accordingly, the appeal is dismissed. No costs.

(S.V.N.J.,) **(R.K.M.J.,)**
30.03.2023

Speaking Order: Yes / No
pvs

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S.VAIDYANATHAN, J
and
R.KALAIMATHI, J

pvs

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