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W.P.No.19801 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

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

W.P.No.19801 of 2023
and
WMP.No.19118 of 2023

The Management,
Villupuram Varthaga Sangam,
Rep. By its Secretary,
N.P.Premnath,

Previously having office at:
No.12, Kandhasamy Layout,
First Street, Villupuram – 605 602.

Now Having office at:
No.134, Super Bazzar,
MG Road, Villupuram – 605 602.

...Petitioner

Vs.

The President,
Villupuram Mavatta Sumai Pani Thozilalargal Sangam,
Regn. No.131/VPM,
No.3, Ramsan Building,
East Pondy Road, Villupuram – 605 602.

...Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the Impugned Award dated 16.02.2023 passed in O.P.No.1 of 2020 on the file of the Industrial Tribunal, Tamil Nadu, Chennai, quash the same.

For Petitioner : Mr.S.Sriram



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ORDER

Challenging the impugned Award dated 16.02.2023 passed in O.P.No.1 of 2020 on the file of the Industrial Tribunal, Tamil Nadu, Chennai, the Petitioner-Management has come up with this Writ Petition.

2. The case of the petitioner is that, pursuant to the order of this Court dated 13.06.2019 made in W.P.No.3356 of 2013 filed by the respondent, challenging the order of the Labour Officer, Cuddalore dated 27.09.2012 bearing Na.Ka.No.266/2012, the dispute in respect of fixation of wages, was referred by the Government, vide G.O.(D).No.665, Labour and Employment Department (B2) dated 22.11.2019 and the Industrial Tribunal took the said dispute in O.P.No.1 of 2020 and the claim petition was allowed, vide order dated 16.02.2023 and revised the wages. Challenging the same, the petitioner has come up with this Writ petition.

3. Learned counsel for the Petitioner contended that the Industrial Tribunal erred in rendering a finding that there exists an employer-employee relationship between the Petitioner Management and the members of the Respondent union, however, there is no such relationship and the claim made by the respondent union is totally misconceived and the same cannot be sustained. Further, every year, the wages have been raised by the petitioner management and further, the petitioner



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management cannot be compared with the other Managements. He further submitted that, already the petitioner management obtained injunction as against some of the members of the respondent union and when the same is in force, without considering the same, the Tribunal entertained the claim for revision of wages in the petition filed by the respondent union which is not sustainable and the Labour Court without jurisdiction has revised the wages, which cannot be permitted and the same is liable to be set aside.

4. Heard the learned counsel for the Petitioner management and perused the materials available on record.

5. It is seen that pursuant to the order of interim injunction obtained by the petitioner in O.S.No.383/2010 on the file of the Principal District Munsif, Villupuram, as the members of the respondent union were restrained and the conciliation proceedings ended in a failure report, the respondent herein filed W.P.No.3356 of 2013, challenging the order passed by the Labour Officer, Cuddalore and to initiate conciliation proceedings for fixation of wages based on their Petition and in case of no settlement being arrived at, to submit a Report before the Government for reference of the dispute to the Industrial Tribunal for adjudication. The said Writ Petition was allowed by an order dated 13.06.2019



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with a direction to the Government to refer the dispute to the Industrial Tribunal.

Thereafter, the Industrial Tribunal, Tamil Nadu, Chennai took up the dispute for adjudication in O.P.No.1 of 2020 and by an Award dated 16.02.2023, allowed the Claim Petition and revised the wages by enhancing the same by 50% based on the documentary evidence vide Ex.W12.

6. On one hand, the respondent union claim that the wages was not revised for the past 9 to 10 years, whereas the petitioner claim that every year the wages was revised, however, on perusal of the impugned order it is evident that, no documents were produced by the petitioner management before the Tribunal to substantiate the same. Undoubtedly, wages are paid only on work done basis. Taking note of the fact that the workers are working in an unorganized sector, where there may or may not be records maintained regarding the work done by them, the Tribunal has rightly held that the revised wages be implemented prospectively from the date of the Award, in order to avoid confusion and further litigations. This Court is of the view that the claim of the workers in seeking wage revision is justified.

7. Further, another major contention raised by the petitioner is that, there is no employer-employee relationship between the petitioner management and the



respondent union. However, a perusal of the order of the Tribunal reveals that an exhaustive consideration on the said aspect has been made by the Tribunal to arrive at a conclusion that the members of the respondent union are employed by the petitioner management on daily wages as loadmen and they are coming under the definition of workman as defined u/s 2 (s) of the Industrial Disputes Act, 1947. For better appreciation, the relevant section is as follows:-

“2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,---

(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

A careful perusal of the above provision reveals that the work rendered by the members of the respondent union clearly falls within the purview of the definition of Section 2(s) and, therefore, the members of the respondent Union would squarely be termed to be workman within the provisions of the ID Act. The above aspect has been appreciated in proper perspective by the Tribunal and this Court does not find any perversity in the order passed by the Labour Court.



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8. For the reasons aforesaid, this Writ Petition stands dismissed. No costs.

Consequently, connected Miscellaneous petition is closed.

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

To

The President,
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