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W.P. No. 44719 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

**W.P. No. 44719 of 2016
and
W.M.P. No.38543 of 2016**

The Managing Director
Tamil Nadu Co-operative Milk
Producers Federation Limited
Madhavaram Milk Colony
Chennai-600051.

... Petitioner

-VS-

1. Second Additional Labour Court
Chennai, High Court Campus
Chennai-600104.

2. M.Radhakrishnan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records in C.P.No.134 of 2014 dated 14.07.2016 on the file of the first respondent and quash the same as null and void binding the petitioner.

For Petitioner : Mr.C.P.Dhasarathan

For Respondents : Mr.K.M.Ramesh, Senior Counsel
For Mr.G.Martin Manivannan (R2)



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ORDER

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2. It is the case of the petitioner that the second respondent has filed a computation petition claiming arrears of salary with interest under Section 33-C (2) of the Industrial Disputes Act 1947, from the petitioner for the period from 01.05.2016 ends with 31.07.2017 for 27 months of Rs.4,12,000/-, for bonus Rs.1,10,500/-, for leave wages Rs.30,900/- total amount of Rs.5,62,400/- which has been allowed by the first respondent. Challenging the said order, the petitioner Management has filed the present writ petition.

3. The learned counsel for the petitioner submitted that though it is pleaded that the conciliation report dated 28.08.2003 has been marked as a document, the first respondent/Labour Court has not given any clear finding to the effect as to whether there was conclusion of proceedings once the report was sent to the Commissioner. Equally, the learned counsel for the petitioner submitted that though the Labour Court finds that there is violation of Section 33(2)(b) and approval is not obtained before passing the dismissal order, ultimately, the Labour Court has gone into a further decision that in view of the



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pendency of the Criminal prosecution under Section 33(1) of the ID Act and the claim made by the petitioners cannot be entertained. Without considering all these facts, the Labour Court has passed an award in favour of the second respondent, which is not sustainable one.

4. The learned Senior Counsel appearing for the second respondent submitted that the petitioner Management has filed a writ petition in W.P.No.10929 of 2013 challenging the quashment of the order for the approval petition and the same was dismissed on the ground that the Management has not getting prior approval for the termination of the second respondent. The Hon'ble Supreme Court, in a categorical decision, has held that *order of dismissal or discharge being incomplete and inchoate until the approval is obtained cannot effectively terminate the relationship of the employer and employee that if the approval is not accorded by the tribunal the employer would be bound to treat the respondent as its employee and pay full wages.*" Such decision is squarely applicable in the present case on hand. On followed by the above said decision, the Labour Court has allowed the computation petition, which cannot be interfere with.

5. Heard the learned counsel for the petitioner and the learned counsel for



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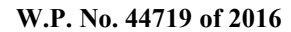
the second respondent and perused the materials available on record.

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6. The facts of the case are not in dispute. Admittedly, the second respondent filed computation petition before the first respondent claiming arrears of salary from the petitioner. It is also admitted fact that on the earlier occasion, the petitioner Management had terminated the service of the second respondent without getting any approval. Challenging the same, the second respondent has raised an ID and got an order in his favour. As against which, the petitioner filed a writ petition before this Court challenging the order of quashment of the approval petition and the same was dismissed.

7. It is also equally undisputed fact that the Labour Court passed an order in favour of the employee in the computation petition stating that there is no valid reason for the termination order passed by the petitioner. The said order was passed by the Labour Court following the decision of the Hon'ble Supreme Court and the same was pointed out by the first respondent.

8. This being the legal principles to be followed, this Court is of the considered opinion that the very adjudication of the disputed issues made by the Labour Court in the computation petition is perfectly in order and the same



9. In view of the facts and circumstances as well as the legal principles, this Court has no hesitation in coming to a conclusion that there is no perversity or infirmity in respect of the order passed by the first respondent/Labour Court in computation petition filed under [Section 33-C\(2\)](#) of the Industrial Disputes Act.

10. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

NCS : Yes/No

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