



W.P.No.10507 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.08.2023

Pronounced on : 08.09.2023

CORAM:

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

W.P.No.10507 of 2014 and
MP.No.1 of 2014

The Management of Khilari Medical System,
20, SBI Officers Colony 1st Street,
Arumbakkam, Chennai-106

... Petitioner

Vs.

- 1.The Presiding Officer,
IIIrd Additional Labour Court,
Chennai
- 2.K.Jayavel
- 3.P.Jayabalakrishnan
- 4.P.Sankar
- 5.K.Balamurugan
- 6.J.Senthilmurugan
- 7.E.Jayavelu
- 8.G.Kanniappan
- 9.J.Kesavan
- 10.R.Mohan
- 11.S.Chandrasekar
- 12.E.Krishnan
- 13.K.Ramesh
- 14.J.Bakkiaraj
- 15.A.Selvakumar
- 16.K.Thilasidasan



W.P.No.10507 of 2014

17.E.Ramesh
18.A.Balaji
19.D.Jayabalan
20.E.Sankar
21.E.Manivannan
22.S.Mariammal
23.K.Radha
24.M.Sasikala
25.T.Manjula

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records from the first respondent relating to his order dated 12.09.2013 passed in claim petition No.374/2002 on the file of IIIrd Additional Labour Court, Chennai and quash the same.

For Petitioner : Mr.S.Ravindran,
Senior Counsel
for Mr.V.Venkatasamy

For Respondents
For R2 to 25 : Mr.M.Manivannan

R1 : Court

ORDER

This writ petition has been filed challenging the award passed by the first respondent in claim petition No.374 of 2002 dated



W.P.No.10507 of 2014

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12.09.2013 thereby ordered to pay minimum wages, bonus and overtime wages with interest at the rate of 12% per annum.

2. The respondents 2 to 25 (hereinafter called as 'workmen') filed claim petition under Section 33(C)(2) of Industrial Disputes Act for computation of money value of the benefits entitled to them together with interest at the rate of 12% per annum. The petitioner is the management / firm (herein called as management) had not implemented various welfare legislations which are provided under Labour Legislations. Therefore, the workmen raised Industrial Dispute under Section 2(k) of Industrial Disputes Act before the Assistant Commissioner of Labour, Chennai. However, the conciliation failed and referred the failure report dated 20.06.2001 and the same was numbered as ID.No.84 of 2003. The Labour Court passed award dated 06.01.2004 in ID.No.84 of 2003 and held that the closure of the management from 5.6.2000 is illegal and not justifiable. Further directed the management to reinstate the respondents 2 to 25 herein with continuity of service, full backwages and all other attendant benefits. The workmen filed a writ



W.P.No.10507 of 2014

petition before this Court to implement the said award. The management also filed writ petition to challenge the said award. This court, by common order dated 27.09.2011 remitted ID No.84 of 2003 to the Labour Court for fresh disposal in accordance with law. The Labour Court dismissed the Industrial Disputes raised by the workmen by award dated 25.07.2012. Aggrieved by the same, the workmen filed writ petition before this Court in WP.No.27964 of 2014.

3. The learned Senior Counsel appearing for the petitioner would submit that the management had manufactured the components of ophthalmic instruments and there were 45 employees. The same was closed on 05.06.2003 after informing the closure to the concerned authorities and the workmen by affixture in the closed door of its factory. The findings of the first respondent are perverse, arbitrary without proper application of mind. The claim petition was filed by the workmen to claim minimum wages, overtime allowances at double the rate of wages on minimum wages and the bonus on the minimum wages payable to them. Therefore, the entire claim of the workmen are based on



W.P.No.10507 of 2014

applicability of the minimum wages to them. The entitlement of minimum wages is not a benefit to be claimed under Section 33 (C)(2) of Industrial Disputes Act. Therefore, the claim petition itself is not maintainable. Further, there is no pleading in the claim petition that the alleged minimum rates of wages were applicable to the management and there was no clear adjudication as to their entitlement of minimum rates of wages. If at all the management failed to pay minimum wages, the workmen ought to have invoked the provision under Section 20 of the Minimum Wages Act, 1948. Therefore, the alleged entitlement of benefits claimed, are yet to be decided and as such, the claim petition for computation of benefits are not at all maintainable by way of claim petition under Section 33(C)(2) of Industrial Disputes Act. In support of his contention, the learned Senior Counsel relied upon the following judgments:

(i) ***Nathan Press Vs. K.Krishnan and others*** reported in ***1988(2) LLN 95***

(ii) ***D.Krishnan and another Vs. Special Officer, Vellore Cooperative Sugar Mill and another*** reported in ***(2008) 7 SCC 22***



W.P.No.10507 of 2014

(iii) ***H.P.State Electricity Board and another Vs. Ranjeet***

Singh and Others reported in ***(2008) 4 SCC 241***

(iv) ***Cholan Roadways Ltd Vs. G.Thirugnanasambandam***

reported in ***(2005) 3 SCC 241***

4. The learned counsel for the workmen submitted that the management is still functioning. It is evident from the EX.P8, the letter issued by the Commercial Tax Department thereby stated that the management have closed their business only from 01.07.2007. Chennai Telephone Directory also stated that the management was functioning in the said given address. Likewise, the Income Tax Department also informed that the management had filed returns of income upto the assessment year 2011-2012. The petitioner is a partnership firm and registered under the Partnership Act. The management failed to file any piece of evidence to show that their partnership firm has been dissolved by the deed of dissolution. The workmen were never paid overtime allowance. The management raised new point before this Court without even raising the said ground before the first respondent. The management never raised the plea of applicability of minimum wages and bonus.



W.P.No.10507 of 2014

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5. Heard, Mr.S.Ravindran, the learned Senior Counsel appearing for the petitioner and Mr.M.Manivannan, the learned counsel for respondents 2 to 25.

6. The management employed workmen for manufacturing of components of ophthalmic instruments. There were totally 45 employees employed in the management factory. The workmen were not paid minimum wages, overtime wages and bonus and therefore, they filed claimed petition under Section 33(C) (2) & 5 of Industrial Disputes Act. The workmen also raised Industrial Disputes under Section 2(k) of Industrial Disputes Act before Assistant Commissioner of Labour alleging that the management without issuing any notice to the workmen closed its factory as it would not amount to closure of the management since it failed to comply with the provisions of the Industrial Disputes Act. It is under challenge in WP.No.27964 fo 2014. In order to prove the claim of the minimum wages, the workmen marked Ex.P1, minimum wages notification. It does not *per se* prove the quantum of minimum wages claimed by the workmen. Accordingly, the average Chennai City



W.P.No.10507 of 2014

Consumer Price Index for the year 1991 should be taken as 1051 points.

Thereafter, for every year from 1993 to 2000, it should be taken into consideration and variable dearness allowance should be fixed at the rate of 85 paise per month over and above 1051 points. Thereafter, the fixed basic pay should be added to arrive at total wages under the minimum wages notification. Hence, the workmen should have produced the Consumer Price Index for each year to demonstrate how this variable payment is arrived at every year from April to March. Therefore, the workmen failed to prove their claim before the first respondent. As such, the workmen cannot claim the minimum wages under Section 33(C)(2) of Industrial Disputes Act without prior adjudication.

7. It is relevant to extract the provisions of Section 33(C) (1) & (2) of Industrial Disputes Act hereunder:

33C. Recovery of money due from an employer:-

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman,



W.P.No.10507 of 2014

his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Thus it is clear that where any money is due to the workmen from an employer under settlement or award or under the provisions of Chapter V-A or Chapter V-B, the workmen can very well make claim for recovery of the said money due.

8. It is rightly pointed out by the learned Senior Counsel appearing for the petitioner that the claim of the minimum wages can be



W.P.No.10507 of 2014

claimed only after adjudication. It is not a benefit to be claimed under Section 33(C) (2) of Industrial Disputes Act. Therefore, the claim petition itself is not maintainable before the first respondent. Insofar as the overtime, there is no evidence produced by the workmen to show that they had done overtime for 75 hours every month. It can be claimed on the basis of inflated minimum rate of wages. The performance of overtime should be within the scope of the Factories Act as per Section 59. Accordingly, the workmen should have worked more than 9 hours in any day or more than 48 hours in any week. The provision under Section 65 (3) (iv) says that no worker shall be allowed to work overtime for more than seven days at a stretch and total number of hours of over time work in any quarter shall not exceed 75 hours. The workmen failed to prove the same by any piece of evidence. Therefore, the findings of the first respondent is absolutely without evidence and perverse. As stated supra, the workmen cannot claim without adjudication of over time wages. Likewise, the bonus claimed by the workmen is only based on the salary. The percentage of bonus can be claimed as prescribed under Sections 10 and 11 of Bonus Act. Accordingly, the calculation of bonus



W.P.No.10507 of 2014

should be in accordance with Section 15 of the Bonus Act read with Schedule IV of the Act. The provision under Section 12 of the Bonus Act says that the monthly wages for the calculation of bonus is restricted to Rs.2,500/- per month during the claim period. Therefore, the claim of the workmen is beyond the scope of Section 12 of the Payment of Bonus Act. At the most, only minimum rate of bonus i.e. 8.33% which is equivalent to one month wage could be claimed as a matter of right. Therefore, the claim of the workmen is over and above 8.33%. Further, it cannot be claimed without prior adjudication.

9. The learned Senior Counsel also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***D.Krishnan and another Vs. Special Officer, Vellore Cooperative Sugar Mill and another*** reported in (2008) 7 SCC 22, wherein it is held that the proceedings under Section 33(C)(2) of the Industrial Disputes Act could only be effective in case of a pre-existing right and as the claim of the workman was disputed, it is not a matter for decision under this provision.



W.P.No.10507 of 2014

role of an Executing Court, and it cannot go beyond the award unless the question is incidental to working the relief on the basis of the award. The heads of claims could be based only on the award, and in the absence of any provision for payment of interest in the award, there could not be any claim for such interest and countenancing thereof. The claim of interest could not be stated to be incidental to computation of the benefits given under the award.

12. Therefore, the first respondent has no jurisdiction to entertain the claim made by the workmen, that too under Section 33 (C) 2 of Industrial Disputes Act and not maintainable since there was no pre-existing right on the workmen who filed claim petition.

13. In view of the above, the impugned order is liable to be quashed. Accordingly, the impugned order dated 12.09.2013 passed in claim petition No.374/2002 of the first respondent is quashed and this writ petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.



W.P.No.10507 of 2014

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Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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W.P.No.10507 of 2014

G.K.ILANTHIRAIYAN, J.

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W.P.No.10507 of 2014

To
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- 1.The Presiding Officer,
IIIrd Additional Labour Court,
Chennai
- 2.The Government Advocate
High Court, Madras.

W.P.No.10507 of 2014

08.09.2023