



W.P.Nos.7328 of 2014 & 23769 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.7328 of 2014 & 23769 of 2018 and  
MP.No.1 of 2014 & WMP.No.27726 of 2018

WP.No.7328 of 2014

The Management  
Khadi Dyeing, Bleaching and  
Printing Unit,  
Bhavanisagar, Sathiyamangalam  
Erode District 638 451

... Petitioner

Vs.

1.General Secretary  
Khadi Dyeing, Bleaching and  
Printing Unit,  
Office Door No.57,  
Bhavanisagar, Sathiyamangalam,  
Erode District 638 451  
2.The Presiding Officer,  
Labour Court,  
Salem

... Respondents

**PRAYER:**

Writ petition is filed under Article 226 of the Constitution of India  
to issue a writ of certiorari calling for the records in ID.No.305 of 2003



W.P.Nos.7328 of 2014 & 23769 of 2018

dated 02.07.2013 on the file of the second respondent and quash the same as illegal.

For Petitioner : Mr.R.Neelakandan,  
Additional Advocate General  
Assisted by  
Mr.S.K.Bose

For Respondents  
For R1 : No appearance  
R2 : Court

WP.No.23769 of 2018

The Management  
Khadi Dyeing, Bleaching and  
Printing Unit,  
Bhavanisagar, Sathiyamangalam  
Erode District 638 451

... Petitioner

Vs.

The General Secretary  
Khadi Dyeing, Bleaching and  
Printing Unit,  
Office Door No.57,  
Bhavanisagar, Sathiyamangalam,  
Erode District 638 451

... Respondents

**PRAYER:**

Writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records in REP.No.12 of 2016



W.P.Nos.7328 of 2014 & 23769 of 2018

in ID.No.305 of 2003 dated 27.04.2018 on the file of Labour Court,  
Salem.

For Petitioner : Mr.R.Neelakandan,  
Additional Advocate General  
Assisted by  
Mr.S.K.Bose

For Respondents : No appearance

### **COMMON ORDER**

The writ petition in WP.No.7328 of 2014 has been filed challenging the award passed in ID.No.305 of 2003 dated 02.07.2013, thereby declared that the closure of the petitioner unit as illegal and directed the petitioner unit to reinstate the affected workmen within a period of four weeks with continuity of service and without backwages.

2. The petitioner unit has been ordered to be closed down with effect from 01.01.2003 by the order of Chief Executive Officer of the Board dated 26.12.2002 followed by the notices dated 31.12.2002 along with compensation amount sent to all workmen. It was due to continuous loss and there was no financial condition prevailing with the Board to



W.P.Nos.7328 of 2014 & 23769 of 2018

establish machineries to support the manufacturing of polyester garment materials and therefore, the unit could not meet out the wages to the employees. Aggrieved by the same, the first respondent raised industrial dispute claiming closure as illegal on the ground that it is against Section 25-O of Industrial Disputes Act. Even before closure, no permission was obtained from the appropriate Government since there were more than 100 employees working in the unit. No notice was issued to the workmen as required under Section 25FFF of Industrial Disputes Act and the requirement under Section 25-F were not complied with. In pursuant to the failure of conciliation, the Government referred to the Industrial Dispute for adjudication before the second respondent. The second respondent ordered to reinstate the workmen of the first respondent without any backwages and with service continuity.

3. Mr.R.Neelakandan, the learned Additional Advocate General appearing for the petitioner submitted that when the closure is not found to be violative of Setion 25-O under Schedule V-B of Industrial Disputes Act, the second respondent ought not to have ordered for reinstatement



W.P.Nos.7328 of 2014 & 23769 of 2018

with continuity of service as it would amount to revival of the unit which is not practically possible. He further submitted that when the management sent notice of closure along with compensation amount to the respective workmen, the second respondent ought not to have ordered for reinstatement with continuity of service.

4. Heard, Mr.R.Neelakandan, learned Additional Advocate General appearing for the petitioner / management.

5. On perusal of records, revealed that the second respondent found that that there is no violation of Section 25-O of Industrial Disputes Act. Therefore, the permission of closure from the Government is not necessary for the reason that number of workmen were less than 100. Therefore, the claim of the workmen was rejected as the management marked muster roll and monthly wage register for December 2002 as Ex.M4 and Ex.M5 which show that there were only 48 workmen in the preceding one year. Further, the Labour Court concluded that the closure notice was sent only one day before the closure to the workmen and as



W.P.Nos.7328 of 2014 & 23769 of 2018

such, it was not in compliance of the Section 25FFF of Industrial Disputes Act. Hence, workmen are entitled to relief as per Section 25-F of Industrial Disputes Act.

6. The learned Additional Advocate General relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Hondaram Ramchandra Vs. Yeshwant Mahadev Kadam(dead) through LR's*** reported in (2007) 14 SCC 277, wherein it is held as follows:

*12. From the records, it appears that the sales office of the appellant had been closed down. We have noticed heretobefore that there exists a dispute as to whether the said closure, for all intent and purport, was effected in 1983 or 1991. The High Court evidently committed an error in not taking into consideration the factum of closure of the business from the premises of the appellant, for the purpose of grant of relief. If the undertaking of the appellant had been closed down, the workmen were entitled to compensation only in terms of [Section 25FFF](#) of the Industrial Disputes Act, 1947 and not the relief of reinstatement with back wages.*



W.P.Nos.7328 of 2014 & 23769 of 2018

WEB COPY

7. He also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***District Red Cross Society Vs. Babita Arora and Others*** reported in (2007) 7 SCC 366, wherein it is held as follows:

*In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in para 21 of the report : "21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of*



W.P.Nos.7328 of 2014 & 23769 of 2018

*the 1947 Act and not the other consequences flowing therefrom. Both [Section 25FF](#) and [Section 25FFF](#) provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."*

8. The learned Additional Advocate General rightly pointed out that when the closure is not found to be violative of Section 25-O of Industrial Disputes Act, the workmen are not entitled for reinstatement with continuity of service. Further, though the closure notice was served one day before, all the workmen were paid one month salary along with the said notice in compliance with Section 25-F of the Industrial Disputes Act. Therefore, the above judgments relied upon by the learned Additional Advocate General are squarely applicable to the case on hand. As such, the findings of the second respondent are perverse and award itself is liable to be set aside. Accordingly, the award in ID.No.305 of 2003 dated 02.07.2013 passed by the second respondent is set aside and



W.P.Nos.7328 of 2014 & 23769 of 2018

the writ petition in WP.No.7328 of 2014 is allowed.

9. Insofar as the writ petition in WP.No.23769 of 2018, in pursuant to the order passed by the Labour Court in ID.No.305 of 2003 dated 02.07.2013, the respondent filed petition for execution of the award. The petitioner /management challenged the award in WP.No.7328 of 2014 and this Court set aside the award and allowed that writ petition. In view of the order passed by this Court in WP.No.7328 of 2014 dated 27.07.2023, this writ petition in WP.No.23769 of 2018 is also allowed and the REP.No.12 of 2016 in ID.No.305 of 2003 dated 27.04.2018 is quashed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

27.07.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

lok



WEB COPY



W.P.Nos.7328 of 2014 & 23769 of 2018

**G.K.ILANTHIRAIYAN, J.**

lok

To

- 1.General Secretary  
Khadi Dyeing, Bleaching and  
Printing Unit,  
Office Door No.57,  
Bhavanisagar, Sathiyamangalam,  
Erode District 638 451
- 2.The Presiding Officer,  
Labour Court,  
Salem
- 3.The Government Advocaote,  
Madras High Court

W.P.Nos.7328 of 2014 & 23769 of 2018

27.07.2023