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WP.Nos.6224 to 6228 of 2016

In the High Court of Judicature at Madras

Dated : 04.8.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition Nos.6224 to 6228 of 2016
& WMP.Nos.5558 to 5562 of 2016

The Management, the Salem
Cooperative Sugar Mills
Ltd., Mohanur-637015.
Namakkal District.

...Petitioner in
all the WPs

Vs

1.V.Ramasamy (died)

...R1 in WP.No.
6224 of 2016

2.The Presiding Officer,
Labour Court, Salem.

...R2 in all WPs

3.Chellammal

4.Vijayakumar

5.Balasubramani

(R3 to R5 substituted as legal heirs
of deceased V.Ramasamy - R1 in
WMP.No.6947 of 2023 vide order
of court dated 03.7.2023 by MDIJ)

...R3 to R5 in
WP.No.6224 of
2016

6.K.Periyasamy

...R1 in WP.No.
6225 of 2016

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7.A.Matheswaran

...R1 in WP.No.
6226 of 2016

8.A.Arokiam

...R1 in WP.No.
6227 of 2016

9.R.Rajan

...R1 in WP.No.
6228 of 2016

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records relating to the impugned orders dated 31.8.2015 passed by the second respondent respectively in C.P.Nos.332 & 328 of 2008, 47 of 2009 & 329 and 186 of 2008 and quash the same.

For Petitioner in all
WPs/Management : Mr.R.Bala Ramesh

For Respondent-1 in all WPs/
Workmen & legal heirs of the
deceased workman : Mr.K.V.Shanmuganathan

COMMON ORDER

These petitions are filed by the petitioner seeking to quash the awards all dated 31.8.2015 made respectively in C.P.Nos.332 & 328 of 2008, 47 of 2009 & 329 and 186 of 2008 on the file of the second respondent.



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2. It is the case of the petitioner that the workmen involved in these cases were employed as canteen employees in the petitioner mill. They were paid daily wages. Claiming permanent status, the canteen employees raised an industrial dispute, which ended in regularization of their services pursuant to the orders of this Court, pursuant to which, the workmen in respective writ petitions absented from work and after conducting appropriate enquiry they were dismissed from service, which led to file the respective claim petitions before the second respondent seeking to implement the Award passed by the Labour Court, Salem in I.D.No.72 of 1984 dated 27.10.1989. Ultimately, vide separate orders dated 31.8.2015, the Labour Court passed an award directing the petitioner to pay a sum of Rs.4,14,113.75 Ps to each of the workmen together with interest. Challenging the same, the petitioner/management is before this Court.

3. The learned counsel for the petitioner management submits that four of the workmen involved in these cases, though joined duty, however absented for work from 29.11.2002 and after conducting proper domestic



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enquiry, they were dismissed from service. Suppressing the above said facts, the workmen filed computation petitions before the second respondent and the second respondent vide separate orders dated 31.08.2015 directed to pay a sum of Rs.4,14,113.75 Ps to each of the workmen together with interest, which is wholly unsustainable. Hence, he prayed to allow these writ petitions.

4. He further submits that pursuant to the impugned orders passed by the Labour Court, the petitioner management fixed the basic pay, other allowances and if at all the workmen is aggrieved over the fixation of wages, they have to work out their remedy in the manner known to law and without availing such remedy, filing the computation petition is not sustainable. He further submitted that the computation petition can only be filed for the differential amount which was denied by the management, to which the workmen have a pre-existing right, however, in the present case on hand though the management has fixed the basic pay and other allowances, claiming the differential amount on par with permanent workmen is not sustainable. Accordingly, he prayed to allow these writ



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5. The learned counsel appearing for the workmen submits that in pursuance of the orders of this Court, instead of conferring permanent status and placing the workmen in appropriate grade on par with permanent workmen, the petitioner fixed their pay as per the provisions of the Tamil Nadu Catering Establishments Act and that by doing so, the workmen were denied the basic pay and other allowances applicable to the lowest grade employee of the petitioner.

6. He further submits that as against the non implementation of the award passed by the Labour Court in I.D.No.72 of 1984 dated 27.10.1989, the workmen filed the petitions seeking for computation of difference in emoluments and they were allowed by the impugned orders. Hence, the learned counsel for the workmen sought to dismiss the writ petitions.

7. Heard the learned counsel for the petitioner/management and the learned counsel appearing for the respective workmen and the legal heirs of



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the deceased workman.

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8. The main grievance of the workmen is that the scale of pay in which they should have been fixed has not been granted to them, which alone would be on par with the persons similarly placed and, therefore, for claiming the same, the workmen are entitled to file computation petitions.

9. Though such a contention, on the face of it looks attractive, it is to be pointed out that for invoking the provisions of Section 33-C (2), the workmen should have a pre-existing right, which alone would entitle the workmen to claim the amount to which they are entitled. In the case on hand, the workmen claim the amount on the basis of persons, who are similarly placed. It is to be pointed out that the right of the workmen to such a scale of pay on par with persons, who are alleged to be similarly placed, has not been adjudicated by any forum. That being the case, there being no pre-existing right, which has been adjudicated on the basis of which the workmen would be entitled to the aforesaid amount, the allowing of the claim petitions filed by the workmen is wholly contrary to the scheme



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of Section 33-C (2), which fact has not been properly appreciated by the Court below, while allowing the claim petitions. If at all the workmen are aggrieved by the wrong fixation of scale of pay, they have to have their grievances ventilated in accordance with law and resorting to the procedure contemplated under Section 33-C (2) is impermissible. Therefore, necessarily, the orders impugned herein deserves to be set aside.

10. Accordingly, for the reasons aforesaid, the writ petitions are allowed setting aside the orders impugned herein. However, liberty is granted to the workmen in respective writ petitions to work out the remedy in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

04.8.2023

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

To

The Presiding Officer,
Labour Court, Salem.

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