



W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

M/s.Jyothy Laboratories Limited
Represented by its
Chairman – cum – Managing Director
... Petitioner in W.P.8323/2016

Vs.

1.Appellate Authority under the TNSE Act
Deputy Commissioner of Labour (MW)
Chennai – 600 006.

2.Henkel Marketing India Limited
Represented by its Manager (Finance)

3.Henkel India Limited
Represented by its Manager (Finance)

4.Henkal AG & Co KGaA
Represented by
Chairwoman of Supervisory Board

5.D.Vijayalayan ... Respondents in W.P.8323/2016

Prayer in W.P.No.8323 of 2016:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records connected with T.N.S.E. Appeal. No.14 of 2012 on the file of the first respondent and quash the order dated 16.12.2015.



WEB COPY



W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

For Petitioner : Mr.John Zachariah
for M/s.Fox Mandal and Associates

For Respondents : Mr.P.R.Thiruneelakandan
for R5 in W.Ps.8323 to 8326 &
8337 to 8340 of 2016
for R4 in W.Ps.8327 to 8336,
8341 to 8344 of 2016,
30373 & 30380 of 2018
No Appearance for R1
in W.Ps.30373 & 30380 of 2018

COMMON ORDER

Since the issue involved in these writ petitions are one and the same, they are heard together and disposed of by way of a common order.

2.The case of the petitioner is that M/s.Henkel India Limited was a Company incorporated under the Companies Act, 1956, wherein majority of the shares were held by M/s.Henkal AG & Co KgaA, Germany. M/s.Henkal AG & Co KgaA, Germany transferred 50.9% of its stake in the petitioner Company and transfer of such shares was completed in the year 2011. Thereafter, the name of M/s.Henkel India Limited was changed to Jyothy Consumer Products Limited with effect from 24.08.2012 and pursuant to that a scheme of amalgamation was



W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

sanctioned by the Bombay High Court and M/s.Jyothy Consumer Products Limited was amalgamated with the petitioner Company on and from 12.04.2013.

3.The further case of the petitioner is that the contesting respondents were working at the corporate office of M/s.Henkel India Limited at Chennai. Consequent to the purchase of the shares by the petitioner Company from M/s.Henkel India Limited at Chennai, the petitioner Company closed the corporate office and shifted the operations to Bangalore. Therefore, the contesting respondents were given three months pay in lieu of notice and were ceased to be employee of the petitioner Company. Besides three months pay, they were also given ex-gratia amount, however, the contesting respondents without accepting the same, filed appeals before the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW) under Section 41 of the Tamil Nadu Shops and Establishments Act.

4.The further case of the petitioner is that during the pendency of the appeals, the contesting respondents filed interlocutory



W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

applications seeking to amend the prayer in the appeals. By the amendment, the contesting respondents sought to settle their account in terms of settlement made in Karaikal unit and the said interlocutory petitions were allowed by the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW). Thereafter, the Appellate Authority allowed the appeals filed by the contesting respondents by holding that the contesting respondents could claim compensation under Chapter V – A of the Industrial Disputes Act and directed the petitioner to pay the retrenchment compensation to them with interest at the rate of 12% per annum from the date of termination till the date of payment. Aggrieved by the same, the petitioner has filed these writ petitions.

5.The learned counsel appearing for the petitioner submitted that once the contesting respondents filed appeals under Section 41 of the Tamil Nadu Shops and Establishments Act, they are not entitled to amend the prayer and seek relief under the Industrial Disputes Act since the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW) has no power to decide the issue in terms of Central Act namely, The Industrial Disputes Act. However, in the present case, the Appellate Authority under the TNSE Act Deputy



W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

Commissioner of Labour (MW) passed award in terms of Section 25 F of the Industrial Disputes Act based on the settlement under Section 18(1) of the Industrial Disputes Act arrived at inbetween the petitioner and the employees working at Karaikal unit, which is not sustainable one, because the contesting respondents were not working at the Karaikal unit and they were working at the corporate office of M/s.Henkel India Limited at Chennai.

6.The learned counsel appearing for the petitioner further submitted that the contesting respondents were working in the promoted cadre as Managers and not as workmen at the time of termination and hence, they are not entitled to raise dispute under the Industrial Disputes Act and the said fact was not properly considered by the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW) while passing award.

7.The learned counsel appearing for the contesting respondents submitted that the contesting respondents were initially employed in the lower cadre in the Karaikal unit and subsequently they were given promotion and were transferred to the corporate office of M/s.Henkel



W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

India Limited at Chennai. The said fact was rightly considered by the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW) and award was passed in terms of the Industrial Disputes Act based on the settlement under Section 18(1) of the Industrial Disputes Act arrived at inbetween the petitioner and the employees working at Karaikal unit.

8.The learned counsel appearing for the contesting respondents further submitted that the contesting respondents are entitled to raise claim before the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW) in terms of the Industrial Disputes Act and further submitted that the said issue was elaborately considered by the Hon'ble Apex Court in the decision reported in ***AIR 1987 SC 1960 (Krishna District Co-Operative Marketing Society Limited, Vijayawada Versus N.V.Purnachandra Rao and Others)***, wherein, the Hon'ble Apex Court has held that if the employees are "workmen" and the management is an "industry" as defined in the Central Act and the action taken by the management amounts to "retrenchment" then the rights and liabilities of the parties are governed by the provisions of Chapter V-A of the Central Act and the said rights and liabilities may



W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

be adjudicated upon and enforced in proceedings before the authorities under Section 41(1) and Section 41(3) of the State Act. In view of such decision, the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW) exercised its power and passed award in favour of the contesting respondents which cannot be interfered with.

9.The learned counsel appearing for the contesting respondents further submitted that before the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW), there was discussion with regard to the payment of compensation based on the settlement under Section 18(1) of the Industrial Disputes Act arrived at inbetween the petitioner and the employees working at Karaikal unit and the petitioner agreed to pay 65 days salary for every completed years of service as compensation to the contesting respondents, whereas, the compensation given to the employees working at Karaikal unit was 90 days salary for every completed years of service. Hence, this Court may fix fair compensation instead of 65 days or 90 days.

10.Heard the arguments advanced on either side and perused



W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

WEB COPY

the materials available on record.

11.Admittedly the contesting respondents were initially employed in the lower cadre in the Karaikal unit and subsequently they were given promotion and were transferred to the corporate office of M/s.Henkel India Limited at Chennai and consequent to the purchase of its shares by the petitioner Company, the petitioner Company closed the corporate office and shifted the operations to Bangalore. Therefore, the contesting respondents were given three months pay in lieu of notice and were ceased to be employee of the petitioner Company.

12.Besides three months pay, the contesting respondents were also given ex-gratia amount, however, the contesting respondents without accepting the same, filed appeals before the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW) under Section 41 of the Tamil Nadu Shops and Establishments Act. During the pendency of the appeals, the contesting respondents filed interlocutory applications seeking to amend the prayer in the appeals. By the amendment, the contesting respondents sought to settle their



W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

WEB COPY

account in terms of settlement made in Karaikal unit and the said interlocutory petitions were allowed by the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW). Thereafter, the Appellate Authority allowed the appeals filed by the contesting respondents.

13.This Court finds considerable force in the submission made by the learned counsel appearing for the petitioner that the contesting respondents were working in the promoted cadre as Managers and not as workmen at the time of termination and hence, they are not entitled to raise dispute under the Industrial Disputes Act and the said fact was not properly considered by the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW) while passing award.

14.However, the contesting respondents claim that they are workmen. The factual aspects were rightly considered by the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW) and award was passed in favour of the contesting respondents in terms of the Industrial Disputes Act based on the settlement under Section 18(1) of the Industrial Disputes Act arrived



W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

at inbetween the petitioner and the employees working at Karaikal unit.

15.This Court can very well set aside the award impugned in these writ petitions and remand the matter back to the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW) for fresh consideration. However, after a lapse of several years, this Court is not inclined to remand the matter back for fresh adjudication. Instead, this Court is inclined to award fair compensation to the contesting respondents.

16.It is the contention of the learned counsel appearing for the contesting respondents that before the Appellate Authority under the TNSE Act Deputy Commissioner of Labour (MW), the petitioner has agreed to pay 65 days salary for every completed years of service as compensation to the contesting respondents. However, the compensation given to the employees working at Karaikal unit was 90 days salary for every completed years of service.

17.In view of the above, this Court directs the petitioner to pay



W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

WEB COPY

70 days salary for every completed years of service as compensation to the contesting respondents. The petitioner shall calculate the amount payable to the contesting respondents and shall pay the same to the contesting respondents, within a period of eight weeks from the date of receipt of a copy of this order, failing which, the petitioner shall pay the compensation awarded by this Court with 6% interest per annum from the date of termination till the date of payment. However, this order will not prevent the contesting respondents from getting the gratuity amount due to them from the petitioner.

18. These writ petitions are accordingly disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

19.07.2023

pri

Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1. Appellate Authority under the TNSE Act
Deputy Commissioner of Labour (MW)
Chennai – 600 006.

11/12



WEB COPY



W.P.Nos.8323 to 8344 of 2016, 30373 and 30380 of 2018

M.DHANDAPANI,J.
pri

**W.P.Nos.8323 to 8344 of 2016,
30373 and 30380 of 2018**

19.07.2023