



WEB COPY



W.P.Nos.16551 & 30480 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.16551 & 30480 of 2018

and

WMP.Nos.19733 & 35550 of 2018 and 3753 of 2019

M/s. Omkar Fine Organics Private Limited,
Rep. by its Managing Director,
No. 22/2, Mangalam Road, Uruvaiyar,
Vilianur Commune, Puducherry – 605 110.

...Petitioner in both W.P's.

Vs.

1. Omkar Fine Organics Employees Union,
Rep. by its President,
Reg. No.1702/RTU/2012,
No.40, Selva Nagar, Pillaiyar Kovil Street,
Uruvaiyar, Mangalam Post,
Puducherry. ...1st Respondent in W.P.No.16551 of 2018
& sole respondent in W.P.No.30480 of 2018
2. The Presiding Officer,
Industrial Tribunal cum Labour Court,
Puducherry. ...2nd Respondent in W.P.No.16551 of 2018

Prayer in W.P.No.16551 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the Award dated 13.10.2017 passed by the 2nd respondent in I.D.(T) No.1/2013 and quash the same except with regard to demand for wage revision.



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Prayer in W.P.No.30480 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for records relating to the C.P.No.6 of 2018 in I.D.(T).No.1 of 2013 on the file of the Industrial Tribunal cum Labour Court, Puducherry and quash the same.

In both W.P's.:

For Petitioner : Mr.S.Vijayaraghavan
for M/s.S.Renugadevi

For Respondents : Mr.P.R.Thiruneelakandan,
for R1 in W.P.No.16551 of 2018 & for sole
respondent in W.P.No.30480 of 2018

COMMON ORDER

Since the issue involved in both the Writ petitions are interconnected, they are heard together and disposed of by way of this common order.

2. The case of the petitioner is that, it is a private limited company incorporated under the Companies Act in the year 1988 and is involved in the manufacture of chemicals for flavour and fragrances and was running well without any labour problems till 2012 since the commencement of the business. Whiles, the respondent union raised an industrial dispute in the year 2012 as against the petitioner management over wage revision, regularisation, safety measures, medical benefits etc., and the Government



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of Puducherry, vide order dated 21.12.2012 referred the dispute for adjudication and the same was taken on the file of the Industrial Tribunal, Puducherry as I.D.(T).No.1 of 2013. After Contest, the Tribunal, vide impugned award dated 13.10.2017 partly allowed the dispute and held that the petitioner adopted unfair labour practice against the workers and has violated the provisions of Section 33 of the Industrial Disputes Act, 1947 (in short 'Act') and further directed the petitioner to give regularization to the members of the respondent union, protection to their service condition and also directed to implement the safety measures in the factory and have also ordered for reinstatement of 18 workmen along with 50% back wages. Challenging the same, the petitioner has come up with W.P.No.16551 of 2018. While such being the legal position, without awaiting for the order to be passed in W.P.No.16551 of 2018, the respondent union filed computation petition under Section 33-C(2) of the ID Act in C.P.No.6 of 2018, seeking to compute the arrears of back wages of the said 18 employees and have also filed an Execution petition in E.P.No.565 of 2018. Hence, challenging the same, the petitioner has filed W.P.No.30480 of 2018.



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3. Learned counsel for the petitioner submitted that, the respondent

union raised several industrial disputes only with an ulterior motive to disturb the working atmosphere in the petitioner management and to spoil the reputation of the petitioner management and they committed serious misconduct and did not perform their duties and are only indulging in creating sabotage, due to which, the petitioner management suffered huge loss. The members of the respondent union joined the services of the petitioner management in different years and among them, 3 members are officers and they do not come under the definition of workman as sated in Section 2(S) of the ID Act and two other persons are temporary workers and one Iyappan is a casual worker and one Bhaskar is a permanent worker and the very registration of the trade Union itself is under challenge and they are not entitled for any relief since they have violated the provisions of the ID Act and Trade Unions Act. Further, though the petitioner management marked about 33 documents and examined RW1 in order to prove their case, however, without considering any of the above said documents and submissions made on behalf of the petitioner management, the Labour Court, vide impugned award ordered for reinstatement of the said workmen, that too with 50% back wages, which is wholly unsustainable. However, the



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learned counsel for the petitioner, on instructions submitted that, the petitioner company is going to get closed and they are ready to pay retrenchment compensation in lumpsum instead of reinstatement and accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the respondent submitted that, the respective workmen, who are the members of the respondent union are employed in various capacities in the petitioner management. Though, the members of the respondent union have rendered several years of service in the petitioner management, they were not issued with any written appointment order and they were paid only a meagre wages and allowances and the petitioner management had miserably failed to follow the safety and welfare measures that were usually followed by other chemical industries. Thereby, in order to protect their legal rights, the workers formed their trade union to have their grievances redressed. It is further submitted that in view of the unfair labour practice of the management, industrial dispute was raised, which was partly allowed in favour of the workmen vide the impugned order. It is the submission of the learned counsel that the order of the Labour Court reveals that all the material documents have been taken



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into consideration and the Labour Court has come to a definitive conclusion with regard to the unfair labour practice of the management and, therefore, passed the impugned order. Though writ petition in W.P.No.16551 of 2018 was filed by the Management, however, no order of stay having been granted, based on the above said award, the present computation petition and execution petition was filed by the respondent union. It is the submission of the learned counsel that only with regard to the pre-existing right on the basis of the award of the Labour Court, the present computation petition has been filed and, therefore, the same cannot be said to be perverse or unsustainable. However, the petitioner management with an ill motive in order to avoid execution proceedings hurriedly filed W.P.No.30480 of 2018, challenging the said CP, before even any order has been passed in the same, which clearly shows the cunning nature of the petitioner management. He further submitted that, this Court, vide order dated 27.02.2019 made in WMP.No.3731 of 2019, directed the petitioner to pay 17-B wages to the employees/members of the respondent union, which was also not paid by the management till date. Accordingly, he prayed for dismissal of these Writ petitions.



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5. Heard learned counsel on either side and perused the material documents placed on record.

6. Admittedly, the members of the respondent union are employees of the petitioner management and the employer-employee relationship between the petitioner and the members of the respondent union are not in dispute. The major grievance of the respondent union is that, during the pendency of the conciliation proceedings, the members of the respondent union were terminated from service. Thereby the employees of the petitioner management raised dispute and also made complaint for violation of 33A of the ID Act, which resulted in the matter being referred to as a dispute and the present award came to be passed.

7. Though it is the claim of the petitioner that, the members of the respondent union committed serious misconduct, for which, disciplinary proceedings came to be initiated against them and the same ended in dismissal, however, in order to show that the departmental enquiry was conducted in the manner known to law, no document has been submitted either the labour court or before this Court and the petitioner management



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had miserably failed to prove the same. Thereby, the Labour Court, after considering the material documents placed before it, passed the present impugned award holding that the petitioner adopted unfair labour practice against the workers and has violated the provisions of Section 33 of the ID Act and further directed the petitioner to give regularization to the members of the respondent union, protection to their service condition and also directed to implement the safety measures in the factory and have also ordered for reinstatement with 50% backwages, as the respondent union had specifically averred that the members of its union are not gainfully employed during the non-employment period. In view of the reasons aforesaid, this Court does not find any fault with the order passed by the Labour Court and, therefore, this Court is not inclined to interfere with the impugned award dated 13.10.2017 made in I.D.(T).No.1 of 2013.

8. Further inspite of the order of this Court, directing the petitioner to pay 17B wages to the members of the respondent union, the petitioner has wilfully defaulted in paying the same to them.



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9. In regard to C.P. No.6 of 2018, which has been filed by the respondent union, even before any order came to be passed in the C.P.No.6 of 2018, the petitioner has come up with W.P.No.30480 of 2018 in order to deprive the rights of the members of the respondent union, which is also a clear case of unfair labour practice, as the workmen cannot be precluded from enforcing their legitimate rights. Therefore, the said writ petition is premature and the same deserves to be dismissed.

10. Accordingly, both the Writ Petitions filed challenging the award dated 13.10.2017 made in I.D.(T).No.1 of 2013 and the proceedings in C.P.No.6 of 2018 the stand dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

20.09.2023
(1/2)

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NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To:

The Presiding Officer,
Industrial Tribunal cum Labour Court,
Puducherry.

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M.DHANDAPANI., J.

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and
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WMP.No.35549 of 2018
in
W.P.No.30480 of 2018

M.DHANDAPANI, J.

Dispensed with for the present.

20.09.2023
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