



W.P. No.18397/2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
04.09.2023	14.09.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.18397 OF 2023
AND
W.M.P. NOS.17611 & 17612 OF 2023**

1. S.Ashok Kumar
2. D.P. Gopal
3. P.Selvarasu
4. D.Govindaraju
5. P.Samraju
6. B.S.Ezhilmaran
7. V.Ekambaram
8. Krishnamoorthy
9. Jayakrishnan
10. S.Ravikumar
11. N.Narasimman
12. C.Selvaraj

.. Petitioners

- Vs -

The Management
Mega Rubber Technologies Pvt. Ltd.
S.F. No.35/1& 45, Anekal Road
Off Thally Road, Poonapalli Village
Hosur Taluk, Krishnagiri Dist. 635 114.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying

this Court to issue a writ of certiorarified mandamus calling for the concerned records from the Labour Court, Hosur, dated 10.05.2023 in I.A. No.1 of 2022 in I.D. No.39 to 50 of 2021, quash the common order of the Labour Court, Hosur, in I.A. No.1 of 2022 in I.D. No.39 to 50 of 2021 dated 10.05.2023, as illegal, arbitrary and contrary to law and consequently direct the respondent to pay the last drawn salary to each of the petitioner every month commencing from January, 2021 and continue to pay every month pending disposal of I.D. Nos.39 to 50 of 2021 pending on the file of the Labour Court, Hosur.

For Petitioners : Mr. Balan Haridas

For Respondent : Mr. S.Ravindran, SC, for
M/s.Bazeer Ahamed

ORDER

Assailing the order of the Labour Court, Hosur, declining the relief of payment of last drawn wages claimed by the respective petitioners in the interim application on the ground of pending industrial dispute, the present petitions have been filed.



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2. It is the case of the petitioners that they were initially under the employ of Sundaram Auto Components Ltd. (Rubber Division), which was subsequently purchased by the respondent company and Sundaram Auto Components settled all the dues to the petitioners with effect from 30.03.2013. Thereafter, the services of the petitioners were taken over by the respondent by issuing fresh order of appointment dated 1.4.2013 and, thereafter, the petitioners were discharging their duties under the respondent.

3. It is the further case of the petitioners that the respondent is engaged in the manufacture of rubber spare parts for automobile industries and has employed 450 employees of which only 28 are permanent employees and the rest of them are contract labourers. It is the further averment of the petitioners that on 26.10.2020, the respondent called the petitioners and informed them that their services were transferred and that the transfer orders were sent to the residence address of the petitioners.



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4. It is the case of the petitioners that the respondent, quoting the financial crisis faced in the business and in view of the existing exigencies and as there is additional work, the petitioners were temporarily transferred and relieved from Hosur with effect from 31.10.2020 and they were directed to report to the transferred place on or before 6.11.2020.

5. It is the further case of the petitioners that the transfer order was passed during the peak of COVID-19 pandemic and that the petitioners were all along working only in Hosur and they are the sole bread winner of their families and that knew only Tamil and have no knowledge of Hindi and that with the wages paid by the respondent, it is impossible to maintain two establishments, one at the transferred place and the other at Hosur and that there was no necessity to transfer the petitioners.

6. It is the further case of the petitioners that the Union gave representation dated 27.10.2020 and 28.10.2020 to the respondent requesting to revoke the transfer order. However, the respondent did not consider the same and, therefore, the petitioners, along with the Union Office



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bearers met the Manager-HR and requested to withdraw the transfer order and individual representations were also given. A dispute was also raised by the Union questioning the transfer of the 12 employees. However, when the dispute was under conciliation, the respondent dismissed the services of the petitioners from service by an order dated 30.12.2020, which is in violation of Section 33 of the Industrial Disputes Act.

7. It is the further case of the petitioner that though in the order of dismissal it is stated that it is for misconduct, however, no charge memo was issued and no enquiry was conducted to prove the allegation. In the aforesaid circumstances, the dispute raised before the Conciliation Officer ended in failure, the petitioners approached the Labour Court, Hosur raising individual industrial disputes, which were taken on file as I.D. Nos.39 to 50 of 2021.

8. It is the further case of the petitioner that filing counter, the respondent sought for an opportunity to prove the alleged misconduct and on the basis of grant of permission, the respondent examined one Mr.Sanjay Anand, Senior Manager-HR as M.W.1 on 12.05.2022 and Exs.M-1 to M-16



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WEB COPY were marked and the matter was posted for cross examination of M.W.1 on 19.5.2022.

9. Since the petitioners were terminated from service during the pandemic period and that they were without employment since 30.12.2020 and since M.W.1 is being examined by the respondent before the Labour Court which is akin to subjecting the petitioners to a domestic enquiry prior to dismissal, the petitioners should be paid the last drawn wages as subsistence allowance in the nature of interim payment.

10. It is the further case of the petitioners that no reason has been assigned by the respondent for dismissing the petitioners from service without conduct of enquiry, but is conducting a roving enquiry before the Labour Court without providing any relief to the petitioners in the form of subsistence allowance, which the petitioners would be otherwise eligible had they been suspended and domestic enquiry conducted against the petitioners. The respondent only with the intention to create more misery to the petitioners is going with the enquiry before the Labour Court, thereby, depriving the



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petitioners their subsistence allowance to which otherwise the petitioners would be entitled. It is the further stand of the petitioners that if they are not paid the last drawn wages, they would be put to irreparable prejudice and loss. Therefore, the present interim application in I.A. No.1 of 2022 was filed by the petitioners for payment of last drawn wages, which was dismissed by the Labour Court, Hosur, aggrieved by which the present writ petition has been filed.

11. Along with the present writ petition, W.M.P. No.17611 of 2023 has been filed to permit the petitioners to join together and file a single writ petition and considering the facts and circumstances, this Court is inclined to order the present petition as prayed for.

12. Learned counsel appearing for the petitioners submitted that the findings recorded by the Labour Court is wholly unreasonable as it has been held that no supportive documents have been filed to show that the order of transfer is unjustified. It is the further submission of the petitioners that the transfer order passed during the peak of COVID-19 pandemic itself would



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show the unreasonableness of the order and no other document is required to be placed to support the same.

13. It is the further submission of the learned counsel that the Labour Court failed to consider the fact that the order of termination without conduct of disciplinary proceedings is only to cause grave prejudice and sufferings to the petitioners. If a disciplinary proceedings had been conducted by placing the petitioners under suspension, the petitioners would have been entitled for subsistence allowance. Further, the act of the respondent in conducting the disciplinary proceeding by letting in evidence before the Labour Court without following the procedure of conduct of disciplinary proceedings before termination of the petitioners clearly shows that the act of the respondent is only to inconvenience the petitioners.

14. It is the further submission of the learned counsel that the act of the respondent is clearly in violation of Section 33 (2) (b) of the Industrial Disputes Act, which has not been appreciated by the Labour Court while passing the impugned order. In this regard, learned counsel for the petitioner



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submitted that when the dispute has been raised with regard to the transfer of the petitioners, alleging that the non-compliance of the order of transfer and resultantly terminating the petitioners is in clear violation of Section 33 (2)(b).

15. It is the further submission of the learned counsel for the petitioners that though very many decisions with regard to the necessity for payment of last drawn wages were placed by the petitioners before the Labour Court, however, the Labour Court, holding that in the said cases, there existed a prima facie case, which is non-existent in the present case, without appreciating the facts, had rejected the claim of the petitioners, which clearly shows that the materials have not been adverted to in proper perspective.

16. It is the further submission of the learned counsel that even the order of transfer is *ex facie* bad, as the transfer order has been issued in the midst of a grave pandemic and when the whole country had imposed a lockdown. Transferring the petitioners to a far off place about 2000 Kms., away clearly shows the nature of the prejudicial order passed by the



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respondent. Transferring the petitioners in the midst of pandemic, thereby the petitioners cannot maintain two establishments and for non-compliance of the transfer, the petitioners are robbed of their livelihood, the aforesaid facts have not been taken into consideration by the Labour Court while passing the impugned order.

17. It is the further submission of the learned counsel that clause 18 of the appointment order of the petitioners show that they can be transferred for a maximum period of three months, yet the order of transfer does not indicate the period of their transfer, which itself clearly show that unfair labour practice is being practiced by the respondent.

18. It is the further submission of the learned counsel that the finding of the Labour Court that the interim relief sought for is part of the main relief is wholly misconceived. The respondent has taken the luxury of terminating the petitioners and coming up with a plea to conduct disciplinary proceedings before the Labour Court which robs the petitioners of their valuable right to subsistence allowance. Considering the above, the Labour Court ought to



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have granted the relief to the petitioners pending the adjudication of the dispute. However, miserably failing in its duty in not properly appreciating the materials, the Labour Court has passed an erroneous order, which is *ex facie* perverse, arbitrary and, therefore, deserves to be set aside.

19. In support of the aforesaid contentions, learned counsel appearing for the petitioner placed reliance on the following decisions :-

- i) *The Management of Bihar State Electricity Board – Vs – The Workman of Bihar State Electricity Board (1971 (1) LLJ 389);*
- ii) *Paramasivam – Vs – Management of Madras Rubber Factory & Anr. (2001 (3) LLJ Supp. 1021 (Mad));*
- iii) *Management of Kanoria Industries – Vs – Bagalkot Cement Company Workers (2001 (1) LLJ 1565 Kant.);*
- iv) *Management of Aurofood – Vs – Presiding Officer & Anr. (W.A. No.611 of 2001 – Dated 22.9.2003);*
- v) *Management of MRF Ltd. – Vs – V.Paramasivam & anr. (CDJ 2005 MHC 699); and*
- vi) *SBI – VS – Presiding Officer & Anr. (W.A. No.67/2016);W.A. No.611 of 2001)*

20. Per contra, learned senior counsel appearing for the respondent submitted that the findings arrived at by the Labour Court to reject the interim



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application for payment of last drawn wages if a well considered order, both on law and facts.

21. It is the further submission of the learned senior counsel that transfer is an incidence of service and when the petitioners have been transferred by the respondent on administrative exigencies, it is the duty of the petitioners to comply with the orders. It is the further submission of the learned senior counsel that inspite of the rejection of the representation of the Union for reconsideration of transfer, the petitioners have not joined duty inspite of passage of more than a month and half, which act of the petitioners is a misconduct, necessitating termination from service.

22. It is the further submission of the learned senior counsel that pandemic period cannot be stated as the reason for not complying with the orders of transfer as even during the said time, the whole governmental machinery as also the other establishments were functioning, but in a different manner and the petitioners ought to have obeyed the transfer order.



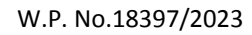
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23. It is the further submission of the learned senior counsel that the Labour Court had adverted to all the decisions placed by the petitioners and had come to the categorical conclusion that the said decisions cannot be pressed into service in the present case as in those cases, a *prima facie* case was made out by the workmen, whereas, the petitioners in the present case have not made out any *prima facie* case.

24. It is the further submission of the learned senior counsel that when there is severance of employer-employee relationship upon termination, so long as the said termination is not held to be illegal and invalid, there would arise no employer-employee relationship and in that scenario, the respondent is not bound to pay any subsistence allowance, which fact has been rightly appreciated by the Labour Court while passing the order.

25. In fine, it is the submission of the learned senior counsel that the order passed by the Labour Court does not suffer the vice of any illegality or arbitrariness nor is it perverse and, therefore, the same does not deserve any interference.



- i) *Ashok Leyland Ltd., Hosur – Vs – Labour Court, Coimbatore & Ors. (1988 (1) LLN 302); and*
- ii) *Head-Human Resources, M/s.IndusInd Bank Ltd. & Ors. – Vs – Appellate Authority under Shops & Establishment Act & Ors. (W.A. No.1468 of 2022 – Dated 28.6.2022)*

28. The interim relief sought for before the Labour Court was with reference to payment of last drawn wages, which has been dismissed by the Labour Court on the premise that the interim relief sought for by the petitioners amount to the final relief sought for in the dispute, which cannot be granted and, therefore, the interim application was dismissed.



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29. A bird's eye view of the facts, which is admitted by either side reveals that the transfer order issued to the petitioners during the pandemic time was not obeyed by the petitioners and inspite of representation of the petitioners and also the Union desisting the transfer, as the petitioners had not complied with the transfer, resultantly, the services of the petitioners were terminated. It is also borne out by record that before passing the order of termination on the petitioners, no enquiry was conducted, however, when the dispute was raised, before the Labour Court, the respondent sought permission to adduce evidence and permission having been granted, the respondent has started letting in evidence by examining M.W.1 and Exs.M-1 to M-16 have been marked and the matter is posted for further examination and cross examination.

30. The order of termination had come to be passed, without conduct of any enquiry on 30.12.2020 and individual disputes were raised in I.D. Nos.39 to 50 of 2021 before the Labour Court and on 12.5.2022, i.e., about



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five months from the time of raising the disputes, M.W.1 has been examined on 12.5.2022 and Exs.M-1 to M-16 were marked.

31. It is the admitted procedure that when disciplinary proceedings are initiated by the employer against its employee by conduct of an enquiry, and pending the enquiry if the employee is placed under suspension, necessarily, the employee is entitled to the benefits of Section 17-B of the Industrial Disputes Act and would be entitled for subsistence allowance. However, in the case on hand, the termination had been passed against the petitioners without conduct of any enquiry, though it is the admitted case that the petitioners are permanent employees under the respondent. Necessarily, in respect of permanent employees, for any allegation of misconduct, it is of necessity for the employer to conduct an enquiry.

32. In this backdrop, very many decisions have been placed before the Labour Court by the petitioners to substantiate their case for payment of last drawn wages, but curiously, the Labour Court had rejected all the decisions as



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not pertinent to the present case by holding that *prima facie* case has not been established by the petitioners.

33. When the disputes have been raised by the petitioners and the respondent has been allowed to let in evidence, necessarily, the concept of enquiry proceedings, which is to be followed at the initial point of time, is being conducted before the Labour Court at a subsequent point of time. The violation of the provisions of the Industrial Disputes Act, committed by the respondent cannot in any manner affect the right of the petitioners on the contention raised by the respondent that there is no subsisting employer-employee relationship. Had the respondent initiated an enquiry proceedings and then terminated the petitioners from service, during the pendency of the enquiry proceedings, either the petitioners would have been in service and received the wages or if they were placed under suspension, they would have to necessarily be paid subsistence allowance. But without following the provisions of the Industrial Disputes Act, the respondent had terminated the services of the petitioners and the violation committed by the respondent cannot be a bar for the petitioners to claim the last drawn wages. The



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respondent cannot put any fetters in the machinery with regard to payment of subsistence allowance by raising the plea of no subsisting employer-employee relationship.

34. Though very many decisions have been relied on by the petitioners, however, the decision of the Division Bench of this Court in ***The Management of Aurofood Pvt. Ltd. - Vs – Presiding Officer, Labour Court, Cuddalore (*W.A. No.611 of 2001 – Dated 22.09.2003)***, stands squarely attracted to the case on hand, which is almost an identical case as the one before this Court. In the said case, appreciating the facts and the act of the employer therein, who was the petitioner, who had assailed the order of the learned single Judge granting payment of subsistence allowance, the Division Bench held as under :-

“10. The employee has been out of employment now for a period of over fourteen years. Had the employee accepted the order made by the employer and had not chosen to question the same by seeking reference that order certainly would have become final. But, once the reference is made an obligation is cast on the employer to adduce evidence if it wants to sustain that order, as, in the event of the employer failing to adduce evidence and to show that there was in fact a misconduct which would justify the termination of service, the employee.



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would become entitled to the relief that he was seeking by having the reference made.

11. When the enquiry is to be made before the Labour Court the evidence that the employer may choose to produce would have to be countered by the workman. During this period when the employer is asserting a right to adduce evidence against the workman not in the domestic enquiry but before the Labour court for the first time, the employee's position is in reality no different from what it would have been had he been subjected to a domestic enquiry prior to the termination of his employment. The object of paying subsistence allowance, as has been pointed out by the Apex Court is to enable the employee to subsist during the time when the employer-employee relationship continues and enquiry against him is pending.

12. While it would be inappropriate to term any payment directed to be made during the period the reference is pending as 'subsistence allowance' a direction to pay an amount calculated on the same basis as subsistence allowance is calculated, having regard to the situation in which the employee is placed, is not beyond the competence of the court when it directs the remand of the matter to the Labour Court for enabling the employer to adduce evidence against the workman.

13. While we sustain the direction given by the learned single Judge to the employer to pay the amount which has



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been termed as 'subsistence allowance' which in reality is not a subsistence allowance but is in the nature of interim relief to the workman, we modify the direction given and limit the period for which the employee has to be paid that amount from the date of the order of the learned single Judge viz., 13.12.2000, till the conclusion of the proceedings before the Labour Court."

(Emphasis Supplied)

35. It is borne out by record that the transfer orders have been issued amidst the COVID-19 Pandemic, when the whole world was gripped with the fear of survival. At that point of time, the entire country was under lockdown and movement of persons outside their residential jurisdiction was kept to the barest minimum in order to save the human folk from the virus. At that point of time, the transfer order has been issued to the petitioners and non-compliance of the same has resulted in the order of termination, which is under dispute.

36. In such a backdrop, the aforesaid decision in *Aurofood case (supra)*, would squarely stand attracted to the case on hand, wherein the Division Bench has held once the reference is made, an obligation is cast on the



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employer to adduce evidence to sustain its order as failure to adduce evidence and to show that there was in fact a misconduct to justify the termination, the employee would become entitled to the relief that he was seeking by having the reference made.

37. Though there is no subsisting relationship between the respondent and the petitioner as contended, however, the subsistence allowance payable in an employer-employee relationship, in the present case, the said allowance would partake the character of an interim relief to the petitioners to sustain themselves to face the proceedings before the Labour Court.

38. Contra to the aforesaid judgment, the decision in *Ashok Leyland case (supra)* is pressed into service by the respondent. However, the said case cannot squarely be made applicable to the case on hand, as the facts in the said case stand on a slightly different footing. In the said case, the Division Bench was adjudicating on the issue of whether an illegal and invalid enquiry or non-conduct of enquiry would enure to the benefit of the workman in the receipt of wages till such time an award is passed by the Labour Court. In the



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case on hand, the question of payment of wages to the petitioners does not arise, but the interim relief sought for is only to sustain themselves, which the petitioners would otherwise be entitled to had an enquiry been conducted by the respondent. Therefore, the decision relied on by the respondent to counter the petitioners contention does not tilt the balance in favour of the respondent.

39. Further, the necessity of conduct of enquiry in case of allegation of misconduct against an employee is only provided as a safeguard to the employee to counter victimisation at the hands of the employer. Giving a go-by to the enquiry proceedings and terminating the employee and, thereafter, when a dispute is raised, the employer going before the Labour Court and contesting the issue by submitting itself to adduce evidence to establish the misconduct of the employee, if allowed to be permitted without payment of any interim relief to the workman, on the mere contention of the Management that there exists no employer-employee relationship, it certainly defeats the purpose of very many labour welfare legislations and is a direct affront on the employee from enforcing their legitimate right to subsistence



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allowance, had the enquiry been conducted, while the employee was in service. The employer cannot be allowed to enter through the back door by defeating the rights of the employee, which they had thrown away by not conducting the enquiry and to pass orders in favour of the employer, would be nothing but allowing the employer to perpetuate the illegality, which otherwise was sought to be nullified by the law makers by imposing the provision for payment of subsistence allowance u/s 17-B.

40. Having regard to the entire factual matrix, this Court is of the considered view that interest of justice warrants that the petitioners should be provided with interim relief to sustain themselves so as to face the industrial dispute, which they have raised against the alleged high-handed act of the respondent. Therefore, this Court feels that interim relief should be provided to the petitioners by following the decision of the Division Bench in *Aurofood case (supra)*.

41. In the result, the writ petition is allowed with the following directions :-



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- i) *This writ petition is allowed by setting aside the order passed by the Labour Court, Hosur in I.A. No.1 of 2002 in I.D. Nos.39 to 50 of 2021;*
- ii) *The respondent is directed to pay a sum of Rs.20,000/- per month (Rupees Twenty Thousand only) to each of the petitioners as interim relief pending disposal of I.D. Nos.39 to 50 of 2021 pending on the file of the Labour Court, Hosur.*
- iii) *The Labour Court, Hosur, is directed to take up I.D. Nos.39 to 50 of 2021 together and complete the proceedings and pass award within a period of three months from the date of receipt of a copy of this order.*
- iv) *Consequently, W.M.P. No.17612 of 2023 is closed. There shall be no order as to costs.*

14.09.2023

Index : Yes / No

GLN

To

The Presiding Officer
Labour Court, Hosur.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.18397 OF 2023**

**Pronounced on
14.09.2023**



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W.P. No.18397/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.07.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.18397 OF 2023

AND

W.M.P. NOS.17611 & 17612 OF 2023

1. S.Ashok Kumar
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- Petitioners

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- Vs -

The Management
Mega Rubber Technologies Pvt. Ltd.
S.F. No.35/1& 45, Anekal Road
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.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the concerned records from the Labour Court, Hosur, dated 10.05.2023 in I.A. No.1 of 2022 in I.D. No.39 to 50 of 2021, quash the common order of the Labour Court, Hosur, in I.A. No.1 of 2022 in I.D. No.39 to 50 of 2021 dated 10.05.2023, as illegal, arbitrary and contrary to law and consequently direct the respondent to pay the last drawn salary to each of the petitioner every month commencing from January, 2021 and continue to pay every month pending disposal of I.D. Nos.39 to 50 of 2021 pending on the file of the Labour Court, Hosur.

For Petitioners : Mr. Balan Haridas

For Respondent : Mr. S.Ravindran, SC, for
M/s.Bazeer Ahamed

ORDER

This petition is listed today under the caption 'for clarification' at the instance of the learned counsel for the respondent/management.

2. The learned counsel for the petitioner would submit that the respondent/management mentioned before this Court with regard to the clarification of the order passed by this Court in W.P.No.18397 of 2023,



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wherein, this Court ordered for only interim relief to the petitioners by directing the respondent/management to pay Rs.20,000/- to each of the petitioner as interim relief pending disposal of the industrial dispute. However, there was a confusion from what date the interim relief was granted either from January 2021 or from the order of this Court. On perusal of the entire order reveals, in paragraph 37 of the order makes it clear that the interim relief to the petitioners sustained them to face the proceedings before the Labour Court. The above said paragraph make it clear that without any interim relief forcing the employer to face the industrial dispute before the labour court is not maintainable, thereby this Court ordered for interim maintenance from January 2021 onward to till the dispose of the ID.

3. In view of the above, the order passed by this Court is clarified in the above terms. The respondent/management is directed to deposit the entire arrears amount as on date within a period of four weeks from the date of receipt of a copy of this order. Immediately after the deposit, the trial Court shall disburse the amount to the employees.

17.07.2025



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