



W.P.No.30110 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

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

W.P.No.30110 of 2017

and

WMP.No.32697 of 2017

The Chennai Port Trust,
Rep. by its Chairman,
No.1, Rajaji Salai,
Chennai – 600 001.

...Petitioner

Vs.

1. Madras Port and Dock Employees Union,
Represented by its General Secretary,
No.55, Old No.26, Moore Street, 1st Floor,
Mannadi, Chennai – 600 001.
2. The Presiding Officer,
The Central Government Industrial
Tribunal-cum-Labour Court,
Chennai – 6.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 2nd Respondent pertaining to Award dated 04.07.2016 in I.D.No.43/2015 and quash the same.



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W.P.No.30110 of 2017

For Petitioner : M/s.Harshini Jothiraman

For Respondents : No Appearance, for R1

ORDER

This Writ Petition has been filed by the Management / Chennai Port Trust as against the award dated 04.07.2016 made in I.D.No.43 of 2015 wherein the 2nd respondent / Labour Court has directed the Management to restore the benefit of allowance by way of overtime to the employees covered under the terms of settlements entered under Section 18(1) of the Industrial Disputes Act (hereinafter referred to as 'the Act') on 21.10.1992, 08.03.2001 and 19.03.2001 within a month of the publication of the award and had directed the Management Trust to restore the benefit of allowance by way of overtime to the technicians in the Diesel Loco Service Station at Marshalling Yard, within a month of the publication of the award.

2. The learned counsel for the petitioner challenges the award on the ground that the Labour Court has not considered the settlements dated 21.10.1992, 08.03.2001 and 19.03.2001 which clearly state that overtime charges are paid to the marine crew only subject to conditions including that



W.P.No.30110 of 2017

they worked beyond the hours of shift. The Labour Court has erroneously come to the conclusion that the overtime charges is not paid only for the persons who worked overtime but for all persons even those who worked only eight hours which is within the regular shift working time. He further submitted that the evidence produced by the petitioner Management was not at all considered by the Labour Court. The Labour Court has failed to note that overtime charges has to be paid only on the need basis and not as a part of the service conditions. The learned counsel further submits that the petitioner management, at present is facing financial crunch and it would be detrimental for them to implement the impugned award dated 04.07.2016 and hence, he seeks indulgence of this Court to set aside the impugned award.

3. The learned counsel for the 1st respondent Union submits that the members of the respondent Union undertakes hazardous nature of work and they have been paid monthly special allowance from the year 1997 onwards. Subsequently, there has been number of settlements under Section 18(1) of the Act between the Management and the respondent Union fixing the service conditions from time to time wherein the overtime allowances was



W.P.No.30110 of 2017

also provided. In the settlement dated 08.03.2001, two hours overtime was extended to the workmen with effect from 19.02.2000. However, on 20.03.2013, the Management issued notice proposing to terminate the settlements dated 21.10.1992, 08.03.2001 and 19.03.2001, against which, a strike notice was issued and the conciliation was initiated by the Labour Commissioner which ended in failure. Thereafter, the Management had discontinued the allowance by way of overtime pursuant to the settlements stated above. Aggrieved by the same, the respondent Union approached the Labour Court. Before the Labour Court, the Union has examined two witnesses and marked several documents substantiating the demands for overtime charges. The Labour Court after considering the materials placed before it had come to the conclusion that the payment received by the workmen was a privilege enjoyed by them and it was in the nature of allowance and not overtime payment and that the Management was not justified in discontinuing the payment of the amount in question without notice under Section 9A of the Act. Therefore, the Labour Court restored the said benefit to the concerned workmen by the impugned award. Accordingly, since the impugned award was passed after duly considering the materials placed before the Labour Court, the same is liable to be



W.P.No.30110 of 2017

sustained. For the aforesaid reasons, the respondent Union seeks for dismissal of the Writ Petition.

4. Heard learned counsel appearing for both sides and perused the materials placed before this Court.

5. It is true that overtime charges ought to be paid to the workmen who worked for more than eight hours over and above the regular shift. However, the service conditions as laid down by the settlements dated 21.10.1992, 08.03.2001 and 19.03.2001 has not anywhere stated that the overtime charges have to be paid to the workmen who do not work beyond eight hours also and that they are entitled for the same even if they worked on that day during normal shift hours. Precisely, the Labour Court has passed the impugned award on these lines. The said reasoning of the Labour Court is contrary to the terms of settlement between the parties as well as the evidence adduced by the parties before the Labour Court. Accordingly, this Court is of the view that the Labour Court has misinterpreted the nature of overtime charges to be paid under the various settlements entered in to between the Management and the respondent Union and hence, this Court is



W.P.No.30110 of 2017

of the considered view that the award of the Labour Court is perverse and the same is set aside. The petitioner management is directed to pay overtime charges only for the workmen who worked beyond the normal shift of eight hours and not to all those who worked on that day during normal shift hours. It is made clear that the petitioner shall implement the settlements entered into between the parties dated 21.10.1992, 08.03.2001 and 19.03.2001.

6. With the above clarification, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

11.09.2023

skt

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

To

The Presiding Officer,
The Central Government Industrial Tribunal
-cum-Labour Court,
Chennai – 6.

6/7



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W.P.No.30110 of 2017

M.DHANDAPANI, J.

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W.P.No.30110 of 2017
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