



W.P. Nos.14559/2017, Batch

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
28.08.2023 30.08.2023 12.09.2023 14.09.2023 20.09.2023	21.09.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.14559, 14560, 27170, 31901 & 32413 OF 2017

W.P. NOS. 12738, 17203, 14194 & 16882 OF 2018

AND

W.M.P. NOS.15784, 15785, 29026, 354047 & 35701 OF 2017

W.M.P. NOS. 14884 & 14926 OF 2018

W.P. No.14559 of 2017

The Coimbatore District Central
Co-operative Bank Ltd., rep. By its
General Manager – N.Kalaivanan
Coimbatore 641 018.

.. Petitioner

- Vs -

1. The Presiding Officer
Labour Court
Coimbatore.

2. P.Vivekanandan
3. C.N.Venugopal
4. A.Renganathan



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5. R.Narayanasamy
6. P.Rethinasamy
7. S.Chandramohan
8. R.Jeyalakshmi
9. R.Praveena
10. P.Sanmeshwaran
11. Papammal
12. K.Balasubramaniam
13. K.Sundaranathan
14. K.Subramaniam
15. K.Shanmugasundaram
16. K.Shanmugavelu
17. S.Dhandapani

.. Respondents

W.P. No.14560 of 2017

The Coimbatore District Central
Co-operative Bank Ltd., rep. By its
General Manager – N.Kalaivanan
Coimbatore 641 018.

.. Petitioner

- Vs -

1. The Presiding Officer
Labour Court
Coimbatore.

2. K.Angathal
3. P.Santhirasekaran
4. S.Sukumaran
5. N.Sundari
6. R.Rathabai
7. U.P.Natarajan
8. K.Pechiyanan
9. G.Palanisamy
10. A.Muthuswamy



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11. T.Murugesan
12. A.Siluvairathinam
13. A.Saraswathi
14. S.Sivaram
15. R.Shanmugasundaram
16. T.C.Subramaniam
17. K.Srimathi
18. S.Thoraisamy
19. V.K.Saraswathi
20. P.N.Ramanantham
21. M.Rathinam
22. S.Radhakrishnan
23. G.Radhakrishnan
24. R.J.P.Liyoraj
25. G.Loganathan
26. R.Lakshmikanthan
27. Karpagam
28. P.R.Gopalakrishnan
29. R.Ramanujam
30. P.Gunasekaran
31. V.R.Jeyalakshmi
32. R.C.Ganesamoorthy
33. M.Indiranai
34. N.Krishnasamy
35. K.M.Sheik Mohammed
36. M.P.Saraswathi
37. M.Balakrishnan
38. M.Muthu
39. A.Krishnasamy
40. M.Jeyaraj
41. P.Krishnasamy
42. M.Suresh Kumar
43. A.Balasubramanyam
44. S.Gopalakrishnan
45. R.Shenbaga Ponnammal
46. E.Pattiwaran



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47. M.Maniyammal

48. R.Loganathan

.. Respondents

W.P. NO.27170 OF 2017

The Management
Metropolitan Transport Corporation
Pallavan Salai, Pallavan Illam
Chennai 600 002.

.. Petitioner

- Vs -

1. S.Yogaraj
2. The Administrator
Tamil Nadu Transport Corporation
Employees' Provident Fund Trust
Pallavan Salai, Chennai 600 002.
3. The Presiding Officer
I Addl. Labour Court
Chennai.

.. Respondents

W.P. NO. 32413 OF 2017

The Management
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.
37, Mettupalayam Road
Coimbatore 641 043.

.. Petitioner

- Vs -

1. The Presiding Officer
Labour Court



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2. A.Mani

.. Respondents

W.P. NO. 12738 OF 2018

The Managing Director
State Express Transport Corporation
Tamil Nadu Ltd., Puducherry.

.. Petitioner

- Vs -

1. K.Sellappan

2. The Presiding Officer
The Industrial Tribunal-cum-
Labour Court, Puducherry.

.. Respondents

W.P. NO. 17203 OF 2018

The Management
M/s.Tamil Nadu State Transport Corporation
(Salem) Ltd.
12, Ramakrishna Road
Salem 636 007

.. Petitioner

- Vs -

1. N.Sarvaraju

2. The Labour Court
Salem.

.. Respondents

W.P. NO. 14194 OF 2018

The Management



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Vennandur Co-operative Primary
Agricultural & Rural Development Bank Ltd.
Rep. By its President, Vennandur 637 505
Rasipuram Taluk, Namakkal District.

.. Petitioner

- Vs -

1. The Presiding Officer
Labour Court, Coimbatore.

2. Sridharan

.. Respondents

W.P. NO. 16882 OF 2018

The Management
M/s.Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.
37, Mettupalayam Road
Coimbatore.

.. Petitioner

- Vs -

1. R.Rajapandian

2. The Presiding Officer
Labour Court, Coimbatore.

.. Respondents

W.P. No.31901 of 2017

The Management
Palace Nagar Co-operative
House Building Society Ltd.
Palace Towers, Cherry Road
Salem -1, rep. By its Administrator

.. Petitioner

- Vs -



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1. The Presiding Officer
Labour Court, Salem.

2. P.Raja Gounder

.. Respondents

W.P. No.14559 of 2017 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent in C.P. Nos.7/2012, 8/2012, 10/2012, 14/2012, 29/2012, 31/2012, 34/2012, 51/2012, 139/2012, 142/2012, 143/2012, 334/2012 and 335/2012, quash the common order dated 01.08.2016.

W.P. No.14560 of 2017 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent in C.P. Nos.3, 4, 5, 6, 9, 11, 12, 13, 15 to 28, 30, 32, 33, 35 to 39, 49, 50, 52 to 60, 138, 140 and 141 of 2012 and quash its common order dated 1.8.2016.

W.P. No.27170 of 2017 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 3rd respondent made in C.P. No.364/2015 dated 10.07.2017 and quash the same.



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WEB COPY W.P. No.32413 of 2017 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records relating to the order dated 4.7.2017 passed in Computation Petition No.360 of 2013 on the file of the Labour Court, Coimbatore and quash the same as being illegal, arbitrary and unconstitutional.

W.P. No.12738 of 2018 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to Award passed by the 2nd respondent in ID No.3 of 2015 dated 13.03.2018 and quash the same.

W.P. No.17203 of 2018 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the order dated 20.09.2017 passed by the 2nd respondent in C.P. No.49 of 2016 and quash the same.

W.P. No.14194 of 2018 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent in C.P. No.1 of 2013 dated 23.01.2018 and quash the same.

W.P. No.16882 of 2018 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records relating to order dated dated 24.10.2017 passed in C.P. No.63 of 2013 on the



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file of the 2nd respondent and quash the same as being illegal, arbitrary and unconstitutional.

W.P. No.31901 of 2017 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the order passed by the 1st respondent in C.P. No.13/2013 dated 02.08.2017 as illegal and as against the provisions of the Industrial Disputes Act, 1947 and quash the same.

For Petitioners : Mr. S.Ravindran, SC, for
M/s.Bazeer Ahamed in
WP 14559 & 14560/2017
Ms.S.Rajeni Ramdass in WP 27170/17
Mr. A.Sundaravadhanan in WP 32413/17 &
WP 16882/18
Mr. L.S.M.Hasan Faizal in WP 12738/18
Mr. R.Babu in WP 17203/18
Mr. M.S.Palanisamy in WP 14194/18
Mr. L.P.Shanmugasundaram in
WP 31901/2017

For Respondents : Mr. V.Ajay Khose for
Mr. C.Murugesan for RR-2 to 17 in
WP 14559 & 14560/2017
Mr. S.T.Varadharajulu for R-1
in WP 27170/2017
Mr. S.Kumar for R-2 in WP 14194/18
Mr. C.Murugan for R-1 in WP 16882/18
Mr. R.Diwakaran for R-2 in WP 31901/17

No Appearance for R-2 in WP 32413/2017



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No Appearance for R-1 in WP 12738/2018

No Appearance for R-1 in WP 17203/18

COMMON ORDER

The writ petitions, which were listed on different dates, were heard, separately, but as the question of law involved in all the writ petitions being common, relating to whether a retired employee could be treated as a workman for the purpose of a petition u/s 33-C (2) of the Industrial Disputes Act, on which basis the award had come to be passed, they are being dealt with and disposed of by this common order.

2. In all the petitions, the respective petitioners have assailed the award passed by the concerned Labour Court by holding that a retired employee would fall within the definition of “*workman*” u/s 2 (s) of the Industrial Disputes Act (for short ‘the Act’) and, therefore, is entitled to maintain a petition u/s 33-C (2) and based on the said finding, the Labour Court had ordered payment of the amount claimed by the respective workmen in the petition filed u/s 33-C (2) of the Act, which is assailed by the respective petitioners before this Court in the present writ petitions.



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3. For the sake of brevity, the respective respondents in the writ petitions will be referred to as workman and Labour Court.

FACTS IN W.P. NOS. 14559 & 14560 OF 2017

4. The petitioner is a co-operative bank, which employs various categories of staff, who do not fall under the definition of '*workman*' as defined u/s 2 (s) of the Act. However, the respondents in the writ petitions are '*workmen*' as defined u/s 2 (s) of the Act.

5. It is the further averment of the petitioner that a settlement u/s 12 (3) of the Act was entered into between the petitioner and the Employees Association in which clause 38 provided for grant of unearned leave to employees to be regulated with reference to Rules in force in case of Tamil Nadu State Government Employees after following procedure.

6. It is the further averment of the petitioner that G.O. Ms. No.488, Department of Finance (Pension) dated 12.8.1996 provided for encashment of



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unearned leave on private affair in respect of Government employees and in tune with the settlement dated 30.03.1979, to extend the benefit of the aforesaid Government Order, General Body Meeting of the Members of the petitioner was convened in which it was resolved to amend clause 8 (1) (c) of the Special Byelaw of the petitioner to avail encashment of earned leave at the time of superannuation. It is the further case of the petitioner that this amendment was registered on 25.5.2001 with the Deputy Registrar of Co-operative Societies, Coimbatore, but by letter dated 11.4.2002, the Registrar of Co-operative Societies directed the petitioner not to implement the above amendment and arrange for cancellation, since it was amended without approval. Pursuant to the above, in the Special General Body was convened on 15.7.2002 and the amendment was cancelled. However, O.S. No.830/02 was filed before the District Munsif Court-III, Coimbatore in which an order of status quo was passed in I.A. N.906/2002 which was not extended after 19.08.2002 and on 3.11.2010, the suit itself was dismissed for default.

7. It is the further case of the petitioner that thereafter on 31.7.2011, Special General Body Meeting was held and special byelaw amendment



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registered on 25.5.2001 was cancelled and it was also duly registered and confirmed by the order of the Deputy Registrar of Cooperative Societies, Coimbatore dated 2.8.2001 and was intimated to the Registrar of Cooperative Societies.

8. It is the further case of the petitioner that clause 38 of the Memorandum of Settlement dated 30.03.1979 did not fructify as benefit for the employees of the petitioner. Certain employees, during the interregnum period, claimed the aforesaid leave benefit in terms of the settlement dated 30.03.1979 by filing W.P. No.9972/2007, which was upheld by the learned single Judge of this Court.

9. However, during the year 2012, the respondents/employees, after their retirement claimed monetary value of leave encashment benefit by filing computation petition u/s 33-C (2) of the Act by relying on the Memorandum of Settlement dated 30.03.1979 and G.O. No.488 by placing reliance upon the order passed in W.P. No.9972/2007.



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10. Entertaining the computation petitions filed by the respective employees/respondents, the Labour Court heard the issue. On the side of the respondents/employees, one witness was examined as P.W.1 and Exs.P-1 to P-6 were marked and on behalf of the petitioner herein, Exs.M-1 to M-9 were marked. It was the specific case of the petitioner that the respondents/employees had no pre-existing right to claim leave encashment on the date of filing the computation petition, as they were not workman as defined u/s 2 (s) of the Act. However, placing reliance on the decision of this Court in W.P. No.9972/2007, which was marked as Ex.P-6, the Labour Court held that the said decision was binding on the petitioner and that coupled with the settlement dated 13.3.1979 and G.O. No.488 dated 12.8.1996, the employees/respondents were entitled to the benefit of the amount as mentioned in the respective computation statement and, accordingly, passed the common award, which is impugned in the present writ petitions.

FACTS IN W.P. NO.27170 OF 2017

11. It is the case of the petitioner that the 1st respondent, while serving as Conductor in the petitioner Corporation was involved in a case of murder,



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which fact was not brought to the notice of the petitioner. However, the 1st respondent was charged for unauthorized absence and enquiry was initiated against the 1st respondent, which enquiry could not proceed further. Therefore, the petitioner dismissed the 1st respondent from service on 27.10.2003 on account of unauthorized absence and also filed an approval petition in A.P. No.377 of 2003 before the Joint Commissioner of Labour, Chennai u/s 33 (2)(b) of the Act. However, due to misconstruction, the said approval petition of the workmen was withdrawn on an error that an industrial dispute is pending. However, the order of dismissal was not challenged by the 1st respondent.

12. It is the further case of the petitioner that the conviction of the 1st respondent was confirmed by this Court as also the Supreme Court in the Special Leave to Appeal (Crl.) No.1811 of 2003 on 7.10.2002, thereby, there was a forfeiture of his service pursuant to his conviction.

13. It is the further case of the petitioner that the 1st respondent filed a writ petition in W.P. No.15722 of 2008 seeking payment of terminal benefits



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and other pensionary benefits and this Court disposed of the said petition on 29.11.2013 holding that the 1st respondent is entitled for payment of the pension by virtue of the withdrawal of the Approval Petition. It is the case of the petitioner that this Court failed to take note of the conviction of the 1st respondent in the criminal case as the said conviction takes away the right of the 1st respondent to continue in the post.

14. It is the further case of the petitioner that the order in the writ petition has been challenged before the Division Bench in W.A. No.725/2016, which is pending. It is the further case of the petitioner that the order of the learned single Judge has not taken into consideration the conviction of the 1st respondent for the offence punishable u/s 304 IPC.

15. It is the further case of the petitioner that the 1st respondent, based on the order in W.P. No.15722/2008, filed computation petition in C.P. No.364/2015 before the 3rd respondent u/s 33-C (2) of the Act and inspite of the fact that the 3rd respondent was informed about the punishment suffered by the 1st respondent and also the provisions of the Tamil Nadu Pension Rules



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was brought to the notice of the Labour Court, however, the Labour Court held that there is no provision available under the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, which debars grant of pension and, accordingly allowed the computation petition directing payment of the benefits sought for. Aggrieved over the same, the present petition is filed.

FACTS IN W.P. NO. 32413 OF 2017

16. It is the case of the petitioner that the 2nd respondent joined the services on 1.10.1974 and retired on attaining the age of superannuation on 31.5.2008. It is the further case of the petitioner that while he was in service, a wage settlement u/s 12 (3) was entered into and by the said settlement the scale of pay was revised with effect from 1.9.2007. It is the further case of the petitioner that based on the said settlement, the scale of pay of the petitioner in the post of Selection Grade Senior Assistant was revised from 4650-120-5250-125-7750 to 5665-180-6565-190-11315 and the last drawn revised salary of the 2nd respondent was fixed at Rs.11315/-.



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17. It is the further case of the petitioner that the pensionary and other benefits were calculated in respect of the 2nd respondent on his retirement from service on 31.5.2008 and paid to the petitioner. In spite of the fact that the 2nd respondent was receiving the pension from the year 2008, only in the year 2013, the 2nd respondent filed the computation petition u/s 33-C (2) of the Act claiming a sum of Rs.31,060/- as difference of basic pay from 1.9.2007 to 31.5.2008 as per the wage settlement dated 6.2.2008 and for payment of the said amount with 12% interest.

18. It is the further case of the petitioner that as on 31.5.2008, when the 2nd respondent retired from service, the employer-employee relationship stood severed and, therefore, the 2nd respondent has no *locus* to file the computation petition u/s 33-C (2). It is the further case of the petitioner, the 2nd respondent has not stated the reasons for the delay in filing the computation petition after a period of five years and, hence, the computation petition ought to be dismissed on the ground of delay and laches. In the absence of any pre-existing right, the claim made by the 2nd respondent,



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having been considered affirmatively in favour of the 2nd respondent, the present petition has been filed assailing the said award.

FACTS IN W.P. NO. 12738 OF 2018

19. It is the case of the petitioner that it is an Undertaking of the Government of Tamil Nadu operating long distance buses. It is the further case of the petitioner that the 1st respondent was working in the Corporation as Conductor and retired from service on 31.7.2012 and is paid a monthly pension of Rs.16,181/-. Further all the terminal benefits were also settled to the 1st respondent by the petitioner from out of the funds received from the Government of Tamil Nadu.

20. It is the further case of the petitioner that the 1st respondent, who was a conductor, attached to the Pondicherry Depot, raised a dispute in ID No.3 of 2015 and vide the award dated 13.3.2018, the petitioner was directed to pay wages for overtime and wages for weekly off to the tune of Rs.6,78,155/-. It is the case of the petitioner that its head office is at Chennai and all the payments towards salary is paid from the Head Office at Chennai. The Depot at Pondicherry where the petitioner was working till his retirement



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on 31.7.2012 is only a Branch for carrying out maintenance of vehicles and it is only a fuel filling station and all the administrative work are being done at Chennai.

21. It is the further case of the petitioner that the wage settlement with the Unions are made under the provisions of 12 (3) of the Act once every three years and the last of the settlement was signed on 1.9.2016 and the Special Deputy Commissioner of Labour Conciliation, Chennai, has subscribed the signature in the settlement as the authority.

22. It is the further case of the petitioner that in the above factual matrix, the 1st respondent has raised a dispute and was able to get a reference from the Government of Puducherry for being adjudicated by the 2nd respondent. It is the case of the petitioner that inspite of the objections raised by the petitioner with regard to the jurisdiction for reference as well as for adjudication by the Government and the Labour Court at Puducherry, the Labour Court had overruled the objections.



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23. It is the further case of the petitioner that the reference and adjudication suffers from lack of jurisdiction and, therefore, the said acts are liable to be quashed. It is the further case of the petitioner that the activities carried out in the depots are being monitored and taken care of from the Head Office and in this regard the settlement u/s 12 (3), which has been entered by the Government of Tamil Nadu assumes significance.

24. It is the further case of the petitioner that the 1st respondent marked 29 exhibits for claiming overtime wages and for weekly off towards which the salary slips alone for the period from 1997 to 2012 are marked. Without marking the attendance for the date-wise duties carried by the 1st respondent, mere salary slips would not be sufficient to establish the claim of the 1st respondent.

25. It is the further case of the petitioner that the 1st respondent, after retirement on 31.7.2012, had approached the Labour Court by means of the reference from the Government with a delay of 2095 days, which delay is not explained properly and the non-explanation of the delay is fatal to the case of



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the 1st respondent. It is the further case of the petitioner that the 1st respondent, while in service, ought to have raised the above plea and after retirement, more so, after a delay of more than six years, has raised the dispute, when on the said date, there was no employer-employee relationship between the petitioner and the 1st respondent and in the said backdrop, the petition u/s 33-C (2) of the Act is not maintainable.

26. However, without appreciating all the above facts, either pertaining to jurisdiction or with regard to the maintainability of the petition u/s 33-C (2), the 2nd respondent has passed the impugned award, which is manifestly irregular and improper and, therefore, the present writ petition has been filed assailing the said award.

FACTS IN W.P. NO.17203 OF 2018

27. It is the case of the petitioner that the workman joined as Driver with the petitioner in the year 1996 and retired from service on 30.04.2014. Two years after retirement, the workman filed C.P. No.49 of 2016 before the Labour Court claiming arrears of salary of Rs.1350/- per month along with 90%



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D.A. for the period September, 2013 to December, 2013 and with 100% DA from January, 2014 to April, 2014 under the 12th wage revision. The workman also claimed EL for 111.5 days claimed to have been accumulated by him and also claimed EL pay for 15 days each for the years 2009 and 2010 claimed to have been surrendered by him.

28. It is the case of the petitioner that already the money payable to the workman under the 12th wage revision has been paid to him and insofar as the accumulated leave of 111.5 days claimed by the workman, the workman had accumulated only 106.5 days leave for which the amount has been paid. Further insofar as 15 days leave alleged to have been surrendered, the petitioner fairly concedes that a sum of Rs.5875/- and Rs.6561/- is due and payable to the workman, which has been admitted and steps are being taken to pay the same. However, the Labour Court, without considering all the above facts, had passed the impugned order directing payment of a sum of Rs.1,27,952/- with 6% interest, which is wholly unsustainable and not supported by materials. Therefore, assailing the said award the present petition has been filed by the petitioner.



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FACTS IN W.P. NO. 14194 OF 2018 :

29. It is the case of the petitioner that the workman was working as supervisor with the petitioner from 1.12.1973 to 31.12.2010 with intermittent breaks. Due to various financial irregularities committed by the workman, departmental enquiry was initiated, in which the workman did not properly participate and tried to drag on the proceedings and inspite of opportunities granted, the workman did not cooperate with the enquiry leading the enquiry officer to submit a report holding the charges against the workman as proved. It is the further case of the petitioner that with regard to the show cause notice, the workman submitted reply that he was not given opportunity to cross examine the witnesses and defend his case. However, the petitioner, appreciating the explanation with regard to the enquiry report, dismissed the workman from service vide order dated 31.12.2002.



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30. It is the further case of the petitioner that the workman filed an appeal before the appellate authority u/s 41 (2) of the Tamil Nadu Shops and Establishment Act wherein an order came to be passed setting aside the order of dismissal. Aggrieved by the said order, the petitioner filed W.P. No.26606/2004. Pending the said writ petition, the workman filed C.P. No.549/2004 before the Labour Court claiming backwages from 4.7.2002 to 30.09.2004 for a sum of Rs.3,89,043/- and the 1st respondent passed an order in favour of the workman allowing the aforesaid claim along with 6% interest.

31. It is the further case of the petitioner that for enforcing the said order, the workman filed W.P. No.43272/06, while challenging the award in C.P. No.549/2004, the petitioner filed W.P. No.6556/2004. This Court, clubbing W.P. Nos.26606/2004 along with W.P. Nos.43272/06 and 6556/07, vide its common order dated 16.11.2007, while set aside the order of the appellate authority, remanded the matter to the authority for fresh consideration, thereby, W.P. No.26606/04 was allowed and in view of the same, the writ petition in W.P. No.6556/07 filed challenging the order in C.P. No.549/04 was also allowed setting aside the award in the computation



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petition and consequently, the writ petition in W.P. No.43272/06 filed by the workman was dismissed.

32. It is the further case of the petitioner that on remand, after affording opportunity, the appellate authority passed an order confirming his earlier order of setting aside the dismissal of the workman challenging which the petitioner filed W.P. No.15216/09 and this Court admitted the writ petition and granted stay of all further proceedings. Pending the writ petition, the workman filed M.P. No.1/2009 in W.P. No.15126/09 claiming wages u/s 17-B of the Act and this Court, vide its order dated 23.11.2009 ordered reinstatement of the workmen without prejudice to the case of the petitioner in W.P. No.15126/09. Pursuant to the said order, the workman was reinstated in service on 27.11.2009 and was paid the salary that he was entitled to, which the workman received without any demur.

33. It is the further case of the petitioner that on the date of reinstatement, viz., 27.11.2009, the workman was paid a sum of Rs.12,763/- and was informed of his monthly salary at the time of reinstatement, which



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would be as per G.O. Ms. No.186 dated 16.8.2000 based on which salary was fixed and paid to him. The workman attained the age of superannuation on 31.12.2010 and as per the aforesaid Government Order, the retirement benefits of the workman was calculated in a total sum of Rs.4,17,807 and was paid on 29.11.2011 vide cheque dated 29.4.2004. Gratuity to the tune of Rs.2,02,325/- was also made ready by the petitioner but inspite of several reminders, the workman had not come forward to receive the same.

34. It is the further case of the petitioner that without any objection and demur, the workman had received the provident fund and leave salary, which estopped him from claiming any increase at a later point of time. The workman cannot go back on his previous acceptance and seek for increase in his salary nearly after a period of three years.

35. It is the further case of the petitioner that the workman filed C.P. No.1/2013 on 12.12.2012 claiming increase of the benefits and the Labour Court without advertng to the factual aspects and not appreciating the fact that no objection was raised by the workman at the time of receiving the



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payment, had directed, vide its order dated 23.1.2018, payment of a sum of Rs.19,09,221/- to the workman with interest at 6% within a period of two months, failing which the amount will attract 12% interest.

36. It is the case of the petitioner that the 2nd respondent got superannuated on 31.12.2010 and received all the benefits without any protest and, therefore, the claim made after three years is not maintainable. It is the further case of the petitioner that the computation petition filed by the 2nd respondent u/s 33-C (2) of the Act is not maintainable because there is no prior adjudication or determination by any court of law with regard to the payment payable to the workman. Further, the employer-employee relationship between the petitioner and the workman stood severed on his superannuation and, therefore, the workman has no right to file a computation petition and the same is not maintainable. Assailing the order passed in C.P. No.1/2013 on the aforesaid grounds, the present writ petition is filed.

FACTS IN W.P. NO. 16882 OF 2018



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37. It is the case of the petitioner that the workman joined as a conductor with the petitioner on 1.8.1979 and attained superannuation on 28.2.2011 and the workman was also paid on the retirement benefits including gratuity and he is receiving pension. After a lapse of three years from the date of his retirement, the workman has filed the computation petition claiming the balance of salary, balance of basic pay and grade pay for the period from 1.9.2003 to 31.8.2005, which was claimed after a lapse of almost ten years from the period of the claim.

38. It is the further case of the petitioner that the workman was paid the basic pay and grade pay for the period from 1.9.2003 to 31.8.2005 and 1.9.2010 to 28.2.2011 by rightly fixing the pay as per the 12 (3) settlement. It is the further case of the petitioner that the workman was also granted review benefits three times in his service the last of which was paid on 1.2.2009. It is the further case of the petitioner that no adjudication was made with regard to the claim for basic pay and grade pay made by the workman, which is directly against the decision of this Court in the case of **Management Salem Urban Co-operative Bank Ltd. – Vs – N.Dhanalakshmi & Ors. (2013 (1) LLJ**



W.P. Nos.14559/2017, Batch

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657]. It is the case of the petitioner that the matter was not adjudicated earlier by the Court of law and without any adjudication, paying the claim straight-away in a computation petition is wholly impermissible.

39. It is the further case of the petitioner that once the workman retired from service, the employer-employee relationship stood severed and, therefore, no computation petition u/s 33-C (2) could be filed or maintained against the employer. Therefore, assailing the order passed, the present writ petition has been filed.

FACTS IN W.P. NO. 31901 OF 2017 :

40. It is the case of the petitioner that the petitioner is engaged in the business of promotion of flats and building of residential houses. It is the averment of the petitioner that the workman joined as 'Assistant Salesman' on 28.01.2001. In the year 2006, the workman was proceeded with departmentally, being charged with failing to recover the sale consideration for the sale of houses from prospective purchasers in addition to other charges. An inquiry was conducted under Section 81 of the Tamil Nadu



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Cooperative Societies Act and based on the report filed by the Registrar on 28.2.2011, which revealed large scale breaches in the allotment, surcharge proceedings was initiated against the workman u/s 87 of the Cooperative societies Act and proceedings was passed holding that the workman was liable to compensate the petitioner to the tune of Rs.1,72,856/-. Steps were also initiated for the recovery of the said sum by the petitioner and the aforesaid order also attained finality.

41. It is the further case of the petitioner that for the above act, complaint was lodged by the petitioner with the Economic Offences Wing, Salem in Cr. No.3/2009 and a case was registered u/s 420 IPC and criminal case is pending disposal. It is the further case of the petitioner that the workman attained superannuation on 30.04.2012 and as the by-laws of the petitioner did not permit retaining the service of the incumbent on attaining the age of superannuation, the workman was relieved from service, yet such relief would not sever the relationship of employer-employee between the petitioner and the workman for the purpose of continuance of disciplinary



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proceedings as the outcome of the decision in the departmental proceeding would be binding on both the petitioner and the workman.

42. It is the further case of the petitioner that the workman filed a petition in P.G. No.47/2014 before the Controlling Authority under the Payment of Gratuity Act for the purpose of payment of gratuity, which was ordered in favour of the workman against which a writ petition in W.P. No.1617/2016 was filed before this Court, in which an order of stay has been granted on condition of deposit of Rs.1 Lakh, which has since been complied with.

43. It is the further case of the petitioner that the workman, thereafter, approached the Labour Court and filed C.P. No.13/2013 claiming payment of monetary value due as per Section 33-C (2) in respect of services rendered by him with an erstwhile company. It is the further averment of the petitioner that the service claimed by the workman was not with the petitioner, but was with another company, for which also PF and leave encashment were sought



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for, which were granted by the Labour Court in the petition filed u/s 33-C (2) and assailing the said order, this writ petition has been filed.

44. Learned counsel appearing for the respective petitioners, in unison, raised the plea of maintainability of the dispute at the behest of the retired employee by submitting that once the employee retired from service, the employer-employee relationship stood severed and no longer, the employee would fall within the definition of "*workman*" as defined u/s 2 (s) of the Act. Once the individual is no longer a workman, the said individual has no right or authority to raise a dispute u/s 33-C (2) of the Act.

45. Barring the above unified contention raised on behalf of all the petitioners, on the factual aspects of the case, learned counsel appearing for the respective petitioners raised a barrage of contentions to point out the perversity in the award passed in favour of the respective respondents.



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46. Learned senior counsel appearing for the petitioner in W.P.

Nos.14559 and 14560/2017 submitted that the Labour Court exceeded in its jurisdiction while entertaining a petition u/s 33-C (2) as the said jurisdiction u/s 33-C (2) is limited. It is the submission of the learned senior counsel that the settlement dated 13.3.1979 and G.O. No.488 dated 12.8.1996 with regard to encashment of unutilised earned leave lying to the credit of the employee at the time of retirement, when read together, would point out that it is only upon a resolution pass granting relief, it could be enforced and not otherwise. The said resolution passed, having subsequently been withdrawn and has also been registered, the respondents cannot lay any claim for encashment of unutilised earned leave.

47. It is the further submission of the learned senior counsel that in the absence of resolution, neither the settlement dated 13.03.1979 nor G.O. No.488 dated 12.08.1996 could be the basis, either solitarily or in conjunction, to claim the relief of encashment of unutilised earned leave. Further, when the relationship between the petitioner and the workmen stood severed by virtue of the retirement of the workmen, no claim u/s 33-C (2) could be



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entertained. Accordingly, he prays for setting aside the order passed by the Labour Court.

48. Learned senior counsel, in support of the aforesaid submissions, placed reliance on the following decisions :-

- i) *K.Jayapal – Vs – Union of India & Ors. (2007 (4) LLN 450);*
- ii) *The Management of Chemplast Sanmar Ltd. – Vs – The Presiding Officer, Central Government Labour Court, Chennai & Ors. (W.P. No.20219/2004 – Dated 11.02.2021); and*
- iii) *The Management of Roca Bathroom Products Pvt. Ltd. – Vs – Parry Retd. Employees Welfare Association & Ors. (W.A. No.978 of 2017 – Dated 17.08.2017)*

49. Learned counsel appearing for the petitioner in W.P. No.27170/2017 submitted that the conviction of the workmen has not been brought to its notice. However, by then the workman was dismissed from service on disciplinary grounds. Though approval petition was filed by the petitioner initially, however, on misconstruction the same was withdrawn. The writ petition filed by the workman in W.P. No.15722/2008 was allowed to



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hold that the dismissal would become ineffective against with W.A. No. 725/2016 has been filed, which is pending.

50. Learned counsel appearing for the petitioner submitted that without considering the pendency of the writ appeal the computation petition filed by the workman has been allowed, which is not only perverse and erroneous, but it has been passed without taking into consideration the punishment of conviction and sentence imposed on the workmen. It is the submission of the learned counsel that once a workman is convicted and sentenced in a criminal case, he forfeits his right to all the benefits that accrues as a result of his employment. However, without adverting to the basic legal principle, merely on the ground that the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules does not debar the workman for receiving pension and other monetary retiral benefits. It is the submission of the learned counsel that the said finding recorded by the Labour Court is against the well established dictum that a person, who has suffered a conviction is not entitled for continuance in the job as well as receiving the



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benefits. Therefore, the order passed by the Labour Court allowing the computation petition deserves to be set aside.

51. Learned counsel appearing for the petitioner in W.P. No.32413/17 submitted that the employee, after retiring from service in the year 2008, has kept silent for five years and, thereafter, has raised the claim for differential amount in the pay scales. It is the submission of the learned counsel that the difference claimed by the employee with regard to wrong fixation of pay scales and claiming the differential amount by filing a computation petition is wholly impermissible and such a petition is not maintainable.

52. It is the further submission of the learned counsel that based on the settlement, the scale of pay of the employee was fixed and the benefits were paid and the employee retired from service on 31.5.2008. Such being the case, having accepted the fixation and not raised any quarrel during the time of his employment and also having kept silent for more than five years, after a lapse of five years, in the year 2013, the employee had filed a computation petition claiming re-fixation of pay scale u/s 33-C (2), which is wholly



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impermissible, as the intent of Section 33-C (2) is only with respect to the benefits, to which the employee has a pre-existing right, which could be quantified in terms of money. However, the scale of pay sought for by the employee, being a disputed question of fact, a computation petition is not maintainable and the employee has to only raise an industrial dispute, if law permits, to have his grievance redressed.

53. It is the further submission of the learned counsel that unmindful of the purport of Section 33-C (2) and the relief that could be granted therein, the Labour Court has totally lost sight of the provision and had granted the benefit to the employee in a computation petition on questions of fact, which are in dispute. Therefore, the said award passed by the Labour Court deserves to be set aside.

54. Learned counsel appearing for the petitioner in W.P. No.12738/18 submitted that the petitioner is under the control of the Government of Tamil Nadu with Head Office situate in Chennai and any dispute with regard to the conditions of service, as arises under the Industrial Disputes Act, would be



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referable only to the Labour Court within the jurisdiction of the State of Tamil Nadu and the Government of Tamil Nadu alone has jurisdiction to refer the dispute. However, the Government of Puducherry has referred the dispute to the Labour Court at Puducherry, which has no jurisdiction with regard to the dispute relating to service in respect of undertakings belonging to the Government of Tamil Nadu, as the petitioner is merely a maintenance depot operating bus service for the convenience of the public and has no inkling with the Government of Puducherry and, therefore, the reference as also the consequential award passed by the Labour Court is bad. Further, the workman having already retired from service, there is no employer-employee relationship between the petitioner and the workman and, therefore, the computation petition u/s 33-C (2) of the Act is not maintainable.

55. Learned counsel appearing for the petitioner in W.P. No.17203/2018 submitted that the claim for arrears of salary and also for the earned leave claimed by the workman cannot be claimed after the retirement of the workman when no adjudication as regards the right of the workman has been made. However, even without adverting to the basic principle on which



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a computation petition would lie, the Labour Court had gone ahead and allowed the computation petition in favour of the workman, which is grossly erroneous.

56. It is the further submission of the learned counsel that the claim has been raised by the workman after retirement from service, when there is no relationship of employer-employee and, therefore, the petition u/s 33-C (2) is not maintainable. It is the further submission of the learned counsel that the workman received all the benefits without demur and, therefore, after two years of retirement, the workman cannot file any computation petition claiming arrears of pay and leave salary. **However, with regard to the amount towards surrender of EL for 15 days during the year 2009 and 2010, the amount would be disbursed to the workman within the time stipulated by this Court.**

57. Learned counsel appearing for the petitioner in W.P. No.14194/2018 submitted that when the workman had, without objection, received the retirement benefits, including gratuity payable on



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superannuation, the workman is estopped from filing C.P. No.1/2013 claiming increase after a period of three years from the date of his superannuation.

58. It is the further submission of the learned counsel that the petitioner had made ready the amount payable towards gratuity and had reminded the workman several times to receive the same, the workman not having come forward to receive the same. It is the further submission of the learned counsel that with regard to the claim of backwages and other retirement benefits, which are pending consideration in W.P. No.15216/09, unless an order is passed by this Court with regard to the legality of the order passed by the appellate authority, no computation petition can be entertained by the Labour Court and any computation made. It is the further submission of the learned counsel that without adjudication of the claim for backwages and retirement benefits, which have a bearing on W.P. No.15216/09, the Labour Court was not right in computing the claim u/s 33-C (2) of the Act, and the said exercise undertaken by the Labour Court is wholly perverse and unreasonable. Further, it is the submission of the learned counsel that once



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there is severance of employer-employee relationship, the workman is not entitled to maintain a petition u/s 33-C (2) of the Act.

59. Learned counsel appearing for the petitioner in W.P. No.16882/18 submitted that the claim for balance of salary, balance of basic pay and grade pay cannot be computed by the Labour Court in a petition u/s 33-C (2) as no adjudication with regard to the entitlement of the workman had been made by any Court of law. Without there being an adjudication, the computation of the benefits in terms of monetary value u/s 33-C (2) is wholly erroneous. It is the further submission of the learned counsel that the workman retired in the year 2011 and the petition has been filed only in the year 2013 after a delay of about three years moreso, with respect to a claim for the period September, 2003 to August, 2005. It is the submission of the learned counsel that neither there is any reason attributed for the enormous delay nor there is any reason attributed for not raising the claim during the service of the workman. When the workman had not raised the claim during his service and after a lapse of about three years from the date of his superannuation, the petition filed for computing the monetary value with respect to certain unadjudicated



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amounts, the Labour Court was wholly in error in allowing the petition, which requires interference at the hands of this Court.

60. Learned counsel appearing for the petitioner in W.P. No.31901/2017 submitted that the order of the Labour Court to pay the Provident Fund and Leave Encashment amount is wholly unsustainable, as surcharge proceedings were initiated and the amount is to be recovered from the workman, which can be done only if the amounts are retained by the petitioner till the completion of the disciplinary proceedings. However, without appreciating the aforesaid case and inspite of the Cooperative Societies Act providing for withholding of PF and Leave encashment salary, the Labour Court has passed the award, which is illegal and arbitrary.

61. It is the further submission of the learned counsel that without adjudication of the claim for PF and Leave encashment sought for by the workman, the claim has been entertained u/s 33-C (2), which is highly illegal and perverse and is against the ratio laid down in a catena of decisions by this Court as also the Supreme Court.



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62. It is the further submission of the learned counsel that till the departmental proceedings are complete, the petitioner is not liable to pay the terminal benefits and the same can be withheld u/s 78 and 79 of the Tamil Nadu Cooperative Societies Act for the purpose of recovering the dues payable by the workman subject to the outcome of the departmental proceedings. Therefore, the order passed by the Labour Court requires interference at the hands of this Court.

63. Per contra, learned counsel appearing for the workmen in W.P. Nos.14559 and 14560/2017 submitted that in respect of a pre-existing right, even a retired workman is entitled to file a petition u/s 33-C (2) of the Act. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

- i) *A.Sathyanarayana Reddy & Ors. – Vs – Presiding Officer, Labour Court, Guntur & Ors. (2008 (5) SCC 280);*
- ii) *A. Sathyanarayana Reddy & Ors. – Vs – Presiding Officer, Labour Court, Guntur & Ors. (2016 (9) SCC 462280);*



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- iii) *Parry Retd. Employees Welfare Association – Vs – Government of Tamil Nadu & Ors. (W.P. No.995 of 2015 – Dated 25.04.2017);*
- iv) *Manicka Mudaliar (M) – Vs – Labour Court & Anr. (1981 (1) LLJ 592 (Mad));*
- v) *National Buildings Construction Corporation Ltd. – Vs – Pritam Singh Gill & Ors. (AIR 1972 SC 1579)*

64. Learned counsel elaborating further on the issue relating to the workmen in W.P. Nos.14559 and 14560/2017, submitted that the pre-existing right stands available to the workmen in terms of the order passed by the learned single Judge of this Court in W.P. No.9972/2007 and the said order having become final, the stand of the petitioners that the petitioners cannot be brought within the fold of workmen is totally misconceived.

65. It is the further submission of the learned counsel that the stand of the petitioner that the order passed in W.P. No.9972/2007 would only be available to the petitioners therein is wholly misconceived as the said decision does not speak about the order being applicable only to the parties therein. In fact, in the said decision, learned single Judge had clearly laid down that the



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Settlement as well as G.O. Ms. No.488 dated 12.8.1996 are the basis on which the workmen were entitled to encash 50% of the unearned leave. Such being the case, as held by the learned Judge, when the Government rules with reference to encashment had been directly incorporated, the moment the said order is issued, the workmen derives a right under the said settlement to the benefits of the said Government Order and, therefore, the pre-existing right of the workmen could be enforced by filing a petition u/s 33-C (2). Rightly, the Labour Court has held in favour of the workmen and, therefore, no interference is warranted with the said award.

66. Learned counsel appearing for the respondent in W.P. No.32413/17 submits that the fixation of pay has not been properly made, which was highlighted by the workman in the petition, which has been properly adjudicated by the Labour Court while ordering the petition in favour of the workman. It is the further submission of the learned counsel that the petition u/s 33-C (2) is an adjudication petition based on which monetary benefit is paid to the workman and, therefore, separate adjudication is not necessary.



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Therefore, it is submitted that no interference is warranted with the award passed by the Labour Court.

67. Learned counsel appearing for the workman in W.P. No.12738/18 submitted that the claim made by the workman with regard to arrears in salary and other incentives, that are due to the workman has been properly appreciated by the Government, while making the reference, as it has come to the conclusion that the unit is functioning within the limits of the Union Territory of Puducherry and, therefore, a reference is maintainable and the said fact has also been properly appreciated by the Labour Court, not only while entertaining the reference, but also while passing the award and, therefore, no interference is warranted with the same.

68. Learned counsel appearing for the respondent in W.P. No.17203/18 submits that the arrears of salary and DA are an ingrained pre-existing right of the workman and so long as the same is not paid by the employer, the workman is within his right to claim the same by filing a computation petition and the Labour Court can very well adjudicate the same in a computation



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petition. It is the further submission of the learned counsel that the petition u/s 33-C (2) is an adjudication petition based on which monetary benefit is paid to the workman and, therefore, separate adjudication is not necessary. Therefore, it is submitted that no interference is warranted with the award passed by the Labour Court.

69. Learned counsel appearing for the workman in W.P. No.14194/18 submitted that though the payment with regard to the period during which the workman had worked had been paid, however, the period during which he was under an order of termination has not been paid. Further, the gratuity amount has also not been paid towards which the workman had filed a petition, which has been rightly ordered by the Labour Court and, therefore, the order does not suffer any perversity.

70. Learned counsel appearing for the respondent in W.P. No.16882/18 submits that the arrears of salary, basic pay and grade pay, which have not been paid to the workman for which the workman filed the petition. The right to the said amounts, being a pre-existing right of the workman and so long as



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the same is not paid by the employer, the workman is within his right to claim the same by filing a computation petition and the Labour Court can very well adjudicate the same in a computation petition. Therefore, it is submitted that no interference is warranted with the award passed by the Labour Court.

71. Learned counsel appearing for the workman in W.P. No.31901/17 submitted that the Labour Court has rightly appreciated the facts and had ordered withholding of the gratuity amount, as the matter is sub judice before this Court, but had ordered payment of PF and leave encashment, which cannot be withheld by the petitioner. It is the further submission of the learned counsel that the service of the workman with the previous employer cannot fall within the realm of disputed question for the petitioner to hold the amount due and payable to the workman on account of PF and leave encashment. Rightly the Labour Court has arrived at the conclusion and directed payment of the amounts to the workman while withholding the payment of gratuity and, therefore, the said order does not call for any interference.



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72. This Court paid its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on in support of the aforesaid contentions.

73. There are two facets to the writ petitions, viz., one, which is common in all the writ petitions, being in relation to the right of a retired employee to file a petition u/s 33-C (2) of the Act and the other is the individual claim of the workman as projected in the respective writ petitions. Therefore, the two issues that fall for consideration in the present petitions are :-

- i) *Whether a retired employee would fall within the definition of workman as defined u/s 2 (s) of the Act.*
- ii) *Whether the award passed by the Labour Court in respect of the claim raised by the individual workmen, in a petition u/s 33-C (2), is sustainable.*



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74. The foremost question that befalls consideration of this Court is whether a retired employee would fall within the definition of “workman” as defined u/s 2 (s) of the Act.

75. The term “workman” is defined u/s 2 (s) of the Act, which is as under :-

“2.

(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged, or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

.....”

76. The Apex Court, in the case of *Pritam Singh Gill (supra)* had occasion to consider the status of an employee, who has since retired, but who is entitled to certain benefits, by means of its accrual in favour of the employee,



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during his service, but which has not been paid and whether such a person would fall within the ambit of workman as defined u/s 2 (s) and in the said context held as under :-

“5. It was observed in that decision that while enacting Section 33-C (2), the Legislature did not intend merely to provide a remedy for the limited class of persons who are in actual employment on the date of the application under that section. The words “any workman” in Section 33-C (2) according to that decision would mean a workman who would be entitled to benefits conferred under the Act and would necessarily include a discharged workman as well.”

77. In the aforesaid decision, the decision of the Division Bench of this Court in *Manicka Mudaliar case (supra)* was also adverted, wherein the Division Bench held as under :-

“2. In the first place it must be pointed out that there is nothing in Section 33-C (2) of the Act, which says that only a “workman” can apply under that provision. All that it says is that where a workman is entitled to receive from the employer any benefit, the amount of such benefit may be determined by the labour court. The fallacy in the argument on behalf of the appellant is that Section 33-C (2) expressly provides that only a “workman” on the date of the application can make the



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application. On the other hand, the use of the passive in that provision contemplates that the application may be made by a person, who on the date of the application was not a "workman" as defined by the Act, but was a workman during the period in respect of which he was entitled to any benefit."

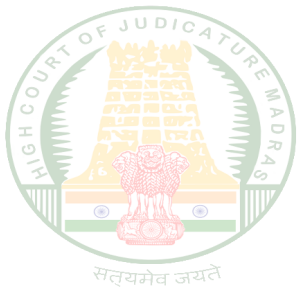
78. Subsequently, the same issue fell for consideration before a Division Bench of the Apex Court in *Sathyanarayana Reddy's case (supra)* and finding that there is divergence of opinion with regard to the view expressed in *Pritam Singh Gill case* and *A.K.Bindal case* for an authoritative pronouncement, referred the matter to a Larger Bench and, accordingly, the matter was adjudicated by the Larger Bench in *Sathyanarayana Reddy case (2016 (9) SCC 462)* held as under :-

"12. Thereafter, the Court in Pritam Singh Gill (supra) referred to number of decisions and posed the question thus:

The crucial point which requires consideration on the Appellant's argument is thus confined to the precise scope and meaning of the word "workman" used in Section 33-C(2) in the background of the definition of this word as contained in Section 2(s).

13. Thereafter, it was held:

This Section was enacted for the purpose of enabling individual workman to implement, enforce or execute their



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existing individual rights against their employers without being compelled to have recourse to Section 10 by raising disputes and securing a reference which is obviously a lengthy process. Section 33-C of the Act has accordingly been described as a provision which clothes the Labour Court with the powers similar to those of an executing court so that the workman concerned receives speedy relief in respect of his existing individual rights. The primary purpose of the Section being to provide the aggrieved workman with a forum similar to the executing courts, it calls for a broad and beneficial construction consistently with other provisions of the Act, which should serve to advance the remedy and to suppress the mischief. It may appropriately be pointed out that the mischief which Section 33-C was designed to suppress was the difficulties faced by individual workmen in getting relief in respect of their existing rights without having resort to Section 10 of the Act. To accept the argument of the Appellant, it would always be open to an unfair, unsympathetic and unscrupulous employer to terminate the services of his employee in order to deprive him of the benefit conferred by Section 33-C and compel him to have resort to the lengthy procedure by way of reference Under Section 10 of the Act thereby defeating the very purpose and object of enacting this provision. This, in our view, quite clearly brings out the repugnancy visualised in the opening part of Section 2 of the Act and such a position could hardly have been contemplated

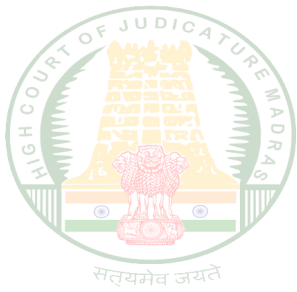


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by the Legislature. In order to remove this repugnancy Section 33-C(2) must be so construed as to take within its fold a workman, who was employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the application. In other words the term "workman" as used in Section 33-C(2) includes all persons whose claim, requiring computation under this Sub-section, is in respect of an existing right arising from his relationship as an industrial workman with his employer. By adopting this construction alone can we advance the remedy and suppress the mischief in accordance with the purpose and object of inserting Section 33-C in the Act. We are, therefore, inclined to agree with the view taken by the Madras decisions and we approve of their approach. According to Shri Malhotra, in cases where there is no dispute about the employee's right which is not denied, he will be entitled to file a suit. Whether or not the right of suit can be claimed by the employee, we are not persuaded on the basis of this argument to accept the construction canvassed on behalf of the Appellant and deny to a dismissed employee the benefit of speedy remedy Under Section 33-C(2) of the Act.

* * * * *

15. We need not refer to the other clauses as they do not really provide for any kind of benefit but stipulate the various aspects for implementation of VRS and the procedure to be



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adopted. On a perusal of VRS, it is clear as day that it did not deal with the lay-off compensation.

16. As has been laid down in *Pritam Singh Gill* [*National Buildings Construction Corpn. v. Pritam Singh Gill*, (1972) 2 SCC 1] , a claim pertaining to non-payment of suspension allowance could be agitated under the said provision in spite of the employee being dismissed from service. In *A.K. Bindal* [*A.K. Bindal v. Union of India*, (2003) 5 SCC 163 : 2003 SCC (L&S) 620] , the two-Judge Bench has held that after acceptance of the scheme and availing of benefits under VRS an employee could not claim higher wages. The controversy was different. If the VRS had mentioned about the lay-off compensation, needless to say, the claim would have been covered and the amount received by the workmen would have been deemed to have been covered by the quantum of lay-off compensation. That is not the factual position. Therefore, the controversy that arose in *Pritam Singh Gill* [*National Buildings Construction Corpn. v. Pritam Singh Gill*, (1972) 2 SCC 1] and the dispute that emanated in *A.K. Bindal* [*A.K. Bindal v. Union of India*, (2003) 5 SCC 163 : 2003 SCC (L&S) 620] are quite different. Hence, we are disposed to think that there exists no conflict between *Pritam Singh Gill* [*National Buildings Construction Corpn. v. Pritam Singh Gill*, (1972) 2 SCC 1] and *A.K. Bindal* [*A.K. Bindal v. Union of India*, (2003) 5 SCC 163 : 2003 SCC (L&S) 620] .



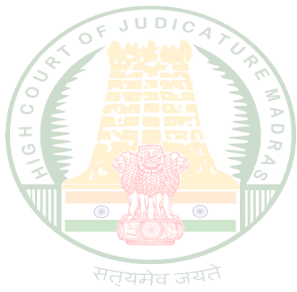
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17. We think it appropriate to say that though there is cessation of relationship between the employee and the employer in VRS but if it does not cover the past dues like lay-off compensation, subsistence allowance, etc., the workman would be entitled to approach the Labour Court under Section 33-C(2) of the Act. If it is specifically covered, or the language of VRS would show that it covers the claim under the scheme, no forum will have any jurisdiction."

(Emphasis Supplied)

79. The decision of the learned single Judge of this Court in *Parry Retired Employee case (supra)* has also been relied upon, wherein, learned single Judge had rendered a finding on similar lines and for clearer understanding, the same is quoted hereunder :-

15. A careful reading of the abovesaid provision would show that it includes "any person". The word "means" again cannot be given a restrictive interpretation. In other words, it only connotes the categories given therein as illustrative but not conclusive. Thus, it does not take from its purview, the other cases. The workman since retired may not seek for benefits, which would be available after his retirement. However, it does not mean that he cannot seek such a benefit, by which, according to him, he is entitled for the service rendered by him. A pension gives a continuous cause of action and a right

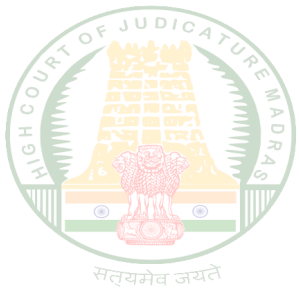


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over it stands vested. Section 2(s) of the Industrial Disputes Act, 1947, includes a person, who has been dismissed, discharged etc. Once again it enlarges its scope by introduction of the words "any person" and "includes". Curiously, though it excludes by its non inclusion certain categories of persons, it does not speak about a retired workmen. "Workman" is a class by itself. Therefore, there is no need to sub divide it into existing and retired. To put it differently, the word "workman" would also include a retired one though the dispute has to be seen contextually.

80. From the above, it is clear beyond a pale of doubt that insofar as any right, which had accrued to a workman, while in the service of his employer, even after the retirement of the workman, the claim could be agitated by the workman by invoking Section 33-C (2) and to that extent the right of the workman with regard to his pre-existing right as it stood at the time when the workman was in service would stand protected and would not be extinguished merely because the workman had retired from service.

81. The decision in *Jayapal's case (supra)*, which has since been followed in *Chemplast Sanmar case (supra)*, have been dealt with on the basis

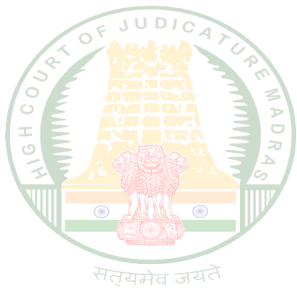


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of the facts as is appearing in the said cases. The decision in the said cases cannot be said to be a ratio laid down for this Court to follow. Moreso, in the said cases as well, the learned Judges have held that the pre-existing right does not stand extinguished and that the employees, who have since retired, are entitled to claim their pre-existing right, as was available to them prior to their retirement. Therefore, the said decision would be of no avail, more particularly in view of the decision of the Larger Bench of the Apex Court in *Sathyanaraya Reddy case (supra)*.

82. Therefore, on the first issue, this Court holds as under :-

“Section 33-C (2) takes within its fold any workman, who was employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the application and would not be restricted to workman, who are only in service. Therefore, the term "workman" as used in Section 33-C(2) includes all persons whose claim, requiring computation under this sub-section, is in respect of an



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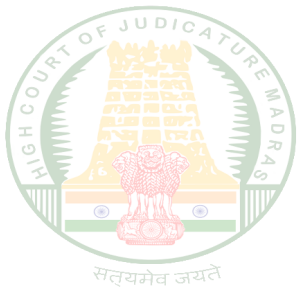
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existing right arising from his relationship as an industrial workman with his employer at the relevant point of time.”

83. Once this Court has come to the definitive conclusion that even employees, who have since retired, but their claim relates to the period during their employment with the employer would necessarily have to be construed as a workman falling within the definition of Section 2 (s) of the Act, the individual cases of the workman in the respective petitions requires to be looked into.

Workmen connected with W.P. Nos.14559 and 14560 of 2017 :

84. In the aforesaid petitions, the workmen filed the computation petition with regard to encashment of leave on private affairs upon their retirement and in support thereof, reliance is placed on the decision of the learned single Judge of this Court in W.P. No.9972/2007 – Dated 8.7.2011. However, the petitioner herein contends that the order of the Labour Court



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granting the said benefit is erroneous as the aforesaid decision cannot operate as a precedent and it only relatable to the respondent/workmen therein.

85. The facts in the said decision, which are similar to the case on hand is not disputed by either parties. However, only its applicability to the case on hand is put in issue. Since such a contention is advanced, it is just and necessary for this Court to refer to the relevant portion of the said decision to find out whether the ratio laid down therein would stand applicable to the case on hand, which is as hereunder :-

“12. With reference to the contention regarding the pre-existing right of the workmen, it is seen from the records that the contesting Respondents have filed Ex.W.1, which is 12(3) settlement signed between the Management and the Union. As noted already, under Clause 38, it was agreed that the grant of unearned leave to employees will be regulated as per the Government Rules in force. In support of the Government Rules, the Respondents have also filed Ex.W2, which is the order of the State Government in G.O. Ms. No. 488, Finance (Pension) Department, dated 12.08.1996. Under the said order, in Para 2(a) it was stated that at the time of retirement, 50% of the leave on private affairs standing to the credit of the employees, up to a maximum of 90 days, be entitled for full leave salary. Therefore, in the light of Ex.W1 read along with Ex.W2, the employees are having pre-existing right to encash the unearned



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leave on private affairs up to a maximum of 90 days. It is immaterial that the by-laws which were sought to be framed by the Board with effect from 01.07.1996 was sought to be cancelled by them subsequently in the absence of any approval. So long as the settlement is valid and binding on the parties, the workers can act upon the said settlement. In the present case, the settlement itself do not provide any firm commitment by the employer; on the other hand, the Government leave rules with reference to encashment had been directly incorporated and therefore, the moment the Government had issued an order in this regard, it becomes part of the right under the said settlement and hence, such contention to the contrary has to be rejected."

86. From the above, it is implicitly clear that not only the respondents in the said writ petitions, but all the employees, who were on the rolls of the petitioner on the said date when the said settlement was entered into, which, under Clause 38 provided for it to be regulated as per the Government Rules in force, all the employees would be entitled for the encashment of leave on private affairs and the cancellation of the special-by law subsequently would have no bearing on the right, which stood accrued to the workmen on the said date. The aforesaid order having allowed to attain finality, as held in the said decision, the benefit will not enure only to the respondents therein, but would also be equally be available to the workmen herein, as the workmen herein



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have a pre-existing right to claim the said benefit to which they were entitled and the Labour Court has rightly appreciated their claim and had allowed the same, which does not warrant any interference.

87. For the reasons aforesaid, the award of the Labour Court, which are impugned in W.P. Nos.14559 and 14560 of 2017 does not require any interference and, accordingly the writ petitions are to be dismissed.

Workmen connected with W.P. Nos.32413/2017, 17203 and 16882/2018 :

88. In all the aforesaid petitions, the claim of the workmen relate to payment of revised scales of pay, payment of arrears of salary, DA, Grade Pay, etc. It is the claim of the workmen that the fixation pursuant to the settlement/wage revision was not properly done, thereby, the workmen have been deprived of proper payment.

89. The opening portion of Section 33-C (2) itself is that where any workman is entitled to receive from the employer any money or any benefit. The above clearly signifies that a quantification with regard to the benefit or

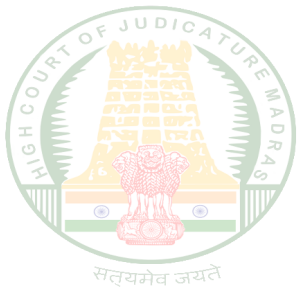


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money, which the workman is entitled to receive should have been adjudicated and any award is passed in favour of the workman upon such quantification, then for non-grant of the said benefit, the workman is entitled to file a petition for computation of the said benefit, which could be computed in terms of money.

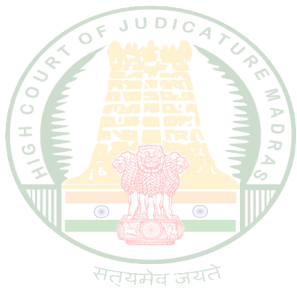
90. In the case of the workmen in the aforesaid petitions, the claim has been made by the respective workmen that they are entitled for the benefit of revision of scales of pay, DA, Grade Pay, etc. However, no quantification of the said benefit has been made in accordance with law by any Court. Moreover, the said claim is disputed by the petitioner/Management that the workmen are not entitled for the same, as they have already been paid. The claim itself being disputed and also not quantified, the Labour Court had clearly fell in error in permitting the claim filed by the workmen and, necessarily, the award passed by the Labour Court in respect of the respective workmen deserves to be set aside.



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91. Further, it should also not be lost sight of that after retirement of the workmen, the claim petitions have been filed with regard to the above claims, after an enormous delay. There is no reason attributed for the delay. In fact, the delay is more than two years extending to even ten years in one of the writ petition. Though there is no period of limitation to raise a claim, however, when a claim is filed, that too after such a long lapse of time, it is incumbent on the part of the workman to spell out the reason for the delay. Only in the aforesaid scenario, the credibility in the claim petition would stand established to some extent. However, in the cases on hand, there is no material whatsoever which speaks about the reason for the delay. Therefore, on the ground of delay and laches as well, the claim made by the workmen does not enlist the sympathy of this Court.

92. For the reasons aforesaid, the award of the Labour Court, which are impugned in W.P. Nos. 32413/2017, 17203 and 16882/2018 are wholly perverse, illegal, arbitrary and unreasonable and the claims do not fall within the four corners of Section 33-C (2) and, accordingly, the writ petitions



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challenging the impugned orders deserve to be allowed rejecting the claim made by the respective workmen.

Workman connected with W.P. No.12738 of 2018 :

93. The petitioner has raised the question of jurisdiction of the Government to make the reference and also that of the Labour Court to deal with the reference.

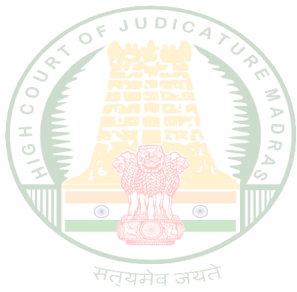
94. Though the workman claims that the Government as well as the Labour Court have jurisdiction to deal with the reference, yet, the workman has not placed any materials to show that the Union Territory of Puducherry is the appropriate Government to refer the dispute.

95. In this regard, “*appropriate Government*” is defined u/s 2 (a) of the Act and the same is quoted hereunder :-

“2. In this Act, unless there is anything repugnant in the subject or context, -

(a) “*appropriate Government*” means -

.....



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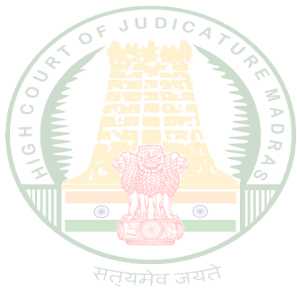
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(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government.

.....”

96. From the above definition, it goes without saying that insofar as State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the said State Government is the appropriate authority.

97. It is the pointed case of the petitioner that the petitioner is a State Undertaking under the Government of Tamil Nadu and the unit that is housed at Puducherry is controlled by the principal undertaking at Chennai, which is the Head Office and it is only the State Government, viz., the Government of Tamil Nadu, which has jurisdiction to refer any dispute and such dispute could be referred for adjudication before the Labour Court established by the State of Tamil Nadu.



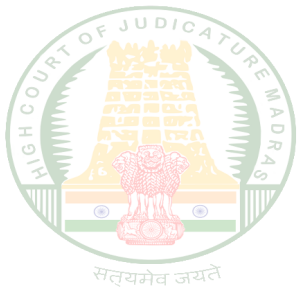
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98. As stated above, the workman has not placed any materials contrary to the above. Rather, the stand of the petitioner is clear and it is borne out by record. When the Union Territory of Puducherry has no hold over the petitioner and it is only the Government of Tamil Nadu, which has control over the petitioner, which is an unit established by the principal undertaking at Chennai, necessarily the reference made by the Government of Puducherry to the Labour Court at Puducherry, is perverse, illegal, arbitrary and not maintainable and the said reference is *void ab initio*.

99. For the reasons aforesaid, the award of the Labour Court, impugned in W.P. No.12738/2018 is wholly perverse, illegal, arbitrary, not maintainable and without jurisdiction and, accordingly, the writ petition challenging the impugned order stands allowed rejecting the claim made by the workman.

Workman connected with W.P. No.14194 of 2018 :

100. The petitioner has questioned the impugned award on the ground that the workman had come to the Court claiming the arrears of wages for the time he was under termination after a lapse of two years and that he is not



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entitled to the same as he does not have any pre-existing right as no backwages was awarded to him.

101. The fact remains that the order of termination was challenged by the workman before the Shops and Establishments Authority u/s 41 (2) and the said appeal ended in favour of the workman. Assailing the said order, the petitioner filed writ petition in W.P. No.15216/2009 and pending the writ, the workman was reinstated in service and, thereafter, he has retired and has been paid the retirement benefits. However, the fact remains that pending W.P. No.15216/09, the workman was reinstated and paid the wages. Thereafter, upon final order passed in W.P. No.15216/09, which has since been dismissed, this Court had confirmed the order of the Shops and Establishment Authority, who had merely directed reinstatement. There was no direction to the petitioner to pay backwages. The claim of the workmen is premised on the basis that had he continued in service, he would have got further promotions and would have retired in a higher position and on that basis, the computation petition has been filed before the Labour Court.

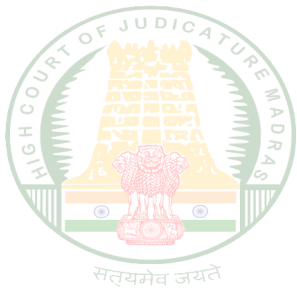


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102. However, it is to be pointed out that benefit accrues to a workmen only based upon pre-existing right and not on surmises and conjectures. The workmen cannot presume that he would have been promoted. thereby, he would have earned higher compensation. The Authority had not granted backwages, while ordering reinstatement, which order has since been confirmed by this Court. Such being the case, the computation petition has been filed on surmises without there being a pre-existing right on based on a figment of imagination on the part of the workman. The workmen, even after retirement is entitled to claim amount only based on pre-existing right, which cannot be extinguished and it cannot be on the basis of interpolation.

103. The Labour Court has erroneously passed the impugned order directing payment of the amount claimed by the workman and, therefore, the same deserves to be interfered with.

104. ***For the reasons aforesaid, the award of the Labour Court, impugned in W.P. No.14194/2018 is wholly unreasonable and suffers the vice of illegality and, accordingly, the impugned order is set aside and the writ petition stands allowed.***



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Workman connected with W.P. No.31901 of 2017 :

105. The contention with regard to payment of terminal benefits of PF and leave encashment to the workman hinges on the departmental proceedings alleged to have been initiated against the workman. However, the fact remains that the workman had since superannuated and has also been relieved from service. That being the case, it has been the consistent view of the Courts that what is due to the workman in the form of PF, leave encashment ought to be paid to the workman upon his superannuation. If at all, the employer gets right only to withhold the gratuity, which is payable to the workman, when he retires from service without any blemish. However, in the case on hand, departmental proceeding is pending against the workman and, therefore, the employer had rightly withhold the gratuity and the error perpetrated by the Controlling Authority directing payment of gratuity had been stayed upon imposition of some condition by this Court, which has also been complied with.

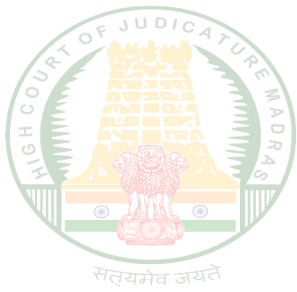


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106. However, it is to be pointed out that the right of the employee to his PF and leave encashment cannot be deprived by the employer, even if departmental proceedings are pending, when the employer had relieved the workman from service. In the case on hand, though the petitioner claims that the employer-employee relationship has not severed as departmental proceedings are pending, it is to be pointed out that the relationship of employer-employee is only to the limited extent of continuance of the departmental proceedings and not for any other purpose. If this Court is to even presume the contention of the petitioner that even upon relieving of the workman upon superannuation the employer-employee relationship subsists, then for all purposes, it is to be held so and then the workman would be entitled for all other continuing benefits out from the employment. The aforesaid contention could be only held to be a reserved contention for the purpose of continuance of departmental proceeding and not for any other purpose.

107. Therefore, rightly the Labour Court had directed the petitioner to pay the PF and leave encashment to which the workman is entitled along with



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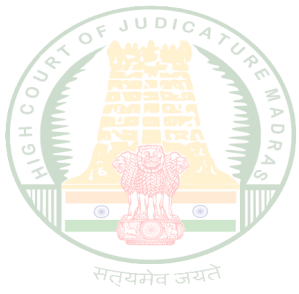
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interest, which order, is not only just and reasonable, but also legal and tenable and, therefore, the contention placed on behalf of the petitioner does not merit acceptance and the order passed by the Labour Court deserves to be confirmed.

108. For the reasons aforesaid, the award of the Labour Court, impugned in W.P. No.31901/2017 is justified and reasonable and does not suffer the vice of any illegality and, accordingly, the writ petition challenging the impugned order stands dismissed.

Workman connected with W.P. No.27170 of 2017 :

109. In this case, the facts, as evidenced from the materials available on record, requires this Court to give an in-depth deliberation with reference to the impugned award and its legality and enforceability in the alleged absence of approval to the order of dismissal passed by the petitioner against the workman.



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110. The workman was dismissed from service on account of prolonged absence by conducting an enquiry, in which the workman did not participate. After the dismissal, the petitioner filed A.P. No.377 of 2003, u/s 22 (2)(b) of the Act, which was subsequently withdrawn by the petitioner.

111. The continuous absence of the workman was on account of his implication in a criminal case in which the workman was found to be guilty and sentenced to imprisonment u/s 304 IPC for seven years, though he was tried for the offence u/s 302 IPC. It is the case of the petitioner that the fact of the workman being implicated in an offence of murder and being arrested and tried was not brought to the notice of the petitioner at any stage of the proceeding, either departmentally or even otherwise. The appeal filed by the workman was also dismissed confirming the sentence even by the Supreme Court vide its order dated 7.10.2002. After undergoing the imprisonment, the workman filed W.P. No.15722 of 2008 seeking payment of terminal and pensionary benefits, which petition was disposed of on 29.11.2013 holding that by virtue of the withdrawal of the approval petition, the dismissal is inoperative and ineffective and, accordingly, the petitioner was directed to



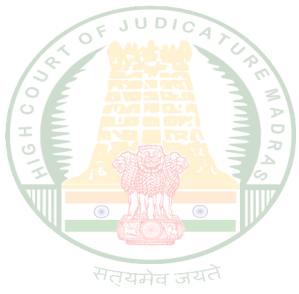
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pay the terminal benefits and pensionary benefits to the workman as if he had attained superannuation. Based on the aforesaid order of this Court, the present computation petition has been filed by the workman before the Labour Court, which has ordered payment of the amount claimed, which is put in issue before this Court.

112. On behalf of the workman, it is submitted that the order passed in the computation petition by the Labour Court has to be complied with in letter and spirit, as the order in W.P. No.15722/08 directing grant of terminal and pensionary benefits to the workman has since attained finality, as the appeal filed by the petitioner in W.A. No.705/2016 has been dismissed and the further appeal in SLP No.26865/2018 has also been dismissed and, therefore, the workman is entitled for the amount, as his dismissal is inoperative and ineffective.

113. True it is that the workman had obtained favourable orders with regard to payment of terminal and pensionary benefits. However, the core question that requires determination in the present case is whether approval

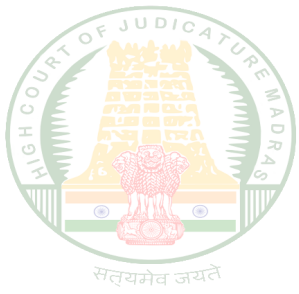


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as mandated u/s 33 (2)(b) of the Act is required in the case of dismissal of the workman and the withdrawal of the approval petition renders the dismissal inoperative and ineffective.

114. The consistent case of the petitioner is that the petitioner was not aware of the implication of the workman in a criminal case leading to subsequent conviction and sentence. True it is that no departmental action was taken against the workman with regard to the conviction, however, the conviction and sentence attained finality only on the Supreme Court passing orders in the SLP by dismissing the same on 9.5.2003.

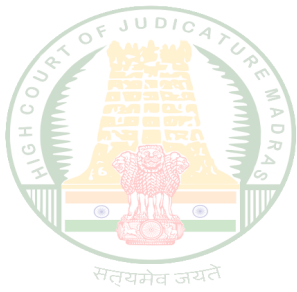
115. For unauthorized absence, the workman was proceeded with departmentally by initiating disciplinary proceedings and since the workman did not partake in the enquiry proceedings, the order of dismissal had come to be passed. Thereafter, approval petition was filed, which was subsequently withdrawn, which act has been held by this Court to have made the order of dismissal ineffective and inoperative, thereby, entailing the workman to the terminal and pensionary benefits.



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116. There could be no quarrel that with regard to the dismissal of a workman for the reasons set out under Section 33 (2) (b) of the Act, approval of the Labour Court is mandatory and in the absence of such an approval the dismissal would be ineffective and inoperative and only on that analogy, this Court in W.P. No.15722/08 has passed the aforesaid order, which has subsequently been affirmed by the Division Bench as also by the Apex Court.

117. The Apex Court had highlighted the act of the petitioner in not taking any action against the workman with regard to his involvement in the criminal case and, thereby, dismissing the workman for the said delinquency. Further, the Apex Court had, on the basis of the SLP filed under Article 32 of the Constitution, had decided the issue merely on the strength of the orders passed by the learned single Judge, which had been affirmed by the Division Bench in W.P. No.15722/08 and W.A. No.705/2016. Therefore, the Supreme Court had not gone into the merits of the issue, whether approval is mandatorily to be obtained by the employer in the present case for confirming the order of the learned single Judge as also the Division Bench.



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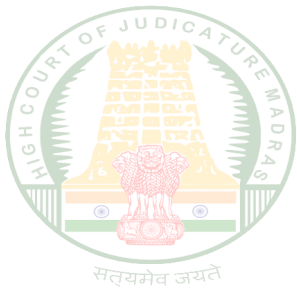
118. Therefore, what is necessary to be looked at in the present context is as to the application of Section 33 (2)(b) and the scenario in which barring an approval, the dismissal or discharge would become inoperative and ineffective. Therefore, the mandatory nature of the approval is predicated upon the circumstances as envisaged under Section 33 (2)(b), infraction of which alone would render the dismissal ineffective and inoperative.

119. For better appreciation of the case, Section 33(2)(b) is quoted hereunder :-

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-

* * * * *

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman –



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(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

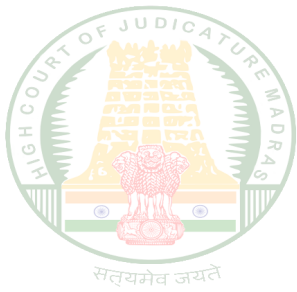
(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

* * * * *

(Emphasis Supplied)

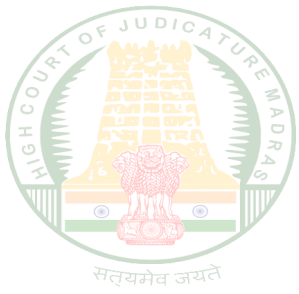
120. A careful perusal of clause (b) to sub-section (2) to Section 33 reveals that for any misconduct of the employee, which is not connected with the dispute, that is pending consideration before the authority, the workman can be discharged or punished, whether by dismissal or otherwise. Proviso therein provides that where such discharge or dismissal is meted out to an employee, the employer has to pay one month wages and also file an application to the authority before which the proceeding is pending for approval of the action taken by the employer.



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121. The intent of Parliament in enacting Section 33 (2)(b) is therefore very clear. In that it safeguards the workman against any action from the employer, which is a direct off-shoot of a dispute, which is pending consideration, as it is always a possibility that punitive action may be taken by the employer against the workman with respect to a dispute. Only to provide the requisite safeguards to the workman from any punitive action and unfair labour practice, the necessity for approval has been necessitated u/s 33 (2) (b).

122. The Supreme Court in *Jaipur Zilla Sahakari case (supra)* has categorically held that the approval by the authority in a case of dismissal or discharge of an employee, for any misconduct, pending a dispute, is a condition mandatory to be complied with in addition to the conditions imposed in proviso to Section 33 (2)(b). Therefore, it is evident that even if the discharge or dismissal of the employee is not relatable to the dispute, which is pending consideration before the appropriate authority, for the safeguard of the employee against punitive action or victimisation at the

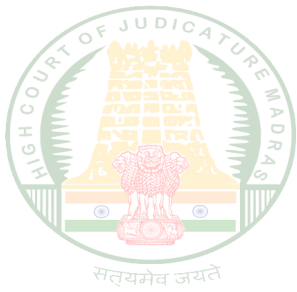


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hands of the employer, the concept of approval has been brought in by way of amendment to Section 33 (2)(b) in the year 1956.

123. However, in the case on hand, though the petitioner had initially filed petition seeking approval of the dismissal of the workman, however, for reasons best known, had withdrawn the same. Therefore, there is no compliance of the provision of Section 33 (2)(b).

124. However, it is the stand of the petitioner that the workman had been implicated in a criminal offence and had been convicted and sentenced and, therefore, he would not be entitled for any terminal and pensionary benefits. Though such a contention is advanced, it is to be pointed out that as held by the Apex Court in the SLP preferred by the petitioner against the order in writ appeal, the Supreme Court had categorically held that the dismissal of the workman from service was not with regard to the conviction in the criminal case and the Apex Court had held that the employer had lost the bus, when it failed to take steps to dismiss the workman from service on account of the conviction in the criminal case.



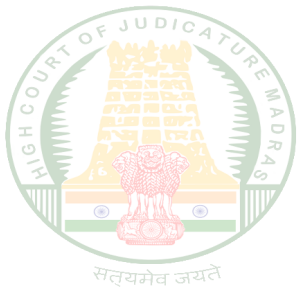
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125. In this regard, the observations in the order of the learned single Judge in W.P. No.15722/2008 assumes significance and the relevant portion of the order is quoted hereunder :-

“4. The learned counsel for the respondent contended that the petitioner was dismissed from service in pursuance of the conviction imposed by the Criminal Court. The learned counsel for the respondent further contended that since the conviction has been upheld by the Hon’ble Supreme Court, the petitioner is not entitled to terminal benefits. The learned counsel for the respondent by relying the judgment of the Hon’ble Supreme Court in United Bank of India – Vs – Sidhartha Chakraborty (2007 (7) SCC 670) contended that permission may be given to the respondent to initiate fresh proceedings against the petitioner in accordance with law. Therefore, the learned counsel for the respondent prays for dismissal of the writ petition.

* * * * *

6. It is not in dispute that the petitioner was appointed as driver under the respondent Corporation on 14.8.1976. It is also not in dispute that in pursuance of the conviction of the petitioner in the criminal case, the petitioner was dismissed from service. Admittedly, the conviction was upheld by the Supreme Court. It appears that the application under Section 33 (2)(b) of the Industrial Disputes Act, 1947, has been filed



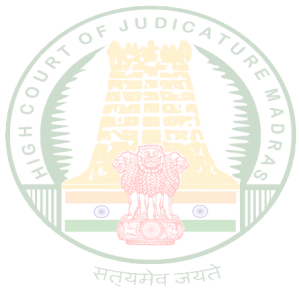
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seeking approval of the authority for the dismissal of the petitioner and subsequently, the same has been withdrawn by them on 26.7.2004. It is useful to extract the operative portion of the said order which reads thus :-

“On 07.6.2004, the applicant filed an application seeking to withdraw the approval application No.377/2003 without prejudice to the rights of the Management to take further action on the above matter.”

The above liberty given by the Labour Court has not been exercised till now. Therefore, in my considered opinion, the judgment of the Supreme Court in United Bank of India – Vs – Sidhartha Chakraborty (2007 (7) SCC 670) relied on by the learned counsel for the respondent is not applicable to the facts of the case.”

126. From the above sequence of events, it is perfectly clear that not only the approval petition, which had been filed by the employer was withdrawn, but the liberty sought for, for initiating further action on the workman, consequent upon his conviction in the criminal case, has not been proceeded with by the petitioner. The petitioner has kept silent all through from the time the approval petition was withdrawn from the Labour Court. Such being the position, it does not lie in the mouth of the petitioner to claim



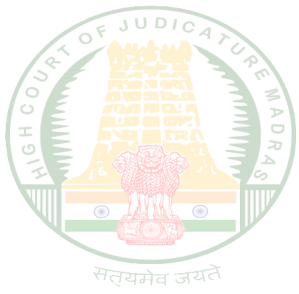
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that the order of dismissal passed by it had not been challenged by the workman u/s 33-A of the Act and, therefore, the same becomes final, as the said contention stands nipped in the bud by the decision of the Apex Court in *Jaipur Zilla Sahakari case*.

127. Further, the compliance of the other limb of Section 33 (2) (b) has also not been spoken to by the petitioner, with regard to payment of one month wages to the workman at the time of dismissal and when simultaneously the approval petition was filed. Only in the above context, the Supreme Court, while pointing to the act of the petitioner in not taking action against the workman even upon coming to know that he stood convicted and sentenced in a criminal case, confirmed the view of the Division Bench, which was given in favour of the workman. The words of the Apex Court in the earlier round of litigation, which has a bearing on the present case, is extracted hereunder :-

"Unfortunately, the petitioner-management did not take advantage of the conviction to dismiss the respondent from service. On the contrary, they held disciplinary proceedings subsequently in respect of a period of unauthorised absence."

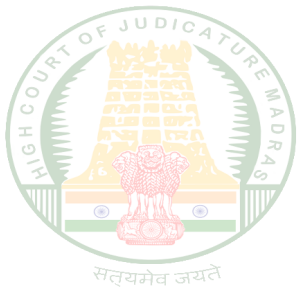
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128. When as early as on 7.6.2004, the petitioner had taken a stand before the Labour Court at the time of withdrawing the approval petition that it will take further action, for which alone liberty was asked for and granted, yet, till 29.11.2013, the petitioner had not taken any concrete steps with regard to the further action to be taken against the workman. The above act or the petitioner clearly shows that the petitioner has not been diligent enough at any point of the proceeding, be it at the time of withdrawal of the approval petition or even thereafter, but has slept over the matter without appreciating the nuances in the enactment of Section 33 (2)(b). When the petitioner is not responsive and diligent in exercising its rights by initiating action at the proper time, this Court cannot come to the aid of the petitioner, merely on the ground that the workman had suffered criminal conviction.

129. Further, what is more pertinent to be pointed out is the fact that the conviction in the criminal case is not something which is based on the charge in the departmental proceeding, but it is a case, which is unconnected with the employment of the workman. So long as the charge in the criminal

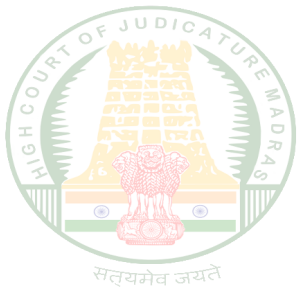


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case does not relate to the employment of the petitioner, as a sequel to the decision in *Jaipur Zilla Sahakari case* it is incumbent on the part of the petitioner to obtain approval with regard to the dismissal and non-compliance of the same, would render the dismissal ineffective.

130. One other aspect, which stares writ large on the petitioner even from taking any action against the workman is the fact that the workman had since died and no proceeding could be initiated against him at this point of time, when the legal heirs of the workman had been brought on record even before the Apex Court in the earlier round of litigation in SLP No.26865/2018 by the petitioner herein.

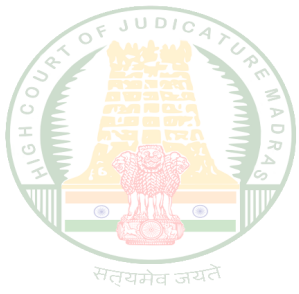
131. Further, it is the admitted case of the parties that the workman had attained superannuation on 31.10.2003 but four days prior to his superannuation, the workman was meted out with punishment of dismissal from service on the ground of unauthorised absence. Necessarily, the approval of the Labour Court is necessary, as only to avoid punitive acts on the part of the employer the amendment with safeguards to the workman was



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introduced in the year 1956 u/s 33 (2)(b). Though the workman had suffered criminal conviction and sentenced to imprisonment, yet the petitioner had not taken any steps to take action against the workman for the said act. Such being the case, as held by the Apex Court in *Jaipur Zilla Sahakari case*, the petitioner, who has since withdrawn the application made u/s 33 (2)(b) cannot be rewarded by negating the claim of the workman and relieving it of the statutory obligation casted on it by Section 33 (2) (b).

132. The Labour Court had carefully analysed all the aforesaid materials while adjudicating the claim of the workman and holding in his favour, which cannot be said to be erroneous or wrong. The error in law committed by the petitioner in withdrawing the approval application cannot be put against the workman, though the workman may not be legally entitled to the benefit, but one, which by the act of the petitioner, had been served to the workman on a golden platter, which has been rightly appreciated by the Labour Court and, therefore, this Court cannot interfere with the impugned in the writ petition, as it is based on law and appreciation of facts.



W.P. Nos.14559/2017, Batch

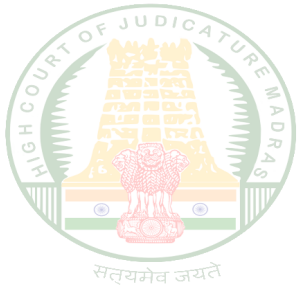
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133. *For the reasons aforesaid, the award of the Labour Court, impugned in W.P. No.27170/2018 is justified and reasonable and does not suffer the vice of any illegality and, accordingly, the writ petition challenging the impugned order stands dismissed.*

134. In the result, this Court passes the following order :-

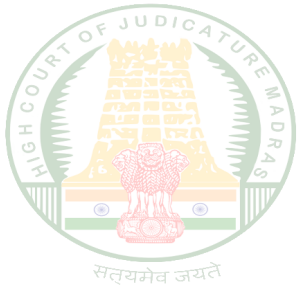
- i) W.P. Nos. 32413/2017, 12738/2018, 17203/2018, 14194/2018 and 16882/2018 are allowed setting aside the order/award passed by the Labour Court.
- ii) W.P. Nos. 14559 and 14560/2017, 27170/2017 and 31901/2017 are dismissed confirming the order/award passed by the Labour Court.
- iii) The petitioner in W.P. No.17203/18 is directed to pay the surrender of earned leave benefits to the workman, as undertaken in the writ petition, within a period of four weeks from the date of receipt of a copy of this order;
- iv) Consequently connected miscellaneous petitions are dismissed. There shall be no order as to costs.

21.09.2023



W.P. Nos.14559/2017, Batch

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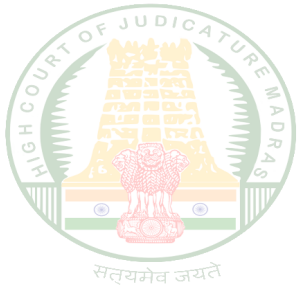


W.P. Nos.14559/2017, Batch

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To

1. The Presiding Officer
Labour Court
Coimbatore.
2. The Presiding Officer
I Addl. Labour Court
Chennai.
3. The Presiding Officer
The Industrial Tribunal-cum-
Labour Court, Puducherry.
4. The Labour Court
Salem.



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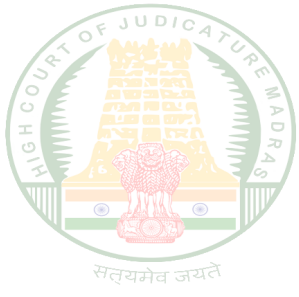
W.P. Nos.14559/2017, Batch

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.14559, 14560, 27170
31901 & 32413 OF 2017
W.P. NOS. 12738, 17203, 14194
& 16882 OF 2018**

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W.P. Nos.14559/2017, Batch

21.09.2023