



W.P. No.20445 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.20445 of 2023 &
W.M.P. No.19839 of 2023

The Management of MRF Limited
Represented by its Managing Director
P.B. No.5285, Thiruvottiyur
Chennai 600 019

...Petitioner

Vs.

M. Madhan

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the Industrial Tribunal, Chennai and to quash the impugned order dated 03.12.2021 made in I.A. No.20 of 2019 in A.P. No.84 of 2016 and to direct the Industrial Tribunal to decide the approval Petition in A.P.No.84 of 2016 on merits and in accordance with law.

For Petitioner	:	Mr.M.Vijayan for King and Patridge
For Respondent	:	Mr. V. Prakash, Senior Counsel Assisted by Mr.T.Ramkumar



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ORDER

The petitioner Company has challenged the impugned order dated 03.12.2021 of the Industrial Tribunal, Chennai, made in I.A. No.20 of 2019 in A.P. No.84 of 2016.

2. Quickly into the facts of the case.

2.1. The petitioner Company M/s. MRF Limited is registered under the Indian Companies Act 1956 with the factory in Tiruvottiyur and engaged in manufacture of tyres. The respondent Madhan joined as an apprentice in the petitioner Company on 11.06.2008 and got confirmed in service on 11.06.2011 as a workman in the Engineering Department. He is reportedly an alcoholic and used to attend office in an inebriated condition due to which he was warned on many occasions and later issued with show cause on 29.04.2016. This show cause was due to his act of misconduct on 28.04.2016 after coming drunk for duty at 11 p.m. in the night shift. When he was asked to go for a medical check up by his superior he left the office without any notice or authorisation



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thereby disobeying his superior's order. A domestic enquiry was conducted after his reply to the show cause was found unsatisfactory. The enquiry took place between 13.06.2016 to 13.08.2016 and finally he was dismissed from service on 30.09.2016. An approval petition was also filed in the Industrial Tribunal as mandated under Section 33(2) (b) of the Industrial Disputes Act, 1947 (herein after referred to as "the Act"). One month's wages of Rs.18,051.70 was also paid to the delinquent employee, the respondent, on the same day i.e. 30.09.2016 as mandated in the relevant provisions of the Industrial Disputes Act. However, the respondent, in I.A. No.20 of 2019 contended that he was not paid the wages for one month as defined under the Industrial Disputes Act and therefore the petitioner Company had not complied with the proviso to Section 33(2) (b) of the Act. His actual wages worked out to Rs.26,145/- whereas he was paid only Rs.18,051-70. The petitioner Company contended that wages as defined under Section 2(rr) of the Act, means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to workman in respect of his employment, or of work



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done in such employment and includes (i) such allowances (including dearness allowance) as the workmen is for the time being entitled to; (ii) the value of any house accommodation, or supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles; (iii) any travelling concession; (iv) any concession payable on the promotion of sales or business or both. Thus the petitioner Company held on to its opinion that whatever was paid was one month wages.

2.2. The Industrial Tribunal after analysing the arguments on both sides concluded that approval petition is devoid of merits as four allowances, viz., incentive, second shift allowance, night shift allowance and CLRI earnings, were not paid to the respondent thereby not abiding by the proviso to Section 33(2) (b) of the Act. The Tribunal made a comparison with the salary slips of March and April 2016.

3. Mr.M.Vijayan, learned counsel for the petitioner Company would contend that notional wages for a particular month may not be a



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repeat of the wages paid during the previous months and that the allowances not paid were not routine ones to be paid irrespective of the nature of assignment allocated to the respondent and therefore the Industrial Tribunal had erred in dismissing the A.P. No.84 of 2016 merely based on the earlier months' salary slips. His further contention was that even assuming that there was a shortfall in the amount of wages paid for the month of September 2016, the Tribunal ought to have disposed the I.A. No.20/2019 without rejecting the main petition A.P. 84/2016. Furthermore, he contended that the Tribunal took more than three years to dispose of the A.P.84/2016 when the Industrial Disputes Act clearly stipulates time limit of 3 months for disposal. According to him such inordinate delay coupled with unreasonable rejection of the main approval petition have cost the petitioner Company very dearly. He prayed for setting aside the impugned order.

4. Per contra Mr. V. Prakash, learned Senior Counsel, assisted by Mr.T.Ramkumar, learned counsel for the respondent contended that the Writ of Certiorari is supervisory in nature and since



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the impugned order is not perverse, the jurisdiction of this Court is limited. Moreover, he also added that wherever two views are possible the one which is favourable to the employee has to be taken and this Court cannot invoke the jurisdiction of Article 226 of Constitution. Therefore, he argued that the Writ Petition is liable to be dismissed.

5. There are two important aspects to this case. They are,

- (a) Whether the full one month's wages was paid to the respondent on his dismissal.
- (b) Whether the delay in disposal of the Approval Petition by five years is acceptable and is within the provisions of the Industrial Disputes Act.

6. In order to exercise the powers of discharge or dismissal, the proviso to Section 33(2) (b) of the Act requires two conditions to be fulfilled.

- a) The concerned workman should be paid wages for one month. It is intended to "soften the rigour of unemployment that will face the



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- b) The employer must make an application before the appropriate authority for approval of the action taken by the employer.

7. Before going into the aspect of whether the wages paid constituted the full month's wages, it is important to go into the application made to the appropriate authority for approval of the action taken by the employer.

8. The principles to be considered by the Tribunal before granting or refusing approval under Section 33(2) (b) of the Act, are to observe;

- a) Whether the standing orders justify orders of dismissal.
- b) Whether the enquiry has been held as prescribed by standing orders and,
- c) whether the conditions laid down in the proviso of Section 33(2)(b) of the Act are fulfilled.



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9. In the instant case the Tribunal has not dealt with the aspects (a) and (b) mentioned above. It has focussed on the quantum of one month's wages paid only.

10. The issue now boils down to the quantum of one month's wages. The contention of the petitioner Company is that four allowances, viz, incentive, second shift allowance, night shift allowance and CLRI earnings are job specific and assignment specific and cannot be paid as a matter of routine. According to the petitioner Company incentive is payable to workmen involved in production work and that the respondent was not in production department. Second Shift allowance is applicable for workmen who perform their duty between 3 p.m. and 11 p.m. and that the respondent was not allocated the second shift. Night shift allowance is paid to those workmen who perform duty during night shift and that the respondent has not performed this duty. CLRI is the abbreviation for Cleaning, Lubricating, Retightening and Inspection. The respondent was not assigned this task and hence was not paid this allowance.



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11. However, the Tribunal perused the salary slips of March and April 2016 of the respondent which were produced by the petitioner Company and found the payment of all the four allowances in earlier months as described above. Based on these salary slips the Tribunal concluded that "it is of the firm view that the Management tried to suppress the material documents which is in their custody to elicit the facts in a proper manner".

12. In ***Bharat Electronics Limited vs. Industrial Tribunal, Karnataka, Bangalore and another*** (Civil Appeal No.744 of 1987) reported in ***(1990) 2 SCC 314***, the Apex Court observed thus:

"But at the same time it needs to be clarified that it is for the Management to establish, when questioned, that the sum paid to the workmen under Section 33(2) (b) of the Industrial Disputes Act, 1947, represented full wages of the month following the date of discharge or dismissal as conceived in the provisions".



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13. The learned counsel for the petitioner Company has relied on the decision in ***Bharat Electronics Limited vs. Industrial Tribunal, Karnataka, Bangalore and another*** (cited supra), in which it was held by the Apex Court that *"Now confluencing the two legal thoughts expressed in [Bennett Coleman & Co. \(P\) Ltd. v. Punya Priya Das Gupta](#), [1969] 2 SCC 1 and [Dilbagh RaiJarry v. Union of India & Ors.](#), [1974] 3 SCC 554 , the stream of thought which inevitably gurgles up is that an allowance which from the term of employment flows as not contingent on actual working is part of wages for the purposes of [section 33\(2\)\(b\)](#) but an allowance which is earnable only by active serving is not an allowance which will form part of wages, within the meaning of the said provision."* In this context, it can be deciphered that the respondent was paid the wages which he was entitled as not being contingent. But then about the interim relief of Rs.4,000/- paid to each and every employee from the date of order i.e, 12.08.2015 in I.A. No.52 of 2014 in I.D. No.8/2014 (in a wage revision matter which



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was finally adjudicated by the Tribunal on 12.03.2019), the petitioner Management on one side has confirmed that payment of Rs.4,000/- interim relief was paid to the respondent also from 12.08.2015 to 30.09.2016 but on the other it does not find a place in the break up of one month's wages paid. The petitioner Company had contended that interim relief amount does not form a part of the wages. Had the employee (respondent) continued in service he would have earned it till 12.03.2019 till the matter got finally adjudicated. This again lacks clarity as to whether Rs.4,000/- interim relief was paid to the respondent or not. The Tribunal also has not clarified on that aspect but instead concluded that it forms part of the monthly wages. However the Hon'ble Supreme Court in the decision in ***S.Ganapathy and others Vs. Air India and another*** reported in (1993) 3 SCC 429 has held that the the Tribunal can grant approval with a condition to pay the balance amount in the event of the one month wages paid was less than the actual wages payable to the employee.

14. The other contention of the learned counsel for the



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petitioner Company is regarding the inordinate delay in dealing with the Approval Petition. The proviso to Section 33(2) (b) of the Act, mandates that unless the workmen is paid wages for one month and an application as contemplated is made by the employer to the Tribunal for approval of his action, no such workmen can be discharged or dismissed. In ***Tata Iron & Steel Co, Ltd., vs. S.N. Modak*** reported in 1965 SCR (3) 425 a three Judge Bench of the Apex Court ruled that the order of discharge or dismissal is incomplete and inchoate until the approval is obtained and that the dismissal order could not terminate the relationship of employer and the employee, and if the approval is not accorded by the Tribunal, the employer would be bound to treat the workman as his employee and pay him all the wages for the period. In the instant case the I.A. 20/2019 was filed by the respondent as late as 05.08.2019 for the Approval Petition No.84/2016 filed on 03.10.2016 immediately after the dismissal order dated 30.09.2016. The matter has taken five long years to see the light of the day. Such inordinate delay on the part of the Tribunal defies logic and is viewed with disfavour. No explanation is also found in the order for the delay.



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16. The Tribunal has erred on the following counts.

- a) Inordinate delay of more than five years in deciding on the approval petition.
- b) Misinterpreting the components of the monthly wages paid to the respondent without understanding the amount payable was contingent or not.
- c) Not clarifying whether Rs.4,000/- as interim allowance was paid for September 2016 or not.



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- d) Concluding on the one month wages based on earlier months' pay slips.
- e) Not adverting its attention to the validity of the domestic enquiry.

17. Such glaring lapses coupled with the settled provision of law that the Tribunal can always apprise the petitioner with the condition that the one month wages be paid instead of rejecting the approval petition after five years as held in the case of ***S.Ganapathy and others Vs. Air India and another*** (cited supra).

18. In the result, the Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed. The impugned order dated 03.12.2021 made in I.A. No.20 of 2019 in A.P. No.84 of 2016, on the file of the Industrial Tribunal, Chennai, is set aside and the matter is remitted back to the Tribunal with a direction to dispose of A.P. No.84/2016 on merits within a period of three months from the date of receipt of a copy of this order.



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Index: Yes/No
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R. HEMALATHA, J.
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To
The Industrial Tribunal, Chennai

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