



W.P.No.8088 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

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1. P.Govindaraj
2. A.Arumugam
3. Vasantha
4. B.Arjunan
5. V.Valarmathi
6. R.Sollazhagan
7. S.Silakkammal
8. K.Valli
9. E.Kannan
10. S.S.Gaja
11. Ahamed
12. Rajendran
13. Balramman



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14. R.Thayanithi

15 A.Kumaresan

16.R.Savithri

17. J.Aameen

.... Petitioners

VS

1. The Presiding Officer,
Addl.Labour Court,
Vellore,
Vellore District.

2. The Management,
South East Tannery,
Solur Village and Post,
(Via) sandrorkuppam - 635 814
Vaniyambadi Taluk,
Vellore District.

3. The Management,
South East Tanning Company Tannery,
Naval Hospital Road,
Periyamedu,
Chennai - 600 003.

4. A.Hafeezur Rehman

5. Jeenathraj

6. Rafeeq Ahmed

7. The Management,
Tojoomals Private Limited,
No.5, Naval Hospital Road,



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Periyamedu,
Chennai - 600 003.

8. The Management,
Tejoomals Private Limited,
No.58, Uttukattan Street,
Periyamedu,
Chennai - 600 003.
9. The Management,
Eastern chrome Tanning Company,
Solur Village and Post,
(Via) Sandrorkuppam - 635814
10. The Management,
South East Tanning Company Private Limited,
Solur Village and Post,
(Via) Sandrorkuppam - 635814
11. S.Shajagan
12. V.R.Govindan
13. The Management,
Ahalimar Tanning Company,
Solur Village and Post,
(Via) Sandrorkuppam - 635814
Vellore District.
14. Mohamed Begam Sahib
15. Kaka Sayeeth Ahamed Sahib
16. General Secretary and Dharmakartha,
Jahmia Darussalam,
Educational Trust
Omerabath - 635 808

..Respondents



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Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records and quash the Award of the Labour Court, Vellore dated 15.03.2012 in I.D.Nos.168, 171, 176, 181, 182, 187, 189, 190, 208, 201 of 2004 and I.D.No.173, 175, 178 of 2010, I.D.Nos.25,27 of 2003 and I.D.No.69 of 2004 and I.D.No.177 of 2010 respectively and direct the respondents from 2 to 16 to reinstate the workers with backwages and all consequential and attendant benefits or in the alternative to pay the workers all statutory liabilities such as retrenchment compensation/closure compensation, gratuity and all other terminal benefits.

For Petitioner : Mrs.S.Thamizharasi

For Respondents : R1-Court
No appearance for R2 to R5, R7 to R9,
R11, R14 to R16.
Mr.S.Dhayaleswaran for R6 & 12
Mr.A.Venkateshkumar
for M/s. Gupta & Ravi
for R10 & R13

ORDER

This writ petition has been filed challenging the Award of the Labour Court, Vellore dated 15.03.2012 passed in I.D.Nos.168, 171, 176, 181, 182, 187, 189, 190, 208, 201 of 2004 and I.D.No.173, 175, 178 of 2010, I.D.Nos.25 & 27 of 2003 and I.D.No.69 of 2004 and I.D.No.177 of 2010



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respectively and direct the respondents from 2 to 16 to reinstate the workers with backwages and all consequential and attendant benefits or in the alternative to pay the workers all statutory liabilities such as retrenchment compensation/closure compensation, gratuity and all other terminal benefits.

2. The case of the petitioners is that they are all workers employed in the factory of the 2nd respondent viz., South East Tannery Company and they have all put in more than 20 years of service. The 2nd respondent did not pay wages to the workers for the period from 10.05.1990 to 31.12.1990. The workers filed petitions before the Payment of Wages Authority claiming the wages due to them, in which, an award was passed on 22.04.1992 for a sum of Rs.59,69,856/-. The Banks, which had given term loans to the respondent Management filed a suit in C.S.No.12 of 1989 before this Court and this Court also appointed a Receiver. The Union filed writ petition in W.P.No.16451 of 1995 against the Receiver for recovery of money awarded by the Payment of Wages Authority. This Court, by order dated 12.07.2002, directed the District Collector, Vellore to recover the same as arrears of land revenue and make payments to the workers. A writ appeal was preferred and the Division Bench of this Court directed the management to deposit a sum of Rs.15 lakhs. The said order was not



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complied with. Finally, this Court directed sale of leather which was lying in the factory for the purpose of realising the amounts due to the workers by virtue of the orders passed by the Payment of Wages Authority. Subsequently, North Arcot District General Workers Union entered into a settlement under section 18(1) of the Industrial Disputes Act. As per the agreement, the management was to execute all legal documents which were necessary for effecting the transfer of the factory in favour of the workmen and give necessary cooperation for running of the factory or for job work and so on. Subsequent to the filing of the suit, after several rounds of litigation, the respondents and the banks arrived at a settlement and the management accepted to pay one fifth of the loan given by the Bank. Subsequently, the Industrial Disputes raised by the workers was dismissed by the Labour Court, Vellore by a common award dated 15.3.2012. The workers who have raised the industrial dispute had received the payments of 27 days wages and moreover, the trade union had agreed for the sale of the factory by passing a resolution to sell the property of the 2nd respondent company by giving advertising in the newspaper and to call for tender applications for sale of tannery. The office bearers of the trade union had consented and affixed their signatures in the resolution. The Labour court



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came to the conclusion that since the trade union decided to sell the property of the 2nd respondent company and to divide the sale proceeds to the workmen including the petitioners in the industrial disputes, it was no longer open to the workers to claim anything more from the 2nd respondent company. The said resolution was to sell the property in favour of Gani and Sons for a sum of Rs.1,31,50,000/- whereas the sale allegedly made to the 11th respondent, was for a far lesser sum. Thus, the office bearers of the trade union colluded with the management in order to deprive the workers of their statutory dues and benefits by entering into a sham settlement. Hence, this writ petition for the aforesaid reliefs.

3. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents.

4. Admittedly, the petitioners had joined in the 2nd respondent management from 1967 to 30.04.1990 as employees. The 2nd respondent management is South East Tanning Company and the 3rd respondent company is the Head office of the 2nd respondent management. The 4th to 6th respondents were partners in the 2nd respondent. The 7th and 8th respondents run the factory from 1987 to 1990 on lease.

5. It is seen that the 2nd respondent Tannery was not running and the



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same was closed after 1990. A Memorandum of Settlement under section 18(1) of the Industrial Disputes Act, 1947 dated 24.05.2003 was entered into between the Management of South East Tanning Company Ambur and the workmen represented by General Secretary, North Arcot District General Workers Federation, Vellore. The Management offered the land and machineries to the workers for the claim of settlement and the workmen also agreed the offer as is where is condition as per the terms of settlement and in Annexure II of the Settlement, the names of all the 778 workmen were found in the list, including these petitioners.

6. The main contention of the learned counsel for the petitioners is that during cross examination in I.D.No.167/2004 and I.D.No.172/2010, the signatures of the workmen found in the documents were denied. Therefore, it is the duty of the 12th respondent to prove that after the possession was handed over to the Union as per Section 18(1) dated 25.04.2003, these petitioners had received the amount as full and final settlement and executed documents in favour of the Union or 12th respondent. The Labour Court, after full-fledged trial, on the basis of the oral and documentary evidence, had come to the conclusion that 2nd respondent establishment was closed on 01.05.1990 and the same was not running and the petitioners



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are not entitled to claim reinstatement in service with continuity of service and other benefits. The 12th respondent has also established his case that after the possession of the 2nd respondent was taken by the Union, the trade Union convened the meeting of the members of the trade union and the petitioners have adopted a resolution to sell the property of the 2nd respondent in favour of the 12th respondent and the same was also proved by the 12th respondent. The 12th respondent has also established the fact that the trade Union paid 25 days of salary with dearness allowance to the workmen including the petitioners and they have executed Ex.M16 series documents in favour of the Union. The petitioners failed to prove that they have not received the amount from the Union and that the documents produced by the 12th respondent were forged one in order to defeat their claim.

7. When any fact is specifically within the knowledge of any person, the burden of proving that fact is upon him. So it is for the petitioners to come forward and depose about the averments made in their statement to prove their case. None of the petitioners were examined, except two other workmen and they have also not proved their case. When a party to the case does not appear into the witness box and state his own case on oath and



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does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in several decisions passed by various High Courts. It is the duty of the workmen/petitioners to prove their case by adducing cogent oral and documentary evidence. But the petitioners have failed to prove their case.

8. The Labour Court after considering all the aspects had come to the conclusion that the 2nd respondent Tannery was closed from 01.05.1990 and the same is not existing and therefore, the petitioners are not entitled to claim reinstatement in service with continuity of service and other benefits.

9. This Court does not find any infirmity or illegality to interfere with the award passed by the Labour Court. Accordingly, the Writ Petition fails and the same stands dismissed. No costs.

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Index:Yes/No
Speaking/Non-speaking order
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J.NISHA BANU,J.

vsi

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