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W.A. No.1318 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN
and

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

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- 1.Kondan
- 2.P.Sengottuvelu
- 3.O.Murugan
- 4.R.Kandhan
- 5.K.Muthaan
- 6.M.Muniyan
- 7.M.Sengodan
- 8.M.Nallamuthu
- 9.Kanthasamy
- 10.C.Pachiappan
- 11.K.Arumugam
- 12.R.Velayutham
- 13.S.Giri
- 14.N.Ganesan
- 15.Palaniappan
- 16.R.Raju
- 17.P.Kuppusamy
- 18.Kumaraguru
- 19.C.Thangavel
- 20.Palaniappan

... Appellants

[Name of the appellants 1, 2, 16 & 17 corrected as per
order of this Court made in CMP.No.2845 of 2023
in W.A.No.1318 of 2022 dated 15.02.2023]

Versus



W.A. No.1318 of 2022

1. The Presiding Officer,
Central Government Labour Court,
Chennai – 600 006.

2. The Management of Chemplast,
Sanmar Ltd., Plant-III,
Rep. by its
General Manager, Secretarial,
Raman Nagar & Legal
Ram Nagar, Mettur Dam,
Salem District, Pin-637 403.

... Respondents

[Cause-title accepted vide court order
dated 27.04.2022 made in C.M.P.No.7144/2022
in W.A.SR.No.89438/2021]

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent to set
aside the order made in W.P.No.20219 of 2004 dated 11.02.2021.

For Appellants : Mr.S.Ayyathurai

For R-2 : Mr.S.Ravindran, Senior Counsel
for M/s.Sai Raaj Associates

R-1 : Labour Court

J U D G M E N T

(Judgment of the Court was delivered by S.VAIDYANATHAN, J.)

The present appeal has been preferred by the workmen of the
Management of Chemplast Sanmar Limited, questioning the order of the
learned Single Judge dated 11.02.2021 in W.P.No.20219 of 2004, setting
aside the order of the Labour Court in C.P.Nos.44 to 67 and 73 to 77 of
1999 dated 05.04.2004.



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2. The facts not in dispute are that the employees concerned are working in Limestone Mines under the second respondent Management and the employer has offered Voluntary Retirement Scheme and Special Gratuity Scheme on 10.07.1994 fixing the last date for submitting the application on 25.07.1994. Some of the workers have accepted the scheme benefit and left the service. The Management had decided to close down their Limestone Mines at Sowdapuram permanently and accordingly an application in Form “OA” had been submitted to Government of India on 03.09.1994 for obtaining permission for closure of Mines under Section 25(O) of the Industrial Disputes Act, 1947. On 04.11.1994, the Central Government has granted permission to close down the Limestone Mines. The said order of closure was challenged by the Union by way of Writ Petition in W.P.No.18719 of 1994.

3. During the pendency of the Writ Petition, some of the employees have been extended the benefit of Voluntary Retirement Scheme. The said employees submitted their Voluntary Retirement/resignation on 11.11.1994 and the same was accepted in terms of the scheme and monetary benefits have been extended to those employees. Thereafter,



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the remaining employees pursued the writ petition. This Court, by order dated 11.06.1998, allowed the writ petition. Aggrieved by the said order, the Management had preferred appeals in W.A.Nos.788 and 789 of 1998. During the pendency of the Writ Appeals, there was a settlement entered between the workmen concerned in those cases and compensation was paid.

4. Coming to the present case on hand, the appellants/employees are demanding the benefits of higher compensation, as extended to the other employees. The Labour Court taking note of the fact that there was a promise by the husband of P.W.2 (Mrs.Usha Stephen), the benefit of amount demanded by these employees to an extent of Rs.1,73,000/- need to be paid. The contention of the employer that there was no pre-existing right and that the employees have to get the issue adjudicated by raising an Industrial Dispute was brushed aside and the amount was determined by the Labour Court under the Computation Petition. The contention of the employer was accepted by the learned Single Judge in the Writ Petition and the award of the Labour Court was set aside. Aggrieved by the order of the learned Single Judge, the present appeal has been preferred.



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5. It has been contended by Mr.Ayyathurai, learned counsel appearing for the petitioners/workmen that some of the employees have been granted the benefit to an extent of Rs.1,73,000/- and that the amount paid under the head V.R.S. need to be taken as closure compensation. There cannot be any discrimination among the employees and that the action of the employer amounts to victimisation. When the Labour Court having accepted the evidence of P.W.1 and P.W.2 and determined the amount, the learned Single Judge ought not to have interfered with the finding of the Labour Court in awarding compensation by means of determination under Section 33-C(2) of the Industrial Dispute Act, 1947.

6. Mr.Ravindran, learned Senior Counsel appearing for the second respondent/Management would submit that there are different set of employees, who left the company, all of them including the workmen in this case have accepted the compensation. Some of them have accepted Voluntary Retirement Scheme and those, who have litigated have accepted the monetary benefit, which includes the terminal benefits totalling a sum of Rs.1,73,000/-. He would further submit that there is no pre-existing right and that computation petition itself is not maintainable



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and that these employees have accepted the money as has been paid.

Others cannot come forward to demand compensation by means of computation petition on the score that 22 employees, who are concerned in W.A.Nos.788 and 789 of 1998, have been paid.

7. A cursory glance on the facts of the case would reveal that the permission to close down the Mines was granted on 04.11.1994. Some of the employees have submitted V.R.S. after the date of closure on 11.11.1994. The learned counsel appearing for the petitioners/employees would contend that the employees concerned in W.A.Nos.788 and 789 of 1998, who have been extended the monetary benefits, cannot be construed as a settlement. When such contention is raised, there cannot be any pre-existing right as there is no settlement at all. Even assuming for the sake of argument that it is a settlement, it binds only those persons, who are parties to the same in terms of Section 18(1) of Industrial Disputes Act, 1947. That apart, the management instead of granting closure compensation as per Section 25(O) of the Industrial Disputes Act, 1947, had paid an extra amount falling under VRS scheme. The employees concerned in this appeal having accepted the benefit of Voluntary Retirement Scheme amount, now cannot contend that it should



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be treated as closure compensation. In any event there is no pre-existing right in the present case on hand unless there is a pre-existing right, the application under Section 33-C(2) is not maintainable. While the fact is that right conferred to get compensation is not pre-existing right, the order of the learned Single Judge in setting aside the order of Labour Court is perfectly justified.

8. The learned Single Judge has also analysed the evidence of P.W.1 and it is stated that he was not at all present in the meeting where promise is said to have been made by the husband of P.W.2 and that he has no knowledge. There is also no evidence by P.W.2 to show that the promise was made to the workmen after the meeting. It is stated that even though meeting is said to have been taken place in July 1994, there was no meeting held on November 1994 at Yercaud. In any event, the points raised by the appellants/workmen are disputed question of fact, which cannot be gone into by the Labour Court.

9. It is no doubt true that the Labour Court under Section 33-C(2) of the Industrial Disputes Act, 1947 is entitled to go into the incidental question, decide and determine the amount provided there exists a



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pre-existing right. In the absence of the same, in the present case on hand, we are of the view that the order of the learned Single Judge in setting aside the order of the Labour Court in C.P.Nos.44 to 67 and 73 to 77 dated 05.04.2004 is perfectly in order and we find no reason to interfere with the same.

10. Accordingly, the Writ Appeal is dismissed. No Costs.

(S.V.N., J) (R.K.M., J)

15.02.2023

(2/2)

Index:Yes/No

Speaking order/Non-speaking order
rsi

To

The Presiding Officer,
Central Government Labour Court,
Chennai – 600 006.



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**S.VAIDYANATHAN, J.
and
R.KALAIMATHI, J.**

rsi

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