



W.P.No.4631 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.4631 of 2017

and W.M.P.No.4882 of 2018

1. The Zonal Manager,
Food Corporation of India,
No.2, Haddows Road,
Chennai-600 006.
2. The Senior Regional Manager,
Regional Office,
No.8, Sathyamurthy Road,
Chetput, Chennai-600 031.

.. Petitioners

Vs.

1. The Presiding Officer,
Central Government Industrial tribunal
Cum Labour Court,
Shastri Bhavan,
Chennai-600 006.
2. S.Jeevanandam,
- 3.D.Kannabiran,
- 4.P.Chelladurai,



W.P.No.4631 of 2017

5.T.Masilamani

6.B.Mastan,

7.K.L.Suriya Prakash,

8.S.L.Rasheed,

9.V.Damodaran (Deceased)

10. S.Jayakanthan (Deceased)

11.J.Chandran,

12.A.Thomas,

13.S.Durairaj,

14.S.Nagarajan (Deceased)

15.A.Anbudass

16. A.Md.Yousef Khan

17.V.Mariyappan (Deceased)

18.K.Abdul Jappar (Deceased)

19. S.Tirunavukkarasu

20. V.Vijayan

21.I.Chandrasekaran,

22.M.Narenderaraj,



W.P.No.4631 of 2017

23.K.Danapal,

24.M.Jayavelu (Deceased)

25.A.Venkatakrishnan,

26.K.Jeevanandam,

27.D.Revathi,

28.M.Subathra,

29.M.Pavithra,

(R27 to R29 substituted as the LR's of the deceased R9
vide order dated 10.10.2022 made in W.M.P.No.19856/2022)

30.N.Bharathi,

31.N.Ruckmani Ramya,

(R30 & R31 substituted as the LR's of the deceased R14
vide order dated 10.10.2022 made in W.M.P.No.19856/2022)

32.M.Padmavathy,

33.M.Sakthivel,

34.M.Dhandayudhapani,

(R32 to R34 substituted as the LR's of the deceased R17
vide order dated 10.10.2022 made in W.M.P.No.19856/2022)

35.A.Shanaz Begum,

36.A.Yasmeen Begum,

37.A.Hajira Begum,



W.P.No.4631 of 2017

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38.A.Shamshath Begum,

39.A.Sirajudeen,

40.A.J.Riyazudeen,

(R35 to R40 substituted as the LR's of the deceased R18
vide order dated 10.10.2022 made in W.M.P.No.19856/2022)

41.J.Suguna Devi,

42.R.Suriyakala,

43.J.Mageswaran,

(R41 to R43 substituted as the LR's of the deceased R24
vide order dated 10.10.2022 made in W.M.P.No.19856/2022)

44.J.Rekha

(R44 substituted as the LR's of the deceased R10
vide order dated 28.06.2023 made in W.M.P.No.33639/2022)

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other Writ, Order or direction of like nature calling for the records of the first respondent namely the Presiding Officer Central Govt. Industrial Tribunal Cum Labour Court in C.p.No.1 of 2016 relating to order dated 09.12.2016 and to quash the same.

For petitioner : Mr.G.Rajagopalan, Senior Counsel
for Mr.M.Imthas.

For Respondents : Ms.G.Uma Maheswari
for R2 to R44



W.P.No.4631 of 2017

ORDER

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Assailing the order of the 1st respondent/the Presiding Officer, Central Govt.Industrial Tribunal Cum Labour Court in C.P.No.1 of 2016, the petitioner is before this Court.

2. It is the case of the petitioners that respondents 2 to 26/Workmen who were the employees of the Food Corporation of India at Chennai Port, filed a Computation Petition under Section 33(C)-2 of the Industrial Disputes Act 1947, before the Central Govt. Industrial Tribunal cum Labour Court, Chennai claiming arrears of synchronization allowance, which were paid by the petitioner corporation on the basis of the circular dated 18.11.1989. It is petition, the Labour Court has passed the present impugned award in favour of the workmen directing the petitioner corporation to pay the arrears of synchronization to the workmen. Challenging the same, the petitioners have come up with this Writ Petition.

3. Learned Senior counsel for the petitioner submitted that the workmen raised an Industrial Dispute under Section 33(C)-2 of the ID Act,



W.P.No.4631 of 2017

claiming arrears of synchronization allowance only on basis of the Award passed in favour of the workers of the Vizhakapattinam port which was upheld even by the High Court of Andhra Pradesh and obtained the present impugned award in their favour. However, the award passed under Section 33(C)-2 of the Act cannot be sustained in view of the fact that the workmen do not have any pre-existing right to claim the monetary benefit. However, in the present case, in the absence of any pre-existing right, the petition has been filed under Section 33(C)-2 of the Act pursuant to which, the award under challenge has come to be passed which is wholly contrary to the provisions of Section 33(C)-2. Hence, the award under challenge is liable to be set aside.

4. Learned counsel for the workmen submitted that there is an award in favour of the workers of Vizhakapattinam Port in I.T.I.D.No.1 of 1994 who are similarly situated persons like that of the workmen, wherein the Food Corporation of India was directed to pay 50% of the arrears of synchronization allowance to the workmen which was upheld even by the High Court of Andhra Pradesh, the benefit of which has been extended to



W.P.No.4631 of 2017

the workmen herein vide the present impugned award Section under 33(C)-2 of the Act in C.P.No.1 of 2016. Further, this Court has also granted liberty to the workmen in W.P.No.12238 of 2015 to workout their remedy under the Act and therefore the workmen are entitled for the aforesaid benefit under Section 33(C)-2 of the Act. Therefore, the award under challenge extending such benefit to the workmen cannot be said to unsustainable. Accordingly, he prays for dismissal of this Writ Petition.

5. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing on either side and perused the materials available on record.

6. Admittedly, there is an Award in favour of the workers of Vizhakapattinam Port on the basis of which, the present computation petition has been filed by the workmen under Section 33(C)-2 of the Act. However, it is the case of the petitioners that the petition filed under Section 33(C)-2 of the Act cannot be said to be maintained if there is no pre-existing right in favour of the workmen.



W.P.No.4631 of 2017

WEB COPY

7. For a better appreciation, Section 33(C)-2 of the Industrial

Disputes Act states that:-

Recovery of Money due from an employer:-

(i) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter V-A or Chapter V-B], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government is satisfied that any money is so due to him, and if the certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of Land revenue:

Provided that every such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may subject to as may be specified in this behalf by the appropriate Government [within a period not exceeding three months]



W.P.No.4631 of 2017

8. Even a bare reading of sub-section (2) to Section 33-C reveals that there should be Pre-existing right an entitlement for the workmen to receive from the employer any money or any benefit, which is capable of computation in terms of money. From the above, it transpires that there should be a pre-existing right in favour of the workmen, which alone would be the basis on which the workmen could file a petition u/s 33-C(2). The workmen have to establish such right so as to claim entitlement for receiving the said amount.

9. In the case of hand, the claim of the workmen is based on an award passed in favour of workers of the Vishakapatnam Unit. Merely because the employer is the same, viz., Food Corporation of India, it cannot be taken to mean that what is entitled for the workers at Vishakapatnam Unit would be eligible for the workers in the Chennai Unit as well. The workmen, if at all aggrieved over non-payment of any allowance to persons similarly placed like them, they have to file appropriate application before the Central Government seeking reference of the dispute for adjudication and subject to the outcome of the dispute, the workmen can thereafter, file



W.P.No.4631 of 2017

computation petition claiming monetary relief, if the dispute ends in their favour, which alone can be computed in terms of money, however, without there being any award, which confers certain benefit on the workmen, it is not open to the workmen to file a petition u/s 33-C(2) claiming benefit on the basis of similarly placed persons and claim that the same could be computed in terms of money. The Labour Court, without advertng to the above provision of law properly had passed the order, which cannot be sustained and the impugned award deserves to be set aside.

10. Accordingly, the impugned award is set aside and this Writ Petition is allowed. However, liberty is granted to respondents 2 to 26/workmen to make appropriate application before the Central Government within a period of two weeks from the date of receipt of a copy of this order and it is open to the Government to make reference before the Jurisdictional Labour Court. Upon receipt of such reference, if any, the labour court shall dispose of the same in terms of the order passed in W.P.No.12238 of 2018 within the period of twelve weeks thereafter.



W.P.No.4631 of 2017

11. This Writ Petition stands allowed in the above terms. There shall be no order as to costs. Consequently, the connected Miscellaneous Stands closed.

10.08.2023

Index : Yes / No
Internet : Yes / No
Speaking Order/Non-Speaking Order

NHS

To

The Presiding Officer,
Central Government Industrial tribunal
Cum Labour Court,
Shastri Bhavan,
Chennai-600 006.



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W.P.No.4631 of 2017

M.DHANDAPANI, J.

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W.P.No.4631 of 2017

10.08.2023